CONFEDERATION
FISCALE
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CFE Fiscal Committee

National Reports

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128th Meeting

CONFEDERATION FISCALE EUROPEENNE

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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. The Conciliation Committee has not been called yet.

To transport the consensus of the 2012 mediation committee into law, the Upper House confirmed a legislative initiative including the points mentioned in our report on tax changes January 2013.

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 voted in favor on 2 February 2013. The Act provides for the changes mentioned in our report on tax changes January 2013.

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FRANCE

DIRECT TAX NEWS

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

1. Corporation tax

Capital gains: in general, capital gains on participations of at least 5% held for at least 2 years are tax exempt subject to a 1/3 standard corporation tax on a service charge. For financial years closed as from 31 December 2012, the taxable service charge is computed on the gross amount of capital gains (instead of the net amount) and its rate is increased up to 12% (instead of 10%).

Deduction of interest: for financial years closed as from 31 December 2012, if the net financial charges amount to at least €3m, a portion of 15% is generally not tax deductible (increased to 25% for financial years opened as from 1 January 2014).

Tax credit "competitiveness and employment": a tax credit has been created in order to lower labor costs and to improve competitiveness and employment. The tax credit is calculated on the gross amount of wages with the exception of wages higher than 2.5 times the minimum wage. The credit is 4% of this amount in 2013 and 6% in 2014. It may not finance an increase of distributed profits or compensation paid to executives.

Transfer of corporate seat or establishment from France to an EU country: the statute now provides that where assets are simultaneously transferred from France to an EU country (or Island or Norway), latent capital gains are taxable but the taxpayer may generally pay the tax over a 5-year period (with no interest nor guarantee).

Loss carry forwards: the profit of the year may generally not be reduced by more than 50% (previously 60%) by losses of the past financial years.

2. Individuals

Income tax: the marginal rate has been increased up to 45% (the proposed 75% exceptional surtax has been cancelled by the Constitutional court but may be reintroduced in 2013 under a slightly different format).

Dividend, interest and capital gains on the sale of (non-real estate) shares: as a matter of principle, this income is now subject to the standard income tax schedule (the 40% rebate on dividends is still applicable); a reduced 19% rate on capital gains made by entrepreneurs is still applicable under conditions.

New tax on real estate capital gains higher than €50,000: for capital gains realized from disposals occurring on or after 1 January 2013, an additional tax of a maximum of 6% has generally to be added to the standard capital gains tax (for non-residents, this tax applies in addition to the regular 19% or 33.33% tax).

Wealth tax: the marginal rate is set at 1.5% above €10m (the tax shield of 50% had been abolished last year).

3. Non residents

Withholding tax rates on income paid to Non Cooperative States or Territories: the rate has been increased from generally 50% to 75%.

Capital gains on the disposal of substantial (non-real estate) shareholding: subject to tax treaties, since 1 January 2013, capital gains on the disposal of shares by non-residents holding more than 25% of the shares of a company are subject to a 45% levy (instead of 19% previously). However, if the application of regular income tax is more favorable, the taxpayer can obtain a refund of the excess portion. The same tax is applicable where the seller is a non-resident corporation but no refund of the difference with the standard tax rate of 33.33% is contemplated by the statute.

Swiss residents benefiting from lump sum taxation: the prior tolerance whereby they could be treated as Swiss residents for the purposes of the France/Switzerland tax treaty has been withdrawn as from 1 January 2013; as consequence, for instance, a Swiss resident benefiting from this system may be viewed as a French resident if he has his center of economic interest in France.

4. Case law

Consequence of the remittance basis in the UK: The Highest tax court ruled that an individual may be a resident of the UK for the purposes of the tax treaty even if he benefits from the remittance basis since, although he may not be taxable on his foreign source income during the year of payment, he is not definitively exempt as he may be taxable later on upon remittance to the UK (ruling of 27 July 2012, n° 337656 and 337810).

Exercise of a professional activity in France: it was ruled that an individual exercising his professional activity in France had in France his center of economic interest although he did not receive French source income as he had structured his business around a Belgium company and did not receive any salary or dividend from France; in this case, the place where the activity was carried out was more relevant than the actual source of income (Highest tax court ruling of 26 September 2012, n° 346556).

Bruno Gouthière
16 March 2013

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IRELAND

Report on Irish tax developments in the period since January 2013

Local Property Tax

The legislation giving effect to the new Local Property Tax (LPT) was enacted last December. This is an annual tax on residential property and it replaces the temporary €100 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.
- It is anticipated that the tax will be payable on approximately 1.6 million residential properties
- 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.
- A half-year liability will be payable for 2013 and a full year's liability will be payable thereafter.

There are a number of limited exemptions from the tax, including exemptions for properties purchased by a first-time buyer during 2013, properties located in unfinished housing estates, properties owned by charitable bodies, and properties which are subject to commercial rates.

Taxpayers whose income is below a certain threshold may make a claim for deferral of the tax, subject to an interest charge of about 4% per annum. Increased income thresholds apply to those who have outstanding mortgages and are paying mortgage interest.

Taxpayers are provided with a number of payment options, including payment via deduction from salary, cash or cheque payment, direct debit, or payment via debit or credit card. Hard-copy paper returns may be filed, or returns may be filed online via a dedicated Revenue application.

Revenue have a number of powers to ensure compliance with payment and filing obligations in respect of the tax. These include:

- Interest on late payment of about 8% per annum
- Penalties for failure to file an LPT return
- Power to direct employers to deduct the LPT liability directly from the wages or salary of employees
- Power to direct that the tax be deducted from Government payments such as social security payments
- Power to direct that the tax be taken directly from the taxpayer's bank account
- A surcharge on the income tax return of a taxpayer who has not complied with their LPT obligations

LPT returns must be filed in May and the tax becomes payable from July 2013. The government has projected that the tax will yield €250m in 2013 and €500m in a full year.

Finance Bill 2013

Finance Bill 2013 was published in mid-February and it gives effect to the measures announced in last December's Budget, which were detailed in our previous national report. A number of additional measures were contained in the Bill, including the following:

- An incentive for certain urban regeneration activity
- Provisions relating to debt forgiveness and the use of trading losses by those engaged in land dealing or development
- Clarifications on the treatment of foreign rental losses
- Various VAT amendments applicable to receivers and liquidators

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ITALY

Report Update on Recent Developments of Italian Tax Laws as of January 2013

Transfer pricing

The Italian Revenue Office Circular No. 1/E dated 15 February 2013 provides some clarifications on interpretation matters concerning questions put forward by professionals and by the specialized press.

Since many tax administrations presume that controlled foreign distributors have to maintain a constant profitability *ratio*, the question raised by practitioners is whether an Italian holding company (entitled to intellectual property such as trademarks, brands, etc.) could assure a payment to its distributors through a discount policy to remunerate not only the distribution activity, but also other essential functions such as promotion and advertising.

The Italian Revenue Office clarified that, in general, the application of the arm's-length principle is based on a comparison between the conditions under which the controlled transaction is carried out and those under which a transaction between independent enterprises is carried out.

Therefore, the analysis of each comparability factor indicated in the OECD Transfer Pricing Guidelines, i.e., characteristics of property or services, functional and risk analysis, contractual terms, economic circumstances and business strategies, is crucial in order to determine the arm's-length price. As a result of this analysis, it is possible to identify the most appropriate transfer pricing method and, consequently, to determine a price that takes into account the functions performed and the risks assumed by the distribution company for its sales and promotional activities.

Tobin Tax

Italy's 2013 Stability Law, which became effective on 1 January 2013, introduces the Financial Transactions Tax (the so-called "*Tobin Tax*").
The new tax is levied on:

- transfers of ownership of shares or other participating financial instruments;
- transactions involving financial derivatives and securities that have underlying participating financial instruments;
- high-frequency trading.

The tax is due regardless of where the transaction takes place and the country of residence of the parties involved. Therefore, the tax is levied even when neither party is resident in Italy and the transaction occurs abroad, as long as the shares are issued by companies resident in Italy. Transfers resulting from inheritance or donations are exempt from the tax, as specifically set forth in the law.

Additionally, the tax does not apply to:
- issuance and cancellation of shares;
- conversion of shares into newly-issued shares;
- temporary acquisition of securities such as securities lending agreements and repurchasing agreements;
- transfers of shares listed in regulated markets and issued by companies with a net market value (as of November of the year preceding the transfer) below 500 million euros.

The amount of tax due is proportional to the value of the transaction. The tax is reduced by half if the transfer takes place in regulated markets. In short, the tax applies as follows:
- in 2013:
  - 0.22% for transfers that do not take place in regulated markets;
  - 0.12% for transfers that take place in regulated markets;
- starting in 2014:
  - 0.20% for transfers that do not take place in regulated markets;
  - 0.10% for transfers that take place in regulated markets.

The above rates are applied to the net value obtained in the same working day by a single operator on the same financial instrument, or to the consideration paid.

IRAP

The 2013 Stability Law further defines the notion of independent entity. In particular, it establishes the creation of a fund that, starting in 2014, will make it possible to exempt from the application of

IRAP those individuals that practice:
- business activities indicated in Art. 55 of the Italian Income Tax Code;
- independent professional services.

The above mentioned individuals will be exempt from IRAP if:
- they do not employ dependent employees or any worker treated as dependent employee by Italian law;
- the value of the capital goods that they use (including those on lease) does not exceed a certain threshold.

Such threshold shall be defined by Decree of the Ministry of Economy and Finance.

VAT

The 2013 Stability Law establishes the obligation to issue invoices for transactions (transfer of goods and supply of services) that are VAT exempt because they are not relevant in Italy.
The significant difference between this law and the previous legislation is the new obligation to issue invoices to EU taxable persons, liable for tax in their Country via reverse charge, for

transactions with place of supply outside Italy (*ex* Arts. 7-7-*septies* of Presidential Decree No. 633/72, and not just those transactions indicated in Art. 7-*ter* of the same Decree, as previously established) as well as for the transfer of goods and the supply of services that take place outside the European Union (extra-EU transactions).

The invoice shall specify whether it includes a VAT reverse charge for transactions with entities that are subject to tax in another EU Member State, or if it regards a transaction that is VAT exempt because it concerns the transfer of goods or the supply of services to entities established outside the European Union.

As of 1 January 2013, transactions that are not relevant in Italy are included in the turnover of national suppliers of goods or services. The inclusion of these transactions will increase the business value of taxpayers and affect the choice of accounting regimes other than the ordinary one.

Starting on 1 July 2013, the ordinary VAT rate, currently 21%, will increase to 22%. The reduced VAT rates of 4% and 10% will remain unchanged.

March 2013

Raffaele Rizzardi – Piergiorgio Valente

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UNITED KINGDOM

Report on UK developments January to March 2013

Finance Bill and Budget 2013

Draft clauses to be included in Finance Bill 2013 were published on 11 December 2012 for comment by 8 February.

The 2013 Budget will be on 20 March 2013 and the actual Finance Bill will be published on 28 March. After debate in Parliament it will be become Finance Act 2013 sometime in July.

Direct Tax: corporates

The UK Government has a stated ambition for the UK to have the most competitive tax regime amongst the G20 countries and the changes set out below are aimed to realise that objective.

Headline rate of tax
Corporation Tax rate is to be progressively reduced from 24% in 2012-13, to 23% in 2013-14 and then to 21% from 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 regimewill 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) has been 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

UK VAT developments 15 January 2013 to 8 March 2013

January 2013

- First-tier Tribunal decision released involving a claim by the British Film Institute, clarifying that the scope of the VAT exemption applicable to 'certain cultural services' had been too narrowly interpreted by HMRC.

- HMRC highlight a change to their guidance for VAT and hotel rooms used for catering that was not previously highlighted when this guidance was last updated in October 2011, commenting that assessments for divergence from the standard rating outlined in guidance not will apply to supplies prior to 22 Jan 2013.

February 2013

- First-tier Tribunal releases their decision that travel agents commission income due from holiday providers that is offset against the income due from customers purchasing holidays does not decrease the amount of VAT due on travel agents commission.

- Upper Tribunal clarifies that a VAT claim based on legitimate expectation must be decided at a higher level of Tribunal or Court than the First-tier Tribunal and concluded in the particular instance considered (incorrect advice given by HMRC's VAT phone-line service), that there was no legitimate expectation for the taxpayer to rely on the incorrect advice from HMRC.

- Court of Appeal releases its decision in the recoverability of input VAT on advisory fees to a special purpose bid vehicle in connection with the acquisition of BAA plc. In the particular circumstances considered input VAT recovery was denied as the SPV was not carrying on an economic activity and there was no direct and immediate link between the advisory fee costs incurred pre-acquisition and the subsequent management fee outputs once the acquisition had completed.

March 2013

- CJEU decision in the case of Wheels Common Investment Fund Trustees and Others (C-424/11) has been released and indicates that the VAT exemption does not apply to investment management services supplied to pension funds which are not considered as falling within the meaning of 'the management of a special investment fund'.

- The Supreme Court released its judgment in HMRC v Aimia Coalition Loyalty UK Limited (formerly known as Loyalty Management UK ltd) [2013] UKSC 15. This case concerned the Nectar scheme. Under this scheme retailers made payments to LMUK in consideration for awarding Nectar points to their customers. LMUK then made payments to redeemers when customers redeemed their Nectar points for goods supplied by the redeemers. The Supreme Court observed that it was common ground that the payments were third party consideration for supplies by the redeemers to the customers. However, a majority of the Supreme Court considered that the judgment of the Court of Justice did not prevent them from also concluding that the entire payment was also consideration for a supply of services by the redeemers to LMUK, so that LMUK could recover input tax on the payments made to the redeemers. The dissenting minority considered that this analysis was inconsistent with the judgement of the Court of Justice that the payments were just third party consideration and no input tax could therefore be recovered by LMUK.

- 20 March 2013 – Budget (with updated draft Finance Bill legislation due 28 March)

- HMRC update to the VAT treatment of investment management services following the CJEU decision in Deutsche Bank (C-44/11) expected sometime after Easter.

ICAEW Tax Faculty / Chartered Institute of Taxation
March 2013

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