CONFEDERATION
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CFE Fiscal Committee

National Reports

January 2014

130th Meeting

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BELGIUM

Tax developments in Belgium (September 2013 – January 2014)

I - Corporate tax

1. Notional interest deduction

The decision of the Court of Justice of the European Union in the Argenta case has been implemented. As from assessment year 2014, the net worth of establishments or real estate of which the income is exempt, in a country with which Belgium has concluded a tax treaty will no longer be excluded from the calculation base of the notional interest deduction.

Instead, the notional interest deduction calculated on the net worth of establishments or real estate in a country outside the European Economic Area with which Belgium has concluded a tax treaty, must be excluded.

The notional interest deduction calculated on the net worth of establishments or real estate in a country inside the EEA with which Belgium has concluded a tax treaty must only be excluded to the extent that it is lower than or equal to the profits attributable to those assets.

2. Investment deduction

An investment deduction of 4% for new investments in tangible and intangible fixed assets made by small companies in 2014 and 2015 has been introduced. The investment deduction cannot be combined with the notional interest deduction of the year. Any unused deduction can be carried forward for one year.

II- Individual income tax

1. Innovation premiums

The exemption of innovation premiums is extended to 2013 and 2014.

2. Thematic folk loans

As from 1 January 2014, banks and insurance companies can collect funds from the public through the issuance of savings certificates and deposits for qualifying projects in the general interest. The interest payable on loans issued by banks will carry a withholding tax rate of 15% instead of the general rate of 25%. Insurance companies can collect these funds from the public through a branch-21 insurance product. The insurance tax on the premium will be lowered from 2% to 1.1%. It is not the investor, but the bank or insurance company who will be held liable for the difference in withholding tax or insurance tax, should the project not qualify.

III- VAT

1. Business assets

As from 1 January 2014, the minimum amount to qualify as business assets has been raised from 250 to 1.000 EUR.

2. Quarterly filing of VAT returns

As from 1 January 2014, the threshold of the annual turnover for the quarterly filing of VAT returns has been increased from 1.000.000 to 2.500.000 EUR. Taxpayers which must file a monthly listing of intercommunity supplies are excluded from the quarterly filing of VAT returns.

3. Tax procedure

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

The Flemish Region had already done so, but now also the federal level, the Walloon Region and the Brussels-Capital Region have implemented the Directive (the European Commission had sent a reasoned opinion to Belgium last year asking to notify the transposition of the Directive into national law).

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CZECH REPUBLIC

Tax news from September until January 2013 for the Czech Republic

New Civil Code

- The new Civil Code became effective as of 1 January 2014 (recodification of the private law). The new Civil Code introduces new definitions, e.g. a legal term "thing" will include also intangible things but does not include a human body and its part or live animal. The immovable property includes newly rights in rem giving the holder thereof a right of use over immovable property, etc. In addition to this, many legal terms have been renamed.

- Therefore, almost all Czech tax acts have been affected by this change.

New regulation of investment companies

- New Act on Investment Companies and Investment Funds (AICIF) came into force

- The new AICIF divides the funds to the public funds - collecting funds from public and non-public funds – collecting funds from qualified investors. This division is important in particular from the regulatory point of view, as the regulation and supervision of non-public funds is significantly weaker.

Statutory provisions on the immovable property acquisition tax

- The Senate approved the statutory provision on the immovable property acquisition tax on 9 October 2013. The new legislation relates to the recodification of the private law and in particular to the concept of immovable property in the new civil code and a new law on commercial corporations.

- The statutory provision brings considerable changes in the area of tax exemption. Many of the exemptions were abolished or replaced by new ones. The following are the main changes in this area:

    - The exemption for an immovable property investment in the share capital of a company has been abolished,

    - An exemption shall apply for the acquisition of immovable property by its occupant after the end of financial leasing.

    - The first transfer of the immovable property to the leasing company remains subject to tax.

Changes in the VAT

Building rights

- The rights in rem giving the holder thereof a right of use over immovable property is newly considered for VAT purposes to be the goods.

- The place of supply in the case of the above rights shall be the place where a land burdened by these rights is located.

Supply of land

- The new conditions for exemption of supply of land have been introduced. The supply of land was by the end of the year 2013 exempt from VAT except for the supply of building land while the definition of the building land is very narrow. The definition of the building land has been cancelled and the exemption conditions become more strict. The supply of land is be exempt if all the following conditions are met:

    - There is no structure fixed to or in the ground on the land

    - There is no engineering network (water conduit, sewerage etc.) on the land

    - There is no permission or approval of state authorities to erect a building

Joint liability

- There are seven different cases defined in the Czech VAT Act when the tax authorities may hold the recipient jointly and severally liable for payment of the VAT unpaid by a supplier of local taxable supply.

- The tax authorities may, inter alia, hold the recipient jointly and severally liable for payment of the VAT unpaid by the supplier of local taxable supply if the recipient pays to the bank account of the supplier not published in the Register of registered taxable persons.

- As of 1 January 2014 this provision applies only if the payment of the received taxable supply exceeds CZK 700,000 (cca. EUR 26,000).

Prepared by: Martin Houska and Milan Tomíček

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FRANCE

DIRECT TAX NEWS

Fight against tax fraud and tax evasion bill enacted

The adopted bill provides for broader investigation powers for the French Tax Authorities and increases the tax-related criminal offences and penalties.

It also includes a new requirement for large taxpayers to report annually a "light" version of their transfer pricing documentation, which shall include:

- General information regarding the group, including
  - ✓ a general description of the activities performed by the group, including any changes that have occurred during the concerned fiscal year;
  - ✓ a list of the main intangibles in relation to the French entity (e.g., patents, trademarks); and
  - ✓ a general presentation of the group's transfer pricing policy and any changes that have occurred during the concerned fiscal year.

- Specific information in respect of the entity, including
  - ✓ a description of the activities of the entity, including any changes that have occurred during the concerned year;
  - ✓ a summary of any transactions with other related entities; and
  - ✓ a presentation of the method(s) used to determine transfer pricing with respect to the arm's length principle. Any changes of method during the previous fiscal year must be indicated.

The new TP documentation must be submitted to the tax authorities within a 6-month period as from the date of the tax return filing deadline.

Finances bill for 2013 & 2014

The Finances bill for 2014 and Revised Finances Bill for 2013 have been adopted.

Several provisions have been cancelled by the Constitutional Court:

- the extension of the scope of "the abuse of law theory" (“main purpose” instead of “exclusive purpose”);
- the obligation in case of business restructuring (i.e. transfers of functions or risks to a related company outside France) to justify that the operation is at arm's length;
- the obligation of tax advisors to declare to the tax authorities any "tax planning scheme" proposed to their clients;
- the increase of penalties in case of failure to provide sufficient transfer pricing documentation (0.5% of the turnover instead of 10.000 € or 5% of the profits reassessed).

Fight against hybrid loans and artificial indebtness: French companies paying interest to related parties are no longer 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.

Tax on high income: Companies paying gross salaries (wages, benefits in kind, stock options, etc.) above Eur 1 million are 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.

Transfer pricing: the documentation to be provided by large companies must include rulings granted by foreign tax authorities to any of their related companies.

Increase of CIT surcharge for large companies: The temporary 5% corporate income tax surcharge, for large corporate taxpayers with annual revenue above €250 million, is increased to 10.7 %

SMEs – Deduction of tax losses of foreign subsidiaries: This specific regime which allowed SME to temporarily deduct the tax losses incurred by their foreign subsidiaries is cancelled for FYs closed as from December 31, 2013

Tax Audit: The temporary 5% corporate income tax surcharge, for large corporate taxpayers with annual revenue above €250 million, is increased to 10.7 %

Individuals:

- reform of the taxation of capital gains on shares and on properties ;
- amendments to the exit tax regime;

INDIRECT TAX NEWS

Reminder:

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

- 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 Finance Bill for 2014 provides for a certain number of exceptions (please see below).

Finance bill for 2014

VAT rates: as an exception to the above-mentioned principles, the following transactions are subject to a 5.5% VAT rate (as from January 1st, 2014):

- the construction of social housing units, as well as social housing renovation(which were subject to a 7% VAT rate);
- energy-saving home improvements with respect to residential premises which have been built for more than 2 years (which were subject to a 7% VAT rate).

Reverse charge mechanism:
The "reverse charge mechanism" applies to outsourced construction services.
Moreover, in case of emergency, the Government is 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).

Amending Finance bill for 2013

VAT rate with respect to home improvements:
Home improvements may be subject to a 7% VAT rate (instead of 10%) provided that:

- a quotation was accepted before January 1st, 2014;
- a 30% advance payment was made before January 1st, 2014;
- the balance is invoiced by March 1st, 2014 and paid by March 15th, 2014.

Eco-tax on heavy good vehicles

The entry into force of the eco-tax on heavy good vehicles (trucks with a mass exceeding 3.5 tons), which was planned for January 1st, 2014, has been postponed to a non-determined date.

January 20, 2014
Sébastien Laisney & Thibault Hénique

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IRELAND

Report on Irish tax developments in the period since September 2013

Finance (No. 2) Act 2013

Ireland's Budget timetable was brought forward in 2013 as a result of the European Two Pack. As a result, the Budget was announced on 15 October 2013 and Finance (No. 2) Act 2013 was signed into law on 18 December 2013. The following were the key tax measures introduced:

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.
- Deposit interest tax rates increased from 33% and 36% (for frequent and less frequent payments respectively) to 41%.
- Tax relief for investment in pension schemes capped for schemes that deliver pension income of more than €60,000 p.a.
- Tax relief for medical insurance premiums restricted to the first €1,000 per adult insured and the first €500 per child insured.
- A range of tax measures were introduced aimed at "*Building Business and Creating Jobs*". These include an income tax credit for home renovations, a new Capital Gains Tax Entrepreneur's relief and an income tax exemption for long term unemployed who start a new business.

Business taxes

- The first €300,000 (up from €200,000) of R&D expenditure will qualify for the R&D tax credit, without reference to the base year of 2003.
- Change to company tax residence rules. Where an Irish incorporated company is managed and controlled in another EU Member State or Treaty State (i.e. a relevant territory) and is not regarded as tax resident in that other State (because of that other State's tax rules) or in any other State, it will be considered to be Irish tax resident.
- Bank levy introduced which is calculated based on the level of tax withheld on deposit interest by the bank in 2011.
- Pension levy increased from 0.6% to 0.75% in 2014. This levy is due to be reduced to 0.15% for 2015.

Capital taxes

- Capital gains tax rate and capital acquisitions tax rate remained unchanged at 33%.
- Legislation introduced to provide that the base cost of an asset for capital gains tax purposes is reduced where a debt used to fund the acquisition of the asset is released/ forgiven.

VAT

- Threshold for accounting for VAT on the cash receipts basis (for small businesses) increased from €1.25m to €2m with effect from 1 May 2014.
- The reduced rate of 9% VAT for tourism-related goods and services which was due to expire at the end of 2013 has been retained.
- Clawback introduced where an invoice has not been paid within 6 months but the related VAT has been recovered by the customer from Revenue.

International Tax Strategy Statement

In October 2013, the Department of Finance published an 'International Tax Strategy Statement' which sets out Ireland's objectives and commitments in relation to international corporate tax issues.

Department of Finance / Revenue Consultations

Since September 2013, consultations on the following issues were initiated by the Department of Finance:

- Proposed changes to the income tax Pay & File deadline for self assessed individuals. It was suggested that the deadline should be brought forward in order to provide increased certainty around the annual tax take in advance of the Budget.

  Following strong opposition to the changes, on 20 November 2013, it was announced that there would be no change to the Pay & File regime for 2014. It was noted however, that the Minister's intention to bring annual Pay & File dates forward remains, but it has been decided that it would be more appropriate to make any necessary changes by to take effect, at the earliest, from 2015.

- Reform of the Tax Appeal System. This consultation proposed a number of changes to the operation of the Appeal's Commissioners who hear all appeals against decisions of the Irish Tax Authorities. Potential changes could include publication of the Commissioners decisions and changes to how decisions of the Appeal Commissioners can be appealed.

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

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ITALY

Report Update on Recent Developments of Italian Tax Laws (September – December 2013)

Transfer Pricing and IRAP

Up to today, IRAP (the Italian "*Regional Tax on Productive Activities*") regulations gave rise to some interpretative difficulties when transfer pricing issues were involved, especially during tax audits and assessments.

The 2014 Stability Law has introduced a specific provision whereby "*Art. 110, par. 7 of the Income Tax Code has to be applied to the calculation of the net turnover for IRAP purposes also for years subsequent to those ongoing on December 31st, 2007*". Therefore, IRAP is fully applicable to the higher taxable amounts deriving from a transfer pricing audit.

However, penalties envisaged by Art.1, par. 2 of Legislative Decree n. 471/1997 (from 100% to 200% of the higher taxes due) will not be applied to audits on years between the one ongoing on December 31st, 2007 and the year for which at the time of the approval of the legislative decree the tax return can still be filed (unless penalties have been already definitively charged before December 31st 2013, in which case they remain applicable).

International Tax Ruling

The Decree-Law "*Destination Italy*", approved by the Council of Ministers on 14 December 2013, changed the rules governing international tax rulings (Art. 8 of Decree-Law No. 269 of 30 September 2003), extending their functions to include the preventive assessment of the existence, in Italy, of the permanent establishment of a non-resident entity.

The international tax ruling is a tool that enables businesses with international activities to define, beforehand and in coordination with the Italian Tax Authorities, the methods for calculating the arm's length value of intra-group transactions (transfer pricing); the provision of dividends, interest, royalties, and other income categories to non-residents (and the earning of such income from non-residents); and the allocation of profits or losses to the permanent establishment in Italy of a non-resident entity or to the permanent establishment in another Member State of a resident entity.

The goal is to provide multinational enterprises with a tool useful for their investments in Italy, in order to eliminate the risks associated with being subject, in a subsequent tax year, to an assessment concerning the existence of a permanent establishment.

In addition, the aforementioned Decree extends the legal validity of the ruling from three to five tax years.

Italian Desk for Foreign Investors

In order to promote and encourage foreign investment in Italy, the Decree-Law "*Destination Italy*" provides for the establishment, at the Italian Revenue Office, of a dedicated service for foreign investors.

This "*Help Desk*" will respond in writing to questions, concerning tax issues related to entrepreneurial activities to be launched on the national territory, that are formulated by foreign entities interested in making investments in Italy.

Web Tax

The 2014 Stability Law (undergoing the final stages of approval) provides for the introduction of the so-called "*Web Tax*".

In particular, this law establishes that the online ad space and sponsored links that appear on the results pages of search engines, visible by visiting a site or using an online service through either a landline or a mobile network, can only be purchased from entities (publishers, advertising space resellers, search engines, or other advertising operators) that are associated with an Italian VAT registry number.

The entry into force has been postponed to 1 July 2014.

Government Tax Bill

On 25 September 2013, the Government Tax Bill, aimed at reforming the Italian tax system in order to achieve more fairness and transparency, obtained the green light from the Chamber of Deputies.
On 26 September 2013, the Bill was passed on to the Senate.
In order to complete the Government's tax reform work, on 28 November 2013 the Senate Finance Commission started a study on tax bodies and on the relationship between taxpayers and Tax Authorities.

VAT Rate

On 1 October 2013 the ordinary VAT rate increased from 21% to 22%.

IMU (MUNICIPAL PROPERTY TAX)

Italy's 2014 Stability Law provides for a reorganization of real estate taxes through the establishment of the Single City Tax (*Imposta Unica Comunale*, or IUC). The IUC is levied based, on the one hand, on the municipal property tax (IMU) due by property owners on real estate other

than primary residences, and, on the other hand, on the provision of municipal services, *i.e.*, the tax on "*indivisible*" services (TASI), borne by both the owner and the lessee, and the waste disposal tax (TARI), borne by the property occupant. The IMU regulation is therefore being modified, and, beginning in 2014, the IMU tax will not apply to primary residences and adjacent properties.

In 2014, 30% of the IMU tax due on business properties will be deductible from income taxes; afterwards, its deductible amount will be 20%.

December 2013

Raffaele Rizzardi – Piergiorgio Valente
Paolo Centore – Marco Peirolo

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MALTA

<u>I- Indirect Tax Updates (*Oct 2013 - Jan 2014)*</u>

1. Value Added Tax

Act XIV of 2013, the Value Added Tax (Amendment) Act, 2013 enacted a number of changes to the VAT Act. The rate of punitive interest will be reduced from 0.75% to 'a rate which the Minister shall...prescribe'. In cases when endangered tax does not exceed €2,000, administrative penalties will be capped to €250. In cases where the endangered tax exceeds EUR 2,000, the administrative penalty cannot exceed 20% of the excess. Magistrates will be empowered to charge daily penalties for non-compliance only in defined cases. Daily penalties will be reduced to €5 (presently, a €5 to 20 bracket applies). The Act incorporates a retrospective transitory provision. Article 6 provides that when before the date of coming into force of the Act a person has been sentenced with a daily penalty, every amount of the fine per day 'shall be calculated afresh according' to the new rates. In certain cases, daily fines will be cancelled. The cancellation of fines may not result in eligibility to refunds.

There were also the following minor amendments to the VAT laws of Malta:

1. (L.N. 345 of 2013) Amendment to the Fifteenth Schedule to change the exemption (without credit) for insurance services, by making some extensions to related services enabling the provision of insurance and re-insurance transactions.
2. (L.N. 422 of 2013) Amendment to part 5 of the Fifth Schedule to the VAT Act whereby *"yogurt or similar products"* are now taxable at a VAT rate of 18%.

2. Duty on Documents and Transfers Act

Legal Notice 393 of 2013 introduces an Exemption Order whereby persons acquiring their first immovable property between 5th November 2013 and 31st December 2014, are exempt from duty (of 3.5%) on the first €150,000 of the cost of acquisition of that immovable property. If the property is being acquired during the qualifying period above, but the promise of sale agreement leading to that contract has been registered before 1st July 2013, then this exemption order would not apply in that case.

<u>II- Malta Direct Tax Updates (*Oct 2013-Jan 2014)*</u>

1. L.N. 239 Of 2013 Double Taxation Relief (Taxes on Income) (The United Mexican States) Order, 2013

The treaty contemplates a special insurance article. An insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status.

Article 7 (Business profits). Business profits attributable to sales of goods or merchandise of the same or similar kind as the goods or merchandise sold through that permanent establishment are taxable in state where the PE is located.

The Treaty does not always exclude withholding tax on outbound interest payments (5% on gross bank interest, 10% on gross interest in other cases). Withholding tax on interest is excluded in special cases including when interest arises in Malta and is paid in respect of a loan for a period of not less than 3 years granted, guaranteed or insured by special financial institutions).

The Treaty does not always exclude withholding tax on outbound royalty payments (10% on gross royalties in other cases).

2. L.N. 257 Of 2013 Double Taxation Relief (Taxes on Income) (Republic of Singapore) Amendment Order, 2013

This legal notice adds a protocol to the Treaty with Singapore. The protocol provides for exchange of information.

3. L.N. 343 Of 2013 Double Taxation Relief (Taxes on Income) (The State of Israel) Order, 2013

This legal notice brought into force the ratification of Malta's double tax treaty with the State of Israel. The definition of the term 'person' includes a reference to the trust. Factors which are taken into account in determining residence of a trust include country of residence of the trustees at the time of settlement, proper law of the trust, location of trust assets, country of residence of settlor and beneficiaries.

The dividend article provides that dividends paid by an Israeli company to a Maltese resident are subject to w/t of 15% but w/t is of 0% whenever the beneficial owner of the dividends holds at least 10% of the capital of the company paying out the dividends. The dividend article incorporates a special clause on distributions by an Israeli Real Estate Investment Company; w/t is of 15% but if the beneficial owner holds at least 10% of the capital w/t is of 10%.

The interest article refers to a w/t of 5%. The protocol provides that in certain cases interest may be taxed net (elimination of double taxation by deduction).
The royalty article provides that royalties are taxable in the country of residence exclusively.

4. L.N. 361 Of 2013 Remission of Interest Rules, 2013

The rules brought about by this legal notice allow the Commissioner to remit wholly or in part any interest incurred by a taxable person on overdue income tax chargeable remained unpaid. To qualify for the scheme, the tax payer has to provide a justified reason and it has to abide by certain repayment program conditions. The repayment program will not exceed two years and the Commissioner reserves the right to set off any remitted interest against future interest receivable on outstanding refunds by the same tax payer.

5. L.N. 392 of 2013 - Double Taxation Relief (Taxes on Income) (South Africa) Amendment Order, 2013

This protocol amendment transposes minor amendments in the definition of a “resident” as well as the “dividends” and “interest” articles.

Dividend distributions from a South African company to a Malta company are subject to a withholding tax rate of 5% or 10% depending on the company beneficial ownership of the dividend paying company. Dividends paid from Maltese companies to South African companies are subject to the usual full imputation system.

The interest article has been subject to amendments reflecting exemptions from tax on interest paid between Government authorities and other political authorities of the two States.

The amendments are concluded by enhancing the exchange of information clauses.

6. L.N. 432 OF 2013 Enterprise Support Incentives (Amendment) Regulations, 2013

This Legal Notice in essentially re-introduces the Micro Invest Scheme, largely earmarked for self-employed individuals and micro enterprises not employing more than 30 full-time individuals or not having a turnover/balance sheet total of €10 million. The scheme grants a tax credit not exceeding €25,000. The tax credit is granted at the equivalent of qualifying expenditure or jobs created during the calendar financial year 2013. Any unutilized tax credits may be carried forward for utilization up to financial year 2016.

7. L.N. 448 of 2013 Double Taxation Relief (Taxes on Income) (Republic of India) Order, 2013

The amendments include a provision have seen a widening of the provisions relating to a permanent establishment. Apart from the revision to the agency provisions and the a reference to an insurance enterprise, the provision of consultancy services through the presence of employees or other personnel engaged by the enterprise where the activities continue for a period or periods aggregating more than 90 days within any 12 month period shall be deemed to create a permanent establishment.

The withholding tax rates have been revised to 10% for dividends in all cases where the Maltese resident is a beneficial owner (previously 10% for holdings of at least 25% and 15% in all other cases) whereas the withholding tax rate.

As seen in other treaty revisions, the exchange of information provision was enhanced. Interestingly, although the treaty has been updated to encompass OECD model treaty amendments, it still retained the Independent Personal Services provision which has been dropped from the OECD Model Treaty.

8. Exchange of information

An Exchange of Information treaty with Macao signed while the treaty with exchange of information provisions in the treaty with Barbados were enhanced.

End of document

Geraldine Schembri and Christian Vella

Malta (MT)

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ROMANIA

National Reports on developments in tax law since September 2013
Romania

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

1. **Direct Tax**

a) **Corporate income tax**
According to Emergency Ordinance no. 102/2013, starting 1st of January 2014:

- Taxpayers can opt for a fiscal year corresponding to a financial accounting year which could be different from the calendar year.
- The following will be considered non-taxable income for corporate income tax purpose for a Romanian legal entity that holds, for a continuous period for at least one year, 10% of the share capital of the legal entity in which the stakes are held:
  - Income from dividends received from:
    - A Romanian or foreign legal entity located in an EU member state;
    - A legal entity located in a third party country with which Romania has concluded DTT.
  - Capital gains from the sale/transfer of shares held in a Romanian or foreign legal entity located in a state with which Romania has concluded DTT.
  - The proceeds obtained from the liquidation of a Romanian or foreign legal entity, located in a state with which Romania has concluded DTT.
- There are new rules regarding the possibility and conditions for deferral of sponsorship expenses, of deduction rights for interest expenses and net losses from foreign exchange differences.
- New provisions have been introduced regarding the possibility and conditions for legal entities from EU Member States/European Economic Area that operate through a permanent establishment in Romania to benefit from a foreign tax credit for income taxed abroad.

b) **Tax on microenterprises**
  - The tax will also apply to legal entities whose income generated from management and consulting is maximum 20% of total revenues.
  - The tax base has been amended by the removal and addition of new types of income (e.g. income from trade discounts granted after invoicing).

c) **Withholding tax**
  a. The condition of a minimum 10% holding for an uninterrupted period of 1 year will apply for the exemption from WHT taxation on dividends paid by a Romanian legal entity or a company headquartered in Romania to non-residents, which are residents in an EU Member State.

d) Personal income tax

- On 10 September 2013 Order no. 539/225/1479 was published introducing new amendments regarding the criteria required for IT specialists to qualify for income tax exempt status:
    - The university degree and length of studies required:
        - The employee may qualify for income tax exempt status if he holds a diploma from an accredited institution of higher education upon completion of the first cycle of a university degree or if he is awarded a diploma after completion of a long term form of higher education;
        - Eight new specializations have been added, including: Economic Cybernetics, physics – computer science, Radio transmissions, Military electronics equipment and systems, etc.
    - Rules for the revenue obtained by the employer:
        - Income tax exemption applies regardless of the start date of the concerned individual's employment;
        - The exemption is not conditioned by the individual's contribution to the achievement of the minimum income established.
    - Compliance obligations and updates of the NACE codes for the employers in question:
        - The distinct payroll maintained for eligible employees will no longer be filed with the competent labour inspectorate;
        - The business classification codes regarding the employer's business activities in respect of creating computer programs have been updated: NACE 5821, 5829, 6201, 6202, 6209.

- Emergency Ordinance no. 88 amending and completing law no. 571/2003 regarding the Fiscal Code and law no. 95/2006 regarding reform of the healthcare system was published on 20 September 2013 and introduces additional clarifications regarding mandatory health fund contributions for individuals who obtain rental revenues:
    - For this type of revenue, the individuals are obliged to make advance payments as health fund contributions;
    - The taxable base will be computed, as the case may be, as follows:
        - The difference between the gross income and the deductible expense amounting to 25% of the gross income;
        - The difference between the income received and the expenses incurred for the purpose of obtaining this revenues, except for the health insurance contribution, or
        - The annual value of applicable fixed flat revenue, relevant for the applicable period during the 12 months period,
    - The contribution base cannot be lower than the minimum gross base salary per country, if the rental revenue is the only type of income to which the contribution is applied. The same base cannot be higher than five average gross salaries on economy;
    - The competent tax authority must determine the annual earnings for the proper application of the minimum and maximum thresholds and will mention it in the tax assessment notice;
    - If the income payer has the obligation to withhold social contributions (for the revenues obtained from the lease of land), it will also undertake the payment contributions and reporting duties.

e) Tax on constructions – NEW TAX

Starting 1st of January 2014 a tax is due on the constructions stipulated under Group 1 of the Catalogue of the classification and normal period of use of fixed assets, except for buildings that are subject to building tax.

2. Indirect Tax

a) VAT

According to Emergency Ordinance no. 102/2013, starting 1st of January 2014:

- Leasing services:
  The taxable base does not include the insurance cost of the leased good, if the lessor recovers the insurance cost from the user.
- Taxable base adjustments:
  The VAT taxable base is adjusted in case of terminated contracts.
- Adjustment of the VAT initially deducted:
  The obligation to adjust the VAT initially deducted in case of stolen, missing or destroyed goods has been eliminated under condition that it can be proven or confirmed accordingly.
- VAT exemption for non-resident companies:
  The intra-Community acquisitions performed by non-resident companies not established for VAT purposes in Romania are VAT exempt under condition that they perform taxable supplies enabling the VAT deduction right.
- VAT exemption for on-going sea vessels.
- Obligation to VAT register:
  Taxpayers having the place of the economic activity in Romania are liable to VAT register in Romania for VAT exempt financial and banking supplies made to non-EU customers or for services connected to goods which will be exported.

b) Excise

- An explicit prohibition is introduced with respect to the sale of cigarettes to individuals at a price lower than the declared retail price and its related offence.
- The “bonus sales” of marked excisable products (tobacco, alcohol) are prohibited. For these products, discounted sales are permitted only under certain conditions.

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SLOVAK REPUBLIC

Major developments (September 2013 – December 2013)

INCOME TAX

An amendment to the Slovak Income Tax Act adopted by the Slovak National Council on December 2013, which came into effect on 1 January 2014, introduced inter alia the following:

Decrease in corporate income tax rate

A 22% corporate income tax rate will apply to tax base for the taxation period that started on or after 1 January 2014.

Tax license for legal entity

The tax license is a minimal tax that a tax payer – legal entity will pay per each taxation period in which its tax obligation was lower than the statutory amount of tax license or in which it suffered tax loss. The amount of tax license ranges from EUR 480 to EUR 2,880 depending on the turnover of the tax payer and on whether it is a registered VAT payer in the Slovak Republic.

For a taxation period shorter than 12 consecutive calendar months the amount of tax license is proportionally reduced. The tax license amount is reduced by half with respect to a tax payer employing disabled. In specific cases the tax payer is not required to pay the tax license at all.

The amount of paid tax license may be set off against any income tax obligation of the tax payer exceeding the amount of tax license during three consecutive taxation periods.

Incomes from sources in the Slovak Republic

The list of the income originating from sources in the Slovak Republic that is subject to tax was expanded, most notably by the income:

a) from transfer of ownership interest or shares in a company or a cooperative having its registered seat in the territory of the Slovak Republic incurred by a non-EU tax resident (irrespective of the payer of the income);

b) from the transfer of shares, ownership interests or membership rights in a limited liability company or cooperative that owns real property in the Slovak Republic, the value of which exceeds 50 % of the registered capital of that company or cooperative (irrespective of residency

of the company in which the ownership interest or shares are transferred or residency of the payer of the income);

c) from services (even if such services are not provided through a permanent establishment), if this income originates from Slovak tax resident or from the permanent establishment of non–Slovak tax resident in the Slovak Republic.

A special rate of withholding tax

The amendment introduces as from 1 March 2014, a new definition of "Non-Treaty State Tax Resident" covering individuals and legal entities that do not have permanent residency or seat in a state with which the Slovak Republic has concluded a tax treaty. In case income attributed to such Non-Treaty State Tax Resident is subject to withholding tax in the Slovak Republic, a 35% withholding tax rate will apply.

Services permanent establishment

The definition of permanent establishment was expanded by the concept of “services permanent establishment". Under this concept, activities would be deemed to be carried out through a permanent establishment in the Slovak Republic if carried out in the territory of the Slovak Republic for more than six months in any period of twelve consecutive months.

Loss carry forward

The tax loss can be carried forward and set off against the tax base of the tax payer proportionally within four consecutive taxation periods. The previous legislation allowed for tax loss carry forward in seven consecutive taxation periods and the tax payer could decide the amount of tax loss to be set off against his tax base.

New rules of tax loss carry forward apply also to tax loss suffered in taxation periods 2010 through 2013 and not fully claimed yet, so have partially a retroactive effect.

Transfer pricing method

The tax payer is now allowed to choose the best method according to the circumstances of each case. Hence, the previous hierarchy stipulated by law, under which the tax payer had to prefer the method of price comparison, was abandoned.

TAX ADMINISTRATION

An amendment to Slovak Tax Administration Code came into force on 1 January 2014 (except for certain provisions), introduced inter alia the following:

General anti-abuse rule

The amendment extended the anti-avoidance provision in the Slovak Tax Administration Act. As from 1 January 2014, the tax authorities will not take into consideration the actions or other circumstances that are without economic substance and their aim is to avoid tax obligations or to gain unjust tax advantage.

Binding tax ruling

As from 1 September 2014, the Financial Directorate of the Slovak Republic will issue binding tax rulings on the application of tax legislation to a specific matter upon a request of the tax subject and payment of consideration. The fee for the issuance of such ruling will range from EUR 4,000 – 30,000 based on the value of the underlying transaction. The tax ruling will be binding upon both the tax office and the appellate tax office.

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

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SPAIN

SPANISH REPORT – SEPTEMBER 2013 - JANUARY 2014

1. New tax measures on Corporate Income Tax

Law 16/2013 of 29 October has introduced changes to Corporate Income Tax and other tax measures matters (“**Law 16/2013**”). The main tax developments are as follows:

1.1. Permanent changes to the Corporate Income Tax as from 1 January 2013

1.1.1. Non-deductibility of impairment losses

The deductibility of impairment losses on securities representing a holding in the share capital or equity of entities has been removed, whether or not the entities are resident in Spain, and regardless of their percentage of the holding.

Apparently, deductions already applied before the implementation of this new rule (i.e., in tax periods beginning before 1 January 2013) will be reversed even in cases where the recovery of value may be unclear:

a) For impairments deducted, regardless of their record in the profit and loss account, the reversal must be included in the tax base:
   (i) For those periods when the value of the investee’s equity at the end of the year exceeds the value at the beginning of the year.
   (ii) When dividends or profit shares from the investees are received and a deduction of an impairment loss is derived from them, unless those dividends or profit shares are not recorded as income.

b) For impairment of shares in companies listed on a regulated market, the reversal will be taxed when it is recorded in the accounts.

1.1.2. Non-inclusion of dividends in the tax base upon evidence that an equivalent amount was taxed in a previous transfer of the shares

Law 16/2013 establishes the possibility not to include in the tax base the dividends or profit shares recorded as income (through the corresponding negative adjustment) upon evidence that an equivalent amount was taxed at the time of a previous transfer of the shares. In such cases, the amount of the dividends or the profit shares not included in the tax base will reduce the tax value of the shares.
If dividends or profit shares derive from a non-resident entity, they do not have to be included in the tax base (with the simultaneous application of the international double taxation deduction) upon evidence of the abovementioned prior taxation and as long as the distribution has resulted in a recorded impairment loss which will not be deductible.

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However, in the case of dividends or profit shares deriving from a resident entity, there is no need for the distribution to have resulted in a recorded impairment loss, as long as prior taxation is proven (with the simultaneous application of the domestic double taxation deduction of 50% or 100%, depending on the case).

1.1.3. Non-deductibility of negative income deriving from permanent establishments abroad or temporary business associations operating abroad

The following negative income will not be deductible:

- The negative income obtained abroad through a permanent establishment, except in the case of its transfer or cessation of its activities.
- The negative income obtained by members of a temporary business association operating abroad, except in the case of transfer of the holding therein or its cessation.

If positive income is subsequently obtained from the permanent establishment or the temporary business association, any portion corresponding to the amount of the negative income not deducted in previous years will not be included in the tax base.

1.1.4. Deferral of losses deriving from the transfer of shares or permanent establishments between entities of the same corporate group

Law 16/2013 establishes a special rule for the recognition of negative income incurred in the transfer of securities representing a holding in the share capital or the equity of entities, or a permanent establishment, when the acquirer is an entity of the same corporate group (pursuant to article 42 of the Spanish Commercial Code), regardless of the residence and the obligation to file consolidated financial statements.

In these cases, the aforementioned negative income will be recognised in the tax period in which the securities or permanent establishment is transferred to third parties unrelated to the corporate group, or when the transferor or the acquirer does not form part of the corporate group.

1.1.5. Reduction of deductible losses deriving from the transfer of shares or permanent establishments when there was a prior application of an exemption or a deduction

Negative income from the transfer of shares must be reduced by the amount of dividends or profit shares received from the investee from the first tax period of 2009, as long as these have not impaired the share acquisition value:

- ***in the case of a non-resident investee, they are entitled to the exemption or the international double taxation deduction;***
- ***in the case of a resident entity, they are entitled to the domestic double taxation deduction of 100%.***

Negative income deriving from the transfer of permanent establishments must also be reduced by the amount of previous net positive income from the permanent establishment transferred (in this case no restriction refers to 2009).

Similarly, negative income from the transfer of a holding in a temporary business association or its cessation must be reduced by the amount of previous net positive income obtained from it (apparently, only to the extent that this prior net positive income was exempt from taxation).

1.2. Permanent changes on Corporate Income Tax as from 1 January 2014

- The current regulations on the tax credit for income obtained in Ceuta and Melilla has been changed.
- Law 16/2013 establishes an indefinite duration of the deduction for investment in film productions and audiovisual series (which removal was scheduled for fiscal years beginning after 1 January 2015).

1.3. Extension of temporary measures on Corporate Income Tax

1.3.1. <u>Limitation on the tax losses that can be offset</u>

The limitation (existing for the tax years beginning in 2012 and 2013) has been extended to the tax years 2014 and 2015.

In accordance with this limitation, taxpayers whose turnover exceeds EUR 6,010,121.04 in the twelve months preceding the date of the tax period's commencement, can only offset tax losses from prior years:

by 50% of the tax base prior to the offsetting, provided that in the previous twelve months the net turnover was at least EUR 20 million, but less than EUR 60 million;
by 25% of the tax base prior to the offsetting, provided that in the previous twelve months the net turnover was at least EUR 60 million.

1.3.2. <u>Payments on account of Corporate Income Tax</u>

- The increased rates corresponding to the payments on accounts of Corporate Income Tax set out in Royal Decree-Law 9/2011 of 19 August are extended to 2014.
- The minimum amount of installment payments for taxpayers whose net turnover in the twelve months preceding the commencement date of the corresponding year is at least EUR 20 million is extended to 2014 and 2015.
  This minimum amount will be 12% or 6% of the positive outcome of the profit and loss account for the first three, nine or eleven months of each calendar year, in the same terms as those of 2012 and 2013.
- This is maintained for 2014 and 2015,
- The obligation to include 25% of the amount of dividends and income accrued and entitled to the exemption in the tax base to avoid international double taxation is maintained for 2014 and 2015.

1.3.3. <u>Greater flexibility of the leasing regime</u>

The implementation of this regime requires, among others, that the annual amount of the portion of the leasing payments relating to the cost recovery of the asset remains the same or increases over the

contractual term. A requirement is established whereby the years 2009 to 2011 and Law 16/213 have extended this exception to existing leasing contracts whose annual periods commenced in 2012, 2013, 2014 and 2015.

1.3.4. *Reduction of the deductible percentage of goodwill and intangible assets with an indefinite useful life*

The reduction from 5 to 1% of the annual deductible percentage of goodwill on business acquisitions for valuable consideration or restructuring transactions will continue to apply in 2014 and 2015.
The reduction from 10 to 2% of the maximum annual deduction of intangible assets with an indefinite useful life has also been extended to tax periods beginning in 2014 and 2015.

1.3.5. *Limitation on tax credits*

During the tax years beginning in 2014 and 2015 the limitations will remain on the application of the tax credits to encourage certain activities, including reinvestment, established by RDL 12/2012.

2. The optional cash-accounting VAT regime

This new special regime is applicable as from 1 January 2014 and was approved by Law 14/2013 of 27 September on support for enterprising and internationalization.

The cash-accounting VAT regime applies to those taxpayers which (i) VAT-turnover during the previous calendar year did not exceed two million euro (or which activity commenced during the current calendar year) and (ii) which do not receive cash payments from the same client in excess of EUR 100,000 during a given year; provided that they formally opt to be subject to this special VAT regime under the terms established in the corresponding regulations. The option will be extended unless waived, in which case the taxpayer may not re-apply for the regime for at least three years.

The cash-accounting VAT regime basically consists in (i) VAT corresponding to transactions carried out by VAT Cash-Accounting taxpayers not being chargeable under the general rules (by which VAT generally becomes chargeable when the relevant goods or services are supplied), but when payment is made; and (ii) the right of deduction of input VAT borne by VAT Cash-Accounting Taxpayers being postponed until they pay their suppliers.

It must be noted that the special rule regarding the moment when VAT is chargeable affects both the VAT Cash-Accounting taxpayer supplying the relevant goods or services and the recipient (who may not deduct the corresponding VAT until it becomes chargeable, disregarding whether the recipient is a VAT Cash-Accounting taxpayer or not); while the special rule for the deductibility of input VAT borne by the VAT Cash-Accounting taxpayer only affects that taxpayer and not the taxpayer supplying the relevant goods or services.

Under this regime, the general rule is that VAT will be chargeable:

a) at the time of full or partial payment of the price for the amounts actually received; or,
b) if "i" has not occurred yet, on 31 December of the year immediately following that in which the transaction was carried out; or,
c) if neither "i" nor "ii" have occurred yet, when the taxpayer is declared insolvent ("en concurso").

3. Personal Income Tax ("PIT")

The Enterprising Law replaces the former exemption of gains deriving from the transfer of shares in newly-incorporated companies with a new system of incentives for investment in new businesses, including, under certain requirements:

a) a deduction applicable against the national PIT liability for 20% of the amounts temporarily invested in shares of new or recently created companies; and
b) an exemption of the capital gains realised on the transfer of such shares which are reinvested in other shares that meet the same requirements.

Both the deduction and the exemption will only apply to shares acquired on or after 29 September 2013.

4. New tax on greenhouse gases

Law 16/2013 creates a new indirect tax, applicable as from 1 January 2014. The new tax will be imposed on the first sale or delivery, or consumption of greenhouse gases (as defined in the Law 16/2013) after its production, importation or intra-Community acquisition.

5. Tax regime for the Asset Management Company for Assets Arising from Bank Restructuring (the "SAREB")

As from 1 January 2013 the following changes have been introduced to Law 9/2012 of 14 November on the restructuring and resolution of credit institutions:

- For the purposes of the limitation on the **deductibility of interest expenses**, the SAREB will be considered a credit institution, and will therefore be excluded from this limitation.
- The granting of mortgages for financing the acquisition of real estate assets to the SAREB or to entities participated by the SAREB directly or indirectly in at least 50%, will be exempt from the variable **stamp duty** charge.
  Furthermore, the SAREB may apply the tax benefits set out in Law 2/1994 of 30 March on subrogation and loan modification.
- Contributions or transfers of real estate made by the SAREB will not be taken into account in calculating the share of sections 833.1 (land development) and 833.2 (buildings development) of the tax on economic activities.

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SWITZERLAND

Corporate Tax Reform III

On 19 December 2013 the Swiss Federal Council presented the final report on the Swiss Corporate Tax Reform III. The final report is a very clear statement from the Swiss government that Switzerland shall foster its fiscal attractiveness.

Due to the pressure from the European Union (EU) and the Organisation for Economic Cooperation and Development (OECD) on the cantonal tax regimes – such as holding, domiciliary and mixed company regimes – the Federal Council will abolish these regimes by means of the Corporate Tax Reform III. Nevertheless the Swiss Government is also fully aware of the economic importance of the holding, domiciliary and mixed companies. For this reason potential measures to reduce the risk that the country may lose grounds with respect to its attractiveness for companies with movable activities such as financing or holding are elaborated in the final report. The final report proposes following measures:

Introduction of a license box system

The Swiss license box system shall be comparable with the license box systems in other OECD countries and shall offer almost the same benefits that are granted by license box systems in these countries. The planned license box system will be just applicable for cantonal as well as communal taxes. Based on the purpose to integrate the license box system in the tax harmonization act, all cantons will be forced to provide the same license box solutions. However the extent of the privileged taxation (i.e. applicable tax rate or reduction of tax base) is subject to cantonal decisions.

Reduction of cantonal corporate income tax rates

The cantonal and communal income tax rates could be reduced from an average cantonal tax rate of approximately 18% to an average of approximately 14%.The extent of the reduction can be decided individually by every canton. Such reduction would lead to lower effective tax rates (including the federal tax). A reduction of the federal tax rate is currently not planned.

Notional interest deduction on equity (NID)

The internationally accepted regime NID shall ensure equal tax treatment of equity and debt. This Swiss NID regime will not be identical with the already in other countries introduced NID regimes. In the report

it is mentioned that the Swiss NID regime shall be limited to the so-called “surplus equity” as the basis for the NID calculation. The surplus equity can be defined as that part of equity which exceeds an average, sound equity financing of a company.

Other measures

Other possible measures such as the abolishment of the one-time capital duty, changes to the Swiss withholding tax regime or a further reduction or even complete abolishment of the annual capital tax on equity could be introduced. The report also confirms that the abolishment of the privileged cantonal taxation regimes should allow for a tax-free step-up of the built-in gains that were created during the privileged taxation period.

Time Schedule

It is predicted that the whole law making process including the potential public referendum will probably need several years. Thus the Corporate tax Reform III will not come into force before 2018.

Walo Staehlin February 7, 2014

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THE NETHERLANDS

CFE National Report on recent developments in tax law
The Netherlands

On January 1, 2014 the following important tax measures will enter into effect:

- Corporate income tax
  - Fiscal portfolio investment companies (*fiscale beleggingsinstellingen*) subject to 0% Dutch corporate income tax are allowed to perform limited services that do not qualify as investment activities through a normally taxed subsidiaries, without losing their tax status. This is especially favourable for real estate investment funds.
- Personal income tax
  - The opt-in regime for non-resident tax payers to be treated as Dutch residents for personal income tax purposes (especially to claim mortgage interest deduction for their home located in their country of residence) is replaced by a regime that automatically grants certain allowances to certain "qualifying non-resident tax payers";
  - The personal income tax rate for income (both dividends and capital gains) derived from substantial shareholdings (more than 5% of the shares) is lowered from 25% to 22% in 2014 for an amount up to € 250.000;
  - The regime for the deferral of taxation on severance packages that are invested in annuities and other qualifying saving products is terminated in respect of severance packages granted as per 1 January 2014. The (early) release of existing saving products is incentivised by a reduction of the tax base to 80% in 2014;
  - Mortgage interest deduction is further limited by lowering the top marginal tax rate with 0.5% each year until 2042. This addresses both existing and new loans.
- VAT
  - Taxable persons performing exempt supplies used to subject to VAT in respect of 'internal' transactions like the development of real estate for their own account (so-called self-supplies). As from 2014, this VAT on self-supplies is no longer levied. Instead, no deduction of input VAT on costs incurred in relation to the internal transactions is allowed.
- Gift tax

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- Gifts up to an amount of € 100.000 to individuals are exempted from gift tax, provided that the amount is invested in the individual's home or applied to making related mortgage loan repayments.

Culemborg, January 16, 2013
Dr. Ruud Zuidgeest

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UKRAINE

Major tax developments since September, 2013
Corporate Profit Tax (CPT)

CPT rate

The Ukrainian Parliament approved changes to the Tax Code that will make CPT rate 18% in 2014 (instead of the 16% rate earlier prescribed by the Tax Code), 17% in 2015, 16% in 2016.

Tax accounting of securities

In this case the negative financial results from operations with securities as on January 1, 2014, will not be considered when determining the financial results from transactions with securities on the results of the tax periods in 2014.

A gain or loss from the issuance of debt securities above or below their nominal value is recognized in the period during which there was a redemption or repurchase of such securities. Expenses incurred by the taxpayer when purchasing securities, derivatives and corporate rights issued in other than securities form before January 1, 2013 will be considered for their further alienation in its entirety on the basis of primary documents confirming expenses.

Amortization period for intangible assets

The taxpayers are entitled to set the amortization period of the intangible assets on their own, but it must not be less than 2 and not more than 10 years of continuous operation (this only applies to intangible assets, the term of which is not specified in the documents establishing the right).

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Withholding tax

Cyprus

The new Ukraine - Cyprus tax treaty enters into force from 1 January 2014.

The treaty introduces a number of important changes regarding withholding tax (WHT) rates, compared to the previous Cyprus-USSR tax treaty as follows:

Type of income	New WHT	Current WHT
Dividends	5/15%	0%
Interest	2%	0%
Royalties	5/10%	0%

The new treaty also introduces the beneficial ownership requirement in order to enjoy the reduced WHT rates on dividends, interest and royalties.

Previously WHT was zero for all. That is why Cyprus was No1 territory when structuring investing/reinvesting to Ukraine.

Malta

On 4 September 2013, a double tax treaty between Ukraine and Republic of Malta was signed. According to the publicly available information, the treaty introduces the following WHT rates: dividends: 5%/15%; interest: 10%; royalties: 10%. To become effective, the treaty needs to be ratified by the parliaments of the two countries.

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Transfer pricing (TP)

The main changes to the TP legislation introduced are:

1. Resolution No. 749 dated 02.10.2013 that allows 5% deviation from the market prices for all categories of goods listed in transitional provisions of new transfer pricing rules (metals, chemicals, agricultural products) came into force on 25 October 2013.
2. Resolution No. 763 dated 17.10.2013 that establishes the methodology of calculation and application of the market range of prices and profitability came into force on 25 October 2013.
3. Resolution No. 764 dated 17.10.2013 that establishes the procedure of conclusion of bilateral and multilateral pricing agreements came into force on 25 October 2013.
4. Order No. 865-p dated 23.10.2013 that establishes the list of the special commercial publications for transfer pricing purposes came into force on 23 October 2013.
5. Order No. 866-p dated 23.10.2013 that establishes the list of the official sources of information for calculating the market range of prices came into force on 23 October 2013.
6. Order No. 1042-p dated 25.12.2013 that establishes the list of the low-tax jurisdictions came into force on 25 December 2013.

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VAT

Rate

The standard 20% rate remains ((instead of decrease to 17% rate from 2014, earlier prescribed by the Tax Code) will be reduced to 17% from 1 January 2015.

Registration

An entity qualifying as a taxable entity should register with the tax authorities at the place of its location and obtain a VAT registration number. Now voluntary VAT registration is available prior to achievement of the mentioned threshold.

Incentives

Some incentives on VAT were prolonged to 2014.

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The vehicle utilisation fee

The utilisation fee is introduced. It will be paid upon:

• import of vehicles and car bodies (excluding car bodies imported for production purposes)
• sale of vehicles produced in Ukraine
• purchase of vehicles imported for diplomatic purposes.

Ukrainian producers may be exempted from the vehicle utilisation fee if they decide to utilise their products themselves.

The rates of the utilisation fee are based on the car's age, engine capacity, and weight.

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Excise

Excise on spirits and alcohol is increased.

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UNITED KINGDOM

130th Meeting January 2014
Report on UK developments September 2013 to January 2014

Finance Bill/Act 2014
The government published draft clauses in December, for comment by 4 February 2014.

Finance Bill 2014 will then be published in early April after the Budget on 19 March 2014.

Parliament will scrutinise the Finance Bill over the summer months and Finance Act 2014 will be enacted in July 2014.

Direct Tax: corporates

Corporation tax roadmap
When the present government came to power in May 2010 they set out a corporation tax roadmap setting out how they were going to change the system. They have now largely achieved their objectives with a couple of further reductions in headline rate of tax, see below, before the next election in May 2015.

In accordance with the roadmap major changes have been made to the R&D tax credit regime, there was a new Controlled Foreign Companies (CFC) regime for accounting periods beginning on or after 1 January 2013 which targeted only income diverted from the UK and had a favourable regime for group finance companies. In addition UK introduced a 10% patent box regime from April 2013.

Headline rate of tax
Corporation Tax rate will be reduced from 23% in 2013-14, to 21% in 2014-15 and then to 20% from April 2015. The corporate tax rate was 28% when the present government came to power in summer 2010.

Shale Gas
There is to be increased allowances for capital expenditure incurred on or after 5 December 2013 in relation to onshore oil and gas (shale) projects.

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.

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 is going to be reduced from £50,000 a year to £40,000 from the 2014/15 tax year onwards.

Indirect Tax

UK VAT developments September 2013 to January 2014

September 2013

- VAT Brief 26/13 announces a new statutory instrument effective from 1 October 2013 that extends zero-rating to goods supplied to businesses registered for VAT in the UK but established in another country, where those businesses export the goods outside the EU

- The CJEU (Case C-388/11 Credit Lyonnais) concludes a taxable business located in one member state (entity A) is unable to take into account the turnover of its branches located in other member states or third countries when determining the deductible portion of its (entity A's) input VAT. It also concluded a member state is unable to permit such a calculation rule.

October 2013

- A new version of the HMRC agreed 'Framework for Higher Education Institutions Partial Exemption Special Methods' is published.

- European Commission proposed a standard VAT return form for businesses.

- Court of Appeal overturns the 2009 decision of the High Court that gaming machines involving a random number generator providing numbers to a range of terminal machines were gaming machines within the definition of the exclusion from VAT exemption in Note 3 to item 1 of VATA Sch9 group 4 as at the relevant time.

- The European Commission publishes practical guidelines to prepare businesses for the new VAT rules for telecoms and e-services, which will enter into force in 2015 (mini one stop shop).

November 2013

- HMRC issued Brief 33/13 to remind taxpayers that the partial exemption concession on Road Fuel Scale Charges (RFSCs) will be withdrawn with effect from 1 January 2014.

- HMRC is participating in an EU trial of VAT ruling requests for complex cross-border situations, up until 31 December 2013.

- The EU grants an extension to the UK to 31 December 2016 for its 50% input tax block on care hire or lease costs where the car is not used wholly for business purposes.

- The CJEU (Case C-494/12 – Dixon Retail plc) concludes that where a retailer transfers goods to a customer where those goods have been paid for by the fraudulent use of a credit card by that customer, and where the credit card company has not exercised a chargeback to recover the fraudulently used funds, then for VAT purposes there has been a supply of goods and the amount received by the retailer does amount to consideration.

- The First-tier Tribunal (FTT) concludes that five additional cases should be added as 'related cases' behind the lead case ZipVit which questions: "whether a taxable person, who has received supplies of services from Royal Mail which were at the material time treated by Royal Mail as VAT exempt, but which were properly chargeable to VAT under the Sixth VAT Directive or Principal VAT Directive, is entitled to an input tax credit in respect of those supplies." It is understood this lead case will be heard in May 2014.

December 2013

- From 1 December 2014 general betting duty and pool betting duty will be charged on operators' betting and gambling profits from transactions with UK customers, irrespective of whether the operator is in the UK or elsewhere.

- Legislation will be introduced to exempt from CCL supplies of taxable commodities used in metallurgical and mineralogical processes. The changes will take effect from 1 April 2014.

- Legislation will be introduced to suspend elements of the aggregates levy that are subject to a formal State aid investigation by the European Commission. Affected materials will become taxable when commercially exploited on or after 1 April 2014.

- Changes to the place of supply rules and provisions for the One Stop Shop to be introduced that will become effective on 1 Jan 2015.

- The Upper Tribunal rejects Leeds City Council's appeal that the three year cap on reclaims was incorrectly implemented in respect of VAT paid by mistake (VATA s80 claims).

- CJEU (case C-495/12 - Bridport and West Dorset Golf Club Ltd) has held that UK VAT law in respect of VAT exemption for fees for services closely linked with sport of physical education provided by an eligible body operating a membership scheme, is incorrect.

January 2014

- HMRC Brief 38/13 contains notes on changes to Intrastat thresholds from 1 January 2014:
  - the exemption threshold for arrivals is increased from £600,000 to £1,200,000;
  - the Delivery Terms threshold is increased from £16 million to £24 million;
  - the exemption threshold for dispatches (EU exports) remains unchanged at £250,000.

- HMRC issues a consultation concerning clarification of when it will accept VAT returns from small businesses in non-electronic form;

ICAEW Tax Faculty / Chartered Institute of Taxation
January 2014

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