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CFE Fiscal Committee

National Reports

137th meeting

Developments in national tax laws

September 2015 – April 2016

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BELGIUM

Law containing miscellaneous tax provisions of 18/12/2015 – Published on 28/12/2015

Implementation of Tate & Lyle case

The federal government decided to implement the ECJ decision in the Tate & Lyle case into Belgian legislation and to remove the difference in treatment created by the possibility for resident companies to claim the dividends-received deduction (DRD) and to credit the withholding tax (WHT) on dividends from participations below 10%, but above 1,2 M EUR (at that time, currently 2,5 M EUR) against Belgian corporate income tax, whereas a non-resident company could not do so.

A movable withholding tax rate of 1,6995% will apply to Belgian-sourced dividends paid to qualifying foreign companies to the extent that the movable withholding tax cannot be credited or reimbursed in the hands of the receiving company. The rate of 1,6995% equals the corporate income tax (33,99 %) on 5 % of the dividend received that is taxable in the hands of a Belgian company.

The law applies as from 28 December 2015.

Tax shift Law of 26/12/2015 published on 30/12/2015

Lump-sum business expenses

The higher limit of the first bracket of 30% of the salaries of employees will be increased from 3.800 to 5.500 EUR (to be indexed) as from AY 2017.

For AY 2019, the percentage of 30% will remain and the maximum lump sum of business expenses will be increased from 2.760 to 2.950 EUR (to be indexed)

Personal income tax rates

Lower bracket of 30% is increased from 5.705 to 7.070 EUR (to be indexed) as from AY 2017. As from AY 2019, the bracket of 30% will be abolished and the higher limit of 40% will be increased from 13.530 to 13.940 EUR (to be indexed). The higher limit of the bracket of 40% will be further increased to 14.330 EUR (to be indexed) as from AY 2020.

Tax free sum

Limit income for the application of the increased tax-free sum (131 BITC) will be increased from 15.220 to 25.220 EUR (to be indexed) as form AY 2019. At the same time the correction for the transformation of the deduction for own dwelling in a tax reduction will be abolished.

Taxation of capital gains (so-called speculation tax)

A new tax of 33% will be applied on capital gains on listed shares (including share certificates)/options/warrants and other stock quoted financial instruments on shares) that are held for less than six months. The speculation tax is only applicable on resident and non-resident individuals and if the investment in shares is not their professional activity.

Investment deduction

The investment deduction for ordinary investments for the purposes of individual income tax and corporate income tax (only for SMEs) has been increased to 8% as from 1 January 2016.

Increase withholding tax on movable income

The rate of the withholding tax on dividends interests and royalties has been increased from 25 to 27% as from 1 January 2016. In specific cases a lower rate may still apply.

High-technology products (investment deduction and wage withholding tax exemption)

Introduction of a spread investment deduction (20,5 %) for investment in means of production of high-tech products. Conditions:

- products of which the production is new
- products results of increased costs in R&D at the moment of the first series production.

This new deduction is applicable to investments made as from 1 January 2016.
For companies that produce high-tech products, the exemption from WHT for shift and night work is increased by 2,2% but only for workers that are effectively employed in the production of these high-tech products.

Social security contribution

Employer social security contributions will decrease yearly from 33% end 2015 to 25% in 2019.

Royal Decree regarding investment deduction for digital assets published

A Royal Decree published on 08/12/2015 clarifies the qualifying assets for the investment deduction for investments in digital assets for SMEs. The regime foresees two categories of assets: assets for the integration and exploitation of digital payments and invoicing systems and systems for the security of information and communications technology.

New list of tax havens for the purpose of the dividends received deduction

A royal Decree published on 10/03/2016 modifies the list of tax havens for the application of the Dividend received deduction. This new list contains the following countries:

Abu Dhabi, Ajman, Andorra, Bosnia and Herzegovina, Dubai, Gibraltar, Guernsey, Jersey, Kyrgyzstan, Kuwait, Kosovo, Liechtenstein, Macao, Macedonia, Maldives, Isle of Man, Marshall Islands, Micronesia, Moldova, Monaco, Montenegro, Oman, Uzbekistan, Paraguay, Qatar, Ras al Khaimah, Serbia, Sharjah, East Timor, Turkmenistan, Umm al Quaiwain

The new list is applicable to dividends allowed/attributed as from 1 January 2016. (Except if the accounting period is closing before 1 April 2016 where the old list still applies)

Update of the list of tax havens for the purpose of the reporting of payments (art 179 RD BITC – 307 BITC)

Another Royal Decree published on 11/03/2016 adapted the list of tax havens for the purpose of the reporting of payments (art. 307 BITC and 179 RD BITC). This list contains countries:

- Without corporate tax
- Or with a nominal corporate tax rate less than 10%

The new list contains the following countries:

Abu Dhabi, Ajman, **Anguilla**, Bahamas, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Dubai, Fujairah, Guernsey, Jersey, Isle of Man, **Marshall Islands**, Micronesia, Monaco, Montenegro, Nauru, **Uzbekistan**, Palau, **Pitcairn Islands**, Ras al Khaimah, St. Barthelemy, Sharjah, **Somalia**, **Turkmenistan**, Turkey Islands and Caicos, Umm al Quwain, Wallis and Futuna

The list is applicable to payments made as from 1 January 2016 but as transitional regime, the old list remains applicable to payments made during an accounting period closing before 1 April 2016.

VAT

Ceiling for VAT exemption
Ceiling for the VAT exemption for small businesses has been increased from 15.000 to 25.000 EUR. VAT payers whose annual turnover in Belgium does not exceed 25.000 EUR will be able to benefit from this VAT exemption.

VAT chargeable again upon issuance of invoice as from 01/01/2016
VAT on the supply of goods and services for which an invoice must be issued (in B2B and some B2C situations) becomes chargeable upon the issuance of the invoice. If no invoice is issued before the 15th of the month following the supply, VAT is chargeable on that date. If a (partial) payment is made before the supply, VAT is chargeable on the date of payment.

This new regime entered into force as from 01/01/2016

Legal persons acting as directors subject to VAT

The VAT authorities abolished the option according to which legal persons acting as directors were allowed not to register for VAT purposes has been postponed until 1 June 2016.

BEPS

Implementation of EU directive 2014/107/EU on automatic exchange of information in tax matters, OECD common reporting standard, FATCA US-Belgium

The law of 16 December 2015 (published in the Belgian Official Gazette on 31 December 2015) implements Automatic Exchange of Information (AEoI) regimes such as FATCA and the Common Reporting Standard (CRS) in Belgium. FATCA and CRS are the latest in a growing line of information sharing agreements that Belgium and other counties have entered into.

These regimes compel Financial Institutions to identify and report accounts (and their income) held by specified non-resident persons or entities.

The Belgian authorities actually work on the implementation of following action points :

- Adapt the patent income deduction on the new nexus approach (action 5)
- Implementation of country by country reporting and introduction of Transfer pricing master file and local file (action 13 and EU directive).

Jos Goubert

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Czech Republic

1) VAT Control Statement

Obligatory submitting of the so-called "VAT Control Statement" by all taxable persons registered for VAT in the Czech Republic as of 1 January 2016. In relation to the submission of the first Control Statements, the Tax Administration has started far-reaching check-ups of the reported data.

2) Electronic Sales Record

At the end of 2016, obligatory Electronic Sales Record will be introduced for hotels and restaurants. In relation to this, VAT for catering services should be decreased from 21 to 15 per cent and a lump-sum tax allowance for businessmen (CZK 5,000) should be introduced.
Implementation of the Electronic Sales Record for further industries should follow in 2017.

3) New categories of accounting units defined from January 2016

New amendment to the Accounting Act effective January 2016, changes principally triggered by the implementation of EU Directive.
New categories of accounting units: micro, small, medium-sized and large entities (based on criteria of assets, turnover and employees).

4) New DTTS with Pakistan come into effect from 1 January 2016

5 % withholding tax is imposed on **dividends** for companies if 25% shareholding interest for at least one year is maintained, in other cases the WHT is 15%. In case of **interest** and **royalties** (if taxed in contractual state), the WHT should not exceed 10% if paid to the beneficial owner which is resident in the contractual state.

5) VAT Reverse charge mechanism extended

From February 2016 the reverse charge mechanism was extended on business transactions with gas and electricity.

6) VAT return: End of the exception to the mandatory electronic filing for individuals

Effective as of 1 January 2016, there is a change regarding mandatory electronic filing of Value Added Tax Return, request for VAT registration and notification of change in the VAT registration data, VAT control statement etc.
Until the end of 2015, only the individuals whose turn-over exceeded CZK 6,000,000 in the previous 12 months were required to file those filings electronically. No exception applies anymore.

7) Signature of MCAA – CbC reporting

The Czech Republic joined the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports under BEPS Action 13.
The Czech Republic will thus more often act as a CbC report recipient and the automatic exchange of CbC reports will become one of the important information sources for Tax Administration in conducting a risk analysis for transfer pricing purposes.

The signing of the multilateral competent authority agreement assumes the adoption of related legislation at the local level.

8) Signature of DTT with Turkmenistan in March 2016

No such convention had been in place between the two countries previously. Follow-up legislative process is required to make the convention valid and effective.

9) Lex GATCA – introduction of automatic Exchange of information on financial accounts (CRS) from April 2016

An amendment to the Act on Mutual International Assistance in Tax Matters (Lex GATCA) introduces an automatic exchange of information on financial accounts (the Common Reporting Standard, CRS), based on which financial institutions, including certain trusts, will be required to collect information about their clients, tax residents in contractual countries, and will report this information to the Financial Administration.
The exempted accounts from reporting duty include retirement benefit savings accounts and supplementary pension insurance accounts up to the annual limit of contributions of USD 50 thousand.

10) New test on VAT exemption for real estate transactions

Starting from 2016, the VAT Act contains an entirely reworked test to determine whether it is necessary to tax the transfer of the building or land and when they can be exempt from tax.
In this respect new Instruction of the General Financial Directorate was published.

11) Penalty as a punishment: pursuant to the ruling of the Supreme Administrative Court it will no longer be possible to punish certain persons for tax evasion

The ruling of the Supreme Administrative Court impacted the current practice where a penalty was primarily imposed and subsequently a criminal prosecution for tax evasion was initiated with regard to the most serious cases. The new practice would be that once taxable persons receive a penalty from the tax administrator, it will no longer be possible to criminally prosecute them in the relevant matter.

12) Abuse of Right in Taxation – decisions of the Supreme Administrative Court on interest-deductible structures (CTP cases)

With reference to the judicature of the Court of Justice of the European Union (it is possible to mention, e.g decisions C-110/99 Emsland-Stärke or C 255/02 Halifax), the Supreme Administrative Court dealt with the issue of the tax-deductibility of interest on an acquisition loan accepted within the Group for the purpose of intragroup restructuring.

The Supreme Administrative Court concluded that the intragroup loan accepted for the purpose of intragroup acquisition, which implementation had no rational economic substantiation (e.g. change of ownership structure, new acquisition, management unification or operational cost savings), had to be considered as forming a purely formal legal situation. Meaning that it's only purpose is obtaining a tax benefit to which, under regular circumstances, the tax subject would not be entitled.

13) Increase of tax allowances on children (second and third child), possible to apply in PIT returns already for 2015

As of January 2016, parents of two or more children should qualify for higher personal income tax relief (CZK 100 less in taxes for 2 children and bigger families CZK 300 less for a third and every additional child).

This allowance can be applied already in the tax returns filed for 2015.

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FRANCE

Direct Tax News

1. <u>Participation-exemption</u>

In general, dividends received by corporations subject to corporate income tax are tax-exempt (subject to the taxation of a 5% service charge) providing that the shareholding represents at least 5% and that the shares are held for at least two years.

With respect to fiscal years beginning on or after 1 January 2016, the anti-abuse provision contained in EU Directive 2015/121 of 27 January 2015 has been embodied in French law: non-application to dividends paid in the framework of an arrangement or a series of arrangements that are not genuine (Article 145, 6 k of the French tax code, "FTC"). The limitation applies not only to EU subsidiaries but also French and non-EU subsidiaries.

Regarding dividends paid by subsidiaries established in Non-Cooperative States or Territories, the participation-exemption is applicable only if, in short, the French parent demonstrates that there is no tax fraud (previously, there was no possibility to benefit from the participation-exemption but this was not in accordance with the Constitution).

2. Withholding tax on dividends paid to EU shareholders

Dividends paid by French companies to EU or EEA shareholders owning at least 5% of the capital of the distributing entity are not subject to withholding tax if the shareholder would not otherwise be able to use the withholding tax as a tax credit in its country of residence (Article 119 ter of the FTC as amended). In addition, the anti-abuse provision set forth by EU Directive 2015/121 of 27 January 2015 has been introduced under Article 119 ter of the FTC.

3. Fiscal unity

The statute has been amended with respect to fiscal years beginning on or after 1 January 2016 in order to comply with EU law (CJEU case No C-386/14, Groupe Steria SCA). In order to avoid discrimination, it is now provided that dividends eligible to the participation exemption paid by French subsidiaries that belong to a tax group are exempt from corporation income tax subject to the reincorporation of a service charge of 1%.
In order to avoid discrimination, the same applies to dividends paid by EU subsidiaries that would have been able to be part of the tax group if they were incorporated in France, i.e. among others if they meet the 95% ownership test. (Previously, no service charge was applicable in the first case whereas a 5% service charge applied in the second case, which was found discriminatory.)

4. Small reduction of the corporate income tax rate

The ordinary tax rate is set at 33.33%; in addition, two additional taxes of 3.3% and 10.7% are applicable (except for small enterprises). The 10.7% contribution is applicable for the last time to enterprises that close their financial year on or before 30 December 2016. For enterprises that close their financial year on 31 December 2016, the maximum rate is thus 34.43%.

5. BEPS: Country-by-country reporting (CBCR)

As recommended by Action 13 of the OECD anti-BEPS plan, the statute has been amended with respect to fiscal years beginning on or after 1 January 2016 (Article 223 quinquies C of the FTC). A country-by-country reporting has been introduced for multinational groups of companies which establish consolidated accounts and which annual consolidated group revenue is at least €750m; the obligation bares on French companies that are not owned by another French company that already falls within the scope of the filing obligation or by a foreign company falling within the scope of a similar legislation in its country of residence.
The information to be disclosed includes, on a country-by-country basis, the group’s profits, economic, accounting and tax aggregates and information on the location and activities of the group entities. The CBCR has to be filed with the French tax authorities within 12 months from the end of the tax year and it will be automatically exchanged with other compliant countries.

A French company that belongs to a group established in non-compliant country has to file the return for the whole group if it has been designated by the group to that end or if it cannot demonstrate that another group company already files the return for the group.
In case of failure to declare, the maximum penalty will be €100,000 and in case of omission or inaccuracy, the maximum penalty will be €10,000.

6. Transfer pricing reporting obligations

The statute has been amended so that e-filing is now compulsory with respect to the annual simplified transfer pricing documentation that large enterprises have to file every year (Article 223 quinquies B FTC). Moreover, in tax-consolidated groups, the parent company will file the annual transfer pricing documentation for itself and for each consolidated entity.

7. Non-residents individuals using French real estate

Starting with the taxation of the 2015income, non-resident individuals are no longer subject to lump-sum taxation on three times the rental value of their dwelling in France (former Article 164 C of the FTC). This provision was indeed not in accordance with EU law and there were numerous exceptions so that it rarely applied in practice.

8. Tax exempt entities not eligible to treaty benefits

The highest tax court (*Conseil d'Etat*) has ruled in cases Nos 370054 and 371132 of 9 November 2015 that a person exempt from tax is not a "resident" for tax treaties purposes. The cases dealt with a German pension fund that was not subject to tax in Germany and a Spanish pension fund that was subject to tax at the zero rate. Such entities were not eligible to tax treaty benefits and in particular could not get reduced withholding tax rates on dividends.

9. Undeclared activity in France of a non-resident enterprise

A foreign enterprise that carries on an activity in France without having disclosed this activity to various administrative bodies, including the tax authorities carries on a hidden activity and is subject to tax penalties. It has been ruled by the highest tax court in case No 368227 of 7 December 2015 that the penalty may not apply if the taxpayer (i) evidences that he has made a mistake (ii) has filed the tax returns due in its country of residence (iii) is resident in a country that levies a tax similar to the French one and has signed with France a treaty providing for exchange of information.

10. CFC legislation

In two recent court cases, the highest tax court has ruled that the CFC legislation (Article 209 B of the FTC) was not applicable (cases Nos 372522 and 372733 of 30 December 2015).

Those cases involved a French bank which indirectly owned subsidiaries established, the first one in Guernsey where it carried out a private banking activity with international clients attracted by the financial and tax regulations and the legal system of Guernsey, and the second one in Hong Kong where it carried out an activity of management of Asian currencies for the group. The fact that the two entities benefited from a privileged tax regime was not in dispute.

It was held that the CFC legislation was not applicable, so that the tax authorities were not authorized to tax in France the foreign income; the basic reasoning of the court is that such activities could not have been carried out in France and accordingly did not cause any prejudice to the French treasury.

Bruno Gouthière

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IRELAND

Summary of Tax Developments in Ireland since September 2015

Finance Act 2015 was enacted on 21 December 2015. A summary of the key changes introduced by the Finance Act are set out below;

1. Key Domestic Measures

Income Tax

- Comprehensive changes to the Ireland's income tax regime through a reduction in the rates of the Universal Social Charge ("USC").
  The changes mean that the marginal tax rate for those earning up to €70,044 will be below 49.5% (for the first time since April 2009). The top marginal rate for those earning in excess of €70,044 is still 52% (for employees) and 55% (for the self-employed).
- A new "earned income credit" has been introduced for self-employed workers.

SME Measures

- The Act introduces Entrepreneur Relief which provides for a reduced rate of capital gains tax of 20% on the disposal of certain business assets (subject to various conditions being met). The normal rate of capital gains tax is 33%.

- A number of changes were made to the existing Employment & Investment Incentive Scheme which provides for relief on investments into certain SMEs. In particular, the scheme has been amended to comply with EU General Block Exemption Regulations on State Aid meaning that, in general, it no longer applies to companies who are in operation for more than 7 years.
- Extension of the 3-year relief from corporation tax for start-up companies for a further 3 years. The “start-up companies’ relief” applies where the total corporation tax payable for a period does not exceed €40,000. The amount of relief available is linked to employer’s PRSI.

Capital Taxes

- Various anti-avoidance provisions have been introduced to deal with certain income tax and capital taxes. One such change now brings within the charge to Irish tax, non-domiciled individuals who derive income from assets transferred to persons / corporates resident abroad.
- The current Class A Capital Acquisitions Tax threshold has increased from €225,000 to €280,000. The new threshold applies to gifts or inheritances from a parent to a child.

2. International Tax

Changes on foot of EU Directives

- A general anti-avoidance provision has been incorporated into Ireland’s legislation on the EU Parent-Subsidiary Directive. The amendment provides that the benefits of the Parent-Subsidiary Directive will not apply to a company where *“an arrangement or a series of arrangements… has been put in place for the main purpose of, or one of the main purposes of which is, obtaining a tax advantage that defeats the object or purpose of the Directive”.*

- DAC2 has been transposed into domestic legislation. This imposes an obligation on financial institutions to identify non-resident account holders and provide data on reportable accounts to Irish Revenue. This is then exchanged with other tax authorities in the EU.

Update on Ireland’s International Tax Strategy 2015

Ireland’s International Tax Strategy was first published as part of Budget 2014 and an updated publication was released as part of Budget 2016.

The updated document provides an update on the core policies and principles underpinning Ireland’s international tax strategy in light on the publication of the final BEPS reports and tax reform proposals in the EU. The key measures in the updated document include;

- A reaffirmation that Ireland is committed to the 12.5% rate of corporation tax

- The introduction of a Knowledge Development Box, an income-based IP regime which is based on the OECD's modified nexus approach (discussed further in the BEPS section below)
- The introduction of Country-by-Country reporting, in line with the OECD's recommendations in BEPS Action 13 (discussed further in the BEPS section below)
- A commitment to support the European Commission's proposals to extend the DAC to facilitate the automatic exchange of tax rulings.

Spillover Analysis

- As part of the Budget, the government published a spillover analysis of the impact of Ireland's tax system, including the tax treaty network, on the economies of developing countries. The analysis identified very limited flows of capital and trade between Ireland and developing countries, indicating a small likelihood of spillovers from the Irish tax system.

3. BEPS Implementation

Finance Act 2015 enacted legislation to give effect to two minimum standards proposed by the OECD as part of the BEPS project;

- Action 5: Knowledge Development Box
- Action 13: Country-by-Country Reporting

Knowledge Development Box

The Knowledge Development Box ("KDB") is an income-based IP regime which is based on the OECD's modified nexus approach.

Under the regime, companies will effectively be subject to a reduced rate of corporation tax of **6.25%** on income qualifying for the KDB. Income qualifying for the regime includes royalties, licenses fees and (apportioned) proceeds from the sale of goods which comprise of qualifying IP. **Gains** arising from the sale of IP do not qualify for the regime.

Assets qualifying for the KDB are IP assets derived from R&D activities, being;

- Patents (including supplementary protection for plant protection products and medicinal products, and plant breeders rights),and
- Copyrighted software

The scope of assets qualifying for the regime includes one **additional category for SMEs**, being "inventions that are certified by the Controller of Patents, Designs and Trade Marks as being novel, non-obvious and useful". This measure is available to companies with a global turnover of less than €50m and who derive income of less than €7.5m annually from IP assets.

Country-by-Country Reporting

The Irish legislation is based on the proposals in the OECD's final report on BEPS Action 13.

Irish headquartered MNEs with annual consolidated group revenue in excess of €750 million will be required to provide Revenue with information for each jurisdiction in which the MNE Group operates.

Statutory Regulations have also been introduced which give effect to the "secondary mechanism" which require Irish subsidiaries of foreign headquartered MNE's to file "equivalent country-by-country reports" where they are not filed by the group parent or surrogate. The equivalent country-by-country report consists of the relevant data for all group entities which the Irish subsidiary has the power to obtain. The equivalent country-by-country reports are not exchanged by Irish Revenue.

CbCR (and the secondary mechanism) applies for fiscal years commencing on or after 1 January 2016. EU Member States have since agreed to defer the secondary mechanism until 2017 so it remains to be seen whether Ireland will choose to defer the secondary mechanism on the transposition of the EU Directive.

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ITALY

Report Update on Recent Developments of Italian Tax Laws (September – March 2016)

Patent Box Regime

The 2016 Stability Law amended the Patent Box Regime: the only intellectual property that falls within the application scope of the privileged tax regime is software covered by copyright. Complementary intangibles where jointly used for the realization of a product or process are deemed as a sole intangible for patent box regime purposes.

On 1 December 2015, the Tax Authorities issued a Regulation setting forth the relevant procedures to exercise the option as well as instructions related to the drawing up and the forwarding of the request to access the regime at issue and a Circular on the first clarifications on the matter.

APA

On March 21 2016, the director of the Italian Revenue Office issued Regulation No. 42295/2016 (the regulation), containing provisions for the application of the rules on advance pricing agreements (APAs) for enterprises with international activities.

The Regulation clarifies the operative aspects of the procedure which leads to the conclusion of APAs with the Italian tax authorities. The APA institution was introduced into the Italian tax regime by Legislative Decree No. 147/2015 (the Internationalization Decree) providing for tax measures on the growth and development of multinational enterprises (MNEs).

Transfer Pricing: Criminal Relevance

Following the publication on the Official Gazette of Legislative Decree No. 158/2015 – which reformed the tax penalty system – transfer pricing adjustments deriving from assessments of intercompany relations between an Italian company and a foreign associated company shall not be criminally relevant. Moreover, in application of the *favor rei* principle (confirmed by Ruling No. 40272/2015 of the Italian Supreme Court), the afore-stated criminal irrelevance should be applicable also for the past.

Legislative Decree No. 158/2015 amended Article 4 of Legislative Decree No. 74/2000 at various points: in particular, the substitution under Article 4 of the expressions “fictitious loss elements” with “non-existent loss elements” entails that no cost actually incurred – notwithstanding its being considered non-deductible – shall be cause for criminal relevance of evaded tax.

In order to exclude any criminal relevance of evaluation-related issues, the new paragraphs 1-*bis* and 1-*ter* were introduced into Article 4 of Legislative Decree No. 74/2000.

VAT Rates

The 2016 Stability Law (i) postponed the increase of standard rates, expected for 2016 to 2017; (ii) extended the reduced 4% rate also to newspapers, daily newspapers, news agencies’ dispatches, books and periodical publications issued through any material support or by means of electronic communication (EU compatible? ECJ C-219/13); (iii) introduced the 5% rate for the healthcare sector services provided by social cooperatives and their consortia (EU compatible? ECJ C-462/05, C-240/05, C-169/00).

Reverse VAT Charge

The reverse charge mechanism is extended to services provided by member firms of any consortium they might belong to, if such consortium results as the winner of a public organization’s tender, to which the consortium is required to issue invoices.

Tax base and adjustments

Tax base and tax Adjustments (Article 90 of the Directive):

The Stability Law amended the provision on the VAT’s adjustment in the event of contract’s termination or failure to pay the fee, in line with the Directive’s provision.

VAT Refunds for Non-EU Citizens

According to the introduced Tax free shopping, the intermediaries enrolled with the Register of Payment Institutions are allowed to grant VAT refunds for non-EU citizens (Article 147 of the Directive).

Intra community supplies

With the entry into force of Law 115/2015, national provisions on the goods introduced into a MS for working purposes admitted within the EU have been amended in the light of articles 14 and 140 of the VAT Directive.

VAT Penalties

With the entry into force of Legislative Decree No. 158 of 2015, punishability threshold for VAT criminal offences was increased: (i) for the criminal offence related to the submission of a discrepant tax return, the threshold is set at Euro150 thousand; (ii) for the criminal offence of omitted VAT payment, the threshold is set at Euro 250,000; (iii) the principle of proportionality is implemented so as to ensure a graduation of penalties based on the negative value of the offending behavior.

VAT penalties related to the application of the reverse charge mechanism provided by article 6 of D. Lgs. 471/97 have been amended by the same legislative decree, in compliance with the proportionality principle and the interpretation provided by the ECJ in cases C-95/07 and 96/07 Ecotrade; C- 272/13 Equoland; C-590/13 Idexx.

CBR – Cross-border ruling

By Tax Authorities' Regulation of December 29, 2015 Italy participated in a pilot project of Cross-border ruling launched by the European Commission in connection with VAT.

BEPS-Related Actions

Country-by-Country Reporting

In line with OECD Guidelines, Law No. 208 of 28 December 2015 (cf. in particular, pars. 145-147 of Article 1of the Law); introduced into the Italian system specific reporting obligations falling on the controlling companies of any multinational group residing in Italy such companies are required to draw up consolidated Financial Statements, if the Group has realized a consolidated turnover volume during the previous tax year of at least 750 million Euro and if the companies are not, in turn, controlled by entities other than individuals. The same obligation is also provided for controlled companies residing in Italy, if the controlling company is resident in a State "*that has not introduced any requirement to submit*

Country-by-Country reporting, namely, no agreement is in force with Italy such to allow information exchange related to Country-by-Country reporting or, is non-compliant with the requirement to exchange information related to Country-by-Country Reporting".

Piergiorgio Valente Raffaele Rizzardi

Paolo Centore

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LUXEMBOURG

Luxembourg 2016 Budget – Tax changes

On 17 December 2015, the Luxembourg Parliament accepted several tax measures, introduced through bills n° 6847, 6891 and 6900. The new measures are applicable to corporations and individuals and will enter into force as from 1 January 2016. However, certain provisions have a retrospective effect for the 2015 tax year.

Hereafter, you will find a general overview of these tax changes.

Repeal of the minimum Corporate Income Tax and modification of the Net Wealth Tax regime

In response to the European Commission´s letter, which considered the Luxembourg minimum Corporate Income Tax (CIT) (incorporated in 2011) to be inconsistent with EU law, the CIT provisions now stand repealed for tax years after 2015. The provisions have instead been replaced by Net Wealth Tax (NWT) as from 2016 tax year. The existing NWT regime is applicable to Luxembourg companies calculated on a base defined by net asset value after adjustments, exemptions and exclusions provided for by the NWT law, at a uniform rate of 0.5%. The new provisions introduce a digressive scale of rates, effective as from 1 January 2016, which are as follows:

- Rate of 0.5% for entities with taxable base of up to EUR 500 million; and
- For entities with a taxable base exceeding EUR 500 million, the NWT due will amount to EUR 2.5 million in addition to a rate of 0.05% levied on the portion of NWT base above EUR 500 million.

All corporate entities with their statutory seat or central administration in Luxembourg will be subject to the new minimum NWT. For entities where the sum of fixed financial assets, transferable securities and cash at bank held by entities exceeds 90% of their total gross assets and EUR 350,000, the minimum

NWT levied would amount to EUR 3,210. For all other entities, which do not fall within the scope of EUR 3,120, the minimum NWT levied would range between EUR 535 and EUR 32,100 depending on the company´s gross total assets. The minimum NWT charge due by a tax unity group is capped at EUR 32,100 (inclusive of solidarity tax).

Total gross assets	Minimum Net Wealth Tax (including solidarity surcharge)
≤ EUR 350,000	EUR 535
> EUR 350,000 and ≤ 2,000,000	EUR 1,605
> EUR 2,000,000 and ≤ 10,000,000	EUR 5,350
> EUR 10,000,000 and ≤ 15,000,000	EUR 10,700
> EUR 15,000,000 and ≤ 20,000,000	EUR 16,050
> EUR 20,000,000 and ≤ 30,000,000	EUR 21,400
> EUR 30,000,000.	EUR 32,100

Securitization vehicles, SICARs, SEPCAVs and ASSEPs will be subject to the minimum NWT as from 1 January 2016.

Modification of the existing tax unity regime

In conformity with the verdict of the Court of Justice of the European Union (CJEU), given in the SCA Holding case, Luxembourg has widened the scope of its fiscal unity regime. Art. 164bis of Luxembourg Income Tax Law (LITL) provided for a vertical consolidation between the parent company and its subsidiaries, provided certain conditions are met. This provision has now been extended to envelope horizontal consolidation between Luxembourg resident sister companies (that are held directly or indirectly for 75% or 95% by the same parent company, in addition to certain other conditions) to the extent that the common parent company is subject to tax equivalent to Luxembourg CIT and established in a European Economic Area (EEA) country.

Further, the new measures also broaden the scope of eligible subsidiaries, for both vertical and horizontal consolidation, to include Luxembourg permanent establishment of a non-resident company subject to income tax equivalent to the Luxembourg CIT.

The modified regime is effective as from the 2015 tax year.

Transposition of amendments of the EU Parent-Subsidiary Directive into the national law

In order to combat tax evasion and aggressive tax planning, the anti-hybrid and the general anti-avoidance rules (GAAR) amendments of the EU Parent-Subsidiary Directive (2011/96/EU), adopted in July 2014 and January 2015 respectively, have been transposed into the LITL. These additions have been incorporated into the Luxembourg domestic participation exemption regime as under Art. 147 (2) a and d LITL, Art. 166 (2) LITL and § 9 Municipal Business Tax Law (MBTL). Notwithstanding, capital gains under the participation exemption regime and the NWT provisions remain unaffected by these modifications.

The provisions related to GAAR and anti-hybrid mismatches have been included in Art. 166 LITL and §9 MBT Law and will no longer exempt dividends distributed to a Luxembourg parent company by a subsidiary located in another EU Member State to the extent that it is deductible in the latter; or when such a transaction can be characterised as abusive within the GAAR. Nonetheless, other provisions of Art. 166 LITL remain unaffected.

The amended Art. 147 LITL, which now includes GAAR, denies withholding tax exemption to dividends distributed by an eligible Luxembourg entity to an eligible entity in another Member State if the arrangement qualifies as artificial arrangements (i.e., an arrangement which is not genuine and has been structured solely to obtain tax advantage without reflecting the economic reality). Nonetheless, other provisions of Art. 147 LITL remain unaffected.

Repeal of the existing Intellectual Property Regime

In compliance with the decisions made by the EU´s Code of Conduct for Business Taxation Group in 2014 and the agreement between the EU Member States to adopt the recommendation laid down by OECD in BEPS Action 5, the existing Intellectual Property (IP) regime of Luxembourg, set forth in Art. 50bis of LITL (and §60bis BewG, the existing IP Regime), stands repealed as from 1 July 2016 for CIT/MBT and from 1 January 2017 for NWT. The existing regime grants an 80% exemption from tax on net income and gains derived from qualifying IP. Instead, the new modified nexus approach requires a direct nexus between the income receiving benefits and the activity contributing to it.

Nonetheless, the existing IP regime will continue to be applicable for a transitional period from 1 July 2016 until 30 June 2021. Taxpayers owning IP assets that currently benefit from the existing IP regime (before 1 July 2016) will continue to benefit from it until 30 June 2021, provided that:

- The IP rights are developed or acquired from unrelated parties before 1 July 2016 or are improved before that date;
- The IP rights are acquired (including under any tax neutral transaction) from any related parties (as stated in Article 56 of the LITL) before 31 December 2015;
- The IP rights are acquired (including under any tax neutral transaction), after 31 December 2015 but before 1 July 2016, from related parties that already benefitted from the existing IP regime or from a foreign IP regime similar to the existing IP regime at the time of their acquisition.
- The IP rights acquired (including under any tax neutral transaction) from any related party after 31 December 2015, which did not previously benefit from the existing IP regime or a corresponding foreign IP regime, at the time of their acquisition will only be allowed to benefit from the existing regime until 31 December 2016.

Finally, for IP rights acquired or created after 6 February 2015, the Luxembourg tax authorities will spontaneously communicate the information about the taxpayers benefitting from the existing IP regime to the concerned foreign tax authorities.

Extension of the Luxembourg exit tax deferral

The scope of exit tax deferral, provided under §127 of Abgabenordnung (AO), has been broadened to include migration of a Luxembourg company or Luxembourg permanent establishment or business assets to countries with which Luxembourg has concluded tax treaty that includes the exchange of information clause in line with Art. 26 of the OECD Model Tax Convention.

Temporary tax amnesty regime for taxpayers

A temporary tax amnesty regime will be applicable as from 1 January 2016 until 31 December 2017. Under this regime, a taxpayer spontaneously submitting an amended tax return in 2016 incurs a surcharge of 10% on the taxes due in connection with the assets or income which have previously not been reported and a surcharge of 20% on the taxes due if the amended tax return is submitted in 2017.

Step up in value for individuals

From the 2015 tax year onwards, in order to avoid double taxation, a “step-up” principle has been introduced into the Luxembourg tax law thereby allowing a non-resident taxpayer who holds substantial participations (participation of more than 10% in the share capital) or convertible loans (granted to entities in which a substantial participation) to assess the purchase price of his participations or loans at the fair market value upon becoming a Luxembourg resident taxpayer.

Tax adjustment for individuals resident in Luxembourg for part of the year

As from tax year 2015, employment income earned by individuals who cannot be considered as Luxembourg tax resident during the whole year will, upon request, be taxed as if they had been resident in Luxembourg during the whole year. This amendment allows the taxpayers to obtain a tax reimbursement of potentially excessive withholding tax collected on salaries or pensions.

NETHERLANDS

In the period from September 2015, there are several developments with regard to Dutch tax law. The following can be mentioned:

30%-ruling

The long awaited decision of the Supreme Court on the 150-kilometer criterion in the 30%-ruling has been published. It has decided that the 150-kilometer criterion in the 30%-ruling is not in contradiction with EU-law. As a result, the 30%-ruling can only be applied if the employee was living more than 150 kilometers from the Dutch border during a period exceeding two-thirds of the 24-months period preceding to the start of the employment.

Abolition VAR, introduction model-contracts

If the relation between a client and a contractor should be considered to be a relation such as one between an employer and an employee, the client should withhold wage tax. If the contractor has a certain type of VAR, (a statement of the Tax Office) the client does not have that obligation however. On May 1, 2016, the VAR will cease to exist and will no longer have effect from that moment. A new system is introduced, being a system of model-contracts. These model-contracts can be downloaded from the Tax Office website. The implementation period of the new system will run until May 1, 2017. Until then, clients and contractors have time to adapt their practices and work with the model contracts.

No extension 30%-facility due to exceeding of three-month period

If employees change their withholding agents during the period when the 30% facility applies, they may file a joint request together with their new withholding agent to have the 30% facility continued for the remaining period. This is, however, subject to the condition that the period between the end of the employment with the former withholding agent and the signing of the employment contract with the new withholding agent is no more than three months (three-month period). It was disputed whether a period during which the employee was not available for the labor market, should still be included in the three-month period of the 30% facility.

In the particular case an employee started his employment with a new employer four months after his last employment had been terminated. He applied for a continuation of the 30% facility, which was rejected by the inspector. On appeal, the Arnhem-Leeuwarden Court of Appeal rejected the employee's position that the three-month period should be interpreted as being the period during which a new job needed to be found and during which he needed to be available for the labor market. Recently, the Supreme Court confirmed the judgment of the Arnhem-Leeuwarden Court of Appeal and has decided that there is no other way of interpreting the three month period than being a period of three months between terminating the employment with the former employer and signing the employment contract with the new withholding agent. Extension of the 30% facility is not possible if more than three months have passed between the termination of an employment with a former employer and the signing of an employment contract with a new employer.

Withholding dividend tax

The Dutch Supreme Court has, in the cases Miljoen, Société Generale and X, ruled that in some cases withholding dividend tax may be in breach of the free movement of capital. This is the case when the tax burden on dividends for a foreign shareholder is higher than for a Dutch resident. In three judgements the Supreme Court clarified how the comparison between a foreign shareholder and a Dutch shareholder should be made.

A resident portfolio shareholder may credit the dividend withholding tax against the personal or corporate income tax. A foreign portfolio shareholder cannot do so because a foreign portfolio shareholder is not subject to Dutch personal income tax or Dutch corporate income tax.

If the company, or the private shareholder, receives dividend contributions from a Dutch portfolio shareholding which are subject to dividend withholding tax, then the Dutch tax burden should be compared with the tax that would have been borne by a Dutch resident shareholder in a similar situation. If the current tax burden is higher, the difference should be restituted. If the company receives the dividends a comparison should be made with a Dutch resident company that is subject to corporate income tax. Costs that are directly linked to the dividend income should be taken into account when making the comparison. If the private shareholder receives the dividend, a comparison should be made with a Dutch individual that receives the dividends from a portfolio shareholding. In order to compare if a foreign private shareholder has a higher tax burden on the dividends than a resident shareholder, the personal income tax levy of box 3 should be compared with the dividend withholding tax. For this comparison the capital exempted from income tax may be fully attributed to the shares. This means that the capital exempted from income tax does not have to be pro rate attributed against all other capital of the shareholder.

In the cases Miljoen and Société Generale the Supreme Court concluded that there was no discrimination, because the tax burden on the dividends would have been higher if the shareholders would have been a resident of the Netherlands. However, the Supreme Court found the taxation of dividends in the case of X to be more burdersome compared to the tax to be borne if X had been a resident of the Netherlands. According to the Supreme Court the difference had to restituted.

Box 3

As from January 1, 2017, substantial changes to taxation of Box 3 income will take place. Then, the notional return on box 3 assets is calculated on the basis of ascending fixed percentages:

- 2,9 percent on assets with a total value of EUR 25,000 to EUR 100,000.
- 4,7 percent on assets with a total value of EUR 100,000 to EUR 1,000,000.

• 5,5 percent on assets with a total value exceeding EUR 1,000,000.

Currently, the effective rate is 1.2 percent on the assets (4 percent notional return, taxed at a rate of 30 percent. As from January 1, 2017, assets with a value not exceeding EUR 25,000 (currently: EUR 21,330) will be exempt from box 3 taxation. Tax partners may allocate their joint box 3 assets (after deduction of the tax-exempt assets of EUR 50,000) to their partner. This allocation may affect the box 3 tax burden due to this ascending notional return. Each year the percentages will be determined on the basis of relevant market information on interest and investment results. This method seeks to align box 3 taxation more to actual yields. The asset mix is evaluated three years after the new regulation enters into effect and thereafter every five years.

Gift tax

According to the approved Dutch tax plan 2016, as per January 1, 2017, a gift intended for the purchase of a private home is exempted up to EUR 100,000. The recipient of the gift must be between the ages of eighteen and forty and the exemption applies only once in the relationship between giver and the recipient. The exemption applies within and outside the family relationship. The increased exemption applicable to a gift for a private home up to EUR 100,000 also applies for a gift intended for repayment of an old residual debt that dates from before 29 October 2012. This means that the private home can also be located outside the Netherlands.

Emigrating substantial shareholders

According to the approved Dutch tax plan 2016, the legislator has taken measures against emigrating director/substantial shareholders who aim to avoid the Dutch personal income tax on share interests in their private companies. According to the old rules, an emigrating director/substantial shareholder who also moved the place of effective management of his company to another country, shakes off the tax claim in respect of his share interest by satisfying the ten years waiting period. The tax legislator found this highly undesirable and took several measures:

- The ten years waiting period for the release of the precautionary tax assessment will be abolished. This means that the precautionary tax assessment will remain in force without any time limitation.

- Any distribution of profit (dividend) will immediately lead to the (partial) collection of the precautionary tax assessment, to an amount of 25 per cent of the amount of the distribution. Up until now, it was possible to distribute up to 90 per cent of the company’s reserves without triggering collection of the precautionary tax assessment.

- After moving the place of effective management of the company to another country, the company will, under certain conditions, still be considered to be based in the Netherlands, as long as the precautionary tax assessment is still (partly) in force. Because of this, the Netherlands will retain its legal power to levy personal income tax in respect of dividend distributions even after the transfer of the place of effective management of the company.

- In order to prevent double taxation, the precautionary tax assessment is not claimed if a dividend distribution is actually taxed in the Netherlands or abroad.

- These changes in respect of the precautionary tax assessment became applicable directly following the publication of this proposal (that is on 15 September 2015 at 15:15). In respect of director/substantial shareholders who have already emigrated, the previous legislation will remain applicable as it was.

BEPS

In its capacity as president of the [EU Council] during the first half of 2016, the Netherlands is supposed to act as "honest broker". Therefore, the Netherlands has the intention in that position to remain neutral and with respect to the proposals of the EU Commission to refrain from expressing opinions that are specifically in its interest.

The Dutch government takes the position that it will actively participate in finding international solutions in both the context of the OECD/G20-BEPS-project and in the EU context. In the latter context, it is arguing in favor of taking measures against European tax avoidance by adopting binding rules ("hard law") in order to achieve certainty from a legal perspective and uniform implementation so that a "level playing field" can be guaranteed.

In some areas, the Netherlands has the ambition to take a "pioneering" role and has proactively amended its laws and tax treaties. For example, the Netherlands in 2015 enacted legislation with respect to country-by-country reporting. In addition, it entered into a Memorandum of Understanding regarding the exchange of tax rulings under its tax treaty with Germany. Furthermore, it has proposed 23 developing countries to include anti-abuse provisions in their tax treaties with the Netherlands. On the other hand, the Dutch government continues to defend the strong elements of the Dutch tax system, the extensive treaty network, the participation exemption, the absence of withholding taxes on interest and royalties, a efficiently operating tax administration and dispute resolution procedures. It has indicated that it will strengthen these points by taking measures to combat abuse. The budgettary revenues to be derived from the anti-abuse measures will be used for the improvement of competitiveness of the Netherlands in tax matters.

Adjay Pahladsingh

POLAND

1. Adoption by the Sejm of amendments to the Act on profit shifting

The purpose of the Act amending the Act on personal income tax, the Act on corporate income tax and certain other Acts, adopted by the Sejm in its ultimate wording on Friday, 9 October 2015, is to make it difficult for related companies to shift their profits overseas. The Act implements EU rules of levying taxes on income of companies that have equity-based relations with headquarters located in different Member States. It changes the rules of taxing dividends paid between such companies. The amending Act contains more precise regulations pursuant to which an exempt will not be applicable in cases where dividends are paid as a result of fictitious arrangements which do not reflect the economic facts but are aimed mainly at obtaining a tax exemption. The Act also contains provisions implementing the Directive pertaining to exchange of information on income from savings disbursed to natural persons. A chapter which comprehensively regulates the rules of obtaining and providing information on payments of interest was added to the Act on PIT. Also, standards for documenting transactions between related entities were introduced into the Polish legal system. One of the purposes thereof is to hinder shifting profits overseas.

2. *Presidential signing of the Act of 10 September 2015 amending the Tax Ordinance and certain other Acts, which introduces regulations aimed at simplification of tax procedures for companies and tightening up of the tax collection system*.

The amending Act provides for a possibility to introduce, apart from a special power of attorney to handle a specific matter, a general power of attorney enabling its holder to represent the taxpayer in all tax matters. Not only tax consultants, but also attorneys-at-law and legal advisors will be allowed to act as temporary special attorneys. There will be a possibility to electronically submit a power of attorney to a central register. Such a submission will not be subject to stamp duty.

3. Publication of amendments to the Act on payment deadlines in commercial transactions

On 9 November an Act amending the Act on payment deadlines in commercial transactions, the Civil Code and certain other Acts was published (Dz. U. [Journal of Laws] item 1830). The Act introduces a standardized mechanism for accruing interest under civil law transactions and brings the maximum interest level closer to the market interest rates.
The amending Act implements certain provisions of Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions and changes the rules of accruing interest under civil law transactions.
The most important changes provided for in the Act are as follows:
1) introduction of a mechanism for accruing default interest in professional transactions - the NBP reference rate + 8 percentage points;

2) a new mechanism for accruing statutory interest under the Civil Code and diversification of the amounts of the said interest:
3) a new mechanism for accruing maximum interest, which will be equal to twofold statutory interest (on principal) or statutory default interest, respectively.
In addition, the Act adjusts some of the used terms to the wording of the Directive and specifies more clearly the provisions whose practical application is difficult (e.g. calculating the so-called compensation in a situation where multiple invoices are issued under a single contract).

4. Publication of an Act introducing tax allowances for innovations

Into regulations concerning PIT and CIT, the Act amending certain Acts related to supporting innovation introduces an allowance to deduct the costs incurred in relation to research and development activities from the tax base.
The Act of 25 September 2015 (Dz. U. [Journal of Laws] item 1767) specifies which cots are deemed to be eligible costs that can be deducted. Pursuant to the Act, not all costs, but a part of them would be deductible, starting from 30% of remuneration costs for all taxpayers, 20% of the other costs for microenterprises, small or medium enterprises, and 10% of the other costs for all taxpayers. Eligible costs incurred as a part of research and development activities will also be subject to deduction. It will be possible to deduct costs incurred as a part of both development works and applied or industrial scientific research. In the case of basic research, the costs will be deductible only in a situation where such research is conducted under a contract or an arrangement with an academic unit. As regards facilitations pertaining to taxes, the Act abolishes taxes on contributions of intellectual and industrial property, on the condition that such a contribution is made to a company within the next two years, that is in 2016 or in 2017. The Act provides also for preferential taxes for the so-called venture capital companies.

5. Introduction of changes in taxation of related entities

Adjustment of the Polish fiscal regulations to the EU regulations in the area of taxation of savings income and a common system of taxation applicable to related companies is the main purpose of the Act of 9 October 2015 amending the Act on personal income tax (published yesterday), the Act on corporate income tax and certain other acts (Dz. U. [Journal of Laws] item 1932).
The EU regulations introduced in the years 2014-2015 provide for common for the EU Member States approach to requirements for documenting transactions between related entities.

6. Amendments to the Act on VAT in 2016

Several amendments have been introduced into the VAT Act. They include new rules of deducting input tax in relation to purchased goods and services used for mixed purposes, or of establishing the competence of tax authorities in cases related to VAT.

Deduction of VAT in relation to purchased goods and services used at the same time for activities subject and not subject to VAT. Proportions have been established for VAT deduction in respect of expenses related both to economic activities subject to VAT, and to activities not subject to VAT. The hitherto applicable regulations did not contain any provisions concerning this matter, and the practical handling thereof was based on the statements contained in a resolution of the Supreme Administrative Court. The change pertains to determination of the amount of VAT levied on expenses incurred in relation to both types of activities, which cannot be included in their entirety only in one of the two categories. Establishing the proportion in such a situation is expected, in the opinion of the Minister of Finance, to result in determination of the amount of VAT deduction in a way which represents in the best possible way the taxpayers and the specific character of their activities. The amendment may impact the amount of VAT deduction both for local government units (which perform their own tasks not subject to VAT, and activities under civil law agreements subject to VAT), and for foundations or natural persons conducting economic activities (in which case the economic activity sphere intertwines with the private sphere).

Most regulations providing for detailed rules of establishing the competence of tax authorities in cases pertaining to VAT, including Article 3 item 1 of the Act on Goods and Services Tax, have been repealed. It means that from now on, as a rule, pursuant to Article 17 paragraph 1 of the Tax Ordinance of 29 August 1997 (consolidated text in Dz. U. [Journal of Laws] of 2015, item 613), heads of tax offices competent for the place of residence or the registered office of a taxpayer have become the tax authorities competent for VAT payers.

A regulation providing for relevant application of the added on 1 January 2016 provisions of Article 65 items 6a and 6b of the Customs Law of 19 March 2004 has been included in Article 37 item 1a of the Act on Goods and Services Tax. That amendment enables application of increased or lowered default interest rates and makes the amount of interest applicable in respect of VAT on imported goods equal to the interest accrued pursuant to the Customs Law. The introduced amendments leave amongst the competences of the head of customs office the establishment of the amount and reimbursement of overpayment of VAT for imported goods. That is because in a situation where the amount of tax on goods and services for import of goods is established by the head of customs office, it is reasonable that the same body determines the overpayment and disposes of it in accordance with the rules stipulated in the Tax Ordinance.

A new procedure, i.e. a restructuring procedure, has been provided for in the regulations on the so-called allowance for bad debts. The earlier regulations did not provide for any restructuring procedure at all.

7. ***One-time funds for commencement of economic activities exempted from PIT***

Benefits received under employment support, as well as one-time funds for commencement of economic activities granted to graduates will be exempted from personal income tax till the end of 2016. A regulation of the Minister of Finance on abandonment of collection of income tax from natural persons in respect of certain income (revenue) received pursuant to regulations concerning promotion of employment and labour market institutions (Dz. U. [Journal of Laws] item 194) has already been published. The new regulations are a continuation of the regulation of the Minister of Finance dated 19 December 2014 on abandonment of collection of personal income tax in respect of certain income (revenue) of personal income tax payers (Dz. U. [Journal of Laws] item 1931).

8. 1 January 2016 as the effective date of the last package of amendments introduced with the Act of 9 April 2015 amending the Act on goods and services tax, and the Public Procurement Law (Dz. U. [Journal of Laws] item 605).

The Ministry of Finance has prepared a brochure explaining the rules of deducting VAT in the case of goods and services used for mixed purposes (economic activities and purposes not included in the VAT system) and new rules of deducting VAT on expenses related to motor vehicles. According to explanations provided by the Ministry of Finance, in a situation where a taxpayer incurs expenses related to motor vehicles which pertain both to their economic activities and purposes other than economic activities (not being private purposes):
- the amount arising from an invoice, a customs document, an import declaration and from decisions issued by the head of customs office, or
- the amount of output tax due in relation to intra-community purchase of goods, import of goods covered by simplified procedure, resulting from a customs document, import of services and a supply where the buyer is the taxpayer

should be decreased proportionately in accordance with a proportion calculated pursuant to a method for determining such proportion adopted by the taxpayer.

9. Amendments to the Act on personal income tax and to the Tax Ordinance

The amendments to the Act on personal income tax and to the Tax Ordinance, to become effective at the New Year, is of key importance for taxation of income (revenue) from undisclosed sources. The 75% tax rate will remain in force. However, it will not apply in a situation where in the course of tax proceedings or audit proceedings the source of undisclosed revenues is determined. If that is the case, such revenues will be taxed in accordance with the rules prescribed for the source of their origin. The proof that an expense incurred by a taxpayer has been covered with income taxed or not subject to taxation will rest with the taxpayer. If the taxpayer does not have at their disposal any proof confirming that taxed revenue or revenue not subject to taxation was yielded, and such revenue falls under the statute of limitations, lending credence to the yielding of such revenue will be sufficient. If yielding of revenue (income) is not proven or no credence is lent to it, such revenue (income) is deemed to be revenue from an undisclosed source.

10. Works on introduction of the so-called law avoidance clause into the regulations

On 30 December 2015 a governmental Bill amending the Tax Ordinance and certain other Acts (hereinafter referred to as "the Bill") was published. The Bill provides for, amongst others, introduction into the Tax Ordinance of a so-called general anti-avoidance rule (GAAR). The Bill has been sent for consultations between Ministries. The first reading of the Bill in the Sejm took place on 13 April 2016.

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ROMANIA

Report Update on Recent Developments of Romanian Fiscal Code

1. <u>VAT - 1st of January 2016:</u>

- **reduction of the standard VAT rate from 24% to 20%**;

- **reduction the VAT rate:**

- from 9% to **5%** for school-books, books, newspapers and magazines and for services consisting in admission to castles, museums, memorial houses, fairs, exhibitions, cultural events etc.;
- from 24% to **9%** for drinking water and irrigation water in agriculture;
- from 24% to **5%** for admission to sporting events;
- Increase to 450.000 from 380.000 lei the threshold that serves as a reference for classification of a house as social housing, for applying the reduced VAT rate of 5%.

- **extending the reverse charge mechanism** for:

- taxable supply of buildings, parts of buildings and land;
- the following supplies of goods, if the value of invoice, excluding VAT, exceeds the threshold of 22 500 lei:
- *supplies of mobile telephones, being devices made or adapted for use in connection with a licensed network and operated on specified frequencies, whether or not they have any other use;*
- *supplies of integrated circuit devices such as microprocessors and central processing units in a state prior to integration into end user products;*
- *supplies of game consoles, tablet PC's and laptops.*

2. Excises - 1st of January 2016:

- realignment of the excise duty rates for alcohol and alcoholic beverages, as follows:
    - increasing the excise duty rates for still fermented beverages;
    - decreasing the excise duty rates for beer, intermediate products, sparkling wines, sparkling fermented beverages, ethyl alcohol.
- removal the tax on crude oil from domestic production
- removal from the field of excise duty of the “other excisable products” category
- including in the field of non-harmonised excise duty of e-liquid with nicotine intented to be used for electronic cigarettes and heating tobacco products.

3. Corporate income tax and other direct taxes:

- extending the tax exemption concerning invested profit in technological equipment, also for invested profit in computers and peripheral equipment, machines and cash registers, control and billing, as well as software products and/or purchased, including those under finance leases and put into operation, used within the business purposes;
- starting with 1st of January 2016, the tax rate on dividends paid by a Romanian legal person to another Romanian legal person is 5%;
- starting with 1st of January 2016, for micro-enterprises having revenues up to 100.000 euros, it was introduced a differentiated tax rate system by employees number:
    - 1% for micro-enterprises having 2 employees, inclusive;
    - 2% for micro-enterprises having 1 employee;
    - 3% for micro-enterprises without employees;

Also, it was set up a differentiated tax rate of 1% for the first two years of activity for new micro-businesses, constituted for a period greater than 48 months and having at least one employee;

- starting with 1st of January 2016 it was eliminated from the taxable base the construction value of the agricultural buildings.

Income tax

- reduction of the tax rate on dividends from 16% to 5% as from 1 January 2016;
- increase the level of personal deductions granted (between 300 lei up to 800 lei /month) based on the number of dependents, if the gross income does not exceed 1.500 lei/month;

In the field of non-residents taxation, the main measure is the reduction of the tax rate to 5% to dividend derived from Romania by non-residents, from 1 January 2016.

Local taxes and fees:

- the tax on buildings is assessed according to the use of the property rather than the ownership;
- the property taxes are established on annual basis, taking into consideration the ownership and use of the property as of 31 of December of the previous year; the measure should lower the administrative compliance efforts for taxpayers and local administration;
- the new Fiscal Code provides for an increasing autonomy of local administration authorities.

Romania - Implementation of BEPS Actions in Romania's legislation

BEPS Action 2 – "Neutralising the Effects of Hybrid Mismatch Arrangements" and BEPS Action 6 – "Preventing the granting of treaty benefits in inappropriate circumstances"

Anti-hybrid and GAAR rules

The new Fiscal Code (Law 227/2015) which entered into force in Romania as of 1 January 2016 incorporates the general anti avoidance rules (GAAR) and the anti-hybrid provisions of the European Directive no. 2011/96/EU, on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States with its amendments.

The anti-hybrid rule states that income received by a Romanian entity from its qualifying subsidiary will not be tax exempt if such dividend was treated as a deductible expense by the subsidiary.

The GAAR states that Member States shall not grant the benefits of the Directive to an arrangement or a series of arrangements which, having been put into place for the main purpose of obtaining a tax advantage that defeats the object or purpose of the Directive, are not genuine having regard to all relevant facts and circumstances.

BEPS Action 4 – "Limiting base erosion involving interest deductions and other financial payments"

Tightened restrictions on interest deductibility

The restrictions on the deductibility of interest expenses and foreign exchange losses for non-bank loans have been tightened:

- The deductible rate of loan interest has been reduced to 4% (previously was 6%).
- For purposes of calculating the debt-to-equity ratio, loans with a repayment term of longer than one year for which no interest is due under the loan instrument now will be taken into consideration.

BEPS Action 5 – "Countering harmful tax practices more effectively, taking into account transparency and substance" and BEPS Action 6 – "Preventing the granting of treaty benefits in inappropriate circumstances"

Substance over form

The definition of cross-border artificial transaction was introduced in the new Fiscal Code as well as the possibility of a cross-border transaction or a group of cross-border transactions being reclassified by the tax authorities in order to reflect their true nature. The Romanian anti-abuse rules in the New Fiscal Code define "artificial cross-border transaction" as a transaction or series of transactions without economic substance that normally would not be used as part of normal business practices and is intended to avoid tax or obtain tax benefits that otherwise could not be achieved. The anti-abuse rules provide that for such transactions advantage of double tax treaties cannot be taken.

Also the new Fiscal Code brings clarifications regarding the application of the 50% withholding tax rate for income paid in a state with which Romania does not have a legal instrument in place for the exchange of information. Specifically, the 50% rate will apply only in situations where the income is paid as part of a transaction deemed artificial.

Transparency - Exchange of information

Romania will implement the OECD Common Reporting Standard ("CRS"). The Romanian Minister of Finance signed the Declaration to comply with the provisions of the Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Account Information. Moreover, the Convention on Mutual Administrative Assistance in Tax Matters was enforced.

In February 2016, the Romanian government approved the draft law ratifying the MCAA. This agreement is consistent with the laws of our country and the corresponding policy promoted in the field of exchange of information. Once in force, this agreement will allow Romania to exchange information to identify individuals or companies that evade tax by transferring money to foreign accounts.

Further on, Romania will sign bilateral agreements with other states with which the exchange of financial account information will be performed. At this stage, no such agreements have been signed. For Romania, the exchange of information will be made as of September 2017.

The exchange of information will include, inter alia, identity information (name, address, tax identification code); information on the account number; the name and identification number (if any) of the financial institution reporting the information about the balance or the account value. For custodian accounts, the information to be provided is: gross amount of interest, dividends or other income for the assets in the account or the gross amount of the proceeds from the sale or redemption of financial assets. All these reporting obligations were already introduced in the new Fiscal Procedural Code, which transposed the provisions of Directive 2011/16/EU on administrative cooperation in the field of taxation.

BEPS Action 13 – "Transfer pricing documentation and country-by-country reporting"

Transfer pricing (TP)

A legislative act (Order 442/2016), bringing a number of significant changes in respect with the local TP documentation requirements, the TP documentation content and the procedure for adjustment to, or estimation of transfer prices has been published. According to this order, certain taxpayers have to file contemporary documentation. The Order provides for specific TP documentation requirements based on certain materiality thresholds and makes a distinction between:

- Large taxpayers with a total annual value of inter-company transactions equal to or above the euro 200,000 – euro 350,000 materiality threshold, based on the type of transaction;
- The rest of large taxpayers with a total annual value of inter-company transactions equal to or above the euro 50,000 – euro 100,000 materiality threshold, but under the euro 200,000 – euro 350,000 materiality threshold, based on the type of transaction, and
- Small and medium-sized taxpayers with a total annual value of inter-company transactions equal to or above the euro 50,000 – euro 100,000 materiality threshold, based on the type of transaction.

In addition, the content of the TP documentation was amended so that now it includes the elements referred to in Chapter V: Documentation of the OECD Transfer Pricing Guidelines, in its latest version.

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SLOVAKIA

Major developments

INCOME TAX

An amendment to Slovak Income Tax Act, which came into effect on 1 January 2016, introduced inter alia the following changes:

Special tax rate on incomes from capital assets

As of 1 January 2016 income of individuals from capital assets (e.g. interests and other incomes from securities) is included in the separate tax base taxed by flat 19% tax rate. Prior to this amendment, such income from capital assets was included in the "general" tax base with other incomes of an individual, and thus taxed by progressive tax rate, i.e. 19% or 25% based on the amount of income. This may have resulted in different tax treatment of incomes from domestic sources (which in general are subject to withholding tax at 19% rate) and sources from other EU Member States. Therefore, the change in taxation of capital assets was adopted in order to eliminate the potential incompatibility of the Slovak Income Tax Act with EU freedom of movement of capital.

Exemption from the taxation of income from the sale of securities

Income of individuals from the sale of securities accepted for trading on regulated market or similar foreign regulated market is subject to exemption from taxation. This exemption applies only if the period between the acquisition and sale of the securities exceeds at least 1 year.

Change in taxation of dividends

Since 2004 dividends (both inbound and outbound) are not subject to income tax in Slovakia. However, as of 1 January 2016 only those dividends which are not considered a tax deductible expense for the taxpayer making the payment are not subject to tax. As under Slovak law dividends may be paid only from net profit of a business company after tax, the change of regime of taxation might theoretically apply only to inbound dividends.

Specific anti-abuse rule

As of 1 January 2016, an anti-abuse rule was implemented to the Slovak Tax Income Act, stating that if the tax payer obtains dividends based on an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the Slovak Income Tax Act, such dividends will be subject to tax in Slovakia.

Changes in transfer pricing

As of 1 January 2016, certain procedural changes reacting to application problems regarding the submission of request for transfer pricing method approval were implemented. Among other changes, the relevant tax authority may unilaterally approve transfer pricing method applied according to double tax treaties, if after negotiations with competent authorities of a state that is party to double tax treaty, no bilateral or multilateral Advance Pricing Agreement was reached.

VALUE ADDED TAX ("VAT")

As of 1 January 2016, the amendment Slovak Act on VAT is effective implementing, among others, the following changes:

New regime of VAT payments

VAT taxpayer may decide on application of special provisions of the Slovak Act on VAT, according to which the obligation to pay VAT for supply of goods or services in the Slovak Republic will arise as of the date of accepting the payment for these goods or services (and not as of the date of supply of goods / services, even if such date is earlier).

This new regime may be applied only by those, who fulfil required criteria such as the amount of turnover (turnover of VAT payer cannot exceed EUR 100,000) and VAT taxpayer cannot be in liquidation or bankruptcy proceedings. In this regard the Slovak Act on VAT stipulates also other requirements regarding the content of invoices, tax deductions, etc. The date of application of this special regime has to be notified by the VAT taxpayer to relevant tax authority in writing until the end of month, when it started to apply this regime.

Decreased VAT rate on certain type of food

As of 1 January 2016 VAT rate applicable on the supply of selected types of food such as meat, fish, bakery products, milk and butter, was decreased from 20 % to 10 %.

BASE EROSION AND PROFIT SHIFTING (BEPS)

As of today there have not been any initiatives made public that should result in implementation of BEPS in the Slovak Republic.

Miriam Galandova

Slovak Chamber of Tax Advisors

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SPAIN

General tax law

Law 34/2015 ("**Law 34/2015**"), which partially amends Spanish General Tax Law 58/2003 ("**GT Law**"). The main tax developments of Law 34/2015 are as follows:

a) Conflict in the application of tax law

Law 34/2015 introduces the punishment of the situation of conflict in the application of tax law. If the tax authorities consider that a taxable event has been totally or partially avoided by implementing artificial instruments which eventually lead to the same result as the original transaction, but with less adverse tax costs or implications, the tax authorities could punish this conduct.

b) Statute of limitations

Although the Spanish general statute of limitations is 4 years, the statute of limitations to review generated losses and tax credits has been extended to 10 years.

c) Extension of the duration of the tax audit process

Formerly, the deadline for completing a tax audit was 12 months. However, Law 34/2015 extends this deadline to 18 months and allows taxpayers who must audit their financial statements or who form part of a tax consolidated group a possible extension leading to a deadline of 27 months.

d) Limited verification procedure

Tax authorities can examine all types of records except for commercial accounting records. However, if in a course of the procedure, a tax payer voluntarily files accounting documentation, tax authorities can examine this documentation without being subject to limited verification procedures.

e) Invoice as a privileged proof

Invoices for the provisions of services and for the buying or selling of goods are generally considered as a privileged proof. However, tax authorities could consider that the invoices are not sufficient to prove the transaction, which means that the tax payer would need to seek another way of proving that the transaction took place.

f) Valuation report/expert appraisal

The request for a valuation report/expert appraisal will suspend the initiation or continuance of the penalty procedure.

g) Economic-administrative appeals

The main legislative change relates to the fact that the Spanish Central Tax Court now has jurisdiction to hear a claim when the claimant's tax domicile is outside of Spain.

In addition, all the tax courts can now request a preliminary ruling before the Court of Justice of the European Union (the "**CJEU**"). If a tax court requests a preliminary ruling, the proceedings and the statute of limitations will be suspended until the resolution of the CJEU.

h) Exchange of information obligations

Law 34/2015 implements Council Directive 2014/107/EU of 9 December 2014. This modification forces financial entities to identify the residence of the owner or the person who controls certain financial accounts.

Corporate Income tax

Law 27/2014 of 27 November on Corporate Income Tax (the "**CIT Law**") has been partially amended by (i) Law 34/2015; and (ii) Law 48/2015 of 30 November 2015 ("**Law 48/2015**").

a) Patent Box

The CIT Law has been modified to implement BEPS' criteria for the Patent Box. However, this amendment enters into force on 1 July 2016. See section 4 for a further explanation (BEPS Implementation).

b) Deferred tax assets

This modification has been in force since 1 January 2016. It mainly allows the conversion of certain Deferred Tax Assets ("**DTA**") into tax credits directly enforceable against the Spanish Treasury, provided that several circumstances are met. Despite this possibility, Law 48/2015 establishes a limitation whereby the DTA to be converted cannot exceed the tax due in the tax year in which it was generated.

c) Venture capital fund

Law 34/2015 extends the 99% exemption for any capital gains obtained by a venture capital fund that derives from the transaction of the participation in other company.

PERSONAL Income tax

a) Health insurance

Up to EUR 500 of an employee's salary will be exempt from personal income tax if it is used to pay for an employee's and his or her family's health insurance. However, if an employee's family member is disabled, this amount would be increased to up to EUR 1,500.

BEPS implementation

a) Patent Box

As mentioned, the Patent Box amendment enters into force on 1 July 2016.

The CIT Law establishes a 60% reduction on net income deriving from licensing qualifying Intellectual Property (the "**IP**"), which will only apply to the proportion of the income resulting from the following ratio:

i. the expenses (excluding any financial expenses and the depreciation of buildings) incurred by the licensing entity which directly relate to the creation or development of the IP assets, including those deriving from outsourcing to third parties. These expenses will be increased by 30% with the limit of the amount included in the denominator; divided by

ii. the expenses (excluding any financial expenses and the depreciation of buildings) incurred by the licensing entity relating to the creation of the IP, including those deriving from outsourcing, and if applicable, from the acquisition of such IP.

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SWITZERLAND

Corporate Tax Reform III – Update

As mentioned in the "National Report Switzerland" dated 30 September 2014 as well as in our update dated 15 September 2015, Switzerland has been under international pressure for some years because of its cantonal regimes for holding, domiciliary and mixed companies. In the framework of the Corporate Tax Reform III (CTR III) the cantonal tax regimes are to be abolished and substituted by new competitive and internationally accepted measures.

In March 2016, the National Council decided on the draft bill on the CTR III. The wording of the draft bill of the National Council grants a high level of discretion to the cantons on the following measures. The only limiting factor set by the National Council is the restriction that the overall combined tax relief shall be restricted to a maximum percentage of 80%.

Patent box

As mentioned in our last report, the package includes a patent box. The draft bill is in line with the initial proposal and still includes the mandatory introduction of a patent box at the cantonal level. The patent box aims to promote the development and the use of intellectual property rights, which confirms the modified nexus-approach of the OECD. However, the National Council left the limitation of a maximum level of permissible tax relief out.

Input promotion

Moreover, the draft bill of the National Council hold on to the introduction of a input promotion, where the cantons should have the possibility to allow increased tax deductions for research and development expenditures at the cantonal level, which complies with the OECD Guidelines. In contrast to the initial proposal, the draft bill does not limit the deduction to a maximum of 150% anymore. Cantons shall be free to decide which level they consider as appropriate, subject to the overall combined limit of 80%.

Notional interest deduction (NID)

Furthermore, the National Council supports the introduction of an interest-adjusted corporate income tax on above-average equity (NID). It is proposed that this measure become mandatory at federal level and optional at the cantonal level. The tax relief under the NID shall be subject to the overall combined tax relief limit of 80%.

Disclosure of hidden reserves

The draft bill of the National Council provides rules for the tax neutral disclosure of built-in gains (including goodwill) upon migration to Switzerland or upon change of tax status from a preferential taxation to ordinary taxation. The disclosure becomes highly relevant in connection with abolishment of the cantonal tax regimes. Given the abolition of the cantonal tax regime, the companies must be allowed to transfer form privileged to ordinary taxation without immediately increasing their tax burden.

Tonnage tax

Contrary to the previous proposals, the draft bill of the National Council introduces a so called tonnage tax applicable to the shipping industry at the federal and cantonal level. This measure would allow shipping companies to calculate their taxable profit based on the shipping space rather than on their profits recorded in their financial accounts, which could lead to a lower tax burden for companies engaged in the shipping industry.

Abolition of one-time capital duty

In contrast to the previous version of the draft bill, the National Council proposes the abolishment of the one-time capital duty as initially proposed by the Swiss Federal Council. However, the National Council wants to include this measure into a separate bill, distinct from the already existing bill, in order not to endanger the acceptance of the CTR III.

Partial taxation of qualifying dividend income

The National Council also rejected the proposal of the Swiss Federal Council regarding the harmonization of the partial taxation of qualifying dividend income for individuals at the federal and cantonal level (i.e., limitation of the tax relief to 30%). Accordingly, this measure is finally rejected and the existing and more flexible legal situation shall be maintained.

As a next step the draft bill will again be discussed by the Council of States and its technical commission. The remaining differences between the two Councils (National Council and Council of States) should be eliminated in the next parliamentary summer session with the possibility that the final vote on the CTR III will be held at the earliest during the same session. In case no referendum is called, the new federal and cantonal tax laws could take effect, at the earliest, at the beginning of 2019.

Ernst & Young Ltd

Walo Staehlin/Alexander Seewer

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UNITED KINGDOM

Report on UK developments September to April 2016

Autumn Statement

On 25 November 2015 there was an Autumn Statement, which is equivalent to a mini-Budget, and draft clauses were published shortly afterwards for inclusion in Finance Bill 2016.

Budget 2016 and Finance Bill 2016

The annual Budget was on 16 March 2016 and the Finance Bill was published a week later on 24 March. It contains quite a few measures that had been consulted on over summer 2015 and in respect of which draft clauses were published after the Autumn Statement last November. Detailed scrutiny of the Finance Bill by Parliament will take place in July and the Bill is expected to become a Finance Act in October 2016 which is a few months later than is normal.

Direct tax

The corporation tax rate

In the July 2015 Budget the Chancellor announced that the headline rate which was reduced to 20% from April 2015 would come down to 19% from April 2017 and then to 18% from April 2020. In the March 2016 Budget it was announced that the 2020 rate is actually going to be reduced to 17%, rather than 18%.

Implementing BEPS

The government is keen to introduce a number of measures in accordance with the OECD BEPS Action Plan endorsed by the G20 last November. It is consulting on limitations in interest deductibility to 30% of group earnings together with a group ratio subject to a £2m *de minimis* threshold. This change is not to be introduced before 2017 but there will be immediate changes to combat hybrid mismatches. Hybrid mismatch provisions are also going to be introduced.

Diverted Profits Tax

The Diverted Profits Tax was enacted with effect from April 2015. It will tax international business on UK based profits which those businesses have sought to "divert" from the UK by not creating a Permanent Establishment in the UK or using artificial means to ensure the profit does not arise in the UK under existing rules. This new law applies from 1 April 2015.

Business tax road map

On Budget Day 2016 the government published a road map of its plans for business tax in the current Parliament to 2020 and beyond. The main themes are reducing tax rates and supporting small business, tackling avoidance and aggressive tax planning and simplifying and modernising the tax regime.

Large Businesses to publish their tax strategies

The largest businesses in the UK, about two thousand, will have to publish details of their tax strategies to cover the approach of the UK group to risk management and governance arrangements in relation to UK taxation, the attitude of the group towards tax planning (so far as affecting UK taxation), the level of risk in relation to UK taxation that the group is prepared to accept and the approach of the group towards its dealings with HMRC.

<u>Indirect Tax</u>

On the legislative front the following has been announced:

(i) proposals to zero rate sanitary products;

(ii) HMRC to have an ability to direct overseas businesses to appoint a UK VAT representative to account for the tax, and greater flexibility to require security from an overseas business, either in addition to or instead of appointing a VAT representative. HMRC will also have the power to issue a notice to the online marketplace making them jointly and severally liable for the VAT debts of an overseas business in relation to sales made through that marketplace.

(iii) A broadening of the eligibility criteria for the VAT refund scheme for museums and galleries;

(iv) legislation to ensure charities subject to the jurisdiction of the High Court of the Isle of Man are capable of qualifying for UK VAT charity reliefs;

(v) From 1 February 2016 a reverse charge procedure for wholesale supplies of electronic communication services has been introduced as part of its drive to deal with missing trader intra-community (MTIC) fraud.

The following judicial development have arisen

(i) In _HMRC v Finmeccanica_ the Upper Tribunal (UT) states F has no right to make 8th Directive VAT refund claims because its supplies in connection with exhibiting space at the Farnborough Airshow in 2008 and 2010 were made in the UK.

(ii) In _English Bridge Association v HMRC_, a reference has been made to the CJEU on the question of whether bridge is a sport eligible for VAT exemption.

(iii) In _Mercedes Benz Financial Services v HMRC_ a reference has been made to the CJEU on how to interpret VAT Directive article 14(2)(b) to the CJEU. The question concerns car leasing arrangements (arising from a dispute with) and the extent to which one can regard a particular agreement as leading to the transfer of ownership in the normal course of events.

(iv) In _HMRC v Brockenhurst College_ the Court of Appeal decides to refer questions to the CJEU concerning whether restaurant and performance charges levied by a college to customers who had meals or attended performances undertaken by the students as part of their educational and vocational training courses come within the exemption from VAT for educational and vocational training services.

(vi) In _HMRC v Associated Newspapers Ltd (ANL)_ the Upper Tribunal considered that ANL's supply of vouchers free of charge with their newspaper was for business purposes so output tax charge by the intermediary could be recovered. It was also agreed that ANL did not have to charge output VAT on the vouchers because they were being provided as part of a business promotion schemes. However it considered that ANL had no right to recover any input VAT on the goods or services that the vouchers were used to pay for. These constituted supplies to the users of the vouchers.

(vii) The Supreme Court grants permission to appeal in a case concerning _Littlewoods_ about the recover compound interest. This follows an earlier reference to the CJEU.

(viii) In _Finance and Business Training Limited v HMRC_ the Court of Appeal rejected FBT's appeal that its education services provided to students should be treated for VAT purposes similarly to those provided by universities. This contrasts with the EJEU decision in Case C-319/12 _Minister Finansow v MDDP sp z oo Akademia Biznesu, sp komandytowa)_, a Polish case, which appears to permit a wider application of the exemption.

(ix) In _Findmypast Ltd v HMRC_ the Upper Tribunal (UT) has held that unredeemed credits in the period September 2008 to May 2012, that were available for use on a website run by providing online access to genealogy and ancestry information, did not represent taxable supplies at the time of payment, resulting in VAT repayments.

(x) In *Norseman Gold plc v HMRC* the Upper Tribunal (UT) has agreed with the First-tier Tribunal (FTT) that NG was not carrying on economic activity during the relevant period because it was not making, nor did it have an intention to make in the future, supplies to its subsidiaries for consideration for VAT purposes. The case highlights the need to document cross border intercompany arrangements and associated pricing in order to evidence the intention to provide supplies for a consideration.

(xi) In *BBC v HMRC* the Court of Appeal considers that the BBC's supplies to the Open University of broadcasting programs were eligible for exemption.

The following policy documents and guidance have been announced

(i) The British Private Equity & Venture Capital Association issues an update on dialogue with HMRC Policy on establishing principles for recovering VAT in private equity-backed acquisitions ('Bidco'). HMRC now accept that Bidco should generally be considered to be a recipient of the services of advisers.

(ii) HMRC issues customs information papers on changes arising from the introduction of the Union Customs Code (UCC) with effect from 1 May 2016.

(iii) HMRC issues Brief 18/2015 and 23/15 concerning changes to the UK VAT treatment of intra group supplies following the CJEU *Skandia* decision (C-7/13).

(iv) HMRC publishes a consultation on draft legislation (SI 2016/1234) introducing a use and enjoyment provision to counter tax avoidance involving the provision of repair services, carried out under a contract of insurance, to insurers located outside the EU.

(v) As a result of the *Larentia + Minerva and Marenave* judgement (CJEU cases C-108/14 and C-109/14) HMRC Brief 3/2016 indicates that the government expects to make changes to UK law and VAT grouping provisions. These will include extending VAT grouping to non-corporate bodies and identifying rules to determine close economic, financial and organisational links.

(vi) Brief (22/15) on the CJEU decision in *Credit Lyonnais* (C-388/11) with consequent changes to the operation of partial exemption rules from 1 Jan 2016.

(vii) HMRC announces that from 1 May 2016, the current trade facilitation measure given by HMRC of issuing one economic operator registration and identification number (EORI number) concerning customs declarations, to exhibition event organisers to cover an entire event will be withdrawn. This is because it presents security and fiscal risks to the EU and

UK. The trade facilitation measure will continue only for private individuals when using a designated status identifier until new digital services are launched.

(viii) Contrary to what they were previously saying, HMRC are not now proposing to issue further written guidance setting out which pension products qualify for VAT exemption on pension fund management services following the CJEU decision in *ATP* (C-446/12). Backdated claims will be dealt with on a case by case basis, applying the four tests set out in their Brief 44/2014.

(ix) VAT fulfilment house due diligence: a consultation on the 'fit and proper' standards that fulfilment houses will need to meet in order to operate. Fulfilment houses will have an obligation to register and maintain accurate records once online registration opens in 2018. They will also have to provide evidence of the due diligence they have undertaken to ensure overseas clients are following VAT rules.

(x) Consultation on a new penalty for participating in VAT fraud in spring 2016 to be legislated in FB 2017

Stamp duty land tax (SDLT) and land & buildings transaction tax (LBTT)

- From 6 October 2015 there is an exemption from LBTT in Scotland on the conversion of an authorised unit trust to an OEIC and on the amalgamation of an AUT with an OEIC.
- An additional 3% SDLT charge to apply to acquisition of dwellings in the UK by companies and by individuals who already own a dwelling unless the dwelling is one they live in and sell within 3 years. Applies to all residential SDLT rates, including the 0% rate. Similar changes apply for LBTT in Scotland, though there are some differences in the way the rules work.
- From the date of Royal Asset for FB 2016 there will be SDLT seeding relief for a seeding relief for Property Authorised Investment Funds (PAIFs) and Co-ownership Authorised Contractual Schemes (CoACSs). Changes also to be made to the SDLT treatment of CoACSs investing in property so that SDLT does not arise on the transactions in units.
- reliefs available from the 15% SDLT charge for equity release schemes (home reversion plans), property development activities and properties occupied by employees from 1 April 2016.
- SDLT non-residential rates to be reformed from a slab to a slice system from 1 April 2016. The new rates for the different bands of consideration are:
  £0 - £150,000 – nil
  £150,001 - £250,000 – 2%
  Over £250,000 – 5%
  The SDLT rates applying to property lease rentals with a net present value exceeding £5m will increase from 1% to 2%.

Annual tax on enveloped dwellings (ATED)

As previously announced the threshold value before which ATED applies fell from over £1m to over £500k on 1 April 2016.

Insurance premium tax (IPT)

As announced in the Summer Budget 2015 the rate of IPTY increased from 6.5% to 9.5% on 1 November 2015. The standard rate of IPT will also be increased from 9.5% to 10% with effect from 1st October 2016.

Sugar levy

A new soft drinks industry levy to be paid by producers and importers of soft drinks that contain added sugar. The levy will be charged from April 2018 on volumes according to total sugar content, with a main rate charge for drink above 5 grams of sugar per 100 millilitres and a higher rate for drinks with more than 8 grams of sugar per 100 millilitres. There will be an exclusion for small operators.

ICAEW Tax Faculty / Chartered Institute of Taxation

April 2016

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