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CFE Fiscal Committee

National Reports

January 2013

127th Meeting

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BELGIUM

Belgium – Major developments (September 2012 – December 2012)

Corporate Income Tax

- ***Notional interest deduction***

The carryover of excess NID to the 7 following tax periods has been abolished as from assessment year 2013. Transitional measures however apply for the existing stock of carried forward NID at the end of the 2012 assessment year.
The government also announced that the rate of the notional interest deduction will be lowered from 3 % (3,5 % for SME's) actual to 2,742 % (3,242 %) for assessment year 2014 (income of book years closed as from 31/12 2013)

- ***Introduction of a new tax on capital gains on shares***

Companies that are not considered as small companies in the meaning of article 15 of the Companies' Code will be subject to a separate taxation of 0,4% (0,412 % including crisis contribution) on the capital gains realized on shares :

- Of which the dividends fulfill the qualitative conditions for the "Dividends Received Deduction";
- That the company holds for an uninterrupted period of minimum one year.

Note that no deduction of previous losses, notional interest deduction, investment deduction, etc. nor compensation with the current year's tax losses can be made on such capital gains.

This measure will be effective as from assessment year 2014. Any amendment made as from 21 November 2012 to the closing date of the financial year will have no effect on the application of this measure.

The following table summarizes the rules applicable to capital gains on shares further to the various changes introduced in 2012 (assessment year 2014)

Small companies (art. 15 Companies' Code)

Qualitative conditions	OK	OK	NO	NO
Holding period of min 1 year	OK	NO	OK	NO
	↓	↓	↓	↓
Tax rate*	Exemption	25%	Normal rate	Normal rate

Other companies

Qualitative conditions	OK	OK	NO	NO
Holding period of min 1 year	OK	NO	OK	NO

	↓	↓	↓	↓
Tax rate*	0,4%	25%	Normal rate	Normal rate
*to be increased with the crisis contribution of 3% =	0,412 %	25,75 %	normal rate = 33,99 %	

Taxation of Movable Income

As from 01/01/2013, the rate of the withholding tax is increased to 25% for most of the movable incomes (for exceptions, see the summary table below).

The supplementary contribution of 4% for certain movable income is abolished and the movable withholding tax has regained its final character with respect to interests and dividends.

Rate of the movable withholding tax

WHT rate	***Income***
10%	Liquidation bonuses
15%	Non-exempted part of the interests on regulated savings accounts (i.e. the part that exceeds 1.880 EUR)
15%	Interests on government bonds subscribed to between 24/11/2011 and 02/12/2011 and issued on 04/12/2011
15%	Dividends of residential SICAFIs.
15%	Author rights below the ceiling of 56.450 EUR (note that the declaration of these revenues is obligatory)
25%	Other movable income

Individual Income Tax

A series of tax deductions have been transformed into tax reductions, the rate of which is henceforth limited to 45% or 30%, depending on the expenditures in question.

Non-Residents Income Tax

- ***Non-resident income tax applicable to new categories of income***

2 new categories of taxable income for non-resident income tax purposes were introduced in the Belgian Income Tax Code.

The first category includes the income for which a tax treaty allocates to Belgium the taxing right but which were, until now, not subject to tax according to Belgian internal tax rules when paid or attributed to non-residents, while they were taxable in Belgium when received by Belgian resident taxpayers.

The income of this first new category must fulfill the following conditions:

- Income is not mentioned as taxable income in the other provisions of the Belgian Income Tax Code applicable to non-resident taxpayers, while it is considered as taxable income for resident income tax purposes;

- Income is borne by a Belgian resident (individual or legal entity), by a public body (State, Regions, etc.) or by a Belgian establishment of a non-resident;
- Income is taxable in Belgium according to the applicable tax treaty.

The second new category of income that will be subject to non-resident income tax further to the adoption of the law concerns situations where no tax treaty is applicable. The income of this category must fulfill the same first 2 conditions as mentioned for the first category and a third condition: the income will only be taxable in Belgium if it is not actually taxed in the beneficiary's residence state.

This measure applies as from January 1, 2013.

- ***New wage withholding tax obligations***

Belgian taxpayers paying such income will have to withhold a (wage) withholding tax on this income. Withholding tax rate should be fixed at 33% by a Royal Decree and should be applied after deduction of a lump sum of costs of 50%. Furthermore the rate will be reduced according to the applicable tax treaty (5 to 11% depending on the tax treaty). This applies as from January 1, 2013.

The withholding tax will in principle be the final tax due on the income. As from assessment year 2014 (income year 2013), the non-resident will however be able to opt for the globalization regime, allowing him to deduct his real business expenses. It is important for those who pay or receive income that could be subject to the new rules to review their situation, especially as regards wage withholding tax.

- ***Other tax measures affecting non-residents***

Non-residents who received more than 75% of their professional income from Belgian sources will have the possibility to deduct the alimony paid to non-residents. It is important to note that the Memorandum of Understanding explicitly confirms the administrative position according to which the 75% threshold applies to the complete taxable year (applicable as from January 1, 2013).

A more uniform reference to the concept of permanent establishment is introduced in the Belgian income tax code (applicable as from January 1, 2013).

Belgian internal tax law is brought in line with the treaties according to which services provided by an individual in Belgium, without a fixed place of business, constitutes a permanent establishment when the services are rendered during one or more period exceeding 30 days in any period of 12 months (applicable as from January 1, 2013).

An anti-abuse measure was introduced in order to avoid that building sites, constructions or installation projects are divided in different contracts of a duration shorter than the one provided for by the tax treaty to constitute a permanent establishment and attributed to different group companies. This rule will not apply if the taxpayer demonstrates that the division into different contracts is justified by other

reasons than the avoidance of the term after which the activities constitute a Belgian or a permanent establishment (applicable as from January 1, 2013).

VAT

- ***New rules on electronic invoicing, VAT liability, self-billing and receipt of payment as from 1 January 2013***

As regards electronic invoicing, some aspects have been specified and simplified:

- A broad definition of the electronic invoice is now integrated in the VAT Code
- An implicit acceptance by the contracting partner is now sufficient
- The authenticity of origin and the integrity of the content can be guaranteed through internal business controls
- The archiving of the electronic invoices may be carried out through a server located outside Belgium
- The invoices can be stored on paper or electronically, whatever their original form. In all cases, it is always required that the authenticity, the integrity and the readability are guaranteed during the whole storage period, whatever the form of the invoices.

As regards the VAT liability, the invoice is no longer a cause for the chargeability of the VAT. However, in a transitional phase, VAT taxpayers are allowed to continue to apply the old rules during 2013 (i.e. on the one hand, the supplier reports VAT immediately in the VAT return which relates to the period in which the advanced invoice is issued and on the other hand, the customer can immediately deduct the VAT amount without having to await the payment or the time of supply or completion of the service).

VAT taxpayers are also be entitled to apply the new rules in 2013. This means that suppliers can freely choose to not account for VAT in their VAT return when they ask for an advanced payment provided that:

- the advance payment is asked by means of a document other than an invoice;
- this document mentions no VAT, no VAT rate and no reason why no VAT is accounted for (e.g. no reference like 'VAT inclusive').

If the aforementioned document would mention a VAT amount, then it is considered to be an invoice and consequently, the old rules as set out above are applicable.

- VAT deduction rules for investment assets (company cars)

Since 1 January 2011, the general rule is that the deduction of VAT on company cars is limited to their business use. As the new regime is hard to apply from a practical point of view, the VAT authorities decided at the end of 2011 to suspend it in anticipation of further guidelines. The new guidelines were published in December 2012, and apply as from 1 January 2013. Taxpayers are allowed to choose between 3 methods to determine the business use of their company cars:

- The first method is based on the actually covered kilometers on the basis of an administration of all journeys for each individual car.
- The second method is a semi lump sum method. This method starts from a private use calculated as the sum of a pure private use – estimated at a lump sum of 6.000 km per year – and a use for commuting – calculated following the actual home-to-work distance and a lump sum of 200 working days. This private use is then compared to the total of actually covered kilometers according to the milometer.
- The third method starts from a general lump sum business use determined at 35%. This method can only be applied by taxpayers having at least four vehicles.

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CZECH REPUBLIC

Tax news from October until December 2012 for the Czech Republic

Income tax

- Solidarity surcharge
  - Additional 7% tax on personal income exceeding CZK 103,000 per month; applicable for employment income and entrepreneurial income; calculated from the gross salary; obligation to file a personal income tax return
- Increase of WHT rate to 35 %
  - This rate will be applied to the income whose source is in the Czech Republic and the recipient of that income is the resident of the country with witch the Czech Republic has not concluded a double tax treaty.
- Cancellation of cap on health insurance
  - For both the employee and the employer; for 3 consecutive years
- Use of 30 % and 40 % flat-rate expenditure
  - Only individuals with an income of less than CZK 2,000,000 will be entitled for using
- Cancellation of tax relief (wife/husband, children)
  - For self-employed and individuals receiving rental income that use the flat-rate expenditures; this limitation is applied only if the total amount of the partial tax bases for which the flat-rate expenditure was used exceeds 50 % of the total tax base
- Cancellation of tax payer's tax relief of CZK 24,840
  - For pensioners for 3 consecutive years

Value added tax

- Increase of VAT rates to 21 % (standard rate) and 15 % (reduced rate)
- Extend the period for VAT exemption on transfer of buildings from 3 years to 5 years

  After expiry of that period, the supply of the building is exempt, albeit that the supplier will be able to opt for taxation of the supply.

- Insurance services

  The scope of the exemption for insurance services has been narrowed to the effect of excluding settlement of insurance claims (if that service is provided separately) from the exemption.

- Joint liability

  The tax authorities may hold the recipient of a taxable supply of goods or services jointly and severally liable for payment of the VAT that the supplier has not remitted to the tax authorities, if they have earmarked the supplier as an "unreliable person".

  The tax authorities may also hold the recipient of a taxable supply of goods or services jointly and severally liable for payment of the VAT that the supplier has not remitted to the tax authorities, if the payment is made to the bank account of the supplier not published in the Register of the registered taxable persons.

- Second Invoicing Directive

  The rules contained in the Second Invoicing Directive have been implemented.

- Identificated person

  New category of the registered persons has been introduced.

Other changes

- Increase of real estate transfer tax from 3 % to 4 %
- Increase of selected excise taxes (excise tax on tobacco, “green fuel" etc.)

Prepared by: Martin Houska and Milan Tomicek

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GERMANY

Annual Tax Act 2013

Due to a disagreement of the different political institutions on the equality of a registered partnership with the marriage the 2013 Annual Tax Act was not passed at the end of 2012 by the Upper House of parliaments and was referred to the Conciliation Committee. The version worked out by the Conciliation Committee, which still contained the above mentioned amendment, failed approval by the lower house of parliaments on 17 January 2013. It can be assumed that the legislative process of the 2013 Annual Tax Act has failed. However, it is possible that some or most of the intended amendments will now become part of different legislation and thus could still become law.

From an international tax perspective, the main item included in the 2013 Annual Tax Act is the implementation of the "Authorized OECD Approach" (AOA) on the attribution of profits to a permanent establishment into domestic law. Under the AOA, the permanent establishment is treated as a separate and independent enterprise. The new paragraph 5 of Sec. 1 of the Foreign Transactions Tax Law (FTTL) will implement the AOA. Therefore, the arm's length principle will apply to all types of cross-border attribution of profits to permanent establishments. Pursuant to the Act, the first step to attribute profits to a permanent establishment will involve:

- identifying significant people functions;
- attributing economic ownership of assets to the permanent establishment;
- attributing risk to the permanent establishment; and
- attributing appropriate capital to the permanent establishment.

Based on these allocations, the second step will be to set up a tax balance sheet in order to determine the profits of the permanent establishment. A dependent agent will also be seen as a permanent establishment. Where German exit taxation rules apply, relevant tax deferral provisions will remain applicable and will not be suspended by Sec. 1 FTTL.

In addition, the Act empowers the Federal Ministry of Finance to issue guiding regulation on transfer pricing issues. Thus, the Federal Ministry of Finance will be entitled to issue guiding regulation relating (i) to the application of the arm's length principle between related parties or between a company and its permanent establishment, and (ii) for the determination of the attribution of appropriate capital to the permanent establishment.

The Act further specifies that partnerships will come within the definitions of "taxpayers" and "related parties" (where applicable) for the purposes of Sec. 1 Foreign Transactions Tax Law (FTTL). In addition, the Act revises the definition of "business relationship". Under the revised definition a relationship is no longer limited to a relationship under the law of obligations, but will include any economic transaction thus implementing the OECD understanding of "dealings" into the FTTL.

Further amendments of the 2013 Annual Tax Act include, inter alia, some changes to VAT law as well as the implementation of the 2009 EU information exchange and administrative cooperation directive.

Business Tax Reform Act 2012

Next to amendments to the tax treatment of travel expenses, the Business Tax Reform Act 2012 contains certain simplifications and liberalization of the current German consolidated group taxation system. Like the 2013 Annual Tax Act the Business Tax Reform Act 2012 was not passed by the upper houses at the end of 2012. The Conciliation Committee which was called worked out some changes to the Act to make it acceptable by both houses of parliaments. The amended Act was accepted by the lower house of parliaments on 17 January 2013. The upper house is expected to deal with the amended Act on 1 February 2013. The Act provides for the following changes regarding German group taxation:

Negative income of the parent or subsidiary company will not be taken into account for domestic tax purposes as far as losses of such entities are used either by themselves or by any person in any other jurisdiction, including the EU/EEA (European Economic Area). This loss rule was discussed controversially during the course of the legislative procedure. This current version was concluded in the Conciliation Committee.

Like any German corporation, a qualifying EU/EEA corporation with a German place of management can be part of a group as subsidiary company. Similarly, any foreign entity can be the parent, provided that the German/qualifying EU/EEA subsidiary company can be allocated to a German permanent establishment of the parent.

Further, the Act provides for liberalization of the strict profit and loss transfer rules. A valid German tax consolidation requires, inter alia, that a parent and subsidiary conclude a contractual agreement (profit and loss transfer agreement, PLTA), which obliges the subsidiary to transfer all its profits to the parent while obligating the parent to reimburse the subsidiary for all its losses, as established under German GAAP accounting rules and procedures. Under prior rules, materially wrong German GAAP annual accounts of the subsidiary company could invalidate the tax consolidation by causing an incorrect profit transfer. The Act contains rules in favour of the taxpayer by introducing conditions under which the PLTA is deemed to be executed correctly.

The Act further contains amendments to the formal requirements of the PLTA. PLTA concluded or amended after the effective date of the Act must contain a reference to the “current version of Section 302 Stock Corporation Code,” which governs the loss reimbursement obligations of the parent under corporate law. Existing PLTAs, which were concluded at any prior date and which do not reflect the required reference would have to be amended to comply with the new rule until 31 December 2014. An amendment is not required for the interim years if the tax group is, for whatever reason, terminated prior to 1 January 2015.

Dividends paid to non-resident corporate shareholders – Legislative Developments

Efforts to bring Germany's withholding tax rules on dividends into compliance with EU law have hit a snag when the two houses of parliament were unable to agree on a draft bill that would allow corporate shareholders resident in EU or EEA member states to claim a refund of the tax withheld on certain dividend distributions.

The issue arose as a result of a 2011 decision of the Court of Justice of the European Union (CJEU), in which the court concluded that the German withholding tax regime violates the free movement of capital provisions in the EU treaty and the EEA agreement with respect to shareholdings that are not covered by the EU parent-subsidiary directive (i. e. shareholdings of EU companies of less than 10% and shareholdings of EEA companies).

Under German law, dividends distributed to domestic corporate shareholders generally enjoy an effective 95% exemption (100% of the dividends are treated as exempt, with 5% treated as nondeductible business expenses). A domestic company is granted a tax credit for the withholding tax levied, as a result of which the withholding tax is effectively refunded if no income other than dividend income is earned. However, no credit, apart from tax treaty benefits, is granted to a nonresident shareholder not covered by the EU parent-subsidiary directive, so the withholding tax becomes a final tax burden and thus a true cost. The CJEU ruled that this difference in treatment constitutes a restriction of the free movement of capital provisions and it cannot be justified. As one consequence, nonresident corporate shareholders not covered by the EU parent-subsidiary directive could be entitled to a refund of the tax withheld.

To bring German law in line with the provisions of the EU treaty and the EEA agreement, the lower house of parliament passed a draft bill on 9 November 2012 that allows corporate shareholders resident in other EU or EEA member states to claim a refund of the tax withheld on dividend distributions in certain cases. The provision also covers the tax withheld on dividends paid in the past. When the upper house of parliament rejected the bill, it was referred to the Conciliation Committee to come up with a recommendation that would be accepted by both houses. From the discussions thus far, a compromise might be as follows:

- The withholding tax will be refunded to EU/EEA corporate shareholders for previous tax periods upon application if the requirements in the law are met. One requirement (as proposed by the lower house) is that the withholding tax may not be credited in the foreign country (including a tax credit carryforward) or be deducted from the foreign tax base.
- No refund will be available for future tax periods in cases where the corporate shareholder owns less than 10% of the shares in the corporate entity. Dividends (and capital gains) from these shareholdings generally will fully be taxable and the current 95% tax exemption will not apply, regardless of whether the shareholder is a domestic or foreign corporation (as proposed by the upper house).

The legislation is expected to be finalized by March 2013.

It is unclear whether third country (i.e. non-EU/EEA) corporate shareholders also can rely on the principles of the CJEU decision due to the "standstill clause" in the EU treaty. Under the standstill provision, restrictions of the free movement of capital can be justified in relation to third countries if the

restrictions existed on 31 December 1993 and involve direct investment. The clause does not apply where, after that date, legislation is enacted and is "based on an approach that differs from that of the previous law and establishes new procedures" and gives rise to a restriction. In 2000, dividend taxation in Germany switched from a full imputation system to an exemption system, so there are valid arguments why the standstill clause should not apply to withholding tax.

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IRELAND

Budget 2013

Budget 2013 was delivered at the beginning of December. The following were the key tax measures:

Local Property Tax

The new Local Property Tax was the main feature of Budget 2013. This is an annual tax on residential property and it replaces the temporary Household Charge which applied in 2012. The following are the main features of the tax:

- The tax will apply at a rate of 0.18% on the market value of the property up to €1 million. A rate of 0.25% will apply to the value in excess of €1 million.
- The amount paid will depend on the market value of the property on 1 May 2013. This value will be valid until 31 December 2016.
- Taxpayers will self-assess the value of their property and will have to file a Local Property Tax return.

In certain circumstances, for example, where the tax is not paid by the due date, the tax authorities have the power to direct that tax be withheld from salary, certain social welfare benefits and farm payments.

Income tax / social insurance

- No changes to personal income tax rates, bands or credits. The marginal income tax rates were kept at 52% for employees and 55% for the self-employed.
- The €127 weekly PRSI (social insurance) free allowance for employees was abolished
- PRSI to be payable on non-employment income of all PAYE workers from 1 January 2014
- Deposit interest tax rates increased from 30% and 33% (for frequent and less frequent payments respectively) to 33% and 36%.
- Limited pre-retirement access to supplemental pension benefits introduced. Further changes to be implemented in 2014 to cap tax relief for pension schemes that deliver pension income of more than €60,000.
- Film tax relief to move to a tax credit model (instead of the current investor-led incentive) in 2016

Business taxes

- Enhancement of relief for start-up companies
- Foreign Earnings Deduction relief (for Irish companies sending employees abroad) extended beyond the BRICS countries to certain African countries
- Employment and Investment Incentive (for equity investments by individual investors in Irish companies) to be extended from 2014 to 2020, subject to State Aid approval

- The first €200,000 (up from €100,000) of R&D expenditure will qualify for the R&D tax credit, without reference to the base year of 2003.
- Real Estate Investment Trusts to be introduced
- Public consultation to take place on the taxation of micro enterprises with a view to reducing compliance costs

Capital taxes

- Capital gains tax rate and capital acquisitions tax rate increased from 30% to 33%
- "Carried interest" provisions to be reviewed, to help companies access venture capital investment

VAT

- Threshold for accounting for VAT on the cash receipts basis (for small businesses) increased from €1m to €1.25m

We expect Finance Bill 2013 to be published in early February 2013.

FATCA Inter-Governmental Agreement Signed

In December, an inter-governmental agreement (IGA) on the implementation of FATCA was signed on behalf of the Irish and the US Governments. Under the IGA, Irish financial institutions will report the information required under FATCA to the Irish tax authorities, rather than reporting directly to the IRS. Reciprocal country-to country reporting will then take place between the Irish tax authorities and the IRS. The first country-to-country report will be made in September 2015.

EU Presidency Tax Priorities Outlined

Ireland has taken over the rotating EU Presidency for the period January-June 2013. Ireland's priorities for its EU Presidency term were outlined by the Government in January. In relation to taxation, the priority items identified for the 6-month Presidency term include the following:

- Make progress on the FTT, including working towards an agreement to advance the enhanced cooperation procedure.
- Carry forward the discussions on the CCCTB.
- Continue work on proposals facilitating fast and effective responses to VAT fraud in the form of the reverse charge and quick reaction mechanisms, as well as proposals on the VAT treatment of vouchers.
- Progress the recently adopted proposal for an implementing Regulation governing VAT rules for cross-border services.

- Take forward the Commission's Action Plan to strengthen the fight against Tax Fraud and Tax Evasion, including its Recommendations on Tax Havens and Aggressive Tax Planning.
- Work towards agreement of the revised Savings Directive.

Commissioner Šemeta visited Dublin in January to mark the start of Ireland's EU Presidency. The Commissioner met with Finance Minister Mr. Michael Noonan and he also appeared before a Parliamentary Committee on Finance where he set out his priorities for EU tax policy under the Irish Presidency. These include progress on the FTT, the Action Plan on Tax Evasion and Avoidance, and the CCCTB. The Commissioner also spoke of the need for deeper tax coordination in the EU, along with national taxation that is both competitive and fair. The Irish Tax Institute President Martin Phelan, Chief Executive Mark Redmond and other members of the Institute's Executive Team met with Commissioner Šemeta and engaged extensively on the priority tax issues currently on the EU agenda.

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ITALY

Report Update on Recent Developments of Italian Tax Laws as of December 2012

IMU, i.e., Italian Municipal Tax on Property (hereinafter "IMU") for Charities and Non-Business Entities

On 24 February 2012, the Italian Premier, Mario Monti submitted to the Senate an amendment to Decree-Law No. 1/2012 setting forth "*Provisions on exemption from the municipal tax on real property of charities and non-business entities*", with the objective to allow the EU Commission to thoroughly analyze the issue relating to "*exemption from ICI, i.e., Local Municipality Property Tax for buildings owned by ecclesiastical entities*", in order to settle the infringement procedure activated against the Italian State in October 2010.

In order to restrict the exemption solely to non-business activities, the Ministerial Decree No. 200 of 19 November 2012 (Arts. 3 and 4) sets forth the requirements to non-profit activities as being carried out through non-commercial means, by identifying some valid ones for the general nature of non-commercial entities and pertaining to the minimum contents of these latter's By-laws, and other sector-related ones, differentiated on the basis of the kind of non-profit activity carried out by the particular entity. Any consideration obtained by these entities should be of a minimum amount, in any case not higher than 50% of the equivalent consideration for a service rendered by a comparable business activity.

The EU Commission announced by means of a public notice dated 19 December 2012, that it gave the green light to the above IMU regulation on charities and non-business entities.

Draft Bill on Delegated Tax Law

The Draft Bill on the Delegated Tax regime – containing reform proposals to create a more equitable and transparent tax system having the purpose to enhance economic growth, while pursuing the fight against tax evasion, approved by Cabinet on 16 April 2012 – was stalled by Senate's assessment.

Direct Taxes

With reference to credit losses, Decree-Law No. 83 of 22 June 2012, converted into Law No. 134 of 7 August 2012, introduced less stringent rules for their deductibility.

In particular, the "*certainty and accuracy elements*" required by Art. 101, par. 5 of the Italian Income Tax Code (hereinafter "TUIR") are deemed to exist for deductibility purposes on credit losses, among other things, in the case where:

- the credit amount is negligible (i.e., not more than € 5.000 for large enterprises and not higher than € 2.500 for other enterprises);
- a six-month period has elapsed from the due date for payment of such credit, or if the right for the collection of same has expired.

Furthermore, the measures introduced by the "*Development Decree*" provide streamlined rules for immediate access to the protection granted by bankruptcy law such as, for example, the petition for a composition with creditors without the need to produce simultaneously all of the documentation requested thus far, as well as the possibility for debtor to perform extraordinary management deeds (upon the Court's prior authorization) and the introduction of the so-called "*composition on a going concern basis*" (which sets forth the possibility for debtor's enterprise to continue operating, or the business's transfer/contribution).

The so-called "*Stability Law*" provides for a kind of "*Tobin Tax*" in 2013, i.e., a tax on cross-border financial transactions, which is applicable to trading operations carried out in currency, with the aim to reduce short-term financial speculations. Starting with those transactions concluded as of 1 March 2013, the transfer of share ownership or of other participation-related financial instruments ex Art. 2346, par. 6 of the Italian Civil Code, issued by companies residing in the State's territory, is subject to the new tax with a 0,2% rate on the value of the transaction. For the 2013 tax period, the tax has been fixed at a 0,22% rate.

The tax is not applicable where the transfer of ownership occurs by means of succession or donation.

VAT

As of 1 December 2012, the new so-called VAT "*cash-accounting*" regime enters into force.

Art. 32-*bis* of the "*Development Decree*" implementing the Decree issued by the Ministry of Economy and Finance of 11 October 2012 provided that for the supply of goods and services rendered by taxpayer for a business turnover not exceeding € 2 million vis-à-vis taxable persons VAT is due and payable upon payment of consideration.

For the said entities, the tax pertaining to purchases made is deductible upon payment of the relevant remunerations and in any case, one year from the moment in which the transaction is deemed to have been carried out, pursuant to Art. 6 of Pres. Dec. No. 633 of 1972.

As of 1 January 2013 the invoicing directive (2010/45/EU) has been fully adopted. In addition to the EU requirements, an Italian customer has in any case to be identified on the invoice for the purpose of the

purchase: by VAT identification number in case of business need, by tax identification number in case of a private requirement.

The so-called "*Stability Law*" introduces, instead, for 2013 a percentage increase of the VAT rate which, as of 1 July 2013, will shift from 21% to 22%.

December, 2012

Raffaele Rizzardi – Piergiorgio Valente

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SPAIN

1. Tax measures introduced by law 16/2012

1.1 Introduction

Law 16/2012 of 28 December ("**Law 16/2012**") has introduced various tax measures intended to consolidate Spanish public finances and boost economic activity:

- Balance sheet update up to 129%.
- Provisional limitation on tax depreciation for large sized companies.
- Tax improvements for leases.
- Tax benefits for Spanish Real Estate Investment Trusts ("**SOCIMI**").
- Reform of the tax lease regime.
- Limitation to the 40% deduction for severance payments for Individual Income Tax ("**IIT**") purposes and restriction on the deduction of these amounts for Corporate Income Tax ("**CIT**") purposes.
- Cancellation of the tax deduction for investment in taxpayer's permanent residence.
- New tax on lottery prizes and bet winnings.
- New evaluation of remuneration in kind deriving from use of housing.
- Modification of the taxation of capital gains generated from the transfer of assets held for less than a year.

A summary of these measures is provided below with a special focus on the most significant and potentially relevant aspects in practice[1].

1.2 Balance sheet update

As an extraordinary measure, companies and individuals who carry out business activities are entitled to update the book value of certain assets.

a) **Taxpayers that can opt for this measure:** CIT payers, IIT payers who carry out business activities (and keep their accounts according to the Commercial Code or are obliged to keep records of their business activities) and Non-Resident Income Tax ("**NRIT**") payers with a permanent establishment in Spain.

b) **Assets that can be updated: r**egistered assets in the first closing balance sheet after the entry into force of this law (i.e., after 28 December 2012)[2] provided that they are not (or must be) fully amortized for tax purposes.

The following assets may be updated:

Property, equipment and real estate investments located in Spain or abroad[3], even if they have been acquired through a financial lease (in this case, the effects of the update are subject to the exercise of the purchase option); and

[1] Other measures have been introduced regarding local taxes, special taxes, the Canary Islands general indirect tax, among others.

[2] Or in the corresponding business activity records as of 31 December 2012 for IIT payers obliged to keep them.

[3] Assets of permanent establishments in Spain must be used in connection with economic activities of the corresponding permanent establishment.

Assets recorded as intangible assets by the licensee due to licence agreements subject to the accounting rules of Regulation EHA/3362/2010 of 23 December.

c) **Scope**: it will affect all the assets that can be updated according to the preceding paragraph. Real estate investments can be independently updated.

d) **Procedure**:

- The procedure basically consists of applying certain coefficients to (i) the purchase price or production cost of each asset, (ii) to any improvement made to the assets and (iii) to any tax amortisation.
  The coefficients range from 1 to 2.2946, depending on the date of acquisition or of the improvement. The maximum coefficient, which implies an update of approximately 130%, applies to assets acquired prior to 1 January 1984.
- The increase in the value of assets will be credited to the account "*reserva de revalorización de la Ley 16/2012, de 27 de diciembre*"[4].
- The update must be carried out later than the date of the first closing balance sheet after the entry into force of this law (i.e., after 28 December 2012) but prior to the approval of this balance sheet.
  IIT payers must update the accounts from 31 December 2012 and 30 June 2012 (the deadline to submit the IIT return)
- The balance sheet to be updated must be approved by the corresponding board.

e) **Amortisation of the updated assets**: the net increase in the value of the assets will be amortised in the tax periods starting on 1 January 2015 and during the rest of the asset's useful life, in the same way as renewals, enlargements and improvements.

f) **Special tax**:

- The update will not be subject to CIT, IIT or NRIT.
  However, the update will be subject to a special 5% tax. This tax will be applicable to the amount in the account "*reserva de revalorización de la Ley 16/2012, de 27 de diciembre*" (or, for IIT payers, to the net increase in the value of the assets recorded in the book of investment assets).
- The taxable event will be deemed to occur:
  a) For CIT and NRIT payers, when the updated balance sheet is approved by the corresponding board;
  b) For IIT payers, on 31 December 2012.
- This tax must be settled and paid, in a specific tax return, together with the CIT or NRIT return corresponding to the tax period in which the update has been carried out or together with the IIT tax return for tax period 2012.
- The resulting amount will not be considered tax due for CIT, IIT and NRIT purposes. This amount will be charged to the account "*reserva de revalorización de la Ley 16/2012, de 27 de diciembre*" and will not be tax deductible.

g) **The special account "*reserva de revalorización de la Ley 16/2012, de 27 de diciembre*"**

- Taxpayers are not entitled to dispose of the amount in this account until the Spanish tax authorities audit the account within three years following the date on which the specific tax return is filed.
- Once the Spanish tax authorities audit the account, it may be debited against accumulated losses, to a share capital increase or, after 10 years, to voluntary retained earnings. Taxpayers may

[4] IIT payers must register any increase in the value of assets in the record of investment assets.

distribute the amount in the account when the updated assets are wholly amortised, transferred or removed from the balance sheet.

- The distribution of the account "*reserva de revalorización de la Ley 16/2012, de 27 de diciembre*" may be entitled to a double taxation deduction on dividends set out in article 30 of the CIT Law or to the dividend exemption established in the IIT Law.

1.3 Corporate Income Tax (CIT)

1.3.1 Temporary measures

A. Provisional limitation on tax depreciation for large sized companies.

For tax periods starting in 2012 and 2013, the tax deductible amortisation is partially limited to large sized companies[5].

These taxpayers will be entitled to deduct 70% of the amortisation of tangible and intangible assets and real estate investments, which would have been deductible had the restriction not been applicable[6]. If the amortisation is communicated or approved by the Spanish tax authorities, this restriction will not apply.

The amortisation which, according to this provisional restriction, is not tax deductible will be deductible on a linear basis over a period of ten years or over the useful life of the asset as of the first tax period starting in 2015.

B. Extension of the reduced tax rate to small sized companies

The application to small sized companies (those with a turnover of EUR 5 million or less and with an average workforce of 25 employees or less) of the reduced tax rates for the maintenance or creation of employment, is extended to 2013.

C. Extension of the deduction for expenses incurred in training employees in the use of new technologies

The deduction established in article 40 of CIT Law, which applies to expenses incurred in training employees in the use of new communication technologies is extended to 2013.

1.3.2 Permanent measures

A. Special regime for housing rental companies

For tax periods starting on 1 January 2013, the requirements to apply this regime have changed: (i) the minimum number of dwellings is reduced from 10 to 8; (ii) the minimum lease period is reduced from 7 to 3 years and (iii) the maximum constructed area requirement is removed.

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[5] Taxpayers that do not meet the requirements established in article 108 of the CIT Law.

[6] This restriction will also apply to assets depreciated in accordance with articles 111, 113 or 115 of the Corporate Income Tax Law (new assets, assets that have been reinvested and assets under finance lease) provided that the taxpayer does not meet the requirements established in article 108 of the Corporate Income Tax Law in the corresponding period.

B. Special regime for financial leasing agreements

The new tax lease regime entitles financial leasing entities to opt for this regime over the accelerated amortisation regime established in article 115 of CIT Law before the asset becomes active **if the** following requirements are met:

a) The asset must be a tangible fixed asset under a financial leasing agreement under which its price is significantly paid for before its construction ends.
b) The asset must take at least 12 months to be constructed.
c) The asset must have a special design and technical features that cannot be mass produced.

This provision is applicable from 1 January 2013.

C. Removal of the obligation to pay CIT in advance for certain entities

Entities subject to a tax rate of 1% or 0% are not obliged to pay CIT in advance and file the corresponding return. From 1 January 2013, this exemption mainly applies to investment funds.

D. Restriction of the deductible expenses due to severance payments

From 1 January 2013, severance payments that exceed the higher of the following (i) EUR 1 million or (ii) the amount exempt of IIT, will not be deductible.

1.4 Individual Income Tax (IIT)

1.4.1 Cancellation of the tax deduction in taxpayer's permanent residence

This deduction has been cancelled since 1 January 2013. Law 16/2012 established a provisional system for taxpayers that had acquired their permanent residence before 1 January 2013 or had made any payment for the construction, enlargement, refurbishment or works because of a disability in their main place of residence.

1.4.2 Change to the tax regime applicable to earnings from gambling

A. New levies on lottery prizes and bet winnings

Prizes from lotteries organised by the Spanish State, the autonomous regions, the National Organization of Spanish blind people (ONCE), the Spanish Red Cross and similar European entities and that (i) take place after 1 January 2013 and (ii) exceed EUR 2,500, are no longer exempt from IIT and are thus subject to IIT through a special taxation.

Therefore, any prize money exceeding EUR 2,500 will be subject to this special tax at a rate of 20%. This tax will be accrued upon the payment of the prize money and any advance payment must be withheld.

B. Compensation of gambling losses

Gambling losses (excluding those derived from lotteries described in the preceding section) are tax deductible up to an amount equivalent to the gaming gains received during the same tax year.

1.4.3 Taxation on gains generated within a year

Since 1 January 2013, capital gains generated in less than a year will be included in the general tax base ("*base imponible general*") at the general tax rate (up to 56%[7]). Previously, these capital gains were included in the savings tax base (*Base imponible del ahorro*) at the savings tax rate (up to 27%).

1.4.4 Valuation of the remuneration in kind derived from the use of housing

Since 1 January 2013, the remuneration in kind derived from the assignment of housing to employees when the employer does not own the property, has changed. The remuneration in kind will be the cost of rent for the employer.
Nevertheless, this new calculation will not apply during 2013 if the employer was already paying the cost of rent of housing as remuneration in kind before 4 October 2012.

1.4.5 Compensation or other high level remuneration

Income derived from employment that is generated over two years and that was received at considerably irregular intervals may benefit from a 40% reduction in the IIT base. This reduction applies, with certain restrictions, to **severance payments** that exceed the limit set out in the Statute of Workers and to compensation arising from any commercial relationship (managers and directors).
Since 1 January 2013, this reduction is limited as follows:

- The reduction base cannot exceed EUR 300,000.
- The reduction will not apply to amounts exceeding EUR 1 million.
- If the compensation exceeds EUR 700,000, the reduction base will be:
  EUR 300,000 - (compensation amount - EUR 700,000).

1.4.6 Tax benefit for the maintenance or creation of employment

This tax benefit applicable to IIT payers who have businesses and whose net turnover is less than EUR 20 million and have less than 25 employees, is extended to 2013.

1.4.7 Other measures

The exemption applicable to expenses and investments incurred to train employees in the use of new communications and computer technologies is extended to 2013.

1.5 Wealth tax

After being suspended in 2008, the Spanish Council of Ministers approved Royal Decree-Law 13/2011 of 17 September, reinstating Wealth Tax (*Impuesto Sobre el Patrimonio*) for tax years 2011 and 2012. Law 16/2012 has extended its application to 2013.

1.6 Non-Resident Income Tax (NRIT)

As from 2013, non-resident tax payers without a permanent establishment in Spain will be subject to the new tax on lottery prizes as explained in section 0.
Moreover, the special tax on real estate investments for non-resident companies will only apply to non-resident companies that are resident in a tax haven jurisdiction.

[7] This will vary from autonomous region to another.

1.7 Value Added Tax (VAT)

Law 16/2012 amends section 2 of article 8 of the VAT Law by clarifying that the allocation of properties in condominiums is considered a supply of goods subject to VAT.
In addition, Law 16/2012 establishes that, in relation to forward transactions, the supplier will be entitled to modify the tax base after requesting payments by notarial means or by filing a claim.
Finally, the tax base may not be modified when a credit is totally or partially unrecoverable after a court has issued a bankruptcy declaration, when it relates to transactions taking place prior to the judgment.

1.8 Stamp Duty

According to Law 16/2012, registrations in public registries carried out by public authorities will not be subject to Stamp Duty.

1.9 Tax on deposits for financial entities

Since 1 January 2013, Spanish financial entities are subject to a new tax on deposits at a current rate of zero[8].

1.10 Tax improvements for Spanish Real Estate Investment Trusts

Law 16/2012 has changed certain aspects of the tax regime applicable to Spanish Real Estate Investment Trusts (in Spanish, *Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario* or "SOCIMI").
The purpose of the reform is to facilitate the application of this regime by reducing the applicable requirements because, as stated in the preamble of the law, very few companies have registered for this regime.

The following aspects have changed:

a) As regards the trading of shares of SOCIMI (that must be registered shares):
   - They may be purchased and sold on multilateral trading systems.
   - They can now be listed not only on regulated markets of Member States of the EU or of the European Economic Space, but also on multilateral trading systems (among others, on the Spanish alternative investment market known in Spain as MAB).
   - The trade requirement must be satisfied in all applicable tax periods but not on day in which the company opts for this regime (it must be prior to the first applicable tax period).

b) Property assets promoted by SOCIMI must be leased for at least three years (previously seven).

c) Subsidiaries may promote real estate investments (previous forbidden).

d) The requirement to hold at least three real estate properties which separately do not represent over 40% of the company's assets on the acquisition date is removed.

e) The minimum required share capital is reduced to EUR 5 million from the previous EUR 15 million.

f) The minimum percentage of income not deriving from the transfer of real estate, the transfer of certain shareholdings and dividends from such shareholdings that must be distributed, is reduced to 80% from the previous 90%.

g) The 70% limit on external financing is removed.

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[8] The purpose of this tax is to avoid the approval of a similar tax by the autonomous regions.

The 0% rate applicable on income deriving from main business activities is also worth highlighting.
Nevertheless, dividends distributed to shareholders which stake in the share capital of the entity is at least 5% will be subject to 19% tax on the gross amount, if the dividends are tax exempt or subject to a rate below 10% in the shareholders' State of residence[9].
Furthermore, SOCIMI are now excluded from the special regime which imposes a minimum advance payment on account of CIT (i.e., 12% of the positive result of the profit and loss account) to taxpayers whose net turnover in the 12 months prior to the relevant tax period exceeds EUR 20 million. This measure is applicable to tax years starting on 2012 and 2013 (article 1.1.4 of Royal Decree-Law 12/2012 of 13 July).

The special regime applicable to shareholders of SOCIMI on dividends and income deriving from stakes in the share capital of SOCIMI is the following:

- CIT and NRIT payers operating through a permanent establishment will be taxed according to general criteria, even if the income does not qualify for the double taxation deduction.
- IIT payers will be subject to the rate applicable to the savings tax base (currently ranging from 21% to 27%) and cannot apply the EUR 1,500 exemption on dividends established in the IIT Law.
  NRIT payers not operating through a permanent establishment will not benefit from the EUR 1,500 exemption on dividends or the exemption on income deriving from the disposal of securities negotiated in Spain[10].

2. New Protocol amending the current US-Spanish Tax Treaty

On January 14, 2013 the US and Spain signed a new protocol (the "**Protocol**") amending the current 1990 tax treaty for the avoidance of double taxation (the "**Treaty**").
The Protocol includes significant changes to foster the efficiency of reciprocal direct investment in the US and Spain. In particular, it brings withholding treaty rates and other provisions in line with the tax treaties in force between the US and the most significant European Union countries, effectively eliminating the need for complex and costly investment planning structuring.
In most cases, the Protocol eliminates taxation at source, creating relevant savings and increasing net yields. For dividends a 0% withholding rate applies for corporate shareholders controlling 80% of the voting stock (5% for holdings of 10% or more). Interest and royalty payments will not be longer subject to withholding taxes (limited exceptions apply in connection with certain US source interest). Capital gains will only be taxed at source on the disposal of real estate and real estate holding companies (subject to certain requirements).
The Protocol also reinforces technical mechanisms to avoid double taxation through Mutual Agreement Procedures (MAPs) and provides for arbitration to resolve tax issues. The treaty´s exchange of information clause is updated to current standards for this type of clauses.
The new wording of the Limitation of Benefits (the "**LoB**") clause, which includes favorable exceptions such as the "headquarters company", and the regulation of fiscally transparent entities and funds are also of interest.

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[9] A special charge due on the date on which the distribution of dividends is agreed by the General Shareholders' Meeting. The amount must be declared and paid within two months from the date it becomes due. The declaration form and other formalities will be approved by the Ministry of Finance and Public Administration.
[10] The new regulation also modifies the provisions regulating the information obligation, the inclusion and exclusion of this regime and the loss of benefits (articles 11, 12 and 13 of Law 11/2009, respectively).

The principal terms of the Protocol are summarized below.

2.1 Dividends

The Protocol leads to a significant reduction of taxation at source, as the current Treaty provides for a 10% withholding tax when the company receiving the dividend controls 25% of the voting rights, and 15% in other cases.
In accordance with the Protocol, withholding tax rates on dividends are:

i. 0% if the beneficial owner is a company which directly or indirectly owns shares representing more than 80% of the voting stock, and such shareholder has held the shares in the distributing company for a minimum period of 12 months prior to the distribution.
ii. 5% if the beneficial owner of the dividends is a company owning 10% or more of the voting stock; and
iii. 15% in all other cases;

Specific regulations apply to Spanish SOCIMIs and US REITs, and certain tax exemptions apply to distributions to pension funds.

2.2 Interest

In general, taxation at source is eliminated and thus no withholding taxes will apply to interest payments. Specific rules apply for US source contingent interest and loans related to US real estate mortgage conduits (REMICs).
Remuneration of a profit participation loan will qualify as interest under the Protocol, also benefiting from the exemption from withholding taxes.
The new provisions represent a dramatic change given that US lenders (not acting through PEs in Spain) will be fully exempt from withholding taxes on interest paid by Spanish borrowers, regardless of the term of the loan.

2.3 Royalties

Taxation at source is eliminated (except for permanent establishments) and thus no withholding tax will apply to royalty payments.
The measure is expected to be widely applauded by IT companies, pharmaceutical groups, multinational manufacturing companies in Spain and others. The Protocol’s entry into force will eliminate current withholding taxes ranging from 5 to 10%.

2.4 Capital gains

The Protocol significantly alters the approach to the sourcing and taxation of capital gains.
No taxation at source will apply on capital gains, except upon the disposal of real estate assets or shares in companies holding real estate assets or time-share rights (which, in Spain, would be subject to a 21% capital gains tax).
Furthermore, gains deriving from the transfer of licenses and intangible property will qualify as capital gains (and not as royalties), therefore exempt from taxation at source.

2.5 Branch tax

Article 14 of the Treaty, regarding the right to impose a 15% branch tax, will be eliminated. However, under article 10 of the Treaty, as amended by the Protocol, the US taxation of the "dividend equivalent amount" and the imposition of Spanish branch tax (up to a maximum rate of 5%) will be permitted in limited circumstances.

2.6 Limitation of benefits

The Protocol provides for a significantly amended limitation of benefits clause. The wording of the new clause covers numerous situations in detail. Among others, the following features are worth noting:
(i) the traded-company exception, by virtue of which a listed company automatically benefits from the Treaty, will now apply to companies listed not only in the US or Spanish stock exchanges, but also on "recognized stock exchanges" such as those of London, Frankfurt, Amsterdam, Toronto, Mexico City or Buenos Aires.
(ii) the inclusion of a "headquarters company exemption", affording the Protocol's protection and benefits to entities qualifying as headquarters for multinational groups (i.e. providing overall supervision to at least five jurisdictions, amongst other requirements);
(iii) a "permanent establishment triangular clause", excluding permanent establishments located in third countries from the benefits of the Treaty and the Protocol if the PE is taxed at a reduced rate (i.e. less than 60% of the general tax applicable to the parent company).

2.7 Pension funds

The Protocol allows for the possibility of rolling the investment over to pension funds of the other contracting State (i.e. cross-border roll over) without triggering taxation, as taxation will be contingent upon the effective payment or distribution to the beneficiaries.

2.8 Mutual Agreement Procedure and Arbitration

Controversies regarding the interpretation of the Treaty and the Protocol will be resolved through MAPs. In addition, the Protocol provides for mandatory arbitration to resolve matters submitted to a competent authority. Regulation of the arbitration procedure is extensive and detailed. The resolution of the arbitration panel -composed of three members- will be, with exceptions, binding.

2.9 Exchange of information

The exchange of information clause is updated to comply with current standards. No explicit reference is made to the future implementation of FATCA provisions. It is important to note that Spain and the US have agreed to implement FATCA through domestic reporting and reciprocal automatic exchange of information, also based on the Treaty currently in force. The new wording of the Treaty, as amended by the Protocol, should be sufficient to cover FATCA implementation.

2.10 Puerto Rico

In addition to the Protocol, a Memorandum of Understanding (MOU) has been signed by the US and Spain indicating that specific measures to avoid double taxation on investments between Spain and Puerto Rico will be adopted.

2.11 Fiscally-transparent entities

The Protocol and the MOU slightly amend the 2006 Competent Authority Agreement entered into by the US and Spain on the tax treatment of LLCs, partnerships and disregarded entities. Income obtained through fiscally-transparent entities will benefit from the provisions of the Treaty and the Protocol, provided that: (i) the income is allocated to a resident (as defined in the Treaty) for the purposes of its taxation in accordance with domestic provisions; (ii) the LoB exclusions do not apply; and (iii) the fiscally-transparent entity is organized in the US or Spain or in a State that has entered into an agreement for the exchange of tax information. It should be noted that the 2006 Competent Authority Agreement did not include the latter´s restriction.

2.12 The Protocol's entry into force

The Protocol will enter into force three months after compliance with the domestic US and Spanish procedures required for approval and diplomatic notification.

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THE NETHERLANDS

CFE National Report on recent developments in tax law
The Netherlands

On January 1, 2013 the following important tax measures have entered into effect:

- Corporate income tax
    - Introduction of a restriction of excessive interest expense deductions for debts used to finance shareholdings qualifying for participation exemption for tax years 2013 and onwards.
    - Cancellation of thin capitalization rules for tax years 2013 and onwards.
    - Additional shareholding requirements for fiscal unity. Due to the introduction of flexibility in private company law, it will be possible for private companies to issue shares without voting rights. For the fiscal unity, it will be required that a parent company owns shares that represent at least 95% of the voting rights in a subsidiary.
    - Extended tax liability for director's fees. As from 2013, not only statutory activities of members of a board of directors are subject to Dutch corporate income, but also actual management activities or management services. Of course, the Netherlands will only able to actually levy this tax if the relevant tax treaty enables them to do so.
- Personal income tax
    - Limitation of mortgage interest deduction for loans concluded on or after 1 January 2013. Interest on these newly concluded mortgages will only be tax deductible if the loan will be redeemed, at least on an annuity basis, during no longer than 30 years.
- Real Estate transfer tax
    - Extension of compensation for real estate transfer tax in case of subsequent transfers. The term on which a subsequent transfer should take place in order to apply for compensation is extended from 6 to 36 months.
- Landlord tax
    - Introduction of a tax on the rental of houses in the so-called regulated sector. The tax will be levied on both domestic and foreign taxpayers that own homes in the regulated sector. The tax amounts 0.0014% on the value of these homes in 2013. As from 2014, the tax percentage will increase to 0.231%.

Furthermore, the general VAT percentage has increased to 21% on October 1, 2012.

Also, on October 1, 2012 a bank tax has been introduced. The tax amounts 0,022% on long-term liabilities of banks, and 0,044% on short-term liabilities.

Culemborg, January 7, 2013
Dr. Ruud Zuidgeest

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UNITED KINGDOM

Report on UK developments October 2012 to January 2013

Finance Bill and Budget 2013

Draft clauses to be included in Finance Bill 2013 were published on 11 December 2012.

The 2013 Budget will be on 20 March 2013.

The Finance Bill 2013 will be published a few weeks after the Budget and after debate in the Houses of Parliament will become law in July.

Direct Tax: corporates

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

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 will be 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 5.25%. 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 which will be introduced from July 2013 when this year's Finance Bill becomes law. 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".

Direct Tax: individuals

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

Remittance Basis
Non-domiciled residents can pay £50,000 per annum and only pay tax on their non-UK income and gains to the extent they are remitted to the UK. There are also now provisions under which if such individuals invest in appropriate business investments in the UK that does not trigger the remittance basis charge.

Statutory Residence Test
A statutory residence test is to be introduced from 6 April 2013.

Stamp Duty Land Tax on residential properties
The rate of this tax has now increased for properties over £2 million to 7%, 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

September 2012

- Consultation on extending VAT exemption to “for-profit” providers of higher education;
- Consultation on amendments to the VAT refund scheme for museums and galleries;
- CJEU decision in Field Fisher Waterhouse concerning whether services supplied in connection with a property lease should take the VAT characteristics of the property lease;

October 2012

- Upper Tribunal direct that the First tier Tribunal re-hear the case of Rank plc and whether charging VAT on takings from Gaming Act 1968 Part III betting machines is in breach of EU treaty (following CJEU decision in cases C259/10 and 260/10) when takings from fixed odds betting machines are exempt from VAT
- Upper Tribunal confirm the First tier Tribunal decision that VAT on toasted sandwiches and meatball marinaras (in Sub One Ltd and others) is standard rated, not zero rated. The decision is being appealed to the Court of Appeal.
- Following CJEU case C-288/07 the First tier Tribunal determine that a different VAT treatment of local authority parking compared to privately provided parking would distort competition to a more than negligible extent and so should not be treated differently.

- Reference to CJEU concerning the VAT treatment of fraudulent credit card transactions (by Dixons plc) where the retailer has received the cash made for the fraudulent transaction (contending that there should be no output VAT payable).

November 2012

- HMRC updates its view on whether the 'transfer of a going concern' provisions can apply to the transfer of a property business where the property asset transferred is a subordinate interest carved from a superior interest. They accept it can where the interest retained is sufficiently small (1% is accepted as sufficiently small).
- Upper Tribunal conclude that VW Financial Services UK Ltd was acting as a finance company in providing car hire purchase finance so that none of its input costs related to the sale of the car purchased.

- CJEU decision in case C-85/11 in the case of the Irish VAT treatment of permitting non-taxable persons to be members of a VAT group appears to support the current UK treatment

December 2012

- From 1st December, non-established taxable persons (NETPs) will no longer be able to benefit from the UK VAT registration threshold. They will be required to register for UK VAT when they make their first supply of goods or services here regardless of the value.

- Court of Appeal conclude that VAT on the supply of hotel accommodation services supplied through Secrete Hotels2 Ltd was due in the UK (issues relate to TOMS but are relevant for principal versus agent debate).

- HMRC is changing its policy on the VAT treatment of services relating to insurance (pensions) mis-selling reviews and associated helpline services. The change will not affect the use of these services by banks and other lenders. The new taxable VAT treatment for the insurance (pensions) sector will apply from 1 April 2013.

- The UK issues a consultation on withdrawing its VAT exemption for business supplies of research between eligible bodies from 1 August 2013, accepting advice from the European Commission that the exemption does not comply with European legislation.

- HMRC issues notice of change of policy on VAT on first time connection charges for water supplies made by the same taxable person to the same customer as for the main supply of water.

January 2013

- HMRC issues notice of a settlement opportunity for business with the submission of one or more VAT returns outstanding, to bring their VAT Returns and payments up to date.

- 1 Jan 2013 simplified and electronic invoicing rules apply to conform UK rules with EU provisions

- Upper Tribunal direct that the First tier Tribunal re-hear the case of Rank plc and whether charging VAT on takings from Gaming Act 1968 Part III betting machines is in breach of EU treaty (following CJEU decision in cases C259/10 and 260/10) when takings from fixed odds betting machines are exempt from VAT

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ICAEW Tax Faculty / Chartered Institute of Taxation
January 2013

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