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National Reports

Developments in national tax law

March – September 2014



Table of Contents

Belgium (BE)	3
Czech Republic (CZ)	6
France (FR)	10
Germany (DE)	12
Italy (IT)	14
Romania (RO)	16
Slovakia (SK)	18
Slovenia (SI)	19
Switzerland (CH)	22
Ukraine (UA)	24
United Kingdom (UK)	26

BELGIUM

Tax developments in Belgium (January – September 2014)

Tax incentives for employment generating investment in zones in economic difficulty

A law has been published regarding the support of zones in economic difficulty (places where collective dismissals have taken place). In short, employers which invest in a zone in economic difficulty can benefit from a temporary exemption of payment of withholding tax due on wages paid to new employees hired following such an investment. There are 2 regimes, one for small employers and another for large employers. The conditions mostly overlap, but there are a few differences in favor of small employers.

Implementation of the 6th State Reform in the income tax code

The implementation of the 6th State Reform in the income tax code has also important consequences for the taxation of non-resident individuals.

Under the new law there exist 3 categories of non-resident individuals :

- Non-resident individuals of the EEA with at least 75 % of their earned professional income in Belgium (or individuals resident in a country with a DTC that has specific non-discrimination clause e.g. NL, Fr, Lux) are entitled to personal allowances and to the regional tax deductions.
- Non-resident individuals from outside the EEA with at least 75 % of their earned professional income in Belgium are entitled to personal allowances (but no regional tax deductions)
- Ordinary non-resident individuals are not entitled to personal allowances or to regional tax deductions.

The new legislation implies also that expatriates working in Belgium and earning less than 75 % of their professional income in Belgium , will no longer be entitled to personal allowances (or regional tax deductions)(exception made for Fr, NL and Lux where the tax treaty provides for pro rata application) . In certain circumstances, potentially additional tax will therefore be due.

Constitutional Court on excess foreign tax credit: no refund or carry-forward, but no gross-up

The Belgian Constitutional Court has ruled on 29 January 2014 that any excess foreign tax credit (FBB/QFIE) is not refundable and cannot be carried forward. However, the Constitutional Court has also ruled that any excess foreign tax credit must not be added to the disallowed expenses.

Saving deposits – update legislation after judgment ECJ

A new law (law of 25/04/2014) was adopted in response to a judgment of the European Court of Justice regarding the tax exemption of the first slice of interest on Belgian regulated 'savings deposits'.

According to the new legislation, the exemption will be extended to interest received on savings deposits held with credit institutions that are established in another EEA member state, provided that such deposits meet 'similar' conditions to those imposed for savings deposits held with Belgian banks.

Legal constructions list

As from assessment year 2014, the taxpayer must declare in his individual tax return the existence of a legal construction which he has established or of which he is the beneficiary. Those legal constructions include a.o. the non-residents which, in their country of establishment, are not subject to income tax or, for movable income, are subject to a considerable more advantageous tax regime than in Belgium. A recent Royal Decree has determined the list of those non-residents; it corresponds with the annex 1 to the savings directive with the addition of the Luxembourg "Société de gestion de patrimoine familial".

VAT – warehousing services

Following a recent European regulation, the VAT authorities have published their new position on the place of supply of warehousing services. The VAT authorities distinguish *three categories* of warehousing services, whereby the criterion of 'exclusive right of use' is decisive.

First category: Granting exclusive right of use of immovable property.

This service still takes place and is in principle still taxable where the immovable property is located. The criterion of exclusive right of use is deemed to be met if a number of conditions mentioned in the decision are fulfilled (free access of the customer to the warehouse).

Second category: Granting non-exclusive right of use of immovable property.

According to the general B2B rule, the service is taxable where the recipient is established.

Third category: Warehousing service with additional economic activities.

This concerns the economic activities aimed at maintaining/improving the quality of the stored goods such as packaging, weighing, sorting, labelling, etc. This service is also taxable where the recipient is established, according to the general B2B rule.

Finally, warehousing services, in case they take place in Belgium, will be exempt from VAT in certain cases (e.g. in the case of export).

VAT – Self-Billing system

Under the procedure of self-billing the customer can issue the invoice in the name and on behalf of the supplier for the goods and services which the latter has supplied to him. A recent circular letter from the

Belgian VAT authorities reiterates that self-billing requires the prior agreement between both parties and the establishment of a procedure of acceptance of the self-bill by the supplier. The acceptance can be explicit (e.g. an acceptance document) or implicit (e.g. no reaction by the supplier within a specified period).

The circular letter also states that the Belgian self-billing rules will apply for transactions which, from a VAT point of view, take place in Belgium (regardless of the place of establishment of the supplier) and for transactions which, from a VAT point of view, take place outside the European Union and which have been rendered by a supplier established in Belgium.

Furthermore, the circular letter contains practical details on the issuance deadline (normal rules), the content of the self-bill (a.o. the self-bill numbering), the form of the self-bill (on paper or electronically) and the chargeability of VAT.

The circular letter reminds taxpayers of the possibility, in the case of self-billing, for the supplier to report these transactions in his sales ledger on the basis of internal documents which he has drafted, instead of on the basis of the actual self-bills which have been issued to him.

Finally it is confirmed that, as an administrative tolerance, the self-billing procedure can under certain conditions be combined with a reverse charge mechanism thus resulting in a possible VAT cash flow advantage.

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CZECH REPUBLIC

Research and Development

The government submitted to the discussion process an amendment to the Act on the Support of Research, Experimental Development and Innovations. The amendment will be revised after the discussion process and further dealt with by the government. It is suggested that the amendment will become effective on 1 April 2015. The fundamental change is the establishment of the Ministry of Education, Youth and Sports as the authority responsible for maintaining the list of research organizations. The list will also be a suitable tool for identifying research organizations for the purposes of tax-deductible items in research and development. It will now be possible to get support in the form of refundable financial assistance or a grant with a conditional payback period.

The amendment was prepared in connection with the new Strategy for the International Competitiveness of the Czech Republic for the period 2012 to 2020 and development in the area of support for research and development in the EU.

Foreign trusts in the Czech Republic follow rules for trust funds, under certain conditions

Foreign trusts/foundations can follow the tax laws in the Czech Republic applicable for trust funds under several conditions:

- (i) the foreign group is considered a taxpayer (having a tax identification number) in the jurisdiction under whose laws it is established, which can be an issue for trusts set up contractually;
- (ii) the group doesn't have a legal personality (it doesn't have a business registration number);
- (iii) it is created by entrusting property to a custodian for purposes stipulated by a contract or in case of death;
- (iv) the property loses the legal owner when it is entrusted; and
- (v) profits from the appreciation of the assets and payment to beneficiaries are taxable income in the jurisdiction in which the group is established.

New ways to utilize tax losses

A judgment of the Supreme Administrative Court has changed perceptions on the ways to utilize tax losses during a tax audit. The new judgment indicates that if an entity has sufficient losses from previous years and shows a positive tax base, and the tax administrator increases the entity's tax liability during a tax audit, the entity has the possibility to apply a higher tax loss and avoid the imposition of sanctions. So far, the tax administration and the courts have adhered to the interpretation that the tax loss can only be applied in a regular or additional tax return. The judgment is in response to a change in the legislation, whereby the Act on Administration of Taxes was replaced by the Tax Code.



Expected changes in taxation from 2015

Limitation of the possibility of using the reduced 5% tax rate only for certain investment funds, i.e. basic investment funds, which are delimited by several conditions. The most important of these is a maximum limit of 10% participation for each investor for a period of over 12 months. The new adjustment applies not only to newly created funds, but also to those established before 2015. Funds that do not fulfill the conditions will be taxed at the usual rate of 19% together with exempt payouts of profit shares to investors, both individuals and legal entities.

Changes to trust funds, enabling the continued tax depreciation of assets earmarked for the funds and ensuring the deductibility of costs related to the earmarked funds, which the current law couldn't do because of its faulty formulation.

The situation arising from the effectivity of the new Civil Code, which reduced the limitation period of claims from four to three years, is also addressed. The amendment proposes to reduce the time for creating 100% provisions from 36 to 30 months, and it also proposes the same shortened period for the obligation to additionally tax overdue liabilities.

Questionnaire concerning related-party transactions

The Czech Specialized Tax Office (STO) has recently sent out a questionnaire concerning related-party transactions. Through this, the STO collects the necessary data for its analyses. The questionnaire is further confirmation of the current trend that the tax authority in the Czech Republic is more and more focused on the area of transfer prices. The questionnaire consists of five parts and covers transactions between foreign and Czech related parties. The tax payer is asked to provide information if it has transfer pricing documentation and in what form, volume of transactions with related parties, name of states where each related party is seated, or where the tax payer has its permanent establishment. Part of the questionnaire is similar to the announced obligatory disclosure to the corporate tax return for 2014.

Digital economy

On 27 August 2014, the upper chamber of the parliament approved amendments to the VAT Act, with effect from 1 January 2015, related to the shifting of the place of supply for B2C telecommunications, broadcasting and electronically supplied services (TBE services) provided by service providers established in the European Union to customers resident within the European Union to the Member State where the customer is resident. The EU and non-EU providers of TBE services can account for VAT on the B2C TBE services under the mini one-stop-shop rules.

Reduced rate

On 17 July 2014, the lower chamber of the parliament approved in the first reading the proposal to introduce, in addition to the existing reduced rate of 15% for, inter alia, foodstuffs and pharmaceutical products, a second reduced VAT rate of 10%. The second reduced rate should apply as of 1 January 2015.

The previously adopted merger of the standard and reduced rates into a single rate of 17.5%, which was envisaged to take place on 1 January 2016, will be cancelled.

Expected changes in the VAT area from 2015

The Czech government discussed proposal of the amendments of the VAT Act which includes, inter alia, the following changes:

- Reverse charge for local taxable supplies

The VAT Act will contain a provision authorizing the government to apply the reverse charge mechanism on the following domestic transactions:

- transfers of CO₂ emission allowances;
- mobile telephones, being devices made or adapted for use in connection with a licensed network and operating on specified frequencies, regardless of whether or not they have any other use;
- integrated circuit devices, such as microprocessors and central processing units, in a state prior to integration into end user products;
- gas and electricity supplied to taxable dealers;
- gas and electricity certificates;
- telecommunications services;
- game consoles, tablet PCs and laptops;
- cereals and industrial crops, including oil seeds and sugar beet; and
- raw and semi-finished metals, including precious metals, with the exception of goods that were already subject to the reverse charge mechanism, i.e. used materials, scrap and waste, and investment gold and with the exception of goods that are subject to the margin scheme for second-hand goods, works of art, collectors' items and antiques.

- Quick Reaction Mechanism ("QRM") special measure

The VAT Act will contain a provision authorizing the government to apply under the Quick Reaction Mechanism laid down by Article 199b of the VAT Directive, for a maximum period of nine months, the reverse charge mechanism also for other taxable supplies.

- Registration threshold

The reduction of the registration threshold from CZK 1 million to CZK 750,000, which was to come into effect on 1 January 2015, will be cancelled.

Expected changes in the VAT area from 2016

The Czech government discussed proposal of the amendments of the VAT Act which includes introduction of so called Recapitulative statements. The taxable persons registered for VAT will be required to file, together with the VAT return for the reporting period, a *kontrolní výkaz*, i.e. recapitulative statement, itemizing all domestic supplies of goods and services made to, and received from, other taxable persons. The recapitulative statements must also include advance payment made or



received in the reporting period in relation to supplies to be received or made in a subsequent tax period. The recapitulative statements must have been filed in electronic format by the 25th day of the month following the reporting period.

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FRANCE

1. Additional tax on corporations

An additional tax of 10.7% is due by large enterprises in addition to corporate income tax; this tax should have been abolished at the end of 2015 but this date has been postponed until the end of 2016. As a consequence, for large enterprises, the corporation tax rate is maintained at 38%.

2. Transfer pricing

The transfer pricing legislation has been strengthened as far as Non Cooperative States or Territories are concerned; the tax authorities will no longer have to prove dependence or control in order to make a transfer pricing case where the transfer is made towards such states or territories. This change in law takes effect as from 10 August 2014. Note that this new rule will not have a material impact as there are only 8 states or territories in the list (Botswana, British Virgin Islands, Brunei, Guatemala, Marshall Islands, Montserrat, Nauru and Niue).

Otherwise, large enterprises have, for the first time this year, to file every year a simplified transfer pricing documentation (before a change in law made at the end of 2013, such taxpayers only had to provide a transfer pricing documentation upon request at the beginning of a tax audit). A “large enterprise” is defined as a legal entity established in France that meets one of the following tests: (1) it has a turnover (excluding VAT) or gross assets of at least €400m or (2) at the close of the financial year it directly or indirectly owns more than 50% of the capital or voting rights in a legal entity satisfying the €400m test or (3) more than 50% of its capital or voting rights is, at the close of the financial year, directly or indirectly owned by a legal entity satisfying the €400m test or (4) it belongs to a French tax group that includes at least one legal entity satisfying one of the above tests.

This simplified transfer pricing return is due for the first time at the latest on 20 November 2014. The tax authorities have not yet issued final guidelines in this respect but they have produced a draft that is still under review. In the return, the taxpayer will have to provide general information on the group of associated enterprises (description of the activity, including changes during the financial year; list of the main intangibles assets; general description of the transfer pricing policy of the group and of the changes during the financial year; etc.) and specific information on the French enterprise (description of the activity, including changes during the financial year; recapitulative list of transactions realized with associated enterprises, by nature and amount, where the aggregated amount for each set of transactions exceeds €100,000; description of the method (s) used for the determination of the transfer prices).

3. Fight against tax fraud and evasion

The tax authorities have created, in July 2014, a dedicated website on tax fraud and evasion as part of a national plan against fraud; this website describes in particular, in generic terms, a number of tax fraudulent schemes.



4. Non deductibility of interest if the lender is not subject to a minimum tax rate

The tax authorities have issued, in August 2014, final guidelines on the statute that prohibits deduction of interest on loans where the lender is not subject to a tax that is at least 25% of the tax that would be due in France. For the record, this prohibition, which is applicable in respect of financial years closed as from 25 September 2013, applies notably, but not exclusively, on hybrid loans; it may apply indifferently where the lender is a resident or a non-resident of France.

The guidelines confirm that the comparison takes into account not only the standard corporation tax rate but also the additional contributions. In principle, since the French corporate income tax is 1/3, the foreign rate should be at least 8.33 (33.33/4); however, if the foreign lender would have been subject to additional contributions if it were established in France, the foreign rate should be at least 9.5% (38/4).

Otherwise, the guidelines confirm that interest that is not deductible because the condition is not met is not a deemed distributed income and is accordingly not subject to a withholding tax where the lender is a non-resident.

5. Reduction of income tax for small taxpayers

An exceptional reduction of income tax is applicable as regards income tax on the 2013 income; the reduction is generally equal to €350 (€700 for a married couple) where the income does not exceed €14,145 (€28,290 for a married couple).

6. Case law

A few court rulings issued by the highest tax court (*Conseil d'Etat*) are worthwhile being noted, as, for example, the following:

- the CFC legislation has been viewed as applicable to the French parent company of a Luxembourg holding subsidiary that was fully tax exempt and totally deprived of any substance as regards personnel, material and equipment; notably, the fact that the Luxembourg subsidiary paid fees to third party service providers was not sufficient to demonstrate that it had the required substance (case n° 357264 of 4 July 2014, Bolloré);
- the specific income tax applicable to non-resident individuals having the availability of French real estate (tax on 3 times the rental value of the real estate) has been regarded as contrary to the free movement of capital (case n° 332885 of 11 April 2014, Lappe); this tax, which was already applicable in very few cases only, is accordingly virtually dead;
- a dividend paid to a non-resident shareholder may not be subject to a tax that is higher than the tax that would be applicable to the same shareholder if he were a French resident; in the circumstances, the French withholding tax levied at the Treaty rate of 15% on dividends paid to a Belgium resident individual was viewed as an infringement to the free movement of capital as the shareholder would have been subject to a lower tax on the dividend if he were a French resident (case n° 356760, 7 May 2014, Reynaerts).

Bruno Gouthière



GERMANY

Interest limitation [“Zinsschranke”] unconstitutional?

Supreme Tax Court resolution I B 85/13 of December 18, 2013 published on April 16, 2014

The Supreme Tax Court has confirmed in a resolution granting a stay of execution pending a final court decision that there is doubt as whether the interest limitation meets the constitutional requirement of equality of taxation.

The case: A German family-owned GmbH with a network of 13 foreign subsidiaries objected to the interest limitation rule as being in breach of the constitutional requirement for equality of taxation in like circumstances. This rule essentially disallows net interest expense in excess of 30% of EBITDA. However, it does not apply to businesses that are not members of groups and it also does not apply where the annual net interest expense is under €3 m. According to the official explanation at the time, it was introduced to replace the “thin capital” rule rejected by the ECJ and was intended to meet the same objective of countering the perceived abusive practice of shifting taxable income abroad through interest expense. However, it cannot openly discriminate against payments to institutions in other EU member states and thus applies to all interest payments regardless of the location of the recipient.

The Supreme Tax Court held that there is doubt as whether the interest limitation meets the constitutional requirement of equality of taxation. It applies indiscriminately, regardless of any suspicion, or even possibility, of abuse, and thus goes beyond what is necessary to achieve its legitimate object. Start-ups, companies in financial difficulties and interest paid to German lenders were quoted as examples. On the other hand, it does not apply to companies with a total interest expense of (now) less than €3 m or to businesses that are not members of groups. It therefore does not “catch” all possible abuses and may therefore be an unsuitable tool in respect of its stated object. The court also pointed out that its total revenue is only minor in relation to tax revenue as a whole and that only relatively few taxpayers are affected. Hence possible overriding considerations in the public interest lose their significance.

Final PE loss abroad offset at home

Supreme Tax Court judgment I R 48/11 of February 5, 2014 published on April 23

The Supreme Tax Court has confirmed its judicature on “final PE losses”.

The case: An ice cream manufacturer operated a loss making branch in Belgium. Ultimately, he decided to wind up the Belgian venture and sell the assets to a subsidiary, which was in Belgium as well. This resulted in a further loss. The Belgian tax office recognized the German taxpayer’s right to a loss carry forward. The German tax office took this to mean that the taxpayer still had a theoretical possibility of offset in Belgium and that it was therefore not called upon to allow the loss in Germany as “final”.

The Supreme Tax Court has now held that the Belgian loss must be allowed in Germany once it is clear that there is no longer a realistic prospect of obtaining relief in Belgium. This follows from repeated ECJ judgments in the same vein. The prospects of obtaining relief can be denied for either legal or for practical reasons. The legal entitlement of the taxpayer to an indefinite carry forward in Belgium was

not, in the case at issue, in dispute. However, the taxpayer maintained, and the court agreed with him, that having effectively sold the Belgian business, he had ceased to earn Belgian business income, and thus no longer had anything against which the loss could be offset. That the Belgian business had been closed down and the appropriate notices sent to the respective authorities was for the court, sufficient evidence of the lack of intention to earn income in Belgium. The loss was therefore “final” and, as such, to be relieved in Germany. Should by any manner of chance, relief become available in Belgium at some future point, the German deduction could be reversed under the “new facts” provision of the General Fiscal Code [Abgabenordnung]. The fact that he sold the assets to its own subsidiary is as such not an abuse of tax.

Tax officials of the German Tax Authorities mention that in autumn 2014 a new provision will be introduced to cut the judicature down to that what they think is necessary to be in line with the judicature of the ECJ.



ITALY

Report Update on Recent Developments of Italian Tax Laws (September 2014)

Exit tax

On 10 July 2014, the Italian Tax Authorities published a Regulation providing a number of procedures and conditions to exercise the option ex paragraph 2-quater of Article 166 of the TUIR. The above Regulation offers taxpayers subject to corporate tax the option to suspend taxes due on latent capital gains in case of transfer of tax residence abroad.

The Regulation outlines in particular the requirements involving the documentation's safekeeping and custody, a "monitoring" obligation when filing tax returns, procedures for the submission of guarantees as well as the grounds for termination of the suspension benefit.

Delegated Tax Law

Law No. 23 of 11 March 2014, which became effective on 27 March 2014, delegates to Government the mission to develop a more equitable, more transparent and growth-oriented tax system to be implemented within 12 months (26 March 2015). Significant implementation rules are expected before the end of 2014, including the introduction of VAT grouping; the possibility for the customer, instead of the supplier, to send to the Italian Tax Administration the declaration of intent electronically; the enterprises or bodies with an Italian VAT number will be allowed to carry out Intra community supplies at the moment of the request of registration in the VIES portal, without the actual suspension of thirty days for the approval.

On 20 June, the Italian Cabinet approved a Draft Legislative Decree providing guidelines to streamline taxation, which was subsequently submitted to the competent Parliamentary Commissions for further scrutiny.

The above Draft also provides a number of measures on international taxation which also includes a simplified tax return for companies or entities with no legal or administrative office in the State's territory, the raising of the exemption threshold within which there is no obligation to provide any communication on transactions entered into with black-list Countries, authorization request procedures to carry out intra-Community transactions.

Capital Income Taxation

Decree-Law No. 66/2014 has once again reformed the taxation regime of capital income and of various kinds of financial incomes.

Article 3, paragraph 1 of Law Decree No. 66/2014 sets forth that withholdings and substitute taxes on the said kinds of incomes be applied at a 26% rate (formerly at a 20% rate), except for a series of proceeds specifically indicated (for example, interests and other proceeds from Italian Government bonds and comparable securities, interests and other proceeds from foreign white list Government

bonds, interests paid to non-resident group companies having the purpose to finance debenture loans, dividends issued to non-resident group companies, etc.), remaining at a 12,50% withholding tax.

With regard to the effective date of the measure, the general principle is that the 26% rate is applicable as of 1 July 2014 to capital income due and to other income realized.

Therefore, the new 26% rate is applicable to capital income for which, the right to collect the same or rather, the right to claim payment of the same started running from 1 July 2014 onwards; conversely, income linked to the right to collect the same continues being subject to taxation by applying the prior provisions in view of a collection right, which is valid until 30 June 2014.

Italian Regional Tax on Productive Activities (hereinafter “IRAP”)

Decree-Law No. 66/2014 amended Article 16, paragraph 1 and 1-*bis* of Legislative Decree No. 446/97, by decreasing IRAP rates applicable to various taxpayers subject to the said tax at the approximate rate of 10%. The 8,5% rate was solely confirmed for Public Administrations.

As a result of the normative intervention, IRAP rates are as follows:

- 3,9% (until 2013) and 3,5% (as of 2014), as a general rule;
- 4,65% (until 2013) and 4,2% (as of 2014), for banks and other financial entities;
- 5,9% (until 2013) and 5,3% (as of 2014), for insurance companies;
- 4,2% (until 2013) and 3,8% (as of 2014), for enterprises holding concessions for the management of services and public works (other than those involving the construction and management of highways and tunnels);
- 1,9% (until 2013) and 1,7% (as of 2014), for agricultural entities and cooperative societies for small-scale fishing and their unions.

Withholding Tax on Foreign Income

Article 4, paragraph 2, of Decree-Law No. 167/90 set forth the application of an “*entry*” withholding which had to be originally withheld at source and as an advance payment at a 20% rate on capital income and on other income:

- deriving from investments abroad and from foreign financial activities;
- contributing to the formation of total income of individuals, of sole proprietorships and of non-commercial entities.

On 19 February 2014 with Regulation No. 24663, the effective application of a 20% withholding on the so-called “*foreign source income*” was postponed from 1 February 2014 to 1 July 2014.

Subsequently, Government introduced Article 4, paragraph 2 of Decree-Law No. 66/2014 which repealed the 20% withholdings at issue.

Raffaele Rizzardi – Paolo Centore - Piergiorgio Valente



ROMANIA

Report Update on Recent Developments of Romanian Tax Laws (September 2014)

1. Excises

New level of the specific excise duty for cigarettes

As of 1 April 2014 entered into force a Government Decision approving the specific excise duty for cigarettes.

According to the provisions applicable as of 1 April 2014, the specific excise duty for cigarettes is EUR 59.77/ 1,000 cigarettes, the new ad-valorem rate is 18% and the new minimum level of excise duty is EUR 81.50/ 1,000 cigarettes.

2. VAT

Amendments to the settlement procedure for returns with negative amounts of VAT requested for reimbursement

The Procedure concerning the settlement of returns with negative amounts of VAT requested for reimbursement has been amended by an Order of the Ministry of Finance, published on 7 April 2014.

Under the new legislative provisions, irrespective of the VAT amount requested for reimbursement, all tax payers will be subject to an elaborate risk analysis procedure, in order to obtain the VAT reimbursement.

3. Customs regulations

Amendments concerning the community / common transit regime

Two Orders of the President of the National Agency for Fiscal Administration have been published, approving the technical Norms of application of the transit regime using TIR carnets and the technical Norms of application of the community/common transit regime.

These new Orders clarify customs officers' responsibilities and the actions to be taken in the event that the NCTS (New Computerised Transit System) application stops working temporarily and also establish the documents accepted as a transit declaration for the backup procedure.

4. Profit tax

Tax exemption for reinvested profits

The Fiscal Code has been amended and supplemented by the publication of a Government Emergency Ordinance in connection to the profit tax exemption for reinvested profits.

The profit invested in new technological equipment, manufactured and / or acquired and put into operation during the period 1 July 2014 – 31 December 2016 is exempt from profit tax.

In order to benefit from this incentive, the technological equipment should be used by the taxpayer for business purposes for more than half of its useful life, but for no longer than five years.

The technological equipment for which this tax incentive applies cannot be depreciated by using the accelerated depreciation method.

5. Exchange of information

Regulations on automatic exchange of information

The standardized forms containing the required information for the automatic exchange of information were approved by an Order of the Ministry of Finance published on 7 July 2014.

Residents of other EU Member States who own property in Romania have to file a tax return for the purpose of automatic exchange of information.

We expect standardised forms for automatic exchange of information to be approved for other specific types of income and capital. Taxpayers are responsible for the submission of the above-mentioned tax returns.



SLOVAKIA

Major developments (March 2014 – September 2014)

DOUBLE TAX TREATIES

Kuwait

Slovak Republic entered into a Double Tax Treaty with Kuwait. The treaty became valid on 21st April 2014 and will become effective from 1st January 2015. The structure of the treaty corresponds to the structure of the OECD Model Tax Treaty.

Poland

As of 1st August 2014 a protocol to the Double Tax Treaty between the Slovak Republic and the Republic of Poland became effective. The protocol amends articles 9, 10, 11, 12, 13, 24 and 27 of the treaty and adds article 28a (Limitation to benefits) to the treaty. The protocol inter alia introduces more advantageous treatment of dividends, interest and royalties, but also introduces an option to tax capital gains from transfer of shares in an entity holding real estate and expressly denies the treaty benefits to artificial arrangements. The provisions of the amended treaty will be applied to income arising as from 1st January 2015.

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SLOVENIA

Changes in Slovenian Taxation in period March 2014 – September 2014

Personal Income Tax

The last change of Slovenian Personal Income Tax was published in Official Gazette nr. 50/2014 in July 2014.

The special option for paying tax on income from small business that a person owns as a sole entrepreneur or a self-employed person is a simplified way of taxation of small businesses which are only starting to operate or businesses with the small scale of operations, generating revenues (determined according to accounting standards) that did not exceed 100.000 euros (in 2014 50.000 euros) in the previous tax year.

Therefore, the owner can **choose to pay the tax** on the basis of revenues and **standard expenditures** in the amount of **(80% of the revenues** if the revenue (determined according to accounting standards in the year 2014 is 70%) of a business does not surpass the amount of 100.000 euros in the previous tax year and if certain additional conditions aimed at preventing possible cases of tax avoidance in situations of start-up of a business or changing the legal form of a business are met.

Sole entrepreneur has to inform the competent tax authority about the decision to elect this tax treatment in the current tax year by submitting a prescribed form by 31st of March of the current year for the previous tax year.

Owners that satisfy the conditions and elect this way of taxation are not entitled to allowances. They are not required to keep standard accounting documents on file, but they have to keep two kinds of records: **the record on issued bookkeeping documents** (this mostly includes bills), from which the amount of income earned is evident and **the record of assets**.

Such a taxpayer has to file a specific tax return form to the competent tax authority by 31st of March of the current year for the previous tax year.

Income from small business is taxed **at the flat rate of 20%** when election for tax treatment described above is made. The annual personal income tax liability of the taxpayer is determined on the basis of the tax return. If the tax paid during the year in the form of advance tax payments exceeds the annual tax liability the taxpayer gets reimbursed for the excess. If the tax paid during the year falls short of the annual tax liability the taxpayer has to settle the difference.

Corporate Income Tax

In July 2014 in Official Gazette nr. 50/2014 changes of Corporate Income Tax were published. The main changes came into force on January 1st 2014.

The changes are related with special system of paying corporate income tax for small enterprises.

In 2013 Slovenia extended the special simplified option for paying tax on personal income from small business that a person owns as a sole entrepreneur or self-employed person to corporations and other legal persons established in accordance with the *Companies Act*. This also applies for comparable foreign persons which carry on business in Slovenia through a business unit of a nonresident (permanent establishment) situated therein. This option of settling the tax liability can be elected by the taxpayers starting to operate business in their first tax year and also in the second tax year if they start operating business in the second half of their first tax year. In general taxpayers can elect this option if the following conditions are met: revenues, determined according to accounting standards up to 50.000 euros** (for 2015 is 100.00 euros) in the previous tax year (i.e. in the calendar year before the tax year for which the special option is elected) and certain additional conditions aimed at preventing possible cases of tax avoidance in situations of start-up of a business or changing the legal form of a business.

The corporate income tax in this case is paid on the basis of revenues, determined according to accounting standards and standard expenditures in the amount of 70 % of the revenues (in 2015 is 80%). Such taxpayers are not entitled to tax allowances provided for in the *Corporate Income Tax Act* and in other provisions to be deducted from their taxable income. Also, by electing this system of taxation the taxpayers are not allowed to deduct tax-deductible expenses and tax loss from their taxable income. The rate of corporate income tax does not change by electing this system of taxation and it is set at 17 %.

The taxpayer elects this option of settling tax liability by informing the competent tax authority about the decision for such a tax treatment in the current tax year on a corporate income tax return form for the previous tax year.

*** It is important to emphasize that this revenue limit of 100.000 euros holds for the foreign enterprise as a whole and is not applied separately at the level of revenues of the business unit of a nonresident or permanent establishment.*

Real Property Tax Act

On December 9th 2013 in Official Gazette nr. 101/2013 Real Property Tax Act was introduced into Slovenian tax law. Before that Act the taxation of immovable property in Slovenia was taxed in a very old, inappropriate way, with variety of different Acts, originating from former Republic of Yugoslavia. But in the end of March 2014 the Slovenian Constitutional Court ruled that it was unconstitutional.

FATCA

On 2 June 2014 the Foreign Account Tax Compliance Act (FATCA) was signed between governments of the USA and Republic of Slovenia.

New Financial Administration of the Republic of Slovenia

On August 1st 2014 the Customs Administration of the Republic of Slovenia and Tax Administration of the Republic of Slovenia merged into the new joint Financial Administration of the Republic of Slovenia.

The new website is www.fu.gov.si/en/.



New government in Slovenia

Since our new government is forming at the moment, we expect more developments on tax law in next months.

SWITZERLAND

Corporate Tax Reform III (CTR III)

In Spring 2012 the Swiss Federal Council assigned the FDF (Federal Department of Finance) to elaborate fiscal measures for the third Swiss Corporate Tax Reform (CTR III), which aim to strengthen Switzerland's attractiveness as a business location and its international acceptance. Considering the ongoing changes in international tax policy regulations, the Swiss Federal Council deem it necessary to abolish the cantonal taxation regimes for holding, domiciliary and mixed companies, and replace them by new competitive regimes, which meet the international taxation standards.

For these reasons the FDF put their main focus in the draft legislation and the explanatory report on the following:

1. The reduction of cantonal corporate tax rates
2. The implementation of license box regimes
3. NID – notional interest deduction on equity
4. Other measurement

1) The cantons may reduce their ordinary tax rates in order to enhance their attractiveness. In addition, the cantons shall be entitled to reduce the capital tax on net equity related to participations, IP or group-loans. Federal tax will furthermore amount to 8.5%.

2) The Swiss Federal Council is planning to implement a license box regime on the cantonal and communal level, that will be based on EU-guidelines and be similar to the UK patent box. Patents, supplementary protection certificates, exclusive licenses for patents are the mainly qualified intellectual property rights, that shall meet the license box requests. The Swiss license box will give companies the opportunity for a privileged tax treatment for incomes derived from intellectual property rights. The maximum tax relief on cantonal/communal level will amount to 80%, so the effective tax rate amounts to approximately 10% (including federal tax). Since as well the EU as the OECD are examining all license box criteria, the Swiss license box regime may be amended in future to comply with the latest international standards.

3) The introduction of a NID concept, similar to this in Belgium, shall give companies the opportunity for an equal tax treatment of equity and debt financing. This concept will be introduced on federal and cantonal/communal level and give a privileged treatment on the so called "surplus equity". On this surplus equity the Federal Council proposes an interest rate based on the yield of 10-year government

bonds plus 50 basis point but in any case a minimum interest rate of 2%, that can be deducted as a justified business expenditure.

4 a) Hidden reserves: The new legislation proposes furthermore a new tax treatment for hidden reserves and a self-generated goodwill. When a company changes its tax status, the company gets the possibility for a tax-neutral step up of built-in gains as well as for a self-generated goodwill, followed by a tax effective amortization over 10 years.

4 b) Stamp duty: With the present reform the 1% stamp duty on capital contribution shall be abolished. The abolition of this kind of tax will help to improve a financing neutrality not only for companies moving to Switzerland, but also for companies that are already established in Switzerland.

4 c) Tax loss carry forward: The tax legislation suggests also an unlimited period of time for tax loss carry forward. However, it was also noted that at least 20% of the taxable profit, before use of tax losses, will be taxed. Actually, the period of time for tax loss carry forward is limited to 7 years.

4 d) Capital gain tax on securities: By today private capital gains on securities did not generate a base for income tax. This shall change with the present CTR III, where capital gains will be added to the income tax base. It is necessary to differentiate between dividends on shares, which will be taxed up to 70%, and other securities, which will be fully taxed. Consequently the taxpayer gets also the opportunity to offset capital losses with capital gains.

The Corporate Tax Reform III depicted above was presented on 22 September 2014 by the Swiss Finance Minister. During the next four months, all interested parties are invited to provide their comments and feedbacks. However the Federal Council will continuously take into consideration international developments that occur in the meantime.

It will be expected that the reform draft will be presented to the Parliament in the first winter months 2015 and will be considered by the First Chamber in the winter session 2015. The discussion in the Parliament might be finished in the middle of 2016 and in case no referendum will take place, the new law might enter into force between 2018 and 2020.

Walo Staehlin/Anna Nora Niederkofler



UKRAINE

Main changes in the Tax Code of Ukraine that have already taken effect in 2014

Income Tax

- The income tax relief have been abolished for companies engaged in hotel business and for electricity sector (that generate electricity from renewable energy sources);
- Income from securities transactions taxed at 18% instead of 10%.

VAT

- Extension of the exemption from VAT for raw hides and tanned leather without further processing, also for operations with scrap metal till 01.01.2015;
- Introduction of tax exemption from VAT for operations with recycled paper;
- The threshold for mandatory registration of a company as a VAT payer have been increased from 300000 UAH to 1 million UAH;
- Introduction of the VAT accounts system and electronic administration of VAT;
- Introduction of arithmetical calculation of tax amount to which the taxpayer is entitled to issue tax invoices (on the special account of VAT payer there always must be funds or received tax bills, in order to be able to issue tax invoices and accordingly to be engaged in economic activity);
- Introduction of taxation of drugs (medical) at the rate of 7%;
- Introduction of universal registration of issued tax invoices without limitation of the amount of money for mandatory registration.

PIT

- Enacted taxation of PIT in the form of interest accrued on current or deposit bank account and the interest accrued on credit union member's payment to the unit. The rate is 15% (if the amount of income exceeds 20706 UAH per year - 17%);
- Temporarily introduced military collection - 1.5% of income;
- Introduction of PIT taxation from pension and permanent alimony (to be paid from the pension fund if the amount exceeds 10000 UAH).

Single Tax

Now electronic check is possible. It is based on application of the taxpayer with low level of risk activity. This service is now available to all small and medium sized businesses that operate on total tax system. From 01.01.2016 it will be available for all taxpayers.

Environmental Tax

Environmental tax on disposal of decommissioned vehicles has been abolished.



Other

- Doubling of rate fee for special use of forest resources;
- Increased rent for iron ore mining from 5% to 8%; oil - from 39% to 45%; gas deposits up to 5km - from 28% to 55%; gas deposits over 5km - from 15% to 28%;
- The excise tax on tobacco products increased on 5%;
- Beverages containing 8.5% or more of ethanol attributed to alcohol and the excise imposed at the level of vodka - 70.5 UAH per 1 liter of 100% spirit.

Now Ukrainian society keenly discusses the Conception of reforming the tax system of Ukraine suggested by government. Tax advisers of Ukraine are actively involved in this process.

Outside written

August 14, Ukraine's parliament passed a law on peculiarities of taxation of Ukrainian enterprises in the annexed territory of Crimea which is not yet in force (it has not yet been signed by the President). It mainly provides that Ukrainian enterprises in the annexed territory of Ukraine do not pay taxes, but relations with them are based on the analogy with non-residents of Ukraine.



UNITED KINGDOM

Finance Act 2014

This year's Finance Act was enacted in July 2014.

Autumn Statement

This year's Autumn Statement will be on 3 December 2014 and it will outline the measures that the current government intends to introduce in next year's, 2015, Finance Bill. The government will also publish in December draft clauses, based on consultations over the summer months, representing legislation which it intends to include in Finance Act(s) 2015.

Because the next General Election takes place in May 2015 only some of the draft clauses are likely to be included in the first Finance Act of 2015 which will have to receive Royal Assent before the election.

If the Conservatives get back into power then the remaining clauses are likely to be introduced in a subsequent Finance Act that year: in 2010, the year of the last general election, there were three Finance Acts. If there is a change in government then some of the remaining clauses may still be enacted but the new government may have some other legislative priorities as well.

One proposal, on which the government is currently consulting, is for HMRC to have power to take money direct from taxpayer's bank accounts without getting an order from a court. This proposal has proved enormously contentious and professional bodies, amongst others, are lobbying the government to reconsider the proposal.

Direct tax

The headline rate of tax has been 21% from April 2014 and is due to come down to 20% from April 2015.

Expenditure on capital plant and machinery can be fully written off up to £500,000 of expenditure each year.

There are new provisions blocking promoters and users of tax avoidance schemes and users will have to pay the tax that hoped to save upfront to HMRC. They will get the money back if their scheme is eventually found to be successful.

The existing pension regime is going to be fundamentally changed and pensioners will be free to draw out the money in their pension arrangement paying tax at their marginal rate of tax at the time the funds are withdrawn.

Indirect Tax

Sections 103 and 106 and Schedule 22 Finance Act 2014 contain provisions enacting the Mini One Stop Shop (MOSS) provisions in article 5 of Directive 2008/8/EC

Sections 104 -105 Finance Act 2014 make changes to the definition of place of belonging of a supplier or customer in s 9 Value Added Tax Act 1994 and for regulations relating to altering the place of supply rules.

Section 108 Finance Act 2014 makes provision for prompt payment discounts and treats the consideration for VAT purposes as being the discounted payment when just the discounted payment is made. Previously the charge was on the discounted price even if the full price was paid.

The VAT (Section 55A) (Specified Goods Excepted Supplies) Order adds electricity and gas to the list of supplies subject to reverse charge procedures.

S 111 Finance Act 2014 imposes a 15% SDLT charge on the acquisition of an interest in residential property by a company if it is over £ 500,000. Previously the threshold was £2m. There are a number of exemptions when the acquisition is for business purposes.

Part 2 and Part 3 of the Finance Act 2014 contain provisions directed at gaming duties.

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