CONFEDERATION
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CFE Fiscal Committee

National Reports

September 2013

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BELGIUM

<u>**Belgium – Short overview of major developments (January 2013 – August 2013)**</u>

Corporate income tax

- ***Patent income deduction***

As it was announced in the recovery plan of the federal government presented in 2012, the conditions for SMEs (on a consolidated basis) to benefit from the patent income deduction (deduction of 80% of the income from patents) have been relaxed: as from assessment year 2014, they do not need to develop or improve the patents in research centers constituting a branch of activity, to benefit from the deduction (Law of 17/06/2013).

- ***Notional interest deduction (NID)***

As from assessment year 2014, the NID rate is calculated on the basis of the average return of the 10-year OLO in the months July, August and September. As a consequence the applicable rate for assessment year 2014 is 2,742% and the rate for assessment year 2015 will be 2,630 %. The absolute limit of 3% remains in place (Law of 17/06/2013).

Furthermore, as from assessment year 2014, the calculation base of the NID is further narrowed as shares must be excluded from this base when their dividends may benefit from the dividends-received deduction (Program-Law of 28/06/2013).

- ***Fairness tax***

The Law of 30/07/2013 introduces, as from assessment year 2014, a fairness tax that will be due by companies distributing dividends. The tax takes the form of a separate taxation in the corporate income tax at a rate of 5,15%. It will be due on the difference between the amount of distributed dividends and the final taxable result that has effectively been subject to tax during the same taxable period. Taxable reserves accumulated during tax years 2013 or prior tax years will be deducted from the tax basis of the fairness tax. At last a correction factor will apply to this base reflecting the proportion between on the one hand the 'harmful deductions' (previous tax losses and NID of the year) and on the other hand, the taxable result of the taxable period.

This separate taxation applies to resident companies and permanent establishments of foreign companies subject to Belgian non-resident's income tax. SME's (criteria to be considered on a consolidated basis) are not subject to the fairness tax.

Personal income tax

- ***Legal constructions to be reported in individual income tax returns***

As from assessment year 2014 (income year 2013), individuals will have to report in their income tax return the existence of legal constructions of which they are founders or (potential) beneficiaries. The concept of legal construction is new in Belgian tax law and covers certain legal relations as well as certain non-resident entities which:

- are not subject to tax on their movable income or which are subject to a tax regime which is appreciably more advantageous than the Belgian tax regime on their movable income, and
- are held by individuals resident in Belgium, or of which such individuals are beneficial owners.

According to the parliamentary documents, the new reporting obligation does not aim at prohibiting the use of legal constructions but rather at improving transparency and at closing possible loopholes.

A list of entities concerned for certain jurisdictions will be published. However it was already confirmed during the parliamentary discussions that trust and foundations from San Marino, Switzerland or the Netherlands Antilles as well as *Anstalten* and *Stiftungen* from Lichtenstein will be concerned.

- ***Tax credit on personal income tax for taxpayers with business profits***

As from assessment year 2013, the tax credit on business profits of up to a maximum of EUR 3,750 per year is applicable to non-residents taxpayers. This measure is the consequence of an infringement procedure initiated by the European commission against Belgium.

- ***Reimbursable tax credit for low income***

Further to another infringement procedure of the European commission, the reimbursable tax credit for low income is applicable for non-resident income tax purposes as from assessment year 2013.

R&D incentives

- ***Partial exemption of wage withholding tax on researchers' remunerations***

The partial exemption of wage withholding tax on researcher's remunerations is increased from 75% to 80% as from 01/07/2013.

A new procedure of prior notification of the research and/or development programs /projects concerned (for which a legal definition is introduced) to the "*Belgian Science Policy Office*" will be implemented as from 01/01/2014. This should allow the tax authorities to perform efficient controls. The employers and the tax authorities will also be offered the opportunity to obtain from the Belgian Science Policy Service a binding confirmation that R&D programs or projects fall into the scope of the wage withholding tax exemption. A transition period is foreseen for existing programs and projects

Movable income

- ***WHT on liquidation gains***

The withholding tax on liquidation gains that is actually at 10 % will be increased to 25 % for liquidation gains paid or attributed as from 01/10/2014.

As a transition measure the government introduced the possibility to incorporate taxable reserves in the equity capital and paying the WHT-rate of 10 %. As from 1 July 2013, it is possible to distribute taxed reserves approved by the general assembly at the latest on 31/03/2013 with a 10% WHT, provided the received amount is immediately incorporated into capital. This incorporation has to be done in the last accounting year closed before 01/10/2014.

At later capital decreases, those incorporated reserves will be taxed at following rates.

Tax rates	SME (art 15 Company Code)*	Other companies
15%	In year 1 and 2	In the 4 first years
10%	In year 3	In year 5 and 6
5%	In year 4	In year 7 and 8
-	As from 5th year	As from 9th year

** At the time of capital contribution*

A future capital decrease would be considered as first impacting (decreasing) this capital contribution.

To the extent that the actual dividend policy during the five preceding taxable periods is not continued in the year of distribution and incorporation of these taxed reserves, an extra tax of 15% will be due on the shortfall.

- ***Reduced WHT on dividends on new shares in SME's***

A reduced WHT is introduced on dividends on new nominative shares in SME's representing contributions in cash made as from 01/07/2013. Contributions originally resulting from the distribution of taxed reserves as meant in the previous point are excluded.

Only dividends on new shares in SME's can benefit. The distributing company must only be an SME at the time of the contribution of cash.

The WHT tax rate on the dividends is

- 25% at distribution of profit in the first accounting year following the contribution;
- 20 % at distribution of profit in the second accounting year after year of contribution
- 15 % at distribution of profit in the third or later accounting years after year of contribution

The shares must be held uninterruptedly in full ownership since their creation until the distribution of the dividends in order to benefit from the reduced WHT. Neutrality in this respect will be provided in case of inheritance, donation or tax-neutral reorganizations. Several anti-abuse measures are provided for.

- ***WHT on dividends received by investment companies***

As from assessment year 2014, the withholding tax of 25% borne by Belgian investment companies on the dividends they receive is no longer creditable and reimbursable (implementation of the judgment of the Court of Justice of the European Union in the case Commission v Belgium of 25 October 2012).

- ***Taxable capital gains on UCITS***

As from 1 July 2013, capital gains realized at the repurchase of shares in bond funds and mixed funds (more than 25% invested in fixed income products) without European passport are subject to a withholding tax of 25% (previously already applicable on such funds with European passport).

VAT

The services of lawyers will be subject to VAT as from 1 January 2014

Tax procedure

- ***Tax amnesty***

The ***Law of 11 July 2013*** provides for a temporary tax (and social) amnesty. While permanent tax regularization has applied in Belgium since 2006, the new legislation offers taxpayers a last opportunity to regularize undeclared amounts, during the period from 15 July 2013 until 31 December 2013. As from 1 January 2014, tax regularization is abolished.

Where the former legislation provided in the regularization of income, under the new legislation, also capital can be regularized.

The new legislation provides for two types of regularization:

The first type deals with income for which the statute of limitations is still running:

- As regards to undeclared professional income, movable income such as dividends or interests, legacies, etc., the taxpayer will have to pay the taxes due and a 15-percent penalty;
- As regards to income resulting from serious and organized tax fraud, the taxpayer will have to pay the taxes due and a 20-percent penalty.

The second type deals with capital for which the statute of limitations has expired. In that case, a penalty of 35-percent of the amounts concerned will be due.

In most cases, the regularization will provide for immunity from criminal prosecutions.

- ***Implementation of the European directive 2011/16/EU of 15/02/2011 on administrative cooperation in the field of taxation***

While, on 20 June 2013, the European Commission sent a reasoned opinion to Belgium asking to notify the transposition of the Directive 2011/16/EU on administrative cooperation into national law, Belgium was working on this implementation.

At federal level, the Parliament adopted on 18 July 2013 a law implementing the directive for all federal taxes and regional taxes for which the federal ministry of finance ensures the perception and recovery.

At regional level:

- a Flemish Decree of 21 June 2013, published on 26 June 2013, implements the directive for all regional taxes for which the Flemish Region ensures perception and recovery;
- the Parliament of the Brussels-Capital Region has adopted a similar decree on 12 July 2013;
- the Walloon Region did not yet implement the directive.

Jos Goubert/Sabine Graziosi

KPMG Tax advisers Brussels

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CZECH REPUBLIC

Tax news from March until August 2013 for the Czech Republic

Labour Law

- Job contracts for definite period are allowed to be concluded repeatedly with the same employee (in specific cases, i.e. in agriculture or construction companies)

Prepared by: Martin Houska

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FRANCE

DIRECT TAX NEWS

The following summarizes the main recent changes that may be of interest in an international context as far as direct taxes are concerned.

Several Administrative Guidelines published:

Deduction of interest: for financial years closed as from 31 December 2012, if the net financial charges amount to at least €3m, a portion of 15% is generally not tax deductible (increased to 25% for financial years opened as from 1 January 2014). The guidelines provide precisions regarding the financial items concerned by the restriction. Specifically, financial expenses related to interest rate swap agreements are concerned. Business leases and more generally royalties are not concerned.

Transfer of corporate seat in another EU Member State: The transfer of corporate seat to another EU Member State (or Island or Norway) without transfer of assets is neutral for tax purposes. Where assets are simultaneously transferred, latent capital gains are taxable but the taxpayer may generally pay the tax over a 5-year period. The guidelines provides that the spreading of the payment over 5 years also applies to financial assets (i.e., shares in subsidiaries)

Tax on distributed earnings: dividends paid as from 17 August 2012 are subject to a specific 3% tax. This tax also applies to benefits of a permanent establishment in France of a foreign company. The Guidelines provides that the tax applies to the PE's profits only to the extent that such profits do not remain at the disposal of the French PE. In addition, this tax does not apply to profits of a French PE of a company establish in an EU Member State.

Draft bill regarding fight against tax fraud and tax evasion

The draft bill is currently discussed by the Parliament. It provides notably for

- Broader investigation powers for the French Tax Authorities
- Increase of penalties and criminal offenses
- Specific delivery of transfer pricing information for large companies, no later than 6 months after the deadline for filing the CIT return

A provision regarding a reform of the general anti-abuse rule (which would replace the concept of "exclusive purpose of avoiding taxation" by "essential purpose of avoiding taxation") has been postponed, since the proposed wording would have generated legal insecurity for taxpayers. The reform should probably be included in one of the Finance bills at the end of the year.

Draft Finance bill for 2014

The draft Finances bill for 2014 has been disclosed. The provisions for companies that may be of interest in an international context are the following:

Fight against hybrid loans and artificial indebtness: French companies paying interest to related parties would not be allowed to deduct such interest if they are not able to demonstrate that the tax paid by the related party on said interest is at least equal to 25% of the tax that the company would have paid in France if it was established there.

Transfer pricing: in case of business restructuring leading to a decrease of the French company's Earnings Before Interest Tax Depreciation and Amortization (*Excédent Brut d'Exploitation* in French GAAP) of more than 20% compared to the average gross operating profit of the past three years, the French company will have to demonstrate that it received an arm's length compensation.

Tax on EBITDA: a tax assessed on companies' Earnings Before Interest Tax Depreciation and Amortization is created. Its rate would be 1%. It applies to companies whose turnover (or the aggregated turnover of the companies belonging to the same consolidated tax group) exceeds Eur 50 million. The suppression of the Annual Minimum Lump-Sum TAX (IFA) as from 2014 is confirmed.

Tax on high income: Companies paying gross salaries (wages, benefits in kind, stock options, etc.) above Eur 1 million will be subject in 2013 and 2014 to a 50% tax on the amount in excess of Eur 1 million. The tax will be capped to an amount up to 5% of the company's turnover.

INDIRECT TAX NEWS

Reminder:

VAT rates: The last Finance Bill (for 2013) has provided for the following modifications concerning VAT rates, which shall come into force on January 1st, 2014:

- the supplies of goods and services which are currently subject to a 5.5% VAT rate will be subject to a 5% VAT rate ;
- the supplies of goods and services which are currently subject to a 7% VAT rate will be subject to a 10% VAT rate ;
- the supplies of goods and services which are currently subject to a 19.6% VAT rate will be subject to a 20% VAT rate.

The Draft Finance Bill for 2014, which has been recently disclosed, provides for a certain number of exceptions (please see below).

Draft Finance bill for 2014

VAT rates: as an exception to the above-mentioned principles, the construction of social housing units, as well as social housing renovation, which are currently subject to a 7% VAT rate, should be subject to a 5% VAT rate as from January 1st, 2014.

Reverse charge mechanism:
The "reverse charge mechanism" will apply to outsourced construction services.

Moreover, in case of emergency, the Government will be authorized to provide for new applications of the "reverse charge mechanism", for instance in case of fraud (sudden, massive, and which may cause significant tax losses).

Eco-tax on heavy goods vehicles

The entry into force of the eco-tax on heavy goods vehicles (trucks with a mass exceeding 3.5 tons) has been deferred to January 1st, 2014.
Transport companies circulating within the French territory shall register with an authorized electronic tolling service provider by December 31, 2013.

September 30, 2013
Sébastien Laisney & Thibault Hénique

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GERMANY

March – September 2013, by Martin Ziemba

- The Income Tax Act (EstG) has been amended due to a decision of the German Constitutional Court on 7 May 2013 on the equality of marriage and same-sex partnerships in taxation;
- Adoption of the law implementing the EU Directive on Administrative Cooperation 2011/16/EU;
- Adjustments concerning real estate transfer tax, limitations to tax planning, partial VAT-exemptions of persons in charge of others, stage directors and choreographers;
- An act to cut red tape in common public benefit activities gives further tax support to public interest organisations and encourages voluntary honorary activity.
- The legislator has failed to adopt the 2013 Annual Tax Act also containing adjustments due to EU law and case-law.
- Apart from that, there are no new developments: The German federal elections will take place on 22 September 2013, putting legislative activity on hold until at least end of October 2013.
- The following planned legislation is in the pipeline:

  (1) Act amending the Commercial Code (HGB), to be debated on 20 September 2013

  (2) Act on shortening the periods of retention; currently in the Conciliation Committee of the two chamber of Parliament (Bundestag/Bundesrat).

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IRELAND

Report on Irish tax developments in the period since March 2013

Finance Act 2013

Finance Act 2013 was signed on 27 March 2013. It gave effect to the measures announced in last December's Budget and a number of additional measures, as detailed in our previous national reports.

Department of Finance / Revenue Consultations

Since March, consultations on the following issues were initiated by the Department of Finance and Revenue:

- The operation of the current scheme of relief for research and development expenditure (the R&D tax credit). The relief currently involves a tax credit of 25% on incremental R&D expenditure – in addition to a 12.5% trading deduction. The scheme is based on incremental expenditure and allows relief for expenditure on R&D that is in excess of the company's R&D expenditure in 2003.
- The direct tax implications of appointing a receiver. This consultation was accompanied by draft legislation, which it is hoped will address areas of uncertainty which exist in current practice and legislation. It is anticipated that the final legislation will be published in the Finance Bill which accompanies October's Budget.

The Irish Tax Institute made detailed responses to both consultations, reflecting the views, concerns, and recommendations of members.

Ireland's First REIT Launched

Ireland's first Real Estate Investment Trust, Green REIT plc, was launched in June, following the introduction of the relevant legislation in Finance Act 2013. It was reported that over €300 million was raised from investors in the REIT.

OECD Tax Policy Director appears before Parliamentary Committee

In an appearance before Ireland's newly-established Parliamentary Joint Sub-Committee on Global Taxation in July, Mr Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, said that Ireland does not meet any of the relevant criteria for the OECD to class the country as a tax haven. He acknowledged the active role Ireland has played in the OECD's work on addressing international tax issues and stressed the need for multilateral action on these matters.

Local Property Tax

The first Local Property Tax (LPT) returns became due for filing in May 2013. The LPT liability for 2013 then became due for payment in July 2013. As detailed in our previous national report, taxpayers have a variety of options for payment. Compliance rates for the new tax have been quite high, at about 89%, with about €175 million of the €250 million target for 2013 collected to date.

Budget 2014

At the time of writing, Budget 2014 is scheduled to be delivered on 15 October. It is understood that the Finance Bill will be published shortly thereafter, with a view to enacting the Bill by 31 December 2013.

The Government has previously committed to raising €1.1bn in tax revenues in this Budget and to raising a further €2bn through expenditure adjustments.

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ITALY

Report Update on Recent Developments of Italian Tax Laws (April – August 2013)

PILOT PROGRAMME FOR THE IMPLEMENTATION OF A NEW "*COLLABORATIVE COMPLIANCE REGIME*"

In order to improve relations between Tax Authorities and large taxpayers, on 25 June 2013 the Italian Revenue Office, via its website, publicly invited all large taxpayers to express their interest in participating in a pilot programme intended to spearhead the implementation of a new "*cooperative compliance regime*".

The purpose of this programme is the development of a reference model for new and more advanced relations and communications between Tax Authorities and taxpayers, based on criteria of cooperation, transparency, and mutual confidence. Such a result can be more effectively achieved through collaborative activities and concrete communication involving taxpayers directly, in order to collect information and opinions useful to the definition of the new regime.

This project fits into the framework of the "*cooperative compliance programme*" outlined at the international level by the OECD in the document "*Cooperative Compliance: a Framework from Enhanced Relationship to Cooperative Compliance*" (2013).

Tax Vital Statistics

On 24 June 2013, the so-called "*SID*" (Data Exchange System – "*Sistema di Interscambio Dati*"), which allows the Tax Authorities to access the bank current accounts of the taxpayers and to monitor their transactions, was launched.

By 31 October 2013, banks, Post Offices, and asset management companies will have to communicate to the Italian Revenue Office all their data on current accounts and their movements, investments, credit cards use, and safety deposit boxes for the year 2011. For information regarding 2012, the deadline is 31 March 2014, and for information concerning 2013 and the next years, communications will have to be transmitted by 20 April of the following years.

Tobin Tax

With reference to the Financial Transactions Tax, the so-called "*Fare*" Decree (Decree-Law No. 69/2013) postponed the date of entry into force of the tax on derivatives (including high-frequency ones) to 1 September 2013 (instead of 1 July 2013), making no changes to the entry into effect of the tax on transfer of shares and participating financial instruments and on high-frequency trading (1 March 2013).

Further, the deadlines for the payment of the tax have been extended as follows:

- the tax on the transfers of ownership of shares and participating financial instruments and on high-frequency trading of such transfers, which took place until 30 September 2013, must be paid by 16 October 2013;
- the tax due on transactions involving financial derivatives and on high-frequency trading of those instruments, which were carried out in September of 2013, must be paid by 16 October 2013.

Robin Tax

With reference to the so-called "*Robin Tax*", which mandates the payment of a corporate tax (IRES) surtax by large entities operating in the oil and energy sector (as per Art. 81, par. 16 of Decree-Law No. 112/2008), the so-called "*Fare*" Decree amended the size parameters for the applicability of the law so that the surtax applies to companies in the aforementioned sectors if in the tax period preceding the one under examination:

- their revenues were above 3,000,000 Euros (instead of 10,000,000 Euros, as was the case before) and, at the same time,
- their tax base was above 300,000 Euros (instead of 1,000,000 Euros, as was the case before).

Since the size parameters have been reduced, it follows that the tax applies to a broader range of taxpayers. Lacking specific legislation on when the changes will become effective, it can be assumed that they will enter into force beginning in the next tax year as of 22 June 2013 (namely, 2014 for entities subject to a calendar year tax system).

***VAT* – Rate**

The start date of the increase of the ordinary VAT rate from 21% to 22% has been moved to 1 October 2013 (it was originally set for 1 July 2013).

VAT – Permanent audit of transactions and periodical listings

As per 1st January 2015, taxpayers will be entitled to transmit on a daily basis, via internet to the Tax authorities, the relevant information concerning invoices issued and received. This procedure will permit to discontinue a certain number of periodical listings, such as yearly list of sales and purchases (amount for each counterparty), monthly list of transactions with "*black list*" countries, and to avoid joint VAT responsibility for purchases with high risk of fraud and responsibility for social charges unpaid by the suppliers in case of contract works.

From the same date, for any taxpayer, the listing of intra-community purchase of services, not admitted by directive 2006/112/EC, will be discontinued.

August 2013

Raffaele Rizzardi – Piergiorgio Valente

Paolo Centore – Marco Peirolo

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LUXEMBOURG

Major developments in Luxembourg since March 2013

A bill of law dated 9.4. 2013 amends exit taxation for businesses as a reaction against criticism by the Commission against the present Luxembourg system. In substance the projected system provides for a deferred payment of capital gains tax and extends the domestic rollover of capital gains to the EEA.

- By way of a circular dated May 21st, 2013 the tax administration has explained the way it will apply the deduction of expenses with respect to cross border hiring of staff..
- By way of a circular dated August 1st, 2013 the tax administration has explained the way it will apply the minimum taxation for companies which was introduced in 2011 and the scope of which was further extended in 2013.
- A bill of law dated August 16th, 2013 aims at creating a specific vehicle in the form of a foundation. The vehicle presents characteristics of similar vehicles available in countries such as Germany, Austria, Belgium, The Netherlands and Switzerland. Specific provisions aim at identifying beneficial owners so as to avoid the use of a foundation for tax evasion.

Romain Bontemps
Partner

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MALTA

Indirect Tax Updates (*Mar-Sep 2013)*

1. Value Added Tax

With effect from 1st January 2013, there were the following minor amendments to the VAT laws of Malta:

1. (L.N. 140 of 2013) Amendment to Fourth Schedule to reflect the amending provisions of Council Directive 2010/45/EU of the 13th July 2010 amending Council Directive 2006/112/EC. Practically this amends the VAT chargeability taking place on the date of the invoice if this is issued by the 15th day of the month following that which the transaction takes place.
2. (L.N. 141 of 2013) Amendment to the Twelfth Schedule to reflect the amending provisions of Council Directive 2010/45/EU of the 13th July 2010 amending Council Directive 2006/112/EC. This amendment makes mandatory a tax invoice to be issued if the payment is received before the chargeable event taking place.
3. (L.N. 142 of 2013) Amendment to the Fourteenth Schedule to reflect the amending provisions of Council Directive 2010/45/EU of the 13th July 2010 amending Council Directive 2006/112/EC. This amendment removes the turnover limit of €2,000,000 from the VAT cash accounting option for professional practitioners.

1.1 L.N. 240 of 2013 - Extension to Remittance of Interest and Administrative Penalties Scheme.

In an effort to collect amounts outstanding from VAT, the Government has once more launched an extension to this scheme up to 30 November 2013.

2. Duty on Documents and Transfers Act

2.1 DUTY EXEMPTION ON POLICIES OF INSURANCE (RETIREMENT FUNDS)

No duty shall be charged where:
i) the policy holder is a legal person which is incorporated or otherwise created in Malta, and
ii) the said legal person holds the policy in the capacity of a trustee or other fiduciary, and
iii) the life assured and persons who can benefit under the policy are all not resident in Malta, and
iv) such trust or other fiduciary arrangement is exempt under the provisions of article 12(1)(d) of the Income Tax Act (Retirement Fund/Scheme).

2.2 EXTENSION OF EXEMPTION APPLICABLE WITH RESPECT TO DISSOLUTION OF THE COMMUNITY

The duty exemption applicable to transfers between spouses consequent to a consensual or judicial separation has been extended to transfers of immovable property owned by a company which is fully owned by any or both spouses.

2.3 RESIDENTS ACQUIRING A NEW HOME

The remit of the reduced 3.5% rate of duty has been increased to the initial €150,000.

2.4 DONATIONS TO DESCENDANTS IN THE DIRECT LINE

Donations of immovable property to descendants in the direct line will be subject to a beneficial tax treatment. No account is to be taken of the first €200,000 of the value of the property transferred and duty shall be charged on the remaining value thereof at the rate of 3.5%. The benefit applies provided that the donation is the first transfer by such a person to such a descendant.

2.5 ENABLING PROVISION MERGERS

The Minister has been empowered to make rules regulating the duty treatment of companies and their members and other similar bodies or persons concerning mergers and divisions of companies, transfer of assets between companies and exchange of shares concerning companies and for the purposes of this article the definitions contained in article 27A of the Income Tax Act shall apply.

2.6 EXEMPTION TRANSFER CAUSA MORTIS

An exemption from duty applies when all of the following conditions are met:
a) the property transferred *causa* mortis consists of a dwelling house or a part thereof, or of any real right over a dwelling house;
b) the property is transferred by the person from whom the transfer *causa* mortis originates to his descendants in the direct line;
c) the said dwelling house was, at the time of the transfer, and during the whole period of three years preceding the transfer, the ordinary residence of the person from whom the transfer originates, no duty shall be levied at the time of the transfer *causa* mortis of that property.

2.7 DUTY ON TRANSFERS OF SECURITIES (42 DDTA)

Important changes to Article 42 (1) (a) DDTA have been made. Article 42 DDTA is the article which lists the cases when liability to pay duty arises on transfers of securities. Article 42(1)(a) DDTA refers to transfers of foreign marketable securities. The previous version of article 42(1)(a) DDTA was equivocal and now Article 42 (1) (a) DDTA prescribes that duty on the transfer of marketable securities is payable when:

(i) notwithstanding the provisions of article 4, on every transfer inter vivos, whether executed in Malta or outside Malta, of foreign marketable securities held in a property company as defined in article 2(1) of the Income Tax Act, made to or by any person resident in Malta;

(ii) notwithstanding the provisions of article 4, on every transfer inter vivos, whether executed in Malta or outside Malta, of foreign marketable securities held in a company having, directly or indirectly, more than 50% of its business interests in Malta, made to, or by any individual who is ordinarily resident and domiciled in Malta or by any other person (other than any person referred to in article 47(3)) who is

owned or controlled, directly or indirectly, or acts on behalf of, an individual who is ordinarily resident and domiciled in Malta:
Provided that the provisos to article 47(3)(e) shall apply mutatis mutandis to the interpretation of the term "business interests in Malta";

(iii) on every document whereby any other foreign marketable security is transferred inter vivos to, or by any person resident in Malta:
Provided that where the marketable securities in question are not held in a property company as defined in article 2(1) of the Income Tax Act nor in a company having, directly or indirectly, more than 50% of its business interests in Malta as set out above, no duty shall be chargeable where such transfer is effected through a local bank or through a person holding an investment services license under the Investment Services Act.

Similar rules with respect to transfers of interests in a partnership have been introduced.

2.8 DUTY EXEMPTION RETIREMENT FUNDS

Acquisitions or disposals of securities issued by the following persons will be tax exempt:

- a trust or fiduciary arrangement the income of which qualifies for exemption in terms of article 12(1)(d) of the Income Tax Act: and
- whose beneficiaries consist solely of individuals who are not resident in Malta, or a company; and
- where the trustee, fiduciary or company as the case may be, proves to the satisfaction of the Commissioner, that the trust, fiduciary arrangement or company carries on, or intends to carry on, business, or has, or intends to have, business interests to the extent of more than ninety percent outside Malta by demonstrating that it satisfies such conditions as to the Commissioner may appear appropriate.

2.9 FINES AND PENALTIES

A new range of penalties, some of which apply to notaries, has been introduced.

2.10 L.N. 260 OF 2013 – AMENDMENT TO THE DUTY ON DOCUMENTS AND TRANSFERS ACT

With effect from the 1st of January 2013, the duty otherwise chargeable in terms of article 32(1) of the Duty on Documents and Transfers Act on the purchase by persons or companies of property outside an "Urban Conservation Area" (UCA) but within specified zones identified by the Malta Environment and Planning Authority, for the purpose of restoration and development, shall be reduced to the rate of two euro per one hundred euro or part thereof, subject to the conditions and parameters issued by the Malta Environment and Planning Authority. Together with the notice referred to in article 51of the Duty on Documents and Transfers Act, there shall be submitted a certificate issued by the Malta Environment and Planning Authority establishing the conditions under which the restoration and development is permitted on the property in question.

<u>Direct Tax Updates (*Mar-Sep 2013)*</u>

1. AMENDMENTS TO THE INCOME TAX MANAGEMENT ACT

The sole amendment to the ITMA consisted in the introduction of an enabling provision for the charging of fees to be levied in relation to the issue of tax residency and tax balance certificates, applications for rulings and shareholder registrations.

2. AMENDMENTS TO THE INCOME TAX ACT

A new definition of the term 'industrial buildings or structures' has been introduced.

A clarification in the definition of 'Participating Holding' explaining the circumstances when partnerships en commandite and collective investment vehicles qualify to be treated as participating holdings.

The opt-out period for the purposes of Property Transfers Tax has been increased from 7 years to 12 years.

The remit of the participation exemption has been extended to include branch profits.

Fees in respect of homes for the elderly and the disabled will be deductable (up to a capped amount of EUR2,500 the same cap prescribed for homes for the elderly fees);

An enabling provision allowing for a single taxable person basis (consolidated tax return) has been introduced. As announced in the budget speeches 2012, new rates of personal tax will be introduced. These new tax rates contemplate a 32% tax rate. The new rates are the following'

'Single Rates'
For every euro of the first €8,500 .... 0c
For every euro of the next €6,000 .... 15c
For every euro of the next €5,000 .... 25c
For every euro of the next €40,500 .... 32c
For every euro of the remainder 35c

'Married Rates'
For every euro of the first €11,900 .... 0c
For every euro of the next €9,300 .... 15c
For every euro of the next €7,500 .... 25c
For every euro of the next €31,300 .... 32c
For every euro of the remainder 35c

Rates for Parental Computation
For every euro of the first €9,300 .... 0c
For every euro of the next €6,500 .... 15c
For every euro of the next €5,400 .... 25c

For every euro of the next €38,800 .... 32c
For every euro of the remainder 35c

3. L.N. 152 OF 2013 INCOME TAX ACT (CAP. 123) HIGHLY QUALIFIED PERSONS (AMENDMENT) RULES, 2013

This law offers a reduced rate of tax to persons in the financial services, gaming and aviation industry. It applies to employees holding eligible offices. For aviation, the list of eligible offices has been extended to include Aviation Flight Operations *Manager*, and Aviation Ground Operations Manager.

4. L.N. 159 OF 2013 INCOME TAX ACT (CAP.123) DOUBLE TAXATION RELIEF (TAXES ON INCOME) (RUSSIAN FEDERATION) ORDER, 2013

This Legal Notice transposes the Tax Treaty with Russia. The following are the highlights of the treaty:

a) The definition of PE refers to a services PE. The following create a PE:

> i) through an individual who is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period, and more than 50% of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other State through that individual, or
> ii) for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that other State, the activities carried on in that other State in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless these services are limited to those mentioned in paragraph 5 (use of facilities for storage, maintenance of stocks, auxiliary activities etc) which, if performed through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

b) The possibility of withholding taxes in the source country on dividends is not excluded (5% if the beneficial owner is a company holding directly 25% of the company paying the dividend and this holding amounts to at least €100,000, 10% in all other cases);
c) The possibility of withholding taxes in the source country on interest is not excluded (5%);
d) The possibility of withholding taxes in the source country on royalties is not excluded (5%);

e) In line with the most recent version of the OECD Model, the Treaty does not have an article on Independent Personal Services;
f) In Article 27 the Treaty includes a limitation of benefits clause. The benefits of the treaty do not apply when: 'if the main purpose or one of the main purposes of such resident or a person connected to such resident was to obtain the benefits of the Convention' but the LOB clause does 'not apply where a company is engaged in substantive business operations in Contracting State of which it is a resident'.

CONFEDERATION FISCALE EUROPEENNE

5. L.N. 160 OF 2013 INCOME TAX ACT (CAP. 123) DOUBLE TAXATION RELIEF (TAXES ON INCOME) (THE REPUBLIC OF TURKEY) ORDER, 2013

This Legal Notice transposes the Tax Treaty with Turkey. The highlights of the Treaty include the following:
a) The Treaty includes a definition of 'legal head office' which in the case of Turkey means the registered office under the Turkish Code of Commerce and, in the case of Malta, the place of incorporation under Malta law. The definition is used in Article 4 as a tool to establish residence of persons other than individuals. Article 4 provides that when a person other than an individual has its place of effective management in a Contracting State and the *place of its legal head office* in the other Contracting State, then the competent authorities of the Contracting States shall determine by mutual agreement the State of which the person shall be deemed to be a resident for the purposes of the Agreement.
b) The definition of PE includes the concept of a services PE. The term PE includes the furnishing of services, including consultancy services by an enterprise through employees or other personnel engages by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 6 months within any 12-month period.
c) The possibility of withholding taxes in the source country on dividends is not excluded (10% if the beneficial owner is a company holding directly 25% of the company paying the dividend and 15% in all other cases);
d) The possibility of withholding taxes in the source country on interest is not excluded (10%);
e) The possibility of withholding taxes in the source country on royalties is not excluded (10%);
f) The Treaty retains the 'old' Independent Personal Services Article;

g) Article 26, the Limitations of Benefits clause incorporates the 'remittance' article and provides that Articles 6 to 21 of the Treaty (containing rules on allocation of taxing rights) do not apply to:

> i) persons enjoying a special fiscal treatment by virtue of the laws or the administrative practice of either one of the Contracting States which are identified in the Protocol to this Agreement;
> ii) any persons enjoying a special fiscal treatment under the provisions of the Merchant Shipping Act, 1973- and to that extent- are not subject to tax in Malta on the profits derived from the operation of ships in international traffic. Neither shall they apply to income derived from such persons by a resident of the other Contracting State, nor to shares or other rights in such persons owned by such a resident.
> iii) a resident of a Contracting State shall not receive the benefit of any reduction in or exemption from taxes provided for in this Agreement by the other Contracting State if the main purpose or one of the main purposes of the creation or existence of such resident or any person connected with such resident was to obtain the benefits under this Agreement that would not otherwise be available.

6. L.N. 167 OF 2013 INCOME TAX ACT (CAP. 123) GLOBAL RESIDENCE PROGRAMME RULES, 2013 (GRPR)

The legalistic structure of this law follows closely that of the HNWI (Non-EU) Rules. The law provides for a beneficial rate of tax of 15% on income arising outside Malta which is received in Malta by persons falling under the definition of 'beneficiary'. The GRPR applies to the income of beneficiary's spouse and children too. Certain criteria needs to be met.

7. L.N. 176 OF 2013 - DEDUCTION (INCOME FROM EMPLOYMENT) RULES, 2013

Effectively, this Legal Notice implements the decision not to charge any tax on minimum wages. The Legal Notice provides that persons falling within certain criteria (i.e. deriving employment income not exceeding €8,950 and does not derive any other income chargeable to tax at the rates specified in 56 (1) (b) ITA) benefit from a tax deduction equal to the minimum wage.

8. L.N. 177 OF 2013 - DOUBLE TAXATION RELIEF (TAXES ON INCOME) (THE REPUBLIC OF TURKEY) ORDER, 2013 (L.N 160 OF 2013)

This Legal Notice provides that the Treaty with Turkey came into force on 13 June 2013.

9. L.N. 178 OF 2013 INCOME TAX ACT (CAP. 123) HIGH NET WORTH INDIVIDUALS - NON-EU/NON-EEA/NON-SWISS NATIONALS (AMENDMENT) RULES, 2013

This L.N. provides that the Commissioner shall not receive any applications for special tax status under the HNWI rules after 30 June, 2013 as this was replaced by the **GLOBAL RESIDENCE PROGRAMME RULES, 2013 (GRPR).** Beneficiaries in possession of special tax status under the 'old' HNWI Rules may request the Commissioner to grant him special tax status under the GRPR.

10. 179 OF 2013 - INCOME TAX ACT (CAP. 123) - EUROPEAN UNION DIRECTIVES (AMENDMENT) REGULATIONS, 2013

This LN adapted the EU' tax directives because of the accession of the Republic of Croatia.

11. L.N. 180 OF 2013 - JOINT COUNCIL OF EUROPE/OECD CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS ORDER, 2013

This LN brings into force the Joint Convention on Mutual Assistance ratified by Malta on May 23.
In a Schedule, the L.N. transposes the Convention. The Convention provides that state parties to the Convention must provide each other with administrative assistance in tax matters. Administrative assistance comprises:
a) exchange of information;
b) assistance in recovery including measures of conservancy;
c) service of documents.

The Convention applies to taxes on profits and capital gains, taxes on wealth, compulsory social security contributions.

The Convention provides for exchange of information on request, automatic exchange of information and spontaneous exchange of information. Spontaneous exchange of information must occur whenever:
a) A party has grounds of supposing that there may be a loss of tax in the other party;
b) A person liable to tax obtains a reduction in or an exemption from tax in a State increasing tax or liability to tax in another State;
c) When business dealings are conducted in such a way that a tax saving may result in one or the other State or both;
d) A Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
e) Information exchanged is relevant to assess liability to tax in the State requesting information.

The Convention provides for simultaneous tax examinations, tax examinations abroad, assistance in recovery measures of conservancy, time-limits and service of documents. Limits to the obligation to provide assistance are found in Article 21.

The Convention does not affect the rights and safeguards secured to persons by the laws or administrative practice of the requested state. The Convention shall not be construed so as to impose on the requested State the obligation to carry out measures at variance with its own laws, public policy, non-compellable testimony and protection of trade secret. Requested States are empowered to refuse requests for information when the applicant State has not pursued all reasonable measures available under its laws or administrative practice. States can reject a request for assistance in recovery when such a recovery would create a disproportionate administrative burden.

12. L.N. 238 OF 2013 - DOUBLE TAXATION RELIEF (TAXES ON INCOME) (GRAND DUCHY OF LUXEMBOURG) (AMENDMENT) ORDER, 2013

This amends article 26 (Exchange of Information) of the original Double Tax Treaty between Malta and Luxembourg.

Geraldine Schembri and Christian Vella
Malta (MT)

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CONFEDERATION FISCALE EUROPEENNE

POLAND

1. CFC regime

The Polish Ministry of Finance has drafted the CFC (controlled foreign companies) legislation as a proposed amendment to the PIT and CIT Acts. The idea is entirely new to the Polish tax system.

The draft amendment defines a CFC as a foreign company: i) in which a Polish taxpayer holds the minimum of 25% shares (directly or indirectly); ii) which derives at least 50% of its income from "passive income" sources; iii) where at least one type of income is not subject to taxation, is exempt or is taxed beneficially (at a rate at least 25% lower than the one currently in force in Poland). The second category of CFCs is constituted by companies resident in a country exercising harmful tax competition (listed by the Ministry of Finance).

The CFC regime will not apply to foreign companies established in the EU or EEA countries provided that they conduct genuine business activities in these countries. The CFC provisions will not apply also if the income of the CFC does not exceed 250 000 EUR for the tax year.

Subject to the approval of the Parliament and the President, the new rules will come into force on 1 January 2014.

2. General Anti-Abuse Rule

The guidelines for the amendment to the Tax Code envisage, among others, the introduction of the GAAR. The clause, aimed at combating tax avoidance schemes, may apply potentially to all taxes and all transactions. Its exact wording is to be defined in the course of further legislative works.

In the case of the dispute concerning tax assessment based on the GAAR the enforceability of the tax decision will be suspended until the final resolution of the case (i.e., the conclusion of the court proceedings). Should the final resolution be against the taxpayer, the additional financial sanction of 30% of the amount diminished through the tax avoidance scheme will apply.

At the same time the new procedure is to be established, enabling taxpayers who plan to engage in the activities running the risk of being considered as abusive to apply for the opinion of the Minister of Finance. If a taxpayer follows the technical position presented in the opinion, it will not be possible to hold him/her liable for the tax avoidance.

According to the amendment, and following the example of a number of other tax jurisdictions, the General Anti-Avoidance Rule Council will be appointed. Its main task will be to provide expert opinions – at the request of a tax authority or a taxpayer – on whether in the individual case of a given taxpayer tax avoidance was committed. The opinions, after anonymization, will be officially published.

The new law is to come into force on 1 July 2014.

3. Changes to TP regulation

In July 2013 the amendment to the Ministry of Finance's transfer pricing ordinance has come into force. The amended act is generally adjusting the relevant provisions to the 2010 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. In particular the main objectives of the decree are the following:

- reworking the order of transfer pricing methods according to the OECD selection criteria and advising tax inspectors to apply the most appropriate one for specific circumstances,
- defining comparability analysis, shareholders costs and components of low value-adding services and introducing a simplified examination procedure for such services,
- supplementing the provisions concerning business restructuring (any transfer between associated companies, like cross-border transfers, transfer of assets, etc.),
- allowing for the mutual agreement between three countries, concerning the elimination of double taxation,
- amending the national rules with the view to reflect current global trends and standards.

4. Polish Special Economic Zones until 2026

Following the long debate, the Polish government has decided to extend the operating period of the Special Economic Zones. Thus investors can still look forward (at least to 2026) to run a business in Poland on special beneficial conditions. The investors in the SEZs can expect significant tax reductions; depending on the company size, level of investment and its location, they may be able to deduct between 30 and 70% of qualified costs.

5. 'Single window' for customs clearance

In 2012 Poland has made trading across borders faster by implementing electronic preparation and submission of customs documents. This year the Ministry of Finance has declared that between 2014 and 2015 a single window for the customs clearance will be introduced – in full correlation with all concerned departments and commodity inspection. This means that all the procedures related to customs clearance would be settled in one place.

Single window system aims to simplify border formalities for traders and other economic operators by establishing a single electronic submission of information necessary to fulfill all cross-border regulatory requirements.

6. Ministry of Finance applies to the European Commission for passenger cars VAT derogation

Poland seeks a derogation to restrict the input tax deduction on the purchase of motor vehicles for business use as well as fuel for such vehicles. Polish government wishes to restrict the input tax deduction on the initial purchase or hire of these vehicles to 50%. It is most probable that the permission sought will be granted and the restriction will remain in force in 2014-2018.

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PORTUGAL

GOLDEN VISA & NON-HABITUAL RESIDENT TAX REGIME

The Portuguese Government has renewed recently its policy of granting residence visas for foreigners who intend to invest in Portugal or acquire real estate for the purposes of living in the country, enacting a fast track "*Golden Visa*" procedure for non-EU individuals to take up residency in Portugal.

This regime has proved itself very attractive and able to bring an increasing flow of immigrants to Portugal applying for such visa on the basis of bring over more than 1M€ in capital, acquiring real estate of more than 0.5M€ or investing in Portuguese companies that result in new jobs being created.

The benefit from being awarded a Golden Visa can be enhanced by also applying for the Non-Habitual Resident Tax Regime, which typically allows for individuals to be able to benefit from a tax exemption on foreign-source income a flat tax rate on Portuguese employment and business income.

Under this regime, individuals who are eligible to register themselves on a voluntary basis as a non-habitual resident (*i.e.*, those who qualify as Portuguese tax resident and have not been taxed as a resident in the Portugal in the five years prior to that qualification) will basically benefit during a 10-year period from:

a) a flat tax rate (20%) on Portuguese source employment and business income derived from the listed high added value activities; and

b) the application of the exemption method (with progression) on foreign-source income such as pensions or other income provided the State of Source is entitled to tax such income under a Double Taxation Convention ("DTC") or, if no DTC exists with Portugal, the OECD Model Convention, namely passive income, capital gains, income from property and business profits.

The Non-Habitual Resident Tax Regime is favorable also to high net worth individuals, since it allows typically for an exemption on foreign-sourced income in Portugal, while at the same time applying the Portuguese treaty network to restrict the Source State's taxing rights.
Foreign pensioners that elect to take Portuguese tax residency under this regime can simultaneously apply for a tax exemption in Portugal on their pension income received from abroad, while also claiming treaty benefits established under the Portuguese tax treaty network to restrict the ability of the source state of such pension to tax such income therein.
Finally, a broad range of activities are considered as high-level activities attracting a significantly reduced flat tax rate of 20% for employment or business income obtained in Portugal. This category also includes senior company employees taking up Portuguese residency, irrespective of the activities of such companies.

CORPORATE INCOME TAX REFORM

The Portuguese Government appointed a Committee back in January 2013 to propose amendments to the Corporate Income Tax Code aimed at promoting the internationalization of Portuguese companies, simplifying the existing Code and becoming a more competitive jurisdiction tax wise.

The Committee's proposal with a draft of the law to be presented to Parliament has been duly presented in July and is currently under public discussion. The proposal includes *inter alia* the following measures:

- *(i)* a phased reduction of the current adjusted CIT tax rate from the current 31,5% to 19% within a 5-years period;
- *(ii)* the establishment of an universal participation exemption regime applicable to all entities that exempts dividends and capital gains realized in qualifying shareholdings (*i.e.*, basically a 2% minimum shareholding held directly or indirectly for a 12-months);
- *(iii)* an indirect foreign tax credit where dividends distributed by foreign subsidiaries cannot benefit from the participation exemption regime;
- *(iv)* an optional regime for exemption of profits of a permanent establishment of Portuguese entities located abroad;
- *(v)* special rules for internally developed IP income recognition where only 50% income of it is considered taxable;
- *(vi)* a special tax deduction for acquired intangible assets (*e.g.*, trademarks);
- *(vii)* amendments to group relief rules by lowering the minimum shareholding requirement to 75% and allowing Portuguese resident companies held indirectly through EU/EEA intermediate holdings to form part of the group;
- *(viii)* increasing the period for possible carry-forward of tax losses from 5 to 15 years; and
- *(ix)* amending rules dealing with mergers, demergers, and transfer of losses aimed at allowing more tax neutral restructures. The proposal also includes a series of amendments aimed at improving tax law drafting in order to reduce litigation between corporate taxpayers and the Tax Authorities, as well as measures to simplify several tax reporting obligations.

The final version of the draft will be presented to the Government by the Committee at the end of September. The Government will afterwards review the proposal and submit the CIT Reform to Parliament by October 15, 2013. The CIT Reform Bill is expected to be presented simultaneously with the Budget Bill for 2014.

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ROMANIA

National Reports on developments in tax law since March 2013

Tax law has known various notable changes starting March 2013 up to date. The most important of these changes are marked on tax categories below:

1. **Direct Tax**

a) Corporate income tax

- The deductibility threshold will apply to both contributions paid to optional pension funds defined according to Law 204/2006, as well as contributions paid to private pension schemes as defined by the Financial Supervisory Authority which are performed by authorized legal entities established in European Union Member States or in the European Economic Area;
- Depreciation expenses' deductibility has been set to a limit of lei 1,500 per month for vehicles with up to 9 car seats, including the driver's seat, having as purpose the transportation of persons, defined as M1 category under the Regulations regarding the registration and issue of the identity card for vehicles, as well as for the registration of the items used for vehicles. The vehicles found in one of the following categories are an exception:
    - Vehicles used exclusively for the purpose of emergency services, security and protection purposes, as well as for courier services;
    - Vehicles used by sales and acquisitions agents, as well as for test drives and demonstrations;
    - Vehicles used for the transportation of persons for a fee, including taxi services;
    - Vehicles used for rendering services for a fee, including rental to other persons, transfer of the right of user, operational leasing agreements or for instruction purposes by driving schools.
- Publication in the Official Journal of Romania of Order no. 877/2013 that approves the tax registration procedure for non – resident taxpayers carrying out activities in Romania through one or more permanent establishments, as a result of these taxpayers being required to designate a permanent establishment to fulfill their corporate income tax obligations starting 1 July 2013.
- Non – resident taxpayers carrying out activities in Romania through multiple permanent establishments are required to close the current fiscal period by 30 June 2013 and to submit the 101 return no later than 25 July 2013, for all existing permanent establishments.
- Starting 1 July 2013, the sum of the expenses incurred with the day subsistence allowance granted to employees for domestic or international business trips, that surpasses by 2,5 times the legal level established for public institutions, should be considered deductible upon the computation of the corporate income tax (due to the fact that it is taxed according to title III of the Fiscal Code).

b) Personal income tax

- Repeal of the income tax deduction of up to 300 lei a year for investments in the collective savings system for housing;

- The Norms to the Fiscal Code clarify that contributions paid to private pension funds set up within the European Union or the European Economic Area, paid by an employer on behalf of its employees are not taxable up to the limit of EUR 400 per participant per year.

2. Indirect Tax

a) VAT

- VAT adjustments for demolitions - the decision of the European Court of Justice in case of C-257/11 Grand Via Moinesti regarding the right to deduct VAT related to the acquisition of land and buildings constructed on that land which were subsequently demolished was transposed into the Romanian legislation. Romanian real estate developers purchasing buildings subject to demolition are no longer required, therefore, to adjust the input VAT related to these buildings.
- VAT amendments for leased goods not repossessed following the early termination of financial leasing contracts - leasing companies are no longer required to adjust the VAT related to not repossessed goods following the early termination of leasing agreements, as long as the company can prove that it initiated the recovery procedures for these goods, regardless of whether or not the goods are recovered further to the finalisation of the recovery procedures.
- Companies registered for VAT purposes have the right to deduct the VAT related to the acquisitions of goods and services with a value of less than EUR 100, based on a fiscal receipt, as long as that receipt also specifies the VAT registration number of the beneficiary.
- As of 1 September 2013, the reduced VAT rate of 9% applies for the supply of bread, wheat and flour.
- As of 1 September 2013, the reverse charge mechanism applies for supply of energy to taxable persons and for green certificate transactions. This provision applies until 31 December 2018.

b) Excise

- Additional non – harmonized excise duty has been introduced for luxury items, namely gold and/or platinum jewelry (except wedding rings), natural fur garments, cars (both new and used) of over 3,000 cc, hunting weapons and personal weapons and ammunition, yachts and other pleasure craft, with or without engine. The aforementioned products are added to the list of goods which are already subject to non – harmonized excise in excise (green/roasted or soluble coffee, certain beers or fermented beverages).
- An increase in excise duties on ethyl alcohol from EUR 750/ hl of pure alcohol to EUR 1,000/hl of pure alcohol.

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SLOVAKIA

Major developments (March 2013 – August 2013)

INCOME TAX

Taxation of income from bonds

An amendment to Slovak Income Tax Act introducing a new approach to the taxation of all kinds of bonds (in Slovak: *dlhopisy*), came into effect on 1 July 2013.The income from the bonds paid by a Slovak tax resident to individuals or legal entities (both Slovak tax residents and non-residents) is no more subject to Slovak withholding tax unless it is paid to specific entities (i.e. to a non-profit organization, the Slovak National Property Fund or the Slovak National Bank).

Nevertheless, income from the bonds paid by a Slovak tax resident may be subject to 19% securing tax if the recipient of such payments is not a tax resident of an EU Member State and has a permanent establishment in the Slovak Republic to which such payments are attributable.

Furthermore, the income from the bonds paid out by a Slovak tax resident to a Slovak tax non-resident not having a permanent establishment in Slovak Republic is not considered as an income from sources in the Slovak Republic. Therefore, such income of Slovak tax non-resident (individual or legal entity) is not subject to taxation in the Slovak Republic.

For Slovak tax residents, the income from the bonds will be included in their income tax base, they will be required to declare this income in their income tax return and this income will be subject to Slovak income tax at a respective rate, i.e. 19% or 25% for individuals and 23 % for legal entities.

Tax credit for investment aid recipients

As of 1 May 2013 came into effect the amendment of Slovak Act on Investment Incentives that amends the provisions of the Slovak Income Tax Act governing the conditions for tax credit. The investment aid recipients are now entitled to claim a tax credit according to one of two schemes of state aid (as opposed to one scheme that was available prior to 1 May 2013).

HEALTH INSURANCE

From 1 July 2013, due to the changes in the Slovak Income Tax Act, the income from the bonds will be included in the assessment basis for calculation of health insurance contribution of individuals that are subject to Slovak mandatory health insurance. A 14 % rate will apply.

Miriam Galandova
Member of the Methodical Commission for International Taxation by the Slovak Chamber of Tax Advisors

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SLOVENIA

PERSONAL INCOME TAX

The new system of flat rate expenses has been introduced in the Slovenian personal income tax system as an option for taxpayers with yearly revenue of up to EUR 50.000,00. Actual incomes and 70% of flat rate expenses are taken into account. Accrue income is the rule in that system and tax year equals the calendar year. Flat rate taxpayer can't benefit from any other tax reliefs. Tax rate is fixed and is set at 20% and the taxation is set as scheduler. The taxpayer has the obligation of the advance payment of personal income tax (withholding tax has been cancelled in flat rate system).
So far the income of hiring the property has been calculated in the yearly tax base of taxpayer. The tax base has been reduced by 40% of flat rate expenses. Since 1.1.2013 the scheduler taxation has been introduced for the income of hiring property. The tax base is now reduced for 10% of flat rate expenses only and that new tax base is than taxed with 25% tax rate.
Interests and dividends have been taxed with 20% tax rate until 1.1.2013. Since 1.1.2013 the tax rate has been raised to 25%.

CORPORATE INCOME TAX

The amendment of Corporate Income Tax Act has been published in the Official Gazette No. 94 of 10 December 2012, with validity from 11 December 2012 and usage from 1 January 2013.

Also in Corporate Income Tax the flat rate system has been introduced as the possibility. The upper limit for choosing flat rate tax system in the Corporate Income Tax area is EUR 50.000,00 of yearly revenue where 70% of income is treated as tax-deductible expenses.

With the amendment the use of lost from previous tax years has been limited at 50% of rolling period tax base where this provision has been in use for tax periods starting on 1 January 2013 or later.

The source of income in Slovenia from services has been changed with the amendment. Income from services has source in Slovenia if services are performed in Slovenia or it they are charged to the resident or non-resident via his business unit in Slovenia. Since the amendment has come into effect there has been only few listed services that have source in Slovenia taxed by the withholding tax. These are services of consulting, marketing, marketing research, staffing, administration, IT and legal services – if they are paid in the country with lower taxation.

VAT

Since 1 July 2013 the higher VAT tax rate has been in use. The standard rate has been raised from 20% to 22% and the reduced tax rate has been raised from 8,5% to 9,5%.

The value for entering the VAT system was limited at EUR 25.000,00 of taxable income until 31 March 2013. Since 1 April 2013 that value has been raised to EUR 50.000,00. The raise is a result of the Council approval for discrepancy from Article 287 of Directive 2006/112/ES.

TAX PROCEDURE ACT

Article 20 of Tax Procedure Act has been amended. Based on the amendment taxpayers who owe payment of tax, which are otherwise protected by tax secrecy institute, can now be publicly disclosed due to the stronger public interest. Tax debtors are now publicly disclosed once a month. With this provision the legislator wants to decrease the problem of non-payment of public duties on one side and to encourage the free-will payment of them. If tax debtor is a legal person there is also a private individual that owns a legal person disclosed in the list. Slovenian tax authority published the list of tax debtor on 15 April 2013 for the first time.

With the amendment of Tax Procedure Act there has been the Directive 2011/16/EU from 15 February 2011 implemented in Slovenian legal order. In comparison with the previous Directive 77/799/EGS the new Directive broadens the areas of cooperation in tax matters to all taxes, except VAT, duties, excise duties and social security contributions.

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SPAIN

SPANISH REPORT - MARCH 2013 - SEPTEMBER 2013

1- New tax measures

Law 11/2013, of 26 July has approved specific tax measures which are intended to promote entrepreneurship and stimulate growth and job creation. The main tax developments are as follows:

(i) **Corporate Income Tax:** for those companies incorporated since 1 January 2013, the first EUR 300,000 of the tax base will be taxed at a rate of 15%, with excess amounts taxed at a rate of 20% (Small and medium enterprises are taxed at the rate of 20% for the first EUR 300,000 and at a rate of 25% for the excess). These rates will be applicable the first tax period in which the new company generates profits and in the subsequent year.

(ii) **Personal Income Tax**: in accordance with the measure introduced regarding Corporate Income Tax, those taxpayers of Personal Income Tax that initiate a business activity from 1 January 2013 may apply a 20% reduction (up to an amount of EUR 100,000) on income received from business activity during the first tax period in which the taxpayers generates profits and in the subsequent year.
Law 11/2013 also repeals the threshold that was applicable to the exemption for the payment of unemployment benefit in the form of a lump sum.

In addition to the above, a new series of modification to Spanish tax legislation, in particular regarding Value Added Tax and Corporate Income Tax will be approved in the following weeks. These tax measures are also aimed at supporting new entrepreneurs and job creation and includes, among others, the approval of the VAT cash accounting scheme (applicable under certain circumstances) and new tax credits (i) for the reinvestment of profits and (ii) for investments made in R&D and technological innovation.

2- New convention for the avoidance of double taxation between Spain and Argentina amending the current US-Spanish Tax Treaty

On 13 March 2013, Spain and Argentina signed a new convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and net worth (the "**New Convention**").

The New Convention replaces the one previously in force, which had been unilaterally terminated by Argentina on 29 June 2012 and, therefore, ceased to have effects on 31 December 2012.

The wording of the New Convention is almost similar to that of the former one. However, there are some novelties, of which the following are worth highlighting:

- **Article 6 ("*Income from Real Property*")**: the scope of this article is extended to include income from real property that directly or indirectly derives from the ownership of shares or any other rights. According to this article, the Contracting State where the real estate is located shall be entitled to tax that income.
- **Article 11 ("*Interest*")**: the maximum tax rate on interest income is reduced to 12 per cent (in the former Convention, the maximum rate was 12.5 per cent).
- **Article 12 ("*Royalties*")**: the maximum tax rate on royalties derived from the use of software is reduced to 10 per cent (in the former Convention, the relevant rate was 15 per cent).
- **Article 13 ("*Capital Gains*")**: the Contracting State where the relevant real estate is located is granted the right to tax the capital gains obtained from the transfer of shares of real estate companies. Additionally, this right is not subject to the general caps established for capital gains obtained from the transfer of shares of non-real estate companies (i.e. 10 per cent in cases of participations of at least 25 per cent in the capital of the companies whose shares are being transferred and 15 per cent in any other cases).
  On the other hand, coherently with the amendment introduced in Article 6 of the New Convention (see above), the Contracting State of location of the real estate is granted the right to tax the capital gains derived from the transfer of the shares or rights that, directly or indirectly, entitle the use of the real estate.
- **Article 22 ("*Net Worth*")**: pursuant to the former Convention, the Contracting States could not impose any taxes on the net worth formed of shares or participations in the capital or equity of companies. This restriction was the main reason why Argentina unilaterally terminated the former Convention, since it meant that companies resident in Spain that held shares in Argentinean entities were exempt from the Argentinean Net Worth Tax (*Impuesto sobre Bienes Personales*).
  With the wording of the New Convention, Argentina shall be entitled to tax the mere holding by companies resident in Spain of shares of Argentinean subsidiaries. It must be pointed out that in Spain legal entities are not subject to net worth tax.
- **Article 26 ("*Exchange of Information*")**: the wording of this article has substantially changed to reinforce, extend and improve the mechanisms for the exchange of tax information between Spain and Argentina.
- **Protocol to the New Convention**: among other amendments, the most-favored-nation clause set forth in the former Convention has been removed.
- **Memorandum of Understanding**: together with the New Convention, Spain and Argentina signed a memorandum of understanding which, in line with the clauses of other double taxation conventions signed by Spain in recent years, includes several anti-abuse clauses (limitation of benefits, beneficial owner clause, etc.), aimed at avoiding the fraudulent use of the benefits of the New Convention (treaty shopping).

The New Convention will have retroactive effect from 1 January 2013. Therefore, given that the previous Convention ceased to apply from 31 December 2012, investors will be protected from any damages caused by the absence of legal mechanisms to avoid double taxation.
With this goal in mind, both countries are expected to move swiftly through the legal procedures necessary to formally approve the New Convention.

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SWITZERLAND

Developments in tax law since March 2013 - Switzerland

Revision of tax treatment of holding, management and mixed companies

The Swiss government is currently working on the revision of corporate income taxation.

Today, Swiss and foreign controlled holding companies established in Switzerland do not pay corporate income taxes on cantonal level. This results in an effective tax rate of 7.83% for federal income taxes.

Swiss and foreign controlled domiciliary and mixed companies qualify for a privileged taxation on cantonal level. Thus, the overall effective income tax rate amounts to 8-12%, depending on the canton and the quota of foreign activity of the company.

Domiciliary companies are not allowed to perform a commercial activity in Switzerland. However, activities abroad are permissible without restriction. Mixed companies do perform activities in Switzerland, but the predominant part of the activities – approx. 80% of the income and expenses – have to be allocated to activities abroad. Often, these activities are trade activities.

The EU commission urged Switzerland to abolish the unequal treatment of domestic and foreign trade activity and in conjunction also the tax privilege of holding and domiciliary companies.

The current revision of corporate income taxation takes therefore into account this criticism. Conditions for the cantonal holding status shall be adapted to international standards. Today an active business in Switzerland is allowed to a certain extent. In the future if a holding company performs any operational activity the holding status will generally not be granted. Domiciliary and mixed companies will de facto be abolished completely in the next couple of years.

To stay competitive in the international environment, the Swiss government takes into consideration the implementation of some measures, e.g. the promotion of R&D efforts, introduction of “IP boxes” and “innovation boxes”, lowering the effective tax rates, etc. It is envisaged that the overall effective corporate income tax rate lies between 10 and 15%.

None of the above changes is finally decided, thus, it is unclear when changes will be set in force. In any case, it can be assumed that “grandfathering clauses” of 3-5 years will be granted for companies that are affected from the above changes.

Abolition of Swiss Share Issuance Tax

After the abolishment of the Swiss Share Issuance Tax on the debt capital on March 1st, 2012, the Swiss Federal Council plans to abolish the Share Issuance Tax on equity as well. Currently the Share Issuance Tax on equity amounts to 1%. The abolition is broadly accepted. Nevertheless, at the moment, it sees that this part of the revision will not be detached from the other topics of the corporate tax revision and the whole revision will be treated in one package.

Walo Staehlin, Switzerland

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THE NETHERLANDS

CFE National Report on recent developments in tax law

Since March 1, 2013 the following important tax measures have entered into effect:

- Corporate income tax and personal income tax
    - Introduction of facilities for extension of payment of corporate income tax and personal income tax due in case of relocation of the place of effective management of enterprises (exit taxes). The new facilities will have retroactive effect as from November 29, 2011 and relate to the decision of ECJ in case C-371/10 (National Grid Indus);
    - Introduction of a temporarily facility for tax depreciation for investments in the period between 1 July 2013 and 31 December 2013: the costs of these investments can be depreciated at once up to a maximum of 50% of the amounts actually paid.
- Personal income tax
    - Additional grandfathering rules with regard to the newly introduced limitation of mortgage interest deduction for loans concluded on or after 1 January 2013.

Furthermore, the Ministry of Finance has announced a tax bill to establish that the Dutch participation exemption will not apply to dividends and capital gains or losses that in fact relate to a period that a specific shareholding did not qualify for this exemption. The new measures will have retroactive effect as from June 14, 2013.

Also, it can be noted that Dutch tax authorities are reluctant to grant VAT registration numbers to private individuals that own private photovoltaic installations connected to the electricity network, with the purpose to claim input VAT deduction on the basis of the decision of ECJ of 20 June 2013 in case C-219/12 (Fuchs).

Culemborg, August 21, 2013
Dr. Ruud Zuidgeest

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UKRAINE

Tax developments in Ukraine since March 2013. New transfer pricing rules

Starting from 1 September, new Ukrainian transfer pricing law came into force. The Law provides significant developments in respect of determination of controlled transactions, application of transfer pricing methods, transfer pricing documentation and reporting requirements, transfer pricing audits procedures, advance pricing agreements (APAs), etc.

I. Controlled transactions

TP rules apply only to controlled transactions.

According to the Law on TP, the list of controlled transactions will include:

- Transactions of the taxpayer with related parties non-residents of Ukraine.
- Transactions of the taxpayer with related parties residents of Ukraine that:
    - declared tax losses for the previous tax year;
    - apply special tax regimes as of the beginning of the tax year;
    - apply CPT and / or VAT rates other than the standard rates at the beginning of the tax year;
    - are non-CPT and / or non-VAT payers at the beginning of the tax year.
- Transactions with residents of low tax jurisdictions (where the corporate profits tax rate is less than the Ukrainian rate by 5%). The list of the low tax jurisdictions will be set by the Cabinet of Ministers of Ukraine (CMU).

The threshold for controlled transactions will be UAH 50 million, net of VAT (will apply cumulatively for all transactions with one counterparty per year).

It is unclear how this rule will apply in case of loan and agency arrangements.

The contracting price in uncontrolled transactions should be accepted by the tax authorities.

II. Transfer pricing methods

The Law on TP provides five methods for determining the market price.

1. Comparable uncontrolled price (CUP) method (based on the price of identical/similar goods).

2. Resale price method (based on the price in a resale to a non-related party).

3. Cost plus method (based on the cost of a purchase from a non-related party and a sale in a controlled transaction).

4. Net profit (margin) method (used in the absence/lack of information for the application of other methods).

5. Profit split method (in cases of interdependent controlled transactions and/or essential intangible assets owned by the parties).

The CUP method is the primary transfer pricing method to be used over all other methods. If this method is not relevant, the taxpayer is entitled to choose the most appropriate method. This should be accepted by the tax authorities provided the choice of the method is justified.

The taxpayers are entitled to use the combination of two or more than two methods provided in the Law on TP. Using methods or combinations of methods that are not prescribed in the Law on TP is not allowed.

III. Advance pricing agreements

Large taxpayers have the right to agree in advance on the prices in controlled transactions with the Ministry of Income and Charges.

IV. Transitional provisions

The Law on TP prescribes transitional provisions for a five year period for foreign trade transactions with residents of low tax jurisdictions in respect of the prescribed types of commodities, such as agricultural, metal, iron ore and chemical products.

Taxpayers performing these transactions shall use at own choice the following two options for the determination of prices for tax purposes:

- use the information about the prices of the stock exchange (for commodities traded on the stock exchange) or prices published in the official sources of information set by the CMU (for other commodities) and adhere to the permissible deviation percentage of up to 5%; or

- justify the prices by using one of the methods set and disclose copies of the contracts for subsequent sales of commodities to unrelated parties.

Oleg Shmal

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UNITED KINGDOM

Report on UK developments March to September 2013

Finance Act 2013
The Finance Act received Royal Assent in July and is now law.

Finance Bill/Act 2014
The government has begun consulting on legislation to be introduced next year and will publish draft clauses in December, for further consultation in early 2014. Finance Bill 2014 will then be published in April next year after the Budget in March and following parliamentary scrutiny over the summer months the Bill will become an Act in July 2014.

Direct Tax: corporates

Headline rate of tax
Corporation Tax rate is to be progressively reduced from 24% in 2012-13, to 23% in 2013-14, to 21% in 2014-15 and then to 20% from April 2015.

Annual investment allowance
For 2 years from 1 January 2013 investment of up to £250,000 in plant and machinery can be fully written off for tax purposes.

Patent Box
The Government has introduced an optional "patent box" regime from April 2013. Profits arising from "actively" held patents within the regime are taxed at 10%. The relief will be phased in over a four year period, starting at 60% of the full relief from 2013 and reaching full 100% relief from 2017.

Controlled Foreign Companies
A new regime came into force for accounting periods beginning on or after 1 January 2013.The new regime will "target" income that would otherwise have been UK income but has been artificially diverted abroad. Finance companies will be exposed to tax only at 5%, when the full rate is down to 20% in 2015. The CFC regime will continue to tax overseas entities, rather than bad income, but will only tax in the UK the part of the overseas entity's income that falls within the new regime.

General Anti-Abuse Rule (GAAR)
A GAAR was introduced in July 2013. It will counteract abusive tax arrangements which are defined as arrangements which "cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions". There is an Advisory Panel which does not have any HMRC representatives on it which will provide an independent assessment as to whether they think the GAAR should apply in particular circumstances.

Exit charges

The UK has introduced, in FA 2014, a 6 year instalment regime, or a deferral regime which has a maximum deferral of 10 years, for the capital gains charge that would otherwise arise when companies become non UK resident or overseas companies close their UK permanent establishments. This is to comply with the CJEU National Grid Indus BV case.

Direct Tax: individuals

Income Tax Rates
The top rate of income tax (applying to individuals with income over £150,000) is reduced from 50 to 45% with effect from April 2013.

Statutory Residence Test
A statutory residence test started on 6 April 2013.

Stamp Duty Land Tax on residential properties
The rate of this tax is increased to 7% for properties over £2 million , with a 15% rate applicable to purchases by companies or other "non-natural" persons.

Pensions
The amount of pension contributions on which individuals can get tax relief which is £50,000 a year at the moment is going to be reduced to £40,000 from the 2014/15 tax year onwards.

Indirect Tax

UK VAT developments March to September 2013

March 2013

- 7 March CJEU delivers decision in Wheels case (C-424/11) confirming HMRC's view that defined benefit pension investment management services are subject to VAT
- 15 March – Supreme Court (Aimia Coalition [2013] UKSC 15) concludes that Aimia (formerly Loyalty Management UK Ltd) can recover input VAT on invoices it receives from 'redeemers' for the value of goods and services they agree to supply to 'collectors' who exchange Nectar points for the goods or services provided by the 'redeemers'.

April 2013

- 1 April - new VAT registration turnover threshold (£79,000) and deregistration threshold (£77,000) become effective
- 25 April CJEU confirms (Case C-86/11) the UK practice that non-taxable persons can be included in VAT groups

May 2013

- 1 May – Supreme Court concludes WHA Ltd did not provide garage repair services ([2013] UKSC 24) and so input VAT on related costs could not be recovered.
- UK takes part in a test case with 12 other EU member states for private VAT ruling requests relating to cross-border situations.

June 2013

- 20 June – CJEU (Case C-653/11), clarifies that contract terms are not decisive for identifying supplier and the recipient of a 'supply of services' in the case of offshore advertising services promoting a UK based financial advisory firm.
- HMRC issues brief on the "modified" VAT treatment of transaction charges in the context of discretionary portfolio management services following the CJEU decision in Deutsche Bank. For most UK investment managers, the new policy represents no change - provided that all client documentation and correspondence continue to show the transaction charges as a) separate from the investment management fee and b) charged on the basis of actual transactions, as distinct from a periodic charge.

July 2013

- 18 July CJEU decision in PPG (Case C-26/12) means no change in the VAT treatment of investment advisory services to pension funds for the UK.

SDLT developments 5 March 2013 to 20 August 2013

The March budget introduces new reliefs and revises the 15% SDLT charge applying to certain acquisitions (by companies, partnerships with a company member and collective investment schemes) of single dwelling interests with a taxable value exceeding £2m. The reliefs apply from 17 July 2013.

ATED developments 5 March 2013 to 20 August 2013

A new annual tax (Annual Tax Enveloped Dwellings) banded according to the value of single dwelling interests with a taxable value exceeding £2m held by certain companies, partnerships with company members and collective investment schemes, was introduced with effect from 1 April 2013. The first return in respect of properties within the charge is due on 1 October 2013.

ICAEW Tax Faculty / Chartered Institute of Taxation
September 2013

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