DECEMBER 2013 ISSUE 33
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WORLD WIDE TAX NEWS

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UNITED KINGDOM
CHANCELLOR'S AUTUMN STATEMENT – ITEMS OF INTERNATIONAL INTEREST

On 5 December 2013 the Chancellor of the Exchequer delivered his Autumn Statement, in which he stated that the United Kingdom remained on track for a "responsible recovery". We summarise below some of the items of international interest.

PERSONAL TAXES
From April 2015, non-UK residents will be subject to capital gains tax on future gains on the disposal of a UK residential property. A consultation on how best to introduce the new charge will be published in early 2014. The Chancellor's use of the word "future" implies that the tax basis will be current market value (rather than original cost). There had been concerns that this change might have been introduced with immediate effect, but the deferred introduction date will give property owners time to consider their position and take any appropriate action.

Anti-avoidance legislation will be introduced with effect from April 2014 in relation to the use by some non-UK domiciled individuals of artificial dual contracts to split UK and non-UK duties of employment. UK tax will be levied on the full employment income where a comparable level of tax is not payable overseas on the overseas contract.

From April 2014, income tax relief for interest paid on loans to invest in closely controlled companies and employee-controlled companies will be extended to investments in such companies resident throughout the European Economic Area.

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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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CORPORATE TAXES

Some oil and gas companies will benefit from measures designed to assist both onshore and offshore exploration. For onshore (including shale gas) projects, a new allowance will exempt profits worth up to 75% of a company's qualifying capital expenditure from the supplementary charge. The ring fence expenditure supplement for onshore oil and gas losses and qualifying pre-commencement expenditure will also be extended from six to ten accounting periods. Both measures will apply from 5 December 2013.

Extra help is to be given to the UK film industry through an expansion of the existing film tax relief. From April 2014, relief will be available at 25% on the first GBP 20m of qualifying production expenditure (20% thereafter) on qualifying films, subject to state aid clearance. The minimum UK expenditure requirement will fall from 25% to 10%, and the 'culturally British' test will be modernised.

The trading loss relief rules will be amended to allow such losses to be carried forward beyond a change in ownership of a company in the following circumstances:

- Where a new holding company has been inserted at the top of a group;
- Where a company with investment business has increased its share capital by less than GBP 1m or 25%.

The changes will take effect for any changes of company ownership which occur on or after 1 April 2014.

Certain anti-avoidance measures were announced that will mainly affect large multinational groups:

- Amendments to the controlled foreign companies rules will be introduced with effect from 5 December 2013 to prevent the effective transfer offshore of profits from existing UK intragroup lending.
- Changes will be made to the worldwide debt cap provisions to include companies limited by guarantee within the grouping rules. These changes will apply to periods of account starting on or after 5 December 2013.
- Legislation will be introduced to put beyond doubt that with effect from 5 December 2013 double tax relief can only be claimed where the income is taxed twice, once in the overseas jurisdiction and again in the UK.

The bank levy rate is to be set at 0.156% from 1 January 2014. In addition, changes will be made to the operation of the levy, following a review carried out earlier this year. These include treating all derivative contracts as short term items (from January 2015) and aligning the definition of Tier One capital with the new Capital Requirements Directive (from January 2014).

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CHINA

NEW GUIDELINES FOR CLAIMING TAX RESIDENCE UNDER DOUBLE TAXATION ARRANGEMENT WITH HONG KONG

The State Administration of Taxation (SAT) has issued Bulletin 53, which simplifies the procedure for Hong Kong resident companies and individuals to claim tax residence for the purposes of enjoying benefits under the Double Taxation Arrangement (DTA) between China and Hong Kong.

The changes, which are effective from 1 November 2013, are designed to simplify and streamline the process for establishing that companies and individuals applying for relief under the DTA are resident in Hong Kong for tax purposes.

Previously, applicants were usually required by the Chinese tax authorities to provide a tax residence certificate, but in most cases this is no longer necessary. Instead, it will normally be sufficient for companies, partnerships and trusts to provide their certificate of incorporation or business registration in Hong Kong. Individuals will normally only have to provide a Hong Kong identity card, Mainland travel permit and the previous year's Hong Kong tax payment notice .

The exceptions, for which it is still necessary to provide a tax residence certificate, are where:

– A company incorporated in Hong Kong wishes to claim a reduced tax rate for Chinese-source dividends under the listed company safe harbour rule;

– An individual wishes to claim relief on capital gains; and

– The Chinese authorities have any doubts that the applicant is resident in Hong Kong for tax purposes, and the other documentation provided does not confirm the position. This could apply where, for example, a company was incorporated outside Hong Kong, but claims its place of management and control is in Hong Kong, or where an individual visits Hong Kong for only a short period, but claims to be resident there.

The changes outlined in Bulletin 53 are therefore welcome, simplifying the procedure in most cases, and providing additional guidance, which should help to reduce costs and administrative time for both companies and individuals.

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BELGIUM

TAXATION OF CAPITAL GAINS ON SHARES TO CHANGE

Capital gains on shares held by a company used to be almost always completely exempt from taxation, but this will no longer be guaranteed. From the 2014 assessment year, the tax regimes applicable to capital gains on shares will again be extended. As a result, Belgian tax legislation will include four possible taxation regimes, which are summarised below.

1. GENERAL RULE: CAPITAL GAINS EXEMPT FROM TAX

As a rule, capital gains made on shares held by a company remain tax-free because the profits that generated the capital gains are deemed to have already been taxed at a normal corporation tax rate with respect to the company whose shares are held. This is the so-called 'taxation requirement'.

2. CAPITAL GAINS TAXED AT THE ORDINARY RATE OF 33.99%

The ordinary corporate income tax rate of 33.99% (or progressive rates in the case of fiscal SMEs) applies to capital gains made on "contaminated" shares of:

- Companies located in a tax haven;
- A financing, treasury or investment company subject to a more favourable corporation tax regime;
- Companies with offshore activities;
- "Financial branches" of a Belgian company; and
- Intermediate or holding companies.

The taxation requirement is not satisfied for the above mentioned five categories of shares. As a result, capital gains on such shares are included as ordinary income in the company's tax base.

3. CAPITAL GAINS TAXED AT THE SEPARATE RATE OF 25%

From the 2013 assessment year, the taxation requirement will be supplemented by a so-called 'permanence requirement'. This implies that capital gains on shares are only exempt from tax if the company demonstrates that the shares were held for at least one year (on a 'day-to-day' basis per share). If evidence that the shares were held for one year is not available, the capital gain made is not exempt but is taxed at a separate rate of 25% (plus 3% supplementary crisis tax).

However, this separate taxation can only be levied if the company ultimately has a sufficient tax base, which means that tax losses (carried forward), final taxed income deductions (carried forward), etc. can be set off against this capital gain. The capital gain may or may not then be subject to taxation, depending on the situation. The following table shows a number of situations by way of clarification:

		Sitatuation A		Situation B		Situation C
Ordinary taxable result		1,000.00		-20.00		-150.00
Capital gain		100.00		100.00		100.00
Total tax base		**1,100.00**		**80.00**		**-50.00**
Taxable at 33.99%	1,000.00					
Tax at 33.99%		339.90		-		-
Taxable at 25.75%	100.00		80.00			
Tax at 25.75%		25.75		20.60		-
Total tax to pay		**365.65**		**20.60**		**0.00**

4. CAPITAL GAINS TAXED AT THE RATE OF 0.4%

From the 2014 assessment year the fourth tax regime comes into effect, and all capital gains made on shares by 'large' companies and holding companies which meet the taxation requirement and permanence requirement will be subject to tax at 0.4% (plus 3% supplementary crisis contribution). In other words, the former 'fully' exempt capital gains are now subject to taxation.

A company qualifies as 'large' for these purposes if at least two of the following limits were exceeded for the last two financial years (Article 15 of the Companies Code):

- Annual average workforce: 50;
- Annual turnover (excluding VAT): EUR 7,300,000.00
- Balance sheet total: EUR 3,650,000.00

If the company employs more than 100 people, it is considered large in any case.

It is important to note that tax at 0.412% will always be payable on the capital gain made, even if the tax base is lower than the capital gain. What is striking about this regime is that no tax losses (carried forward), notional interest deduction (carried forward), etc. can be set off against the capital gain, which means that this tax qualifies as a minimum tax.

To prevent 'abuse', any change in the closing date of the financial statements after 21 November 2012 will be ineffective.

Finally, the 0.412% tax is not tax-deductible.

IMPAIRMENTS AND LOSSES ON SHARES

Where previously capital gains were, in principle, fully exempt and impairments and losses on shares were added to the tax base as deductible expenses, the new rules on the taxation of capital gains do not alter the regime of losses and impairments. These will remain non-tax-deductible. The only exception remains losses on shares suffered following the full distribution of a company's assets, at most for the loss of paid-up capital.

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SUMMARY

<table>
<tr><th>Type of company</th><th>Assessment year</th><th>Exemption</th><th>Corp. tax rate</th><th>Separate tax at 25.75%</th><th>Separate tax at 0.412%</th></tr>
<tr><td rowspan="3">Large company/ holding</td><td>Before 2013 AY</td><td>☑ Taxation requirement</td><td rowspan="5">☒ Taxation requirement</td><td>-</td><td>-</td></tr>
<tr><td>From 2013 AY</td><td>☑ Taxation requirement</td><td rowspan="2">☑ Taxation requirement
☒ Permanence requirement</td><td>-</td></tr>
<tr><td>From 2014 AY</td><td>☑ Permanence requirement</td><td>☑ Taxation requirement
☑ Permanence requirement</td></tr>
<tr><td rowspan="2">SME</td><td>Before 2013 AY</td><td>☑ Taxation requirement</td><td rowspan="2">☑ Taxation requirement
☒ Permanence requirement</td><td>-</td></tr>
<tr><td>From 2014 AY</td><td>☑ Taxation requirement
☑ Permanence requirement</td><td>-</td></tr>
</table>

FRANCE

2013 AND 2014 BUDGET LAWS UPDATE

The French Draft Budget Laws for 2013 and 2014, which contain some important proposals, have recently been under discussion in Parliament. We summarise below the potential effects on companies and individuals. In addition, a new tax law aimed at combating tax fraud was voted by Parliament.

COMPANIES

– One of the main measures of the French Budget Law for 2013 which was cancelled following the Constitutional Council decision is restored. The Finance Bill proposes to create a new tax (at 50%) on the amount of remuneration paid to an employee in excess of EUR 1 million. This tax is capped at 5% of the turnover of the company. "Remuneration" is widely defined, encompassing all income paid by entities other than the employer (e.g. a foreign company that pays a French employee and is reimbursed for the amount paid).

– The French Draft Budget Law for 2013 intends to modify the regime applicable to the tax deduction of interest paid to an affiliate company in France. From 25 September 2013, such interest will no longer be deductible from the borrowing company's taxable profit if it is not taxed on the creditor company at the rate of 25% of the corporate income tax (33.33%), i.e. at a maximum rate of 8.33%.

INDIVIDUALS

– With a view to simplifying capital gains taxation on movable assets, the French Draft Budget Law for 2014 overhauls the tax regime. From January 2013, capital gains on movable assets are subject to two different regimes:

  o Under the common tax regime, capital gains are taxed at progressive income tax rates (0% to 49%) after application of an allowance for the period of ownership (maximum allowance of 65% after 8 years).

  o A new derogating tax regime is established for capital gains on shares of small and medium sized enterprises (SMEs) when some conditions are met. They are, now, subject to the progressive scale, but they benefit from enhanced allowances (maximum of 85% after 8 years and a fixed allowance of EUR 500,000 for managers of SMEs at the time of their retirement).

  As a consequence, only these two tax regimes would coexist. The existing regimes would be replaced from January 2013 (or January 2014, depending on the previous incentive regime). These new regimes should decrease the current rate applicable to capital gains on shares, thanks to enhanced allowances and the fixed allowance.

– Another amendment proposed by the French Draft Amending Law for 2013 is in relation to life insurance taxation. The tax rate which applies on death for the capital portion exceeding EUR 902,838 will be 31.25% instead of 25%. A tax base allowance of 20% is put in place for some life insurance contracts complying with certain investment requirements.

TAX FRAUD

At the end of the first reading in the Parliament, two main amendments were voted:

1. The French Draft Budget Law for 2013 proposes to extend the concept of abuse of rights in order to include all acts mainly, **and not exclusively**, motivated by a tax purpose. Therefore, the scope of the 80% penalty which implies a tax reassessment based on the abuse of rights principle will be significantly increased. Please note that this change will take effect from 1 January 2016, but as the limitation period is equal to three years, all operations carried out since 1 January 2013 are within the scope.

2. The French government intends to introduce new requirements for taxpayers and their legal advisors similar to the "Disclosure of Tax Avoidance Schemes" rules in UK. As a result, all tax planning whose principal aim is to reduce a taxpayer's tax liability, defer tax, or obtain a repayment will need to be disclosed. Contrary to the UK system, there will be a penalty of 5% of the advisor's remuneration. For the taxpayer, the penalty will represent 5% of the tax benefit.

Under the Tax Fraud law, the right of the tax authorities to obtain information during a tax audit is extended to information voluntarily submitted by third parties in relation to undeclared bank accounts and life insurances. Furthermore, all information obtained unlawfully by the French Tax Administration can be used during a tax audit. However, the Constitutional Council raised a reservation concerning information provided to the tax authorities unlawfully: the tax authorities cannot use such information if a judge subsequently declares its use unlawful.

Finally, specific penalties are imposed for a failure to answer or partially answer requests from the tax authorities. These penalties relate to foreign entities benefiting from a privileged tax regime (i) and the list of associates, shareholders and subsidiaries holding at least 10% of the capital share (ii) (not necessarily benefiting from a privileged tax regime).

ENTRY INTO FORCE

Under the Parliamentary calendar, the French Draft Budget Law for 2014 and the French Draft Amending Budget Law for 2013 should be definitively adopted by the end of the year. Consequently, all the measures in these two Finance Bills will be subject to changes either by Parliament itself or due to a Constitutional Council decision. The new provisions implemented by the Tax Fraud Law have been definitively adopted following the Constitutional Council decision.

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IRELAND

BUDGET 2014

INTERNATIONAL TAX STRATEGY

Ireland's Budget for 2014 was announced on 15 October 2013. Included in the budgetary material is a policy statement entitled Ireland's International Tax Strategy, which contains a new International Tax Charter. The Charter sets out the principles and strategic objectives guiding Ireland's approach to international corporate tax issues. It re-affirms Ireland's commitment to maintaining an open, transparent, stable and competitive Corporate Tax regime, stating that Ireland is "open for business" and will continue to compete "fairly to attract new foreign direct investment".

CORPORATION TAX

The Minister for Finance Michael Noonan re-affirmed the commitment to the 12.5% rate of tax on company trading profits, stating "The tax rate is settled policy. We are 100% committed to the 12.5% corporation tax rate. This will not change."

SMALL AND MEDIUM SIZED ENTERPRISES (SMES)

Budget 2014 proposes additional measures to assist the SME sector, including:

- Removal of the Employment and Investment Incentive from the High Income Earner's restriction for three years. This will benefit individuals with higher levels of income who are seeking to make significant EIIS investments. This change is due to come into effect for investments made between 16 October 2013 and 31 December 2016.
- Subject to receipt of EU State Aid approval, the introduction of a Capital Gains Tax relief to enable entrepreneurs to invest and re-invest in assets used in new productive trading activities. The measure will apply where an individual, who has paid capital gains tax on the disposal of assets, makes investments in a new business in the period 1 January 2014 to 31 December 2018 and subsequently disposes of this investment no earlier than three years after the date of investment. The capital gains tax payable on the disposal of this new investment will be reduced by the lower of:

  i. The capital gains tax paid by the individual on a previous disposal of assets in the period from 1 January 2010; and

  ii. 50% of the capital gains tax due on the disposal of the new investment.

RESEARCH & DEVELOPMENT (R&D) TAX CREDIT

The following enhancements will be made to the R&D tax credit regime which was introduced in 2013:

- The amount of qualifying R&D expenditure eligible for the 25% tax credit, without reference to the 2003 base year, is to be increased from EUR 200,000 to EUR 300,000;
- The limit on the amount of expenditure outsourced to third parties which qualifies for the R&D tax credit is to be increased from 10% to 15%; and
- Amendments are to be made to the provisions which allow a 'key employee' to use a portion of the R&D tax credit against their income tax liability to make the scheme more accessible.

The changes apply to accounting periods commencing on or after 1 January 2014.

START YOUR OWN BUSINESS

A series of measures have been announced under a "Build Your Business Initiative" in an attempt to promote entrepreneurship. One of these measures is an exemption from income tax for to individuals who set up a qualifying, unincorporated business and who have been unemployed for a period of at least 15 months prior to establishing the business.

The exemption that can be claimed is subject to a maximum of EUR 40,000 per annum and will be provided for a two year period. The exemption applies for a new business commenced between 1 January 2014 and 31 December 2016.

TAX RELIEF ON LOANS TO ACQUIRE AN INTEREST IN A PARTNERSHIP

Following the abolition of tax relief on loans to acquire an interest in a company it has been announced, "for reasons of equity", that the relief that was available for acquiring an interest in a partnership will also be abolished.

The relief will be withdrawn over four years on a phased basis. Relief will not be available for any new loans taken out from 15 October 2013. Existing claimants will receive relief on a reducing rate basis until 1 January 2017.

FILM RELIEF

The introduction of the new credit based structure announced in Budget 2013 is to be accelerated to 1 January 2015 rather than the previously planned date of 1 January 2016. The new structure moves the Film Relief incentive from being a relief that benefits individual investors to a relief that benefits the production company directly.

In addition, the definition of "eligible individuals" for the purposes of the relief (broadly individuals employed in the production of the film/programme) is to be extended to include non-EU talent. A withholding tax mechanism will also be introduced to ensure that there is no erosion of the Irish tax take as a result.

The introduction of these provisions is subject to EU State Aid approval.

OTHER BUSINESS MEASURES

Budget 2014 also includes the following business-related measures:

- There will be a review of the tax reliefs and incentives available in the agri-food and fisheries sector;
- Restrictions are to be lifted on the ability of banks which transferred loans to the National Asset Management Agency to utilise tax losses carried forward; and
- Capital allowances and losses on plant and machinery used in manufacturing trades which are claimed by passive investors are to become subject to the high earners' restriction. The change is due to come into effect for the tax period 2014 onwards.

PERSONAL TAX

The 2013 levels of income tax rates, tax rate bands and personal allowances are unchanged for 2014, with the exception of Deposit Interest Retention Tax, which will be increased from 33% to 41% for interest payments arising from 1 January 2014, and the exit tax that applies to life assurance policies and investment funds, which will also increase to 41%.

COMPANY CARS

The benefit in kind charge on company cars is currently based on a fixed percentage of the original market value of the car provided to the employee, starting at 30% and reducing to 6% depending on the level of annual business mileage.

It is proposed to change this to a charge based on the car's level of CO_2 emissions. However, this is subject to a ministerial commencement order which at the time of writing has yet to be made.

TAXATION OF EX GRATIA LUMP SUMS

Finance Act 2013 imposed restrictions on Top Slicing Relief from 1 January 2013 where the ex gratia payment is EUR 200,000 or over. The relief made it possible for individuals who receive ex-gratia payments from employers on the termination of their employments to have the tax arising reduced to the individual's average tax over the previous three tax years. The relief is to be abolished and will no longer be available from 1 January 2014 in respect of any ex-gratia lump sum payments.

PENSIONS

The Minster announced that tax relief at the marginal rate of income tax for contributions will continue to apply, but from 1 January 2014 the standard fund threshold will be reduced from EUR 2.3m to EUR 2m. Individuals with pension rights in excess of the new lower standard fund threshold on 1 January 2014 will be able to protect the capital value of those rights by claiming a personal fund threshold, subject to a maximum of EUR 2.3m.

Technical amendments are also to be made as to how the personal fund thresholds of defined benefit schemes are calculated, which will also come into effect from 1 January 2014.

The 0.6% stamp duty levy on pension fund assets is to increase to 0.75% for the year 2014. However, the levy will be reduced to 0.15% for 2015.

CAPITAL TAX RATES UNCHANGED

The rates of Capital Gains Tax (CGT) and Capital Acquisitions Tax (CAT) are unchanged.

9% REDUCED VAT RATE

The importance of the tourism sector to the overall economy has been identified by the Minister in the budget. The 9% VAT rate introduced in 2011 as part of the Government's initiative to assist in the creation of jobs in the sector will be retained due to its success to date. The rate was due to revert to 13.5% on 31 December 2013. Other VAT rates will remain the same as in 2013.

CASH ACCOUNTING THRESHOLD

To assist small to medium businesses with cash flow, and reduce the administration burden on these business, the VAT cash receipts basis threshold is being increased from EUR 1.25m to EUR 2m from 1 May 2014.

STAMP DUTY EXEMPTION FOR SHARES LISTED ON ENTERPRISE MARKET OF THE IRISH STOCK EXCHANGE

In order to encourage investment in companies listed on the Enterprise Securities Market (ESM), transfers of shares listed on this exchange will be exempt from the 1% Stamp Duty that would otherwise apply. This measure is subject to a commencement order.

LEVY ON FINANCIAL INSTITUTIONS

The Government has decided that a specific contribution to the State's finances is to be obtained from the financial sector for the period 2014 to 2016. The contribution will be related to the amount of tax paid on deposit interest by the institution in the calendar year 2011 and full details will be contained in the forthcoming Finance Bill.

CONCLUSION

Budget 2014 is designed to support Ireland's continuing economic recovery. It contains strong and clear measures to promote the country as a place in which to do business.

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ITALY

NEW EXIT TAX RULE

The Italian 'exit tax' rule in relation to the migration of a company, provided for by Article No. 166 of the Italian Tax Code, was amended in 2012 in response to the ECJ decision of 29 November 2011 in National Grid Indus (C-371/10, recently confirmed by the decision of 25 April 2013 in the case C-64/11), in order to comply with the EU freedom of establishment principle.

Under the previous regime, the transfer of tax residence abroad qualified as a taxable event, so that any unrealised capital gain was to be computed on the basis of fair market value principles and taxed immediately. The transfer of residence was not considered as a taxable event only to the extent that assets related to the Italian business were attributed to an Italian permanent establishment (PE) of the migrating company.

NEW TAX RULES UNDER THE AUGUST 2013 LAW DECREE

Under the new provisions in the Law Decree dated 2 August 2013, published in the Italian Official Gazette issue No. 188/2013 of 12 August 2013, Italian taxpayers that carry out a commercial activity, in moving their tax residence to another EU Member State or to qualifying European Economic Area (EEA) countries (currently EU countries along with Iceland and Norway) may opt between:

- The ordinary regime which entails the immediate taxation of unrealised capital gains on migrated assets, which creates a disadvantage for companies in terms of cash flow but frees them from subsequent administrative burdens; and
- The deferred payment of taxes on such capital gains until the time of actual realisation (to be determined according to Italian tax rules), which necessarily involves an administrative burden for the company in connection with tracing the transferred assets.

MAIN ASPECTS OF THE AUGUST 2013 DECREE

The Decree provides that, in the case of a transfer of residence to an EU Member State or to European Economic Area "white list" countries (Iceland and Norway), an Italian taxpayer may elect for:

- Payment of corporate income tax (CIT) due on the deemed realisation gain;
- Payment of the exit tax in ten equal annual instalments;
- Deferral of the exit tax payment until the time of actual realisation (with guarantee and periodic reporting duties).

Under any election, the exit tax liability should be determined on the basis of the fair market value of the assets/going concern on the date of the migration. In order to determine the market value of the individual assets, corporate liabilities are proportionally attributed to the assets.

Goodwill, business functions and risks related to the migrated assets should also be considered in the computation of the taxable gain in compliance with transfer pricing principles, i.e., reflecting the price that an independent party would be willing to pay for their acquisition.

As for the scope of application, the deferral regime can be opted for in relation to either all the assets transferred or to some of them; in the latter case, the overall gain will be attributed to the assets with respect to which deferral is elected, by reference to the ratio of the respective higher values of those assets and the total higher value of all the assets transferred.

The Law Decree establishes that the time of the actual realisation of gains related to the migrated assets is identified in compliance with the rules provided for by the Italian income tax code.

With specific reference to participations classified as fixed assets, it was established that the time of realisation is also represented by the payment of dividends or repayment of capital by the relevant subsidiary.

The above mentioned deferral regime will also apply to Italian PEs relocating to a qualifying country. Furthermore, the Law Decree allows taxpayers to alternatively elect to pay the exit tax over a 10-year period, in equal instalments, increased by legal interest. In such a case, taxpayers would be exempted from filing obligations.

In any case, both elections (that is, the tax deferral and the instalment election) require the taxpayer to provide a bank guarantee.

TAX LOSSES

Existing net operating losses should be firstly offset against the taxable income of the final year of tax residence in Italy, with any excess used to offset the gain determined as at the migration date. Any further net operating losses may be attributed to the eventual Italian PE of the migrating company under the ordinary limitations provided for by Italian Income Tax Code.

EXCLUSIONS AND TERMINATION OF THE DEFERRAL BENEFIT

Under the new provision the tax deferral regime is not applicable to:

- Trade goods and inventory;
- Net equity reserves with tax suspension status, to the extent not booked in the accounts of an eventual Italian PE of the migrating company;
- Income arising from activities carried out in the final year of tax residence in Italy, including tax-deferred items not related to the transferred assets.

Moreover, the tax deferral regime will terminate and the Italian tax liability must be paid immediately if:

- The company subsequently migrates to a jurisdiction outside the EU/EEA;
- The company is liquidated; or
- There is a merger, demerger or business contribution that results in the company's assets being transferred to an entity that is resident outside the EU/EEA.

However, to the extent that the migrated assets are not further transferred to a country other than a qualifying country, mergers and other reorganisations should not trigger a termination of the tax deferral regime.

FINAL REMARKS

The Law Decree establishes that the Italian tax authorities will provide additional specific guidance on the formalities concerning the making of elections, the payment of instalments, the types of guarantee required and the periodical filing of information.

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MALTA

BUDGET 2014 HIGHLIGHTS

PERSONAL TAX

– For year of assessment 2015 (basis year 2014) the top rate band for income up to EUR 60,000 will be reduced from the current 32% to 29% across all computations. The zero rated tax band for the parent computation will be extended from EUR 9,300 to EUR 9,800.

The rates and bands will therefore be as follows:

Rates	Single computation			Married computation			Parent computation		
	Bands (EUR)			Bands (EUR)			Bands (EUR)		
0%	up to		8,500	up to		11,900	up to		9,800
15%	8,501	-	14,500	11,901	-	21,200	9,801	-	15,800
25%	14,501	-	19,500	21,201	-	28,700	15,801	-	21,200
29%	19,501	-	60,000	28,701	-	60,000	21,201	-	60,000
35%	over		60,000	over		60,000	over		60,000

Dividends received will be taxable at the progressive rates applicable prior to the introduction of the 32% tax rate.

– The cost of living increase for 2014 will be EUR 3.49 per week, compared to EUR 4.08 last year. The cost of living adjustment will be tax exempt for persons in receipt of minimum wage. As from 2014, the tax exemption will be extended to pensioners whose only income consists of a pension that does not exceed the minimum wage.

– Tax on part-time work will be reduced, with the limit extended to EUR 10,000 from EUR 7,000 for employed persons, and to EUR 12,000 for the self-employed. There will be no tax on the minimum wage. Pensioners who work part-time will benefit from a 15% tax rate on their employment. Part-time footballers will benefit from a reduced rate of tax of 7.5%.

– Rental income will be subject to a final withholding rate of tax of 15%.

– Women over 40 years of age who have not worked for five years and who return to work will not be taxed, while the tax paid by their husband will remain at the married rate. This will be for a maximum of five years.

– The maximum tax credit for parents who send their children to private childcare centres will be extended from EUR 1,300 to EUR 2,000.

– Persons currently unemployed who return to work will enjoy 65% of their unemployment benefits during the first year of employment, 45% during the second year, and 25% in their third year.

– The allowance for disabled children will go up to EUR 20 from EUR 16.30 a week

BUSINESS TAX

– Micro enterprises and the self-employed will be supported through a 45% tax credit on eligible expenditure (65% if based in Gozo). In addition, the Jeremie scheme is to be continued. These measures will encourage micro enterprises and the self-employed to invest in their business, increase their workforce, innovate, expand and implement compliance directives and aiding in its continued growth by reducing their tax amount payable to the Government.

– The Government plans to introduce incentives that will assist in the training and subsequent employment of unemployed persons aged between 45 to 65, through a reduction in income tax in the first two years of their employment. Furthermore, their employers will be assisted by means of a reduction in tax equal to 50% of the training cost, capped at EUR 400.

– Entrepreneurs will be granted a deduction of EUR 600 in respect of employment opportunities being offered to inexperienced workers. A tax deduction of EUR 1,200 will also apply in respect of apprenticeships being offered by such entrepreneurs.

INDIRECT TAXES

VAT

– Construction values are to be audited in order to reduce VAT evasion in the construction sector. If the developer cannot provide VAT receipts to substantiate the estimated valuation of works he will be liable to pay the VAT due.

– VAT paid on vehicle registration for personal use between 1st May 2004 and 1st May 2008 will be refunded over a seven year period.

Stamp duty

– First-time buyers who have never owned an immovable property before 1 January 2014 and who finalise their contract in 2014 will be exempt from paying the 3.5% duty on the first EUR 150,000 of the property bought. This one-time measure is expected to support the property market and enhance the ability of first-time buyers to access the property market, giving them a savings of EUR 5,250 on their first residence.

– The current duty of 2.6% on sales by auction of movables exceeding a value of EUR 230 is to be abolished.

– The tax on transfer causa mortis will be abolished for properties inherited by a disabled person.

– Interest payable by heirs on late payment of duty arising upon causa mortis transmission has now been capped such that the interest cannot exceed the amount of duty itself.

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ARGENTINA

RECENT CHANGES – TAX ON PROFIT DISTRIBUTIONS AND CAPITAL GAINS ARISING FROM EQUITY INTERESTS

On 23 September 2013, the Official Bulletin published Law № 26.893. This introduces important changes in the Income Tax law, but it has not entered into force, as the Executive Power has not yet established the necessary regulations.

The new measures include changes to the taxation of profits arising from:

a) The purchase, sale, swap, exchange or disposition of stocks, shares, titles, bonds and other securities which are unlisted; and

b) Dividends paid by companies' resident in Argentina,

in both cases at a lower tax rate than the maximum rate of 35%.

Details of the changes are summarised below.

GAINS ARISING FROM THE TRANSFER OF TITLES, STOCKS AND SHARES

– Gains arising from the transfer of stocks, quotas, shares, titles, bonds and other securities are subject to tax, irrespective of the person who realises them.

– The existing exemption is now limited to profits from purchase, sale, exchange, swap or disposition of stocks, quotas and shares, titles, bonds and other securities that **are publicly listed or on the stock market**, only if the beneficiary of the transaction is a **natural person or an undivided succession beneficiary resident or settled in Argentina**.

*Therefore, all gains realised in respect of the above-mentioned instruments, shares and other securities which are **unlisted** will be subject to Income Tax.*

– Additionally, article 78 of Decree № 2284/1991 has been repealed, which exempted from tax gains arising from purchases, sales, exchanges, swaps, or dispositions by natural or legal persons and undivided succession beneficiaries from abroad.

Therefore, persons settled or domiciled abroad are subject to Income Tax on disposals of the above-mentioned assets, even stocks, quotas, shares, titles, bonds and other securities which are publicly listed or on the stock market.

– With regard to the tax rate applicable to **Argentine** natural persons or undivided succession beneficiaries, the net gain arising from the purchase, sale, exchange, swap or disposition of stocks, quotas or shares, titles, bonds and other securities, will not be added to other gains realised by such subjects, but will be subject to a proportional rate of **15%**.

In the case of beneficiaries from abroad, **except natural persons**, tax will be paid at the lower of 13.5% of the sale price or 15% on the difference between the sale price and historical cost.

For **natural persons from abroad**, there is some doubt whether the same mechanism described in the previous paragraph applies, or whether the rate is the lower of 31.5% of the sale price or 35% on the difference between the sale price and historical cost.

However, it will be necessary to examine whether a double taxation treaty between the jurisdiction in question and the Republic of Argentina offers a more favourable treatment.

Finally, where the owner is a person from abroad and the purchaser is also a natural or legal person from abroad, the purchaser of the stocks, quotas, shares or other securities which are transferred will be liable for the payment of the tax.

The position is summarised in the following table:

DIVIDENDS AND PROFITS

– If the recipients of such amounts are Argentine natural persons or natural or legal persons resident or settled abroad, dividend distributions by the following entities established in the country will be taxable:

i. Corporation (S.A.) and joint stock companies;

ii. Limited Liability (S.R.L.) companies, limited partnerships and general partners of joint stock companies;

iii. Civil associations and foundations;

iv. Financial and ordinary trusts in which the trustee IS NOT a beneficiary nor a foreign beneficiary;

v. Closed mutual funds;

vi. Commercial, industrial, agricultural or mining establishments, or of any other kind, organised as a going concern, belonging to associations, partnerships or companies of any nature, established abroad or natural persons abroad.

It is important to point out that a dividend distribution is not taxable if it is received by an Argentine partnership.

– The applicable rate is 10%, as sole and definitive payment. However, the application of the so-called "equalisation tax" should be considered.

– Finally, stock or share dividends, generally called "dividends in issued stocks", are exempt from tax. However, subsequent redemptions of shares or equity interests in cash or in kind should now be taxable at the 10% rate.

COMMENCEMENT

The measures introduced by the new Law take effect from the date of its publication in the Official Bulletin – 23 September 2013 – and apply to transactions carried out from that date.

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Seller	Listed Shares	Unlisted Shares
Argentine Natural Person	Exempt	Taxed (15%)
Foreign Natural Person	Taxed (35% on gain or 31.50% on sale price)	Taxed (35% on gain or 31.50% on sale price)
Argentine Legal Person	Taxed (35%)	Taxed (35%)
Foreign Legal Person	Taxed (15% on gain or 13.50% on sale price)	Taxed (15% on gain or 13.50% on sale price)

BRAZIL

NEW SYSTEM OF TAXATION ON INCOME FOR COMPANIES

After years of neutrality to the adoption of international accounting standards for tax purposes, as guaranteed by the Transitional Tax Regime (RTT), Brazilian companies will have a new system of taxation on income.

The Brazilian government has decided to end the RTT. Under Provisional Executive Order No. 627, published in the Federal Register on 12 November 2013, corporate income will be calculated according to International Financial Reporting Standards (IFRS), for Income Tax (IR) and Social Contribution Tax (CSLL) purposes.

Although corporate income has been calculated according to international standards under RTT since 2008, some adjustments were necessary in relation to items that did not comply with accounting pronouncements in respect of income up to 2007.

Now, the pronouncements that will be used by tax legislation have been defined and listed.

For example, government grants, changes in fair value, and decreases in impairment will not be taken into account for IR and CSLL purposes.

Similarly, IFRS guidelines will continue to be applied for the calculation of goodwill in mergers and acquisitions. Accordingly, only the residual value after allocation of appreciation or depreciation of the acquired assets is treated as goodwill, i.e. not taking account of the whole difference between the purchase amount and the acquired company's equity.

This change will affect several companies in Brazil and will be effective in 2015. However, companies will be able to adopt it as from January 2014.

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UNITED STATES

GERMANY RULES ON S CORP TREATY BENEFITS

Germany's highest tax court has held that the 5% withholding tax rate available under the 2006 United States – Germany Income Tax Treaty (the Treaty) will apply to dividends issued by German corporations to United States S corporations. This decision may have a significant impact on a number of structures involving hybrid entities under the Treaty.

INTRODUCTION

On 26 June 2013, the Bundesfinanzhof (BFH), the highest tax court in Germany, reversed a lower tax court's decision and held that a United States S corporation was entitled to the 5% dividend withholding tax rate under Article 10(2)(a) of the Treaty (BFH Judgment of 26 June, 2013, IR 48/12) as far as the income of the United States S corporation is taxed in the United States at the level of its United States resident shareholders. During 2012, a lower-tier tax court in Cologne, Germany, had held that a United States S corporation was not entitled to the 5% dividend withholding tax rate, but rather the individual withholding tax rate of 15% applied.

In reversing that decision, the BFH concluded that a United States S corporation is the beneficial owner of dividends paid by a German GmbH because, from a German perspective, the S corporation, rather than its shareholders, is considered the recipient of the dividend payments. As such, the BFH held that the United States S corporation is a deemed tax resident of the United States pursuant to Art. 1(7) of the Treaty.

DISCUSSION

Background

In general, under domestic German law, dividend payments from a German GmbH to a shareholder are subject to a withholding tax of 26.375%. However, in certain circumstances, that rate may be reduced under the Treaty. Pursuant to Art. 10(2)(a) of the Treaty, dividends paid by a German subsidiary to its United States shareholder are subject to a 5% withholding rate if the corporate shareholder directly owns at least 10% of the voting stock of the dividend-paying company.

Until recently, however, the issue of whether an S corporation that receives a dividend payment from a German corporation was entitled to the privileged 5% withholding rate or the general 15% withholding rate under the Treaty had been unresolved. The lower court in Cologne held that an S corporation is not a resident of the United States under Art. 4(1) because it is a transparent entity and not subject to United States federal income tax. The lower court also concluded that the S corporation cannot claim residency under Art. 1(7), because Art. 1(7) does not stipulate the residency of transparent entities but instead stipulates those cases in which income and profits enjoy advantages of the Treaty.

The BFH Decision

On appeal, the BFH reversed the lower tax court's decision. The BFH confirmed that the general residency rules under Art. 4(1) do not apply, but then gave three arguments as to why a United States S corporation should be considered a tax resident under Art. 1(7) of the Treaty (i.e., rules relating to hybrid entities):

1. The BFH emphasised that the meaning of Art. 1(7) is not limited to determining the beneficial ownership of income or profits.
2. In contrast to the lower court, the BFH clarified that tax residency is not a prerequisite for the application of Art. 1(7).
3. The BFH explained that the United States person to whom the profits or income is being attributed under United States domestic law (i.e., the S corporation's shareholders) does not have to be identical with the person (i.e. the S corporation) who is considered a resident of a State who derived such income for purposes of Art. 1(7). The BFH states that an item of income shall be considered derived by "a" resident to the extent that such item is treated as income or profits of "a" resident of such State. Nothing in the language of Art. 1(7) indicates that the person to whom the income is attributed must be identical to the person who is subject to taxation on such income items in the State of residence.

The BFH goes on to determine, by reference to Art. 10(2)(b), that the beneficial owner of the dividends is the S corporation. Irrespective of its flow-through character for United States income tax purposes, the S corporation is a corporate entity from a German tax perspective and the recipient of the dividends. The BFH held that the beneficial owner must be determined in accordance with the laws of the source State, here Germany (referencing a prior BFH decision under the 1989/1991 Treaty).

The BFH decision is not only significant for entities classified as United States S corporations but should also be applicable to a United States limited liability company if it is also treated as a corporation from a German tax perspective.

Notably, this decision may provide some guidance on the interpretation of other United States income tax treaties, as the concept of whether the lower withholding rate of 5% should apply to dividends received by United States S corporations is being debated in a number of countries. For example, Canada and Israel have held that a United States S corporation receiving a local dividend is entitled to the 5% withholding rate, while France and Switzerland and others apply the 15% withholding rate.

Consideration should be given to the filing of a claim for refunds on the over-withheld German tax. Such claims must generally be filed within four years after the end of the year payment was made.

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KENYA

FINANCE ACT 2013

DETAILS OF THE CHANGE

The Finance Act 2013 became law on 24 October 2013. This article summarises the main measures.

INCOME TAX CHANGES

The following changes will take effect on 1 January 2014:

- Group life insurance premiums paid on behalf of employees will be excluded from employment income for tax purposes where the group premium does not assign specific benefits to employees.
- The exemption from income tax for armed forces salaries will be removed.
- The exemption for disabled persons has been extended from three years to five years.
- A 20% withholding tax will apply to betting and gaming winnings, for both resident and overseas payments. In both instances the withholding tax is final; no further declaration or tax is due.

DISPUTE RESOLUTION

Where a taxpayer disputes an income tax assessment, the dispute resolution process starts with lodging an objection letter. The second stage is an appeal to a tax tribunal and the third stage is an appeal to the courts. Any undisputed tax should be paid whilst the disputed amount is the subject of the dispute resolution process.

However, the Finance Act 2013 now provides that in addition to paying the undisputed tax, businesses/taxpayers will be required to pay 30% of the tax in dispute, plus interest, before they can appeal to the income tax appeal tribunal known as the Local Committee. Appeals must be determined within six months, and if found in favour of the taxpayer, the 30% deposit must be refunded within 90 days.

EXCISE TAX CHANGES

Fees and commissions for services provided by financial institutions attract excise duty at a rate of 10% with effect from 18 June 2013. Interest charges are excluded from the excise duty. Financial institutions for excise duty purposes include banks, microfinance institutions, insurance companies, Savings and Credit Cooperative Societies, and the Kenya Post Office Savings bank.

IMPORT DUTY LEVY

With effect from 1 July 2013, a 1.5% levy is payable on all goods (excluding goods-in-transit) imported into the country. This will be payable at the port of entry. The purpose of the levy is to provide funds for the construction of a standard gauge railway network. A legal notice (number 118) has been issued to regulate the administration and accountability of the fund. The construction project is estimated to take 5 years to complete, and this may therefore be a long-term levy.

OTHER NEW LEGISLATION

The new VAT Act was enacted on 16 August 2013 and became effective on 2 September 2013. This Act is covered in detail in our Indirect Taxes News publication, but new measures include:

- The removal of the lower rate of 12% for electricity and fuel oils;
- New powers to reverse anti-avoidance schemes;
- A significant reduction in the categories of goods that are exempt; and
- A significant reduction in the categories of items in respect of which input tax recovery is blocked.

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MAURITIUS

ADDITIONAL SUBSTANCE RULES FOR CATEGORY 1 GLOBAL BUSINESS CORPORATIONS

Category 1 Global Business corporations are Mauritian companies which undertake global business activities and which are supervised by The Financial Services Commission (FSC). The FSC has issued guidelines on new requirements it will take into account when determining whether such corporations are 'managed and controlled' in Mauritius. It is expected that these measures will give more substance to the Category 1 Global Business corporations operating from Mauritius.

Currently the requirements of the FSC are that a Category 1 Global Business corporation must:

- Appoint two Mauritian resident directors;
- Maintain its principal bank account in Mauritius;
- Maintain and keep accounting records at its registered office in Mauritius;
- Prepare statutory financial statements which have to be audited in Mauritius;
- Provide for meetings of directors to include at least two Mauritian directors; and
- Be administered from Mauritius when it is authorised or licensed as a collective investment scheme, closed end fund or external pension scheme.

The FSC has issued additional requirements that a Category 1 Global Business corporation must, by 1 January 2015, satisfy at least one of the following requirements when determining whether it is 'managed and controlled' in Mauritius:

1. Have office premises in Mauritius
2. Employ at least one person resident in Mauritius on a full time basis at administrative or technical level
3. Have a constitution specifying that all disputes arising out of it shall be resolved by way of arbitration in Mauritius
4. Hold assets worth at least USD 100,000 in Mauritius, excluding cash held at bank or investments in another Global Business corporation
5. List its shares on a securities exchange licensed by the FSC
6. Incur annual expenditure in Mauritius which can be reasonably expected from any similar corporation which is controlled and managed from Mauritius. The reasonableness of the expenditure will be determined by taking into account the activities of the corporation, its average turnover and net assets, the country or countries in which it is conducting business and the industry average.

A corporation will be deemed to have satisfied the criteria in the previous paragraph where a related corporation, being a subsidiary, or fellow subsidiary, or parent or any other corporation within the same group structure, holding a Category 1 Global Business licence satisfies one of those additional requirements.

These are the requirements of the local regulatory body, but it remains to be seen whether they will be sufficient in the eyes of regulatory bodies in foreign countries to determine that the Category 1 Global Business corporation is 'managed and controlled' in Mauritius.

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SOUTH AFRICA

CROSS-BORDER TAXATION DEVELOPMENTS

Recent developments in taxation in a cross-border context include the following:

– A substituted transfer pricing provision modelled along the lines of the UK legislation. This provision, when taken together with the penalty regime contained in the recently enacted Tax Administration Act of 2011, imposes an onerous documentation requirement on taxpayers who may have to defend the arm's length nature of the terms and conditions of transactions entered into with non-SA connected persons in order to avoid stiff penalties. The thin capitalisation 'safe harbours' associated with the previous provision are no longer in force.

– Three new (or amended) withholding taxes, all set at a default rate of 15%:

  o The withholding tax on interest, proposed to take effect from 1 January 2015;

  o The withholding tax on royalties, proposed to take effect from 1 January 2015 (and replacing the current royalty withholding tax at a default rate of 12%); and

  o The withholding tax on service fees, proposed to take effect from 1 January 2016. As the provisions of this tax are presently worded, it would appear that the tax will seldom be payable. For example, the source of the service fees must be located in SA. This implies that the place where the services are rendered would have to be within SA. Often services are rendered outside SA in the case, for example, of management fees charged by a non-SA holding company where the work is done outside SA.

– A new provision proposed by the Taxation Laws Amendment Bill of 2013 which seeks to place a ceiling on interest deductions in circumstances where the interest accrues to a connected person who is not subject to tax in SA on the interest. The ceiling is to be determined in terms of a formula which is based on 40% of earnings before interest, taxes, depreciation, and amortisation (EBITDA). Interest accruing to non-SA residents is generally exempt from taxation, and even when the proposed new withholding tax on interest comes into effect (proposed date 1 January 2015), many double taxation agreements (DTAs), for example the DTA between SA and the UK, reduce the withholding tax rate to 0% which would trigger the application of the provision.

So, for example, in the situation where a SA subsidiary owes an amount in respect of a loan to a UK resident holding company, the SA subsidiary may well have to contend with both the new transfer pricing/thin capitalisation provision and the above ceiling in respect of the deductible interest.

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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 13 December 2013.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
British Pound	1.18821	1.63680
Euro (EUR)	1.00000	1.37742
US Dollar (USD)	0.72593	1.00000

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