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WORLD WIDE TAX NEWS

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THE OECD'S ACTION PLAN TO REFORM INTERNATIONAL TAX

The OECD has released its Action Plan on Base Erosion and Profit Shifting, promised in its February 2013 report. The Action Plan sets out 15 areas for study leading to potential international tax reforms. Businesses should be aware of these developments to determine how any recommendations, if enacted, will impact their current or proposed tax strategy and transfer pricing policies.

BASE EROSION AND PROFIT SHIFTING – BACKGROUND

The OECD published a report on Base Erosion and Profit Shifting (BEPS) in February 2013 at the request of the G20 against the backdrop of the debate on tax revenues. That report promised an action plan to address perceived weaknesses in the international tax rules. This Action Plan was published on 19 July 2013 with the support of G20 finance ministers and an invitation for non-OECD members to participate in discussions.

Globalisation of the economy and operating models adopted by businesses have opened up opportunities for multinational enterprises (MNEs) to greatly reduce their tax burden, according to the OECD. They take the view that this is harmful to government revenues, uncompetitive to domestic taxpayers who cannot access these opportunities, and potentially damaging to MNEs themselves through reputational risk.

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EDITOR'S LETTER

Welcome to this issue of *BDO World Wide Tax News*. This newsletter summarises recent tax developments of international interest across the world. If you would like more information on any of the items featured, or would like to discuss their implications for you or your business, please contact the person named under the item(s). The material discussed in this newsletter is meant to provide general information only and should not be acted upon without first obtaining professional advice tailored to your particular needs. *BDO World Wide Tax News* is published quarterly by Brussels Worldwide Services BVBA in Brussels. If you have any comments or suggestions concerning *BDO World Wide Tax News*, please contact the Editor via the BDO International Executive Office by e-mail at mderouane@bwsbrussels.com or by telephone on +32 (0)2 778 0130.

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THE ACTION PLAN – OVERVIEW

The OECD have set out 15 actions for study over the next 18 months to two years. Most of these will result either in changes to OECD guidance, for example on transfer pricing or the OECD Model Tax Treaty, or recommendations to support domestic governments in consistent, multilateral reforms. An instrument is also proposed to enable amendment of tax treaties without the need for renegotiation.

The key areas covered in the Action Plan are:

- **Digital economy**
  Examining the difficulties of taxing activities in the digital economy under the current system and how corporate and indirect taxes might be better aligned with value creation through both sales activities and the collection and use of customer lists and data.
- **Hybrid mismatch arrangements**
  Neutralising the effects of arrangements that are not treated consistently by two tax authorities, for example by double deduction or deduction without corresponding income recognition. Hybrid arrangements, interest and financial instruments are specified.
- **Harmful tax practices and treaty abuse**
  Evaluating preferential tax regimes and tackling treaty abuse through anti-abuse provisions in treaties and addressing the practice of treaty shopping (i.e. interposing third countries into otherwise bilateral arrangements to reduce taxes).
- **Controlled Foreign Companies (CFC) rules**
  Developing recommendations regarding the design of CFC rules in order to counter BEPS and in co-ordination with other Action Plan items.
- **Permanent establishment (PE)**
  Developing changes to the definition of permanent establishment to prevent artificial avoidance of PE status, for example through the use of commissionaire arrangements or specific activity exemptions.
- **Transfer pricing**
  Developing rules to ensure that transactions reflect value in accordance with the arm's length standard, with particular focus on intangibles, contractually assigned risks and high risk transactions not or only rarely seen between third parties (including where capital is allocated within a group without appropriate commercial rationale). However the OECD rejects formulary apportionment.
- **Disclosure and transparency**
  Developing recommendations for the design of consistent mandatory disclosure rules for "aggressive or abusive transactions" and a wider definition of "tax benefit". Transfer pricing documentation will also be reviewed to include a requirement to show the global allocation of income, economic activities and tax across the value chain using a common template.

RECOMMENDATIONS

While the Action Plan may not lead to legislative change for some time, it does provide an indication of tax authority thinking and as a result where they will focus their attention in the coming months and years.

Businesses should especially pay immediate attention to the potential impact of the Action Plan where:

- A business is reliant on any of the arrangements identified in the Action Plan to manage its group effective tax rate.
- The implementation of a business' transfer pricing model involves either the contractual movement of risk to another group entity, commissionaire arrangements, or dependence on value attributed to intangible assets.
- A new or changed tax and transfer pricing model is being designed or implemented that will need to be robust in the longer term.

An immediate impact of the OECD's announcement may be that tax authorities request more information from international businesses about their tax and transfer pricing policies. Where these arrangements are supported by the economic activity of the business, are supportable under law and are effectively implemented, tax and transfer pricing risk should not increase.

All businesses should review their current tax planning arrangements and transfer pricing policies to ensure that the resulting effective tax rate of the group is sustainable in the longer term.

If you have any queries, or to discuss any of these issues in detail, please contact your usual BDO advisor or

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NEW INTERNATIONAL MEASURES TO COMBAT TAX AVOIDANCE AND EVASION

In addition to the OECD Action Plan on Base Erosion and Profit Shifting (see main article), several new international proposals have been announced over the last few months, reflecting increasing international cooperation in combating tax avoidance and evasion, and we summarise these below.

EXTENDING THE AUTOMATIC EXCHANGE OF INFORMATION WITHIN THE EUROPEAN UNION

On 12 June 2013 the European Commission proposed that the existing Directive 2011/16/EU on the automatic exchange of information (the Administrative Cooperation Directive) should be extended.

Currently, the Administrative Cooperation Directive provides that from 1 January 2015 Member States must automatically exchange the following types of information in relation to taxable periods from 1 January 2014:

- Income from employment;
- Director's fees;
- Life insurance products not already covered by existing exchange measures;
- Pensions; and
- Ownership of and income from immovable property.

The proposed new Directive would extend the scope of the Administrative Cooperation Directive to include (also in relation to taxable periods from 1 January 2014):

- Dividends;
- Capital gains;
- Any other income generated in respect of assets held in a financial account;
- Any amount in respect of which a financial institution is the debtor or obligor; and
- Account balances.

The EU Savings Tax Directive has, since 2005, provided for the automatic exchange of information between Member States on the savings of non-resident individuals. The Commission believes that the new measures will give the EU "the most comprehensive system of automatic information exchange in the world". Perhaps anticipating that some individuals will move funds and assets to other jurisdictions, the European Council has also requested an extension of automatic exchange of information at a global level.

The extension of automatic information exchange measures also underlines the importance of the OECD Action Plan points on wider disclosure, and businesses should be prepared to receive requests from tax authorities for greater disclosure of their profits across the value chain even before conclusions are reached by the OECD.

EUROPEAN UNION AGREEMENTS WITH NON-EU COUNTRIES

On 14 May 2013 the European Union Council adopted a mandate for the European Commission to negotiate updated savings tax agreements with Switzerland, Liechtenstein, Monaco, Andorra and San Marino.

The aim is to ensure that these countries continue to apply measures that are equivalent to those in the EU.

COUNTRY BY COUNTRY REPORTING OF CORPORATE PROFITS WITHIN THE EUROPEAN UNION

On 21 May 2013 the European Parliament called on the European Commission to take immediate action with regard to the transparency of companies' tax payments by obliging all multinational companies to publish a simple, single figure for the amount of tax paid in each Member State in which they operate.

This proposal would need to be agreed by the European Parliament and the Member States in order to be implemented, but large multinational companies should note the intention to move to country-by-country reporting, and begin to consider the possible implications.

G8 DECLARATION

The Lough Erne Declaration signed by the leaders of the G8 countries on 18 June 2013 included the following aspirations (in their words):

"1. Tax authorities across the world should automatically share information to fight the scourge of tax evasion.

2. Countries should change rules that let companies shift their profits across borders to avoid taxes, and multinationals should report to tax authorities what tax they pay where.

3. Companies should know who really owns them and tax collectors and law enforcers should be able to obtain this information easily.

4. Developing countries should have the information and capacity to collect the taxes owed them – and other countries have a duty to help them."

SUMMARY

These additional proposals and declarations highlight the increasing determination of governments to clamp down on tax evasion, aggressive tax planning and profit shifting, and to cooperate more effectively to help achieve this.

The extension of automatic information exchange measures will be relevant to individuals with undeclared income and any such individuals should take professional advice and bring their tax affairs into order as soon as possible, using a tax disclosure facility where available.

Companies should monitor the proposals and consider whether they should make any changes to their trading models or tax strategy in light of the proposals and likely developments.

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AUSTRALIA

FEDERAL BUDGET 2013 – INTERNATIONAL TAX MEASURES

Treasurer Wayne Swan delivered the 2013 Federal Budget on 14 May 2013. The proposed measures which are of international interest are summarised below.

CHANGES TO THE THIN CAPITALISATION PROVISIONS

The thin capitalisation provisions impose limits on 'debt deductions' (mostly interest expenses) incurred by Australian entities that are controlled by non-residents, as well as Australian entities that have foreign subsidiaries and/or branches. The provisions impose a cap on the amount of debt that these Australian entities can carry. In most cases, the cap is calculated on a debt to equity ratio of 3:1, namely, for every AUD 1 of equity, an entity can have up to AUD 3 of deductible debt. If the relevant cap is exceeded, interest on the excess debt is not deductible.

The Government announced that from 1 July 2014, the following changes will apply:

- The debt to equity ratio of 3:1 applicable to general entities will be reduced to 1.5:1 (effectively 60% gearing rather than 75% gearing);
- The debt to equity ratios in respect of non-bank financial entities and banks will also be reduced significantly;
- The alternative method for calculating the cap, the worldwide gearing ratio, will be reduced from 120% to 100%; and
- The other alternative method for calculating the cap, the arm's length test, will be referred to the Board of Taxation to make it easier to comply with and clarify in what circumstances the test should apply.

On the positive side, the Government also announced that:

- The 'debt deductions' threshold, below which the thin capitalisation provisions do not apply, will increase eight-fold from AUD 250,000 to AUD 2 million, thereby exempting many Small & Medium Enterprises (SMEs) from the provisions altogether; and
- The alternative method for calculating the cap, the worldwide gearing ratio, will also be available to inbound entities (not just outbound entities).

While the changes to the thin capitalisation provisions have been expected for quite some time, they are still likely to trigger a major re-thinking of how foreign-owned Australian entities are funded. The tax savings of AUD 1.5 billion that the Government is expecting from this measure are significant. However, the significant increase of the threshold under which the thin capitalisation provisions will not apply is a welcome announcement in respect of SMEs who incur significant costs in complying with these provisions.

NON-PORTFOLIO DIVIDEND EXEMPTION

Currently, Australian companies that own a non-portfolio shareholding (i.e. at least 10%) in a foreign company are exempt from Australian income tax on dividends paid by the foreign company. The Government re-announced its intention to reform the exemption so that:

- It is only available to returns on equity holdings (rather than debt holdings) and only those that are non-portfolio in nature (e.g. a substance over form test); and
- It will allow the exemption to flow through trusts and partnerships (which is currently not available).

INTEREST DEDUCTIONS IN RESPECT OF FOREIGN EXEMPT INCOME

Under the current provisions, Australian entities are allowed a deduction for interest expenses (subject to thin capitalisation) even to the extent they derive exempt foreign income (e.g. non-portfolio dividends). The Government is proposing to remove this concession. This will require Australian entities to apportion their interest expenses, and to the extent these expenses relate to the derivation of exempt foreign income, they will not be deductible.

CONTROLLED FOREIGN COMPANY PROVISIONS

The long-awaited reforms to the Australian controlled foreign company provisions and other foreign source attribution provisions have been further deferred, to be reconsidered after an Organisation for Economic Co-operation and Development analysis on these provisions is completed.

AMENDMENTS TO THE CAPITAL GAINS TAX REGIME FOR FOREIGN RESIDENTS

The Government has announced two broad changes to the taxation of Capital Gains Tax (CGT) assets for foreign residents:

- A tightening of the principal asset test in Subdivision 855-A of the Income Tax Assessment Act 1997, to prevent what would otherwise be taxable Australian real property from escaping CGT; and
- A 10% non-final withholding tax on the disposal of certain taxable Australian property by a foreign resident.

THE PRINCIPAL ASSET TEST

The changes to the principal asset test comprise two components. The first is to ignore inter-company dealings between entities within the same tax consolidated group for the purposes of determining whether the entity being disposed of passes the principal asset test. The principal asset test only looks at the assets of the entity being disposed of. It is currently possible to artificially inflate the gross assets of the entity being disposed of in order to fail the principal asset test and, therefore, come under the CGT exemption available under Subdivision 855-A.

The second component is to take certain intangible assets, such as mining information and goodwill which are currently not considered taxable Australian real property, and treat them as taxable Australian real property provided they are attributable to taxable Australian real property such as the exploration and mining rights.

According to the Government's press release, a number of foreign owned mining companies have been disposed of, and the foreign owner had not been taxed on the basis that the non-taxable Australian real property, including mining information, exceeded the value of the taxable Australian real property. In these cases the principle asset test would be failed and the foreign owner would be exempt under Subdivision 855-A. Under this example of the proposed amendments, the mining information will be included as 'taxable Australian property', which may result in the principle asset test being passed and, therefore, the Subdivision 855-A exemption would not be available. These amendments will apply from Budget night.

The change to the principal asset test, to treat mining information as a CGT asset for determining whether a sale of a CGT asset should be taxed, is perceived to be a specific measure against the mining industry. This measure has the capacity to significantly affect the flow of foreign capital investment into the mining industry.

FOREIGN RESIDENT WITHHOLDING TAX

A 10% non-final withholding tax will apply to the disposal of taxable Australian property by foreign residents. The purchaser will be obliged to withhold and remit 10% of the proceeds of the sale of the property to the Australian Tax Office. Similar regimes have been implemented in other major countries (i.e. USA and Canada) to overcome the difficulties of tax collection.

The withholding tax obligation will not apply to residential property transactions below AUD 2.5 million. The design and implementation of the regime will be developed through public consultation to minimise compliance cost.

This new regime will impose a greater compliance burden to Australian resident purchasers who will be required to explain their withholding tax obligations to a foreign resident seller, and this may well be a contract negotiation point similar to gross-up clauses for interest withholding tax.

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CHINA

NEW GUIDANCE ON EMPLOYEE SECONDMENT IN CHINA BY NON-RESIDENT ENTERPRISES

On 19 April 2013 the China State Administration of Taxation issued Public Notice (2013) No. 19 (Notice 19) to provide further guidance on determining the existence of an "establishment and place" of a non-resident enterprise in China for the purposes of the Enterprise Income Tax (EIT) levy, with respect to the secondment of employees working in China. Under the relevant EIT regulations, income derived by a non-resident enterprise from its establishment and place in China is subject to EIT, generally at 25%. Notice 19 became effective on 1 June 2013 and its salient features are summarised below.

FACTORS FOR DETERMINING THE EXISTENCE OF AN ESTABLISHMENT AND PLACE IN CHINA

Basic factors

According to Notice 19, a non-resident enterprise that assigns personnel to render services in China will be viewed as having an establishment and place in China to render services if it bears part or all of the responsibilities and risks of the work result of the assigned personnel, and normally evaluates and assesses their work performance. If the non-resident enterprise is resident in a country/region which has a double tax treaty/agreement with China, and the establishment and place at which the services are rendered is relatively fixed and permanent in nature, such an establishment and place will constitute a permanent establishment in the context of the double tax treaty/agreement.

Additional factors

The following additional factors will also be considered when determining the existence of an establishment and place in China:

1. Payment by the PRC enterprise (PRC entity) receiving the services of a management or service fee to the non-resident enterprise which assigns personnel.
2. Payment by the PRC entity of an amount to the non-resident enterprise in excess of the salary, social security fees and other fees of assigned personnel paid by the non-resident enterprise.
3. Retention by the non-resident enterprise of part of the fees paid by the PRC entity, instead of passing the full amount to the assigned personnel.
4. Payment by the non-resident enterprise of individual income tax (IIT) on less than the full salaries of assigned personnel.
5. Decisions by the non-resident enterprise with regard to the number, qualification, salary and work location of assigned personnel.

If any of the above five factors is present in addition to the basic factors for determining the existence of an establishment and place in China, the non-resident enterprise is generally regarded as having an establishment and place in China for EIT purposes.

EXCLUSION OF SHAREHOLDER SERVICES

According to Notice 19, the provision of shareholder services at the premises of the PRC entity will not by itself constitute an establishment and place of the non-resident enterprise (i.e. shareholder) in China. Shareholder services include the provision of advice in respect of the PRC entity's investment, and attendance at shareholders' or board of directors' meetings, etc. of the PRC service recipient.

TAX COMPLIANCE REQUIREMENTS

According to Notice 19 and the relevant PRC tax regulation, if a non-resident enterprise renders services in China, it must register with the PRC in-charge Tax Bureau within a specified period, and perform record-filing and tax reporting/filing procedures, where applicable. Notice 19 requires the non-resident enterprise to accurately calculate the actual income attributable to the PRC establishment and place for EIT reporting and payment purposes. If the non-resident enterprise fails to calculate and report the actual income for EIT levy purposes, the PRC tax authority may deem a taxable income for these purposes.

CONCLUSION

Non-resident enterprises which have seconded (or are considering seconding) employees in China should review their current or proposed arrangements in light of Notice 19.

Whilst Notice 19 provides further guidance on determining the existence of an establishment and place in China, certain aspects remain to be clarified. For example, what if the assigned personnel were taxed on a time apportionment basis for IIT purposes if the individual performs non-China duties outside China? Would this be caught under the additional factor if IIT has not been paid on the entire salary and wage of the assigned personnel borne by the non-resident enterprise? We anticipate that local variations in practice would exist when Notice 19 became effective on 1 June 2013.

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NEW ZEALAND

COMMISSIONER OF INLAND REVENUE PROVIDES GUIDANCE ON LAW ON TAX AVOIDANCE

INTRODUCTION

The Commissioner of Inland Revenue has issued its long-awaited Interpretation Statement Tax Avoidance and the interpretation of section BG 1 and GA 1 of the Income Tax Act 2007 (IS 13/01). The Statement replaced Inland Revenue's previous statement on the general anti-avoidance rule (GAAR) which was released in 1990.

The finalised Statement comes at a time when a number of countries are introducing a similar GAAR, so the Statement may be of interest to the wider tax community.

In New Zealand the Inland Revenue has taken a more expansive approach by to the scope of the tax avoidance provisions, and has won a series of Court cases, the most influential of which is the Supreme Court decision in Ben Nevis Forestry Ventures Ltd v CIR. This has created significant uncertainty for businesses as to what is tax avoidance and what is acceptable tax planning. The Statement is intended to relieve some of that uncertainty.

Following the Ben Nevis case, the Commissioner's new approach to the GAAR is the so-called Parliamentary contemplation test. Hence the GAAR could be applied where a taxpayer falls within the relevant specific tax provisions but the Inland Revenue considers that the Act has been used in a manner that is inconsistent with Parliament's purpose.

There is a risk that the test will become either:

- A hindsight test (which asks what would Parliament have contemplated, i.e. what would the law have been had Parliament considered this arrangement); or
- An economic substance test (which asks whether the tax consequences are reflective of the arrangement's economic substance).

The Interpretation Statement contains worked examples, one of which is considered to be subject to the GAAR and two of which are not. The examples are not intended to be 'close to the line' and have been included to demonstrate how Inland Revenue's framework applies. The usefulness of the examples is therefore limited.

HOW THE COMMISSIONER WILL DECIDE IF SECTION BG 1 APPLIES

The suggested approach to the application of both section BG 1 and GA 1 is illustrated in the attached flowcharts, reproduced from the Interpretation Statement.

Section BG 1: a suggested approach

Arrangement

The arrangement and its tax effects

– Identify all of the steps and transactions that make up the arrangement.

– Gain an understanding of the commercial, private and other (including tax) objectives of the arrangement, including the role of each of its individual steps.

– Idendity the tax effects of the arrangement, the provisions of the Act that apply to it, and any potentially relevant provisions that do not apply.[1]

Tax avoidance

Parliament's purpose

– Ascertain Parliament's purpose for the relevant provisions from their text, the statutory context (including the statutory scheme relevant to the provisions), case law and any relevant extrinsic material.[2]

– Identify any facts, features and attributes that need to be present (or absent) to give effect to that purpose.

Commercial reality and economic effects

– Examine the whole arrangement from the point of view of its commercial reality and economic effects, having particular regard to the facts, features and attributes that need to be present (or absent) to give effect to Parliament's purpose.

Your consideration of the commercial reality and economic effects of the arrangement may raise further questions as to Parliament's purpose in the context of this particular arrangement. If necessary, repeat these steps until you are satisfied that you have sufficiently ascertained Parliament's purpose.

Does the arrangement, viewed in a commercially and economically realistic way, use (or circumvent) the relevant provisions in a manner that is consistent with Parliament's purpose?

Yes → **s BG 1 does not apply**

No

The arrangement has tax avoidance as a purpose or effect

Merely incidental

Other purposes or effects

– Identify any other (ie, non-tax avoidance) purposes or effects of the arrangement that are not integral to the tax avoidance purpose or effect.[3]

Does the tax avoidance purpose or effect merely follow naturally from the other purposes or effects (rather than being an end in itself)?[4]

Yes → **s BG 1 does not apply**

No

Section BG 1 applies

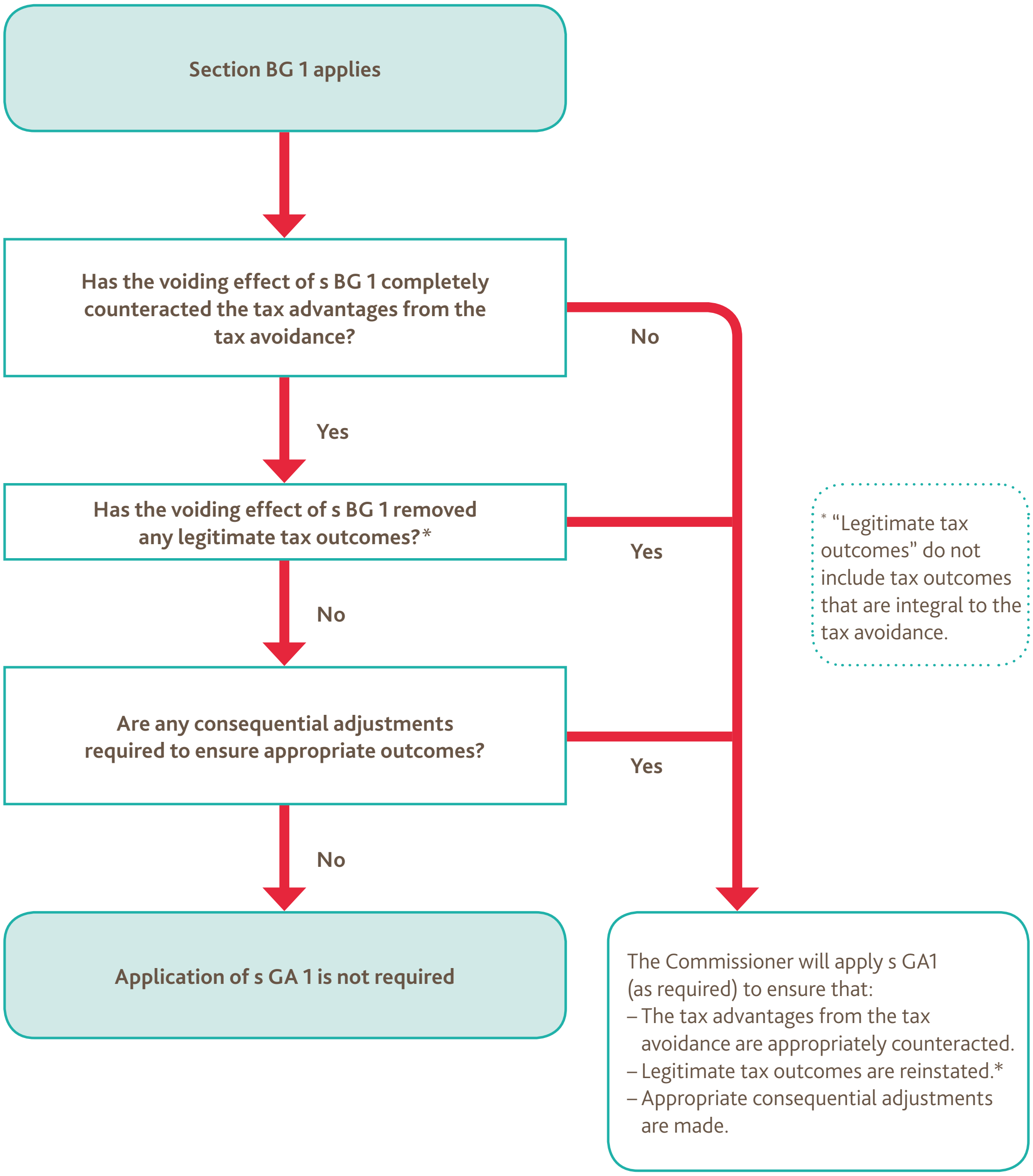
[1] You may need to return to this step if your subsequent analysis of the arrangement identifies additional potentially relevant provisions.

[2] You may also need to consider Parliament's purpose for combinations of provisions at this step.

[3] These do not include purposes or effects that are not achieved by the arrangement (otherwise than as a result of unforeseen factors).

[4] Tax avoidance purposes or effects will not be merely incidental to other purposes or effects where the other purposes or effects:
– Fail to explain the *particular* structure of the arrangement, but instead are more general in nature; or
– Are underpinned by tax avoidance purposes or effects.

Approach to s GA 1



The Statement provides that determining whether a tax avoidance arrangement exists involves considering various factors, including the:

– Manner in which the arrangement is carried out;

– Role of all relevant parties and their relationships;

– Economic and commercial effect of documents and transactions;

– Duration of the arrangement;

– Nature and extent of the financial consequences;

– Presence of artificiality or contrivance;

– Presence of pretence;

– Presence of circularity;

– Presence of inflated expenditure or reduced levels of income;

– Undertaking of real risks by the parties; and

– Relevance of an arrangement being pre-tax negative.

The relevance of these factors will depend on the provisions used or circumvented and what facts, features and attributes Parliament would expect to be present (or absent). Thus, despite the arrangement meeting the letter of the law, the presence of the above factors will mean that the Inland Revenue will seek to ascertain Parliament's purpose for the relevant provisions and then determine whether the arrangement is subject to section BG 1.

HOW THE COMMISSIONER WILL APPROACH MAKING AN ADJUSTMENT UNDER SECTION GA 1

The Statement's section on Reconstruction addresses a concern that the application of section BG 1 might in some cases eliminate perfectly legitimate tax consequences as well as the tax avoidance elements. The Statement confirms that Inland Revenue will exercise its discretion to reinstate legitimate tax advantages where these have been rendered void by section BG 1. In particular, the Statement says that Inland Revenue is required to exercise the section GA 1 power and reconstruct if:

1. Section BG 1 has not appropriately counteracted the tax advantage;
2. Section BG 1 has removed legitimate tax outcomes; or
3. It is necessary to make some consequential adjustments.

Thus some comfort has been provided that taxpayers will be protected from the voiding effect of section BG 1 when an arrangement that is void under that section also gives rise to tax advantages that are legitimate (that is, being within Parliament's contemplation, or being merely incidental).

Determining whether a particular tax advantage obtained under a tax avoidance arrangement is legitimate may be difficult in some cases. Where the particular advantage is so interdependent and interconnected with the tax avoidance parts to be integral to them, the tax advantage will not be considered legitimate and so would not be reinstated under section GA 1.

CONCLUSION

The release of the Statement is viewed as a positive development in that it describes the framework Inland Revenue should apply when considering tax avoidance questions. However, many remain concerned as to whether it truly removes the uncertainty. Many businesses will need to continue to obtain guidance on the tax consequences of particular transactions and, where necessary, seek a binding ruling from the Inland Revenue.

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EUROPEAN UNION

EUROPEAN PARLIAMENT VOTES IN FAVOUR OF FINANCIAL TRANSACTION TAX

Contrary to previous reports, the EU Financial Transaction Tax (FTT) is now firmly back on the European agenda. On 3 July 2013 the European Parliament (EP) voted in favour of implementing the FTT, but with some potentially significant amendments to the original proposals issued by the Commission on 14 February 2013. The legislator (ECOFIN) is not obliged to accept the EP's amendments, but we can expect the final version of the FTT to include some (if not all) of the recommendations, in one form or another.

The proposed FTT will cover a wide range of financial instruments including stocks, bonds and derivatives, with recommended minimum tax rates of 0.01% for transactions in relation to derivative contracts and 0.1% for other transactions.

The amendments proposed by the EP are a mixed bag. The financial services industry will welcome proposals to:

– Introduce an exemption for market makers;

– Permanently reduce to 0.01% the FTT rate applicable to repo and reverse repo agreements with a maturity of up to three months; and

– Until 1 January 2017, reduce the rates for trades in sovereign bonds (to 0.05%) and trades of pension funds (0.05% for stock and bond trades and 0.005% for derivatives trades).

However, there are also amendments which extend the scope of the FTT, bolster its extra-territoriality and potentially increase rates. These include:

– An extension of the FTT to include currency spots on the FX markets;

– The option for FTT zone members to impose higher tax rates for OTC trades; and

– More robust anti-avoidance mechanisms, including making payment of the FTT a condition for the transfer of legal ownership rights.

Unfortunately, the EP proposals do little to address growing concerns that the FTT will have a damaging impact on national economies – both inside and outside the FTT zone – and that certain types of institutions may relocate from Europe to avoid the tax. Of particular concern is the extra-territorial application of the FTT and its potential ability to tax certain transactions twice. Unhelpfully, the EP also failed to explore in detail the mechanics for FTT compliance and enforcement.

11 Member States have expressed an intention to proceed with the FTT - Austria, Belgium, Estonia, France, Germany, Italy, Greece, Portugal, Slovakia, Slovenia and Spain. Following the EP's favourable vote, the next step is for the European Council to consider and vote on the FTT. Assuming the Council also votes favourably, the 11 Member States will then have to transpose the agreed European Directive into their national legislation. According to the Commission, agreement at the European level by the end of 2013 might mean implementation of the FTT towards the middle of 2014.

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BELGIUM

NOTIONAL INTEREST DEDUCTION VIOLATES EU LAW

In the *Argenta Spaarbank NV v Belgische Staat* case (C-350/11), the European Court of Justice (CJEU) has ruled that the Belgian notional interest deduction infringes the European principle of freedom of establishment.

The notional interest deduction is a tax deduction that is calculated based on a company's net equity (including capital and reserves) and by applying a fixed rate. (For the assessment year 2013, the normal rate is 3% and the increased rate amounts to 3.5%). Certain items should be excluded from the basis for computing the notional interest deduction, including the net equity of a foreign branch of the Belgian company located in a treaty country.

The discrimination, when determining the basis for calculating the notional interest deduction, relates to the difference in treatment between a Belgian company with a Belgian establishment and a Belgian company with a foreign establishment.

The legislation requires the part of the Belgian company's net equity (share capital and reserves) which is attributable to a permanent establishment located in a tax treaty country to be excluded. Such an exclusion does not apply in relation to a Belgian establishment. In the case at hand, the Belgian company Argenta Spaarbank NV had to exclude the part of its net equity attributable to its Dutch permanent establishment.

The CJEU concluded that the Belgian rules are incompatible with the European principle of freedom of establishment, and rejected all justifications brought forward by the Belgian government.

Belgium will now have to amend its legislation, and companies will be able to make a formal complaint or request for ex officio tax relief, in order to obtain a revision of their initial tax assessment, for periods of up to five years ago.

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DENMARK

CORPORATE INCOME TAX RATES TO BE REDUCED

The Danish Parliament has voted to reduce the rate of corporate income tax over the next few years, in line with international trends and to assist growth and employment and attract foreign investors.

The proposed rates are as follows:

Tax year	Rate
2013	25%
2014	24.5%
2015	23.5%
2016	22%

The reduced rates will not apply to businesses in the oil and gas industry, and financial businesses will not benefit from the reductions, as they will be offset by corresponding increases in payroll duty.

It is anticipated that the changes will result in tax savings for companies of about DKK 700 million in 2014 and DKK 4.3 billion by 2016.

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NETHERLANDS

PARTICIPATION EXEMPTION: COMPARTMENTALISATION AND CHANGES IN LAW

The Dutch Supreme Court has previously ruled that capital gains on the sale of a subsidiary are only exempted under the participation exemption regime insofar as the increase in value of the subsidiary occurred in a period in which the participation exemption applied. If, due to a change of facts, the subsidiary did not qualify as an exempted participation during a certain period, value accrued during this period is not exempted when a gain is realised, irrespective of whether the participation exemption regime applies at the time of realisation. This time-apportionment of results to the respective exempted and non-exempted periods became known as compartmentalisation.

On 14 June 2013, in case 11/04538, the Supreme Court made a further ruling with regard to compartmentalisation. The Court ruled that when the participation exemption regime commences to apply due to a change in the legislation, the compartmentalisation of results is not mandatory. This decision overrules the explicit intention of the legislator, who, in Parliament, stated that compartmentalisation should apply in this scenario. The Supreme Court stated that in applying the law, one must in principle assume direct applicability of newly issued legislation. If the legislator intends to deviate from this principle, grandfathering legislation should be issued in which such an intention is given effect.

On the same day the State Secretary of Finance announced new legislation to minimise the consequences of the Supreme Court decision. The announced law should have effect as from 14 June 2013. We expect this new legislation will be in accordance with the legislator's intention as stated in parliament, and as such will introduce rules for applying compartmentalisation following changes in the rules of the participation exemption regime.

DEFERRAL OF PAYMENT OF EXIT TAXATION

On 29 May 2013 the Dutch Tax Collection Act 1990 ("*Invorderingswet*") was amended in relation to unrealised gains arising on the relocation of a company's place of effective management. Under the new rules the payment of exit tax may be postponed to the future. This amendment results from the ruling of the European Court of Justice on 29 November 2011 in the National Grid Indus case which concerned Dutch exit tax imposed on a company that relocated its place of effective management from the Netherlands to the United Kingdom.

In the meantime the deferral of payment was governed by a policy statement. If a company transfers its place of effective management outside the Netherlands to a member state of the EU or EEA, or a country that has concluded a tax treaty with the Netherlands, then generally it is deemed to have alienated its assets and liabilities at fair market value and deemed to have released its reserves and provisions, unless and to the extent that such assets and liabilities remain attributable to a Dutch permanent establishment.

The new rules provide that the related tax liability (exit tax charge) does not need to be paid immediately. Instead, upon the taxpayer's election, payment can either be postponed until the relevant inherent gains and goodwill are realised, or be paid in 10 equal annual instalments. Various rules and conditions apply. The new legislation has retrospective effect to 29 November 2011.

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SPAIN

EUROPEAN COURT OF JUSTICE RULES AGAINST SPANISH CORPORATE EXIT TAX RULES

The European Court of Justice (CJEU), in the European Commission v Kingdom of Spain case (C-64/11), has ruled that the Spanish exit tax rules for companies are in breach of the freedom of establishment principle (Article 49, Treaty of the Functioning of the European Union).

The current Spanish rules require immediate payment of tax on unrealised capital gains on a transfer to another Member State of the place of residence of a company established in Spain or of the assets of a permanent establishment situated in Spain. These rules will now have to be amended, as the CJEU decided that they discriminate against transfers to another Member State, as no immediate payment of tax is required for comparable transfers within Spain.

Affected companies may now be able to submit tax repayment claims, if they have not already done so.

This is part of a general trend – we noted in World Wide Tax News (May 2012) that, following the CJEU's decision in the National Grid Indus case, the Netherlands and Italy were also amending their corporate exit tax rules to allow for the deferral of payment of tax on unrealised gains, as is the UK (see World Wide Tax News, May 2013).

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SWITZERLAND

CORPORATE TAX REFORM - EU INCREASES PRESSURE ON SWITZERLAND

Switzerland positioned itself over the past decades as an attractive location for multinational companies. A continuous development of its tax attractiveness encouraged many companies to move their business or some activities to Switzerland. For many years, this successful development generated substantial tax revenues and created a high number of workplaces. The controversy began back in 2005 when the EU criticised its tax policy regarding holding, administration and mixed companies (privileged companies), due to unequal treatment of domestic and foreign income of the privileged companies.

After a failed arrangement for an amendment proposed by Switzerland in 2009, and without achieving a compromise solution in the dialogue about the application of the EU's code of conduct to Switzerland's corporate taxation system during 2010, talks ended in 2012 without any significant results.

Since September 2012 the EU has increased its pressure on Switzerland's corporate taxation system, and threatens new blacklists for such tax havens, including Switzerland. Despite the fact that Switzerland is not a member state, the EU wants it to align its corporate taxation to EU-conformity in the following areas:

- Taxation arrangements with principal companies;
- The Swiss participation deduction rules; and
- Prohibition of granted tax reliefs.

The negotiations with the EU concerning taxation rules of privileged companies are of great importance for Switzerland due to the mobile nature of such companies. Several multinational companies have their domicile, R&D department and/or financial and sales activities located in Switzerland, which generate a direct effect and also a positive indirect impact on the economy. Therefore it is even more important for Switzerland to strengthen its attractiveness in the international tax competition. In recent years numerous European as well as international competing destinations have sought to attract mobile multinational companies with their own tax regimes. Effective tax rates from 2% to 10 %, depending on the activity, degree and country, reveal that Switzerland needs to act to still be perceived as one of the most attractive tax locations.

Even though it is realistic that Switzerland's privileged holding taxation cannot be maintained in future, it is important to safeguard its strong position in the long run. Therefore, substitute tax measures are required, such as the introduction of an EU-compatible licence box and a general reduction of corporate income tax. A different way to maintain tax attractiveness is the elimination of tax obstacles, especially the following ones:

- The abolition of stamp tax on the issue of equity;
- Improvements in external group financing (withholding tax); and
- Enhancement of participation deduction.

There will need to be simultaneous consideration of a controversial political decision-making process and of legal and planning certainty for the groups concerned, and reasonable transitional periods are required until concrete provisions enter into force in four or five years.

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UNITED KINGDOM

SUPREME COURT RULES ON CROSS BORDER LOSS RELIEF TEST

The long-running saga concerning whether Marks & Spencer Plc (M & S) is entitled to claim relief for losses of its German and Belgian subsidiaries from 1998 to 2002 has moved one step nearer its conclusion.

BACKGROUND

In 2005 the European Court of Justice (CJEU) ruled that it was contrary to EU law to prevent the surrender of losses by a non-resident subsidiary which had exhausted the possibilities for obtaining relief in its state of residence. The UK then amended its rules to allow such a surrender, but imposed conditions which made it almost impossible for relief to be claimed in practice.

One of the points at issue was the time at which a company was required to demonstrate that there was no possibility of obtaining relief in its own state of residence, in any previous or future accounting period. HM Revenue & Customs (HMRC) contended that this had to be demonstrated on the basis of the circumstances existing at the end of the accounting period in which the losses in question arose. The taxpayer argued that the appropriate time was the date on which the company made a claim to surrender the relevant loss.

DECISION

The Supreme Court ruled that the appropriate time was the date on which the company made a claim, as the exercise was a factual one, and the claimant company should be given the opportunity to deal with it in as realistic a manner as possible. HMRC's approach meant that there would be no realistic chance of satisfying the conditions – it would hardly ever be possible, based on circumstances at the end of the relevant accounting period, to exclude the possibility that the surrendering company could obtain loss relief in its own Member State.

IMPLICATIONS

M & S (and other companies who have made similar claims) have overcome another hurdle in their long quest to obtain loss relief, but the Supreme Court still has to rule on the following points:

- Can sequential/cumulative claims be made by the same company for the same losses of the same surrendering company in respect of the same accounting period?
- Does the principle of effectiveness require M & S to be allowed to make fresh 'pay and file' claims now that the CJEU has identified the circumstances in which losses may be transferred cross-border, when at the time M & S made those claims there was no means of foreseeing the test established by the court?
- What is the correct method of calculating the losses available to be transferred?

It is expected that the next Supreme Court hearing to decide these issues will be towards the end of 2013, with judgement being given in 2014.

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ARGENTINA

NEW DEFINITION OF TAX HAVENS

DETAILS OF THE CHANGE

On 30 May 2013 a Decree of the Executive Power was published in the Official Bulletin of the Republic of Argentina, modifying the list of countries and jurisdictions considered as tax havens in the Argentine legislation.

Previously, the list included jurisdictions which had low or zero taxation, but now the guiding parameter is their collaboration in sharing tax information with the Argentine Tax Authority. A territory will therefore not now be considered a tax haven as long as its government has started negotiations with the Republic of Argentina with the aim of signing an agreement to share tax information or an agreement to avoid double taxation, with a broad information exchange clause.

IMPLICATIONS

This change may alter the tax treatment of certain transactions with foreign parties.

For example, the Argentine Income Tax legislation establishes that local taxpayers who own shares in an overseas corporation must recognise their income when it is distributed, whether in cash or in kind. Under this criterion of profit recognition, the tax liability therefore arises at the time of dividend distribution.

However, taxpayers must also recognise annually (i.e. even when they were not distributed) profits of companies located in low or zero taxation countries, when 50% or more of their revenues come from activities considered as passive, which in general terms are:

– Renting property;

– Loans;

– The sale of shares, quotas or participations, including interests in trusts or other similar entities;

– Deposits in banks or financial institutions, government bonds, instruments and/or contracts which do not constitute hedge funds;

– Dividends; or

– Royalties.

In such cases the new categorisation of jurisdictions may have the result that income – previously recognised on the cash basis – must now be recognised on the accruals basis. The mere reclassification of jurisdictions could therefore mean that the income must be recognised earlier.

It should also be noted that the Income Tax Law restricts the deduction of certain expenses paid to persons residing in countries considered as tax havens. It specifically provides that expenses paid by local companies which may result in profits of Argentine source to persons or entities located, constituted, residing or domiciled in jurisdictions of low or zero taxation, can only be taken into account for tax purposes when paid in cash or in kind, or put at disposal in any form (such as a credit to an account).

It particularly important to point out that beyond other more specific impacts that this change might have, there are also Transfer Pricing implications and implications for persons who obtain funds from such countries. Any transaction entered into involving jurisdictions classed as tax havens must undergo Transfer Pricing analysis; persons who obtain funds from such jurisdictions must also irrefutably demonstrate the source thereof.

Finally, it should also be noted that the Tax Authority establishes the assumptions for determining whether there is effective sharing of information, and the conditions for starting negotiations for the signing of information sharing agreements, so we look forward to the regulations that the Tax Authority may deliver.

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UNITED ARAB EMIRATES

DUBAI CONSULTS ON NEW TAX LEGISLATION

A public consultation on a number of legislative amendments has been launched by the regulator of the Dubai International Financial Center ("DIFC"). Included within this consultation is the consideration as to whether to bring the tax-free zone's regulatory regime in line with international tax transparency standards.

The DIFC Authority has proposed to amend a number of DIFC laws and regulations to ensure they are compliant with the requirements as set out by the Organisation for Economic Cooperation and Development's Global Forum on Transparency and the Exchange of Information for Tax Purposes. In addition to this they have proposed amendments to the Arbitration Law to align it with the New York Convention.

The DIFC intends to make amendments to the Companies Law, the General Partnership Law, the General Partnership Regulations, the Limited Partnership Law, and the Limited Liability Partnership Law in order to meet best standards on tax transparency.

The DIFC Authority is also proposing to include transitional provisions in the Non-Profit Incorporated Organisations Law, to enable existing Non-Profit organisations to become Non-Profit Incorporated Organisations without having to dissolve and re-incorporate.

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CANADA

NEW OFFSHORE PROPERTY AND INCOME REPORTING REQUIREMENTS

On 25 June 2013 the Parliamentary Secretary Cathy McLeod announced the launch of a strengthened Foreign Income Verification Statement (Form T1135), one of the Economic Action Plan 2013 measures to crack down on international tax evasion and aggressive tax avoidance.

Starting with the 2013 taxation year, Canadians who hold foreign property with a cost of over CAD 100,000 will be required to provide additional information to the Canadian Revenue Agency (CRA). The criteria for those who must file a Foreign Income Verification Form (T1135) has not changed; however, the new form has been revised to include more detailed information on each specified foreign property.

Increased reporting requirements include:

– The name of the specific foreign institution or other entity holding funds outside Canada;

– The specific country to which the foreign property relates; and

– The income generated from the foreign property.

The CRA will use the additional information to ensure all taxpayers comply with Canadian tax laws, through activities including education and audit.

Economic Action Plan 2013 also proposes to extend the reassessment period for a tax year by three years if a taxpayer has failed to report income from a foreign property on their income tax return and Foreign Income Verification Form (T1135) was not filed, late-filed, or included incorrect or incomplete information concerning a foreign property.

The Financial Secretary stated: “The strengthened reporting requirements are just one example of the actions being taken by our Government to crack down on tax cheats.”

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UNITED STATES OF AMERICA

HOW FATCA WILL AFFECT EVERY BUSINESS MAKING CROSS-BORDER PAYMENTS WITH THE UNITED STATES

INTRODUCTION

Beginning in 2014, cross-border payments with the United States will be generally subject to additional reporting obligations under the Foreign Account Tax Compliance Act (FATCA).

FATCA is generally viewed as imposing a heavy burden on United States and foreign financial institutions. Such financial institutions will be required to undergo rigorous due diligence procedures to identify and report United States persons and their foreign financial accounts. However, the legislation's impact is much broader, and will affect multinational corporations and all persons making or receiving United States withholdable payments.

As evidenced by the recently released draft Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, as well as the new W-8 series (also still in draft), future "withholdable" payments by any United States withholding agent to any foreign recipient must satisfy FATCA documentation requirements or suffer the 30% withholding tax.

FATCA – BROADER THAN IT SEEMS

The following two examples illustrate the wider impact of the FATCA requirements:

- In the case of a dividend or interest payment to a foreign parent company, or a royalty to a foreign licensor, a United States payer (withholding agent) will have to obtain the necessary FATCA-related certifications from the payee (typically a Form W-8BEN, Certificate of Status of Beneficial Owner for United States Tax Withholding, or W-8BEN-E, Certificate of Status for Beneficial Owner for United States Tax Withholding (Entities)). If the payee is not properly identified, a 30% withholding tax will apply, even if the recipient is otherwise entitled to a lower tax rate under a tax treaty.
- When a United States subsidiary pays a dividend to its foreign parent company, the parent must determine if it is a foreign financial institution (FFI) or a nonfinancial foreign entity (NFFE), and, if it is an NFFE, whether it has an active business or perhaps substantial United States owners. There are more than 30 entity categories to choose from, and one should not expect the foreign payee to find these rules self-explanatory.

NONFINANCIAL FOREIGN ENTITIES

An NFFE is defined as any non-United States entity that is not a financial institution (such as a bank, investment fund, or investment entity). Unless the NFFE is a publicly-traded corporation (or affiliated with a publicly-traded corporation) it must determine whether it is active or passive. An active NFFE is an NFFE whose passive income is less than 50% of its gross income and whose passive assets are less than 50% of its total assets. To avoid withholding under FATCA, a passive NFFE must certify to the withholding agent that it does not have any substantial United States owners or, if it does, it must disclose the identities of such owners.

Assuming that, outside the financial services industry, most payments will be between United States and foreign nonfinancial entities, foreign payees should still understand that a company with an active business may nevertheless qualify as an FFI if it has also a large investment portfolio. On the other hand, a family-owned company that is not professionally managed should be a passive NFFE even if its sole purpose is to make investments. Such a passive NFFE must then disclose its substantial United States owners (if any).

WITHHOLDABLE PAYMENTS

The withholding obligations under FATCA apply to withholdable payments, which are:

1. United States source fixed or determinable annual or periodical income, such as dividends, interest, rents, royalties, etc. (subject to withholding beginning on 1 July 2014); and
2. Gross proceeds from the sale or redemption of securities that produce or could produce United States source interest or dividends (subject to withholding beginning on 1 January 2017).

FORM 1042-S

On 2 April 2013, the Service published the new draft 2014 Form 1042-S, in order to reflect the new reporting requirements. A key change from the current Form 1042-S is that the recipient has to determine its status separately for purposes of Chapter 3 (general non-resident withholding) and Chapter 4 (FATCA). Likewise, the exemption codes are to be split into those applicable to Chapter 3 and those applicable to Chapter 4.

Important status codes for NFFEs include: Code 21 (passive NFFE identifying substantial United States owners), Code 22 (passive NFFE with no substantial United States owners), and Code 24 (active NFFE). By qualifying under and complying with one of the aforementioned status codes, the NFFE should not be subject to the 30% withholding tax and the withholding agent should not have an obligation to withhold under FATCA. (There may, of course, still be a withholding obligation under Chapter 3.)

Information return reporting on Chapter 4 reportable amounts is set to begin on 15 March 2015. Form 1042-S is filed by the United States withholding agent. However, the status and exemption categories should mirror the information provided by the foreign payee with the new Forms W-8BEN and W-8BEN-E.

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HOLDING COMPANIES TABLE

This table provides a brief guide to the tax position for holding companies in many popular jurisdictions at 30 April 2013

Abbreviations

CD: Capital duty
CFC: Controlled foreign company
CT: Corporation tax
EBITDA: Earnings before interest, tax, depreciation and amortisation
NWT: Net worth tax
SD: Stamp duty
STT: Share transfer tax
TTT: Trade tax
WHT: Withholding tax

FACTOR	AUSTRALIA	AUSTRIA	BELGIUM	CYPRUS	DENMARK	GERMANY	HONG KONG	IRELAND	ITALY	LUXEMBOURG	MALTA	NETHERLANDS	SINGAPORE	SPAIN	SWEDEN	SWITZERLAND	UK
Treatment of dividends	Exempt if fully franked. Otherwise subject to dividend withholding tax	Exempt (1)	95% Exempt (2)	Exempt (3)	Exempt (4)	95% Exempt	Exempt	Taxable (5)	95% Exempt (6)	Exempt (7)	Exempt (8)	Exempt (9)	Exempt (10)	Exempt (11)	Exempt	Exempt	Exempt (12)
Minimum holding for dividends (13)	30% unless there is a DTA	10%	10% or EUR 2.5m	None	10%	10%	None	None (14)	None	10% or cost of acquisition EUR 1.2m	10% (15)	5% (16)	None	5% or cost of acquisition EUR 6m	None (17)	10% or CHF 1m	None
Treatment of capital gains	Exempt (18)	Exempt (19)	Exempt/ 25,75%/0,412% (20)	Exempt (21)	Exempt	95% Exempt	Exempt	Exempt (22)	95% Exempt (23)	Exempt (24)	Exempt (25)	Exempt (26)	Exempt (27)	Exempt (28)	Exempt	Exempt	Exempt (29)
Minimum holding for gains	None	10%	None	None	10% (30)	None	None	5% (31)	None	10% or cost of acquisition EUR 6m	None	5%	None (32)	5% or cost of acquisition EUR 6m	None (33)	10% (34)	10%
Minimum ownership period	None	1 year (35)	1 year (dividends and gains) (36)	None	None	None	None	1 year	1 year	1 year	None (37)	None	None (38)	1 year	None (39)	1 yr (Gains)	1 yr (Gains)
Must subsidiary be active (40)	No	Yes	No	No (3)	No	No	No	Yes (41)	Yes	No	No	No (42)	No	Yes (43)	No	No	Yes for gains
Must subsidiary be liable to tax	No	No (44)	Yes (45)	No (3)	No	No	No	No	No	Yes (46)	No (47)	No (48)	No (49)	Yes (50)	Yes	No	No
CT Rate	30%	25%	33.99% (51)	12,5%	25%	15.825% (52)	16.5%	12.5% (53)	31.4% (54)	29,22% (55)	35% (56)	25% (57)	17% (58)	30%	22%	7.8% (59)	20% (60)
Normal WHT on dividends paid(61)	30% or nil if fully franked (62)	25%	25% (63)	0%	0% (64)	26.375% (65)	None	20% (66)	20%	15% (67)	None (68)	15% (69)	None	0% (70)	0% (71)	35% (72)	None
Normal WHT on liquidation distributions (73)	30% (74)	No	10%/25% (75)	0%	0%/27% (76)	26.375% (77)	None	No	20%	No	None	15% (78)	None	0% (79)	0%	35% (80)	None
Interest deduction (81)	Yes	Yes (82)	Yes	No	Yes (83)	Yes	No	Yes (84)	Yes	Yes (85)	Yes (86)	Yes (87)	Yes (88)	Yes (89)	Yes (90)	Yes	Yes (91)
Debt/equity restrictions etc. (92)	3:1 (93) moving to 1.5:1	No	5:1 (94)	No	4:1 (95)	Yes (96)	No	No	Yes (97)	85:15 (98)	No	No	No	3:1 (89)	None	6:1 (99)	Yes (100)
CFC rules (101)	Yes(102)	No	No (103)	No	Yes	Yes (104)	No	No	Yes	No	No	No (105)	No	Yes (106)	Yes (107)	No	Yes (108)
Binding pre-transaction rulings (109)	Yes	Sometimes	Yes	Sometimes	Yes	Yes (110)	Yes	No	Sometimes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Sometimes (111)
Other taxes	State taxes & Goods and Service Tax	1% CD	None	Defence Tax 20-30% (112) 0.6% CD	None	Trade Tax app. 15%	0.2% SD	None	None	NWT 0.5% (113)	None	None	Stamp duty: 0.2% on disposal of shares of Sing Co	None	No	1% CD, 0.15% - 0.3% STT (114), 0.001% - 0.4% NWT (115)	SD 0.5%
Treaty network (116)	Fair	Very good	Excellent	Fair	Very good	Excellent	Limited	Good	Excellent	Very good	Good	Excellent	Good	Very good	Very good	Excellent	Excellent

HOLDING COMPANIES TABLE as at 30 april 2013

Footnotes

Treatment of dividends
1. Exemption inapplicable if foreign sub's income mainly passive, and tax rate less than 15%. Also, if dividend deductible in payer's jurisdiction.
2. Certain anti-avoidance rules may apply – see note 45. 100% (instead of 95%) exemption arguable per EC Treaty.
3. Exemption inapplicable if more than 50% of foreign sub's income from investment activities, and tax rate less than 5%. Exception for holding co with active sub's – see note 112 regarding Defence Tax.
4. Exemption only applies if (a) Danish holding co directly or indirectly exercises decisive influence over sub, or (b) sub is EU, EEA, or treaty-partner resident, or (c) sub tax- consolidated with Danish parent.
5. In principle, taxed at 25% with foreign tax credit. However, option to be taxed at 12.5% where div sourced (a) at least 75% from trading activity treaty-partner resident foreign sub, and (b) where consolidated value of group's trading assets not less than 75% of all its assets.
6. Exemption inapplicable (a) if foreign sub resident in black-list jurisdiction, or (b) div received deductible in payer's jurisdiction.
7. Exemption inapplicable to non-EU sub liable for tax at less than 10.5%. Recapture rules re expenses etc.
8. Dividends qualifying for participation exemptions not taxable. Divs taxed at subsidiary level do not attract further tax. Untaxed divs taxable with credit for double tax relief.
9. Shareholding in subs qualifies if not held as a portfolio investment. Alternatively, sub qualifies, which assets are more than 50% good assets. Shareholding in sub also qualifies if sub subject to reasonable tax on its profits. See note 26 where exemption does not apply.
10. Exempt provided foreign jurisdiction taxes income from which dividends declared or withholding tax paid on the dividend income, and headline tax in foreign jurisdiction is at least 15%. (Exceptions in certain cases).
11. Exempt provided sub has commercial activity and is subject to tax similar to Spanish tax. If resident in tax haven, exemption inapplicable unless EU resident for economic purposes and with commercial activity.
12. Subject to anti-avoidance rules, including that dividends not deductible in payer's jurisdiction.

Minimum holding for dividends
13. Refers to minimum shareholding for dividend treatment.
14. An Irish company is entitled to elect to tax dividends, which are paid out of trading profits, at the 12.5% tax rate if they are paid by a company which is tax resident in the EU or a country with which Ireland has a tax treaty. There is no minimum shareholding requirement in this case. The election can also be made where trading dividends are received from a company, the principle class of shares in which it or its 75% parent, are substantially and regularly traded on certain recognized stock exchanges
15. Or (a) holding cost in excess of €1,165,000, or (b) majority control, voting, or pre-emption rights.
16. Less in some cases.
17. 10% holding requirement for shares held in listed companies.

Treatment of capital gains
18. Exempt subject to the Taxable Australian Property Threshold i.e. greater than 50% of the underlying assets are real property including mining rights.
19. See note 1. Also, gains on sale of shares in Austrian co's are taxable. Please note that companies holding substantial participation may exercise an option to have capital gains/write-ups and capital losses/write downs treated as taxable or tax deductible, respectively. The option must be exercised in the year of acquisition of the participation and cannot be revoked.
20. In principle, capital gains can benefit from a tax exemption if taxation condition mentioned in note 44 is complied with (if not, corporate tax rate of 33,99% is applicable). As from assessment year 2013, capital gains realized on shares that have not been held during a period of one year at the moment the capital gain is realized, will be taxed at 25,75%. As from assessment year 2014, capital gains realized by holding companies and large companies will be subject to a separate taxation of 0,412%. This taxation concerns a minimum taxation as no tax deductions can be applied on the taxable capital gain.
21. Exemption inapplicable to gains on shares in co's owning Cyprus real estate.
22. Basic 33% tax rate. However, gains exempt when arising on disposal of shares in an EU sub, or co resident in treaty-partner jurisdiction, provided sub exists wholly or mainly to carry on a trade; or is member of trading group and shares held for at least 12 months continuous period.
23. Exemption is inapplicable if foreign sub is resident in black-list jurisdiction. Capital gains are 95% exempt if the following requirements are met: (i) the participation has been held continuously for at least 12 months; (ii) the participation is classified as a financial asset in the first financial statement closed after the participation was acquired; (iii) the company in which the participation is held has not been a resident in a black list jurisdiction in the previous three years; (iv) the participated company has carried on business activities during the last three years.
24. See note 7. Also, exempt gain can result in recapture of interest expense and impairment deductions re shareholding – Note 83
25. See note 8.
26. See note 9. Where gain (or dividend income) does not apply, a tax credit is available.
27. Provided it is a capital gain. To provide certainty, subject to certain exceptions, gains derived by a divesting company from its disposal of ordinary shares in an investee company is not taxable if immediately prior to the date of share disposal, the divesting company had held at least 20% of the ordinary shares in the investee company for a continuous period of at least 24 months. The rule is applicable to disposals of ordinary shares in an investee company made during the period 1 June 2012 to 31 May 2017 (both dates inclusive).
28. See note 11. Active income test has to be performed for the whole holding period. In case of tainted income in the past, exemption may apply only proportionally.
29. Exemption applies to a disposal of shares in a trader or trading group, with conditions.

Minimum holding for gains
30. This tax exemption includes capital gains on portfolio shares, i.e. shareholdings below 10%. However, the exemption will only include capital gains on unquoted shares.
31. See note 22.
32. See note 27.
33. See note 17.
34. Less in some cases.

Minimum ownership period
35. No minimum ownership period for divs from Austrian co's.
36. In order to claim the capital gain exemption, companies must have held the shares for at least one year at the moment of realization of the capital gain (beside complying with taxation condition). Otherwise, taxation as mentioned in 20 (note however minimum taxation for capital gains realized by holding and large companies as from assessment year 2014).
37. But minimum holding period of 183 days under certain conditions.
38. See note 27.
39. 1 year ownership period required for shares held in listed co's.

Must subsidiary be active?
40. Broadly, whether sub carries on active trade or business.
41. See note 22.
42. See note 9. Sub must not hold more than 50% portfolio assets.
43. But some passive activities permitted up to a limit; e.g., financing foreign group entities, exploiting intangibles.

Must subsidiary be liable to tax?
44. See note 1.
45. Sub must be liable to similar tax to Belgian CIT. Minimum 15% tax condition must be met, but inapplicable to co's resident in EU. Dividends and gains from certain types of co, such as financing, treasury, investment co's etc resident in jurisdiction without similar tax base, are not exempt.
46. See note 7.
47. See note 8.
48. See note 9.
49. See note 10.
50. Liability to tax deemed satisfied where sub resident in treaty country with exchange of information clause.

CT rate
51. 33% + 3% additional crisis contribution.
52. 15% + 5.5% solidarity surcharge. Additionally, Trade Tax of approximately 15% is payable.
53. 12.5% applies to trading income. 25% to investment income.
54. 27.5% + 3.9% Regional Tax (IRAP).
55. Corporate tax rate 22.47% (including 7% tax deductible solidarity surcharge). Plus, 6.75% non-deductible municipal tax is increasing tax rate to 29.22% in Luxembourg City. Note that as from 1 January 2011 a minimum corporate income tax charge of EUR1,575 applies to holding companies if financial assets/securities or cash exceed 90% of their balance sheet.
56. Most of 35% tax can be refunded to qualifying shareholders of holding co when it pays dividends.
57. First EUR200,000 taxable at 20%. Excess profits taxable at 25%.
58. 75% of first SGD10,000 of normal chargeable income and 50% of next SGD290,000 of normal chargeable income tax-exempt. For Years of Assessment 2013 to 2015 (i.e. financial year ended 2012 to 2014), corporate tax rebate at 30% of tax payable is available, capped at SGD30,000 for each Year of Assessment. Foreign tax credit claim must be substantiated with proof of payment.
59. Excludes tax at cantoned/communal level. 8.5% federal tax deductible, so effective rate of 7.8%.
60. Single rate of 20% from 1st April 2015.

Normal WHT on dividends paid
61. Assumed paid to corporate shareholder. Frequently 0% under Parent/Subsidiary Directive (including Switzerland), and substantially reduced under tax treaty. Assumes anti-avoidance rules will not deny treaty withholding rate.
62. 30% only in exceptional cases.
63. 0% in application of Parent/Sub Directive or where dividend recipient resident in treaty partner country with exchange of information and treaty conditions broadly similar to Parent/Sub Directive.
64. 28% where recipient not parent co resident in EU, EEA, or treaty-partner country.
65. 25% + 5.5% solidarity surcharge (10% refund for active non-resident shareholders possible which leads to a total withholding tax of 15.825%).
66. Standard rate 20%. No WHT on dividends paid to (a) non-Irish persons who are not co's and are resident in EU State or in treaty-partner jurisdiction; (b) non-resident co's ultimately controlled by EU or treaty-partner resident; (c) non-resident co's, principal class of shares of whose 75% parent are substantially and regularly traded on recognized stock exchange in EU state or in treaty-partner jurisdiction; (d) co's resident in EU state or treaty-partner jurisdiction and not controlled by Irish residents; and (e) non-resident co's wholly owned by two or more co's, each of whose principal class of shares is substantially and regularly traded on one or more stock exchanges approved by Minister of Finance.
67. 0% where dividend recipient resident in EU, EEA or treaty partner country and is liable to tax at 10.5%. Some other exemptions.
68. In fact, dividend payment can attract tax refund – Note 48.
69. In addition to EU parent, 0% when paid to EU corporate shareholder owning at least 5% of Dutch holding co's shares.
70. 0% applies provided Spanish holding has ETVE status. Otherwise the WHT general rate is 21%, or 0% if conditions are met for Parent/Subsidiary Directive benefits, or reduced WHT rate if a tax treaty applies.
71. 0% provided foreign parent subject to effective tax rate similar to Sweden (10% - 15%). Otherwise 30% withholding tax subject to treaty.
72. In addition to treaty reduction, 0% under Parent/Sub Directive.

Normal WHT on liquidation distributions
73. Normally excluding return of paid-in capital.
74. See note 62.
75. In principle, as from 1 October 2014 a rate of 25% will apply (not yet enacted).
76. Liquidation distributions taxable if recipient company is (a) not resident in treaty-partner jurisdiction and either owns more than 15% of Danish co's shares directly or is related to group by indirect ownership, or (b) resident in EEA or treaty-partner jurisdiction and owns less than 15% of shares in Danish co. But, no tax if liquidation proceeds distributed in year when deregistration from Commerce and Companies Agency takes place.
77. See note 65.
78. See note 69.
79. Liquidation proceeds do not benefit from 0% WHT under Parent/Subsidiary Directive. May be treated as capital gains.
80. See note 72.

Interest deduction
81. Refers to interest payable on Holding Co's borrowings to acquire Sub. interest on related party borrowings restricted to arm's length rate. See note 92 et seq. below re debt/equity etc. restrictions.
82. Anti-avoidance measures may deny deduction (e.g. interest for acquisition of direct or indirect participation within a group of companies.
83. Denied in specific circumstances.
84. Strict conditions to be satisfied. Anti-avoidance rules apply.
85. Only to extent interest paid exceeds exempt income. Recaptured to extent of exempt gains.
86. See note 81, but no debt/equity restrictions.
87. Anti-avoidance measures may deny deduction (e.g. interest for acquisition of direct or indirect participation within a group of companies). Interest relating to certain types of acquisitions or intra-group transfers of subsidiaries may be non-deductible. However, per taxpayer the first EUR750,000 of such relating interest will be deductible.
88. Interest only deductible to extent dividend income taxable, which is comparatively rare – Note 10.
89. No thin cap rules (no debt-equity ratio), but interest deduction limitation: 30% of tax EBIDTA.
90. Interest costs related to internal debts is not deductible but could be if the interest is taxed with at least 10% or the debt is based mainly on business reasons.
91. But subject to anti-avoidance rules; e.g., anti-arbitrage, dual deductions, worldwide debt cap, thin-cap rules in some cases. Debt/equity restrictions etc.
92. In addition to debt/equity, restrictions may also be based on Debt Cap and EBITDA – see below. Normally, but not always, restrictions apply only to interest payable to connected persons.
93. 3:1 depends on nature of lender and tests applied. De minimis exemption and safe harbour.
94. 5:1, where paid to other group companies as well as to persons taxed at low rate or exempt. 1:1 ratio re loans from individual directors/shareholders.
95. Additionally, interest limited by reference to EBITDA and Asset Values.
96. If net interest expense EUR3m or more, deduction limited to 30% tax adjusted EBITDA. Interest barrier inapplicable if German co's ratio of equity to assets equal or higher than same ratio for worldwide group (2% shortfall acceptable). Special rules for German tax groups.
97. 30% EBITDA, based on profits in consolidated tax return.
98. No statutory rule but 85:15 generally applied in practice for shareholding activities and holding of real estate. Special rules for financing activities.
99. Tax administration circular, 6.6.97: Safe harbour debt/equity ration is 6:1 for finance and holding companies.
100. Based on connected party transfer pricing rules. Additionally, for large groups, Worldwide Debt Cap restriction applies to disallow excess of intergroup finance costs over Worldwide group finance costs on external borrowing.

CFC rules
101. EU holding companies, review whether Cadbury Schweppes decision may make CFC rules inapplicable to EU/EEA subs.
102. Broadly, rules apply only to passive income.
103. Specific anti-avoidance rules may have broadly same effect as CFC only if shareholding exceeds 10% in subsidiary with 90% or more free portfolio investments and which is not subject to reasonable tax.
104. Inapplicable if EU/EEA resident CFC conducts genuine economic activity.
105. Specific anti-avoidance rules may have broadly same effect as CFC only if shareholding exceeds 25% in subsidiary with 90% or more low-taxed free portfolio investments which is not subject to reasonable tax.
106. Foreign sub may carry out some passive activities; e.g., financing foreign entities, exploiting intangibles. EU subs excluded unless in low-tax jurisdictions with no business activities or economic reasons.
107. Exemptions include royalty income, White List countries, and real economic activities in EU/EEA.
108. Many exemptions, including a de minimis test, an Excluded Countries list with conditions, and companies active in EU countries.

Binding pre-transaction rulings
109. Advance pricing agreements may also be available.
110. Binding pre-transaction rulings may trigger considerable fees levied by the tax authorities.
111. APAs available, especially for large inbound investments.

Other taxes
112. Non-exempt dividends subject to 20% Defence Tax. Interest on fixed deposits subject to 30% Defence Tax. Both exempt from corporation tax.
113. Holdings in qualifying subs, and foreign PE assets exempt from Net Worth Tax. Foreign real estate also exempt based on treaty.
114. Payable on disposal or acquisition of securities if the company holds more than CHF10m in securities. For intercompany transactions exemptions may apply.
115. Rate varies per canton and commune.

Treaty network
116. Number of tax treaties

Number of tax treaties	Classification
< 40	Limited
40 > 60	Fair
60 > 80	Good
80 > 90	Very Good
90, and more	Excellent

CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 29 July 2013.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Australian Dollar (AUD)	0.69679	0.92533
Canadian Dollar (CAD)	0.73215	0.97243
Danish Krone (DKK)	0.13410	0.17816
Euro (EUR)	1.00000	1.32764
US Dollar (USD)	0.75290	1.00000

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