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CFE Fiscal Committee

National Reports

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BELGIUM

Belgium – Major developments (May 2012 – August 2012)

- **Thin cap rule: entry into force and special rule for treasury centers**

Entry into force of new thin cap rule

The thin cap rule introduced by the law of 29 March 2012 entered into force on 1st July 2012.

According to this new provision, the deduction of interest paid on loans will be disallowed in case, and to the extent of the excess, the total amount of these loans is higher than five times the sum of the taxed reserves at the beginning of the taxable period and the paid-up capital at the end of this period.

The deduction limitation is applicable if the beneficial owners of the interest

- are established in a tax haven; or
- are part of a group whereto the debtor belongs.

Easing of negative consequences of thin cap rule for treasury centers

The program law of 22 June 2012 contains the netting of interest paid and received for treasury centers.

The law does not mention the concept of treasury centers, but refers to "financing transactions in the context of a framework agreement for centralized treasury management within a group".

It defines centralized treasury management as the management of daily treasury transactions or the treasury management for the short term or exceptionally for the long term to take specific circumstances within a normal treasury management into account.

The concept of framework agreement should be understood as the agreement in which companies that are part of a group clarify the used financing model and the activities within the centralized treasury management.

The term "group" refers as before to the whole of affiliated companies within the meaning of article 11 of the Companies Code.

For treasury centers interest paid on loans (to which the thin cap rule applies) should be understood as the positive difference between interest paid on sums put at its disposal by group companies, and interest received on sums group companies have put at its disposal.

Interest received cannot be taken into account if it originates from (a.o.)

- Financial institutions and factoring and leasing companies that are part of the group and established in the EEA;
- Group companies that are established in a tax haven (EEA member states are not deemed to be a tax haven).

The treasury center must be able to prove that both interest paid and received are connected to the centralized treasury management and are the consequence of the framework agreement for that centralized treasury management.

- **Supplementary pensions (program-law of 22 June 2012)**

Annual levy of 1,5% on "high" contributions for supplementary pensions

A new levy will be due on "high" employer contributions (regarding employees) and on "high" contributions for independent company directors when they exceed a certain threshold.The levy will be considered as a social security contribution. As such, it should be tax deductible at the level of the employer/company.

It will apply on contracts providing benefits on survival at a stipulated age as well as on contracts providing benefits on death and will be implemented in two steps.

During the first period, from January 1, 2012 till January 1, 2016 at the latest, the levy will be due on the amount of employer contributions exceeding an annual threshold of 30.000 € (subject to yearly indexation).

As from January 1, 2016 at the latest, the 30.000 € threshold should be replaced, and the special levy will be due when the sum of the legal pension and the reserve of supplementary pension converted into monthly income will exceed the "pension objective".

The pension objective will be calculated based on the following formula: (basis amount x career fraction), where the basis amount corresponds to the highest civil servant pension and the career fraction to the amount of years of career / 45.

Introduction of a new condition for the deduction of supplementary pension contributions

Contributions paid as from January 1, 2013 by employers subject to (non-resident) corporate income tax will not be tax deductible if the necessary information has not been provided to Sigedis in order to feed the database for "second pillar" pensions (they will be considered as disallowed expenses).

Taxation of the pension capital pay out

The tax rate applicable to pension capital funded by employer contributions is increased from 16,5% to 20% (when paid at the age of 60) and 18% (when paid at the age of 61). The table below summarizes the applicable rates for pension capital paid as from July 1, 2013.

Tax rate	Age of the beneficiary
20 %	60
18%	61
16,5%	62 to 64
10%	65

Note that a pension capital subject to this separate tax rate is also subject to supplementary municipal tax.

Individual pension commitments

As from January 1, 2012, recording an ***internal provision*** in order to finance a new individual pension commitment is no longer allowed. Existing provisions, which are recorded in the accounts at the end of the last accounting period closed before January 1, 2012 may be maintained but they cannot be increased.

Companies and other legal bodies will have to pay a special contribution of 1,75% on those existing provisions recorded in the accounts at the end of the last accounting period closed before January 1, 2012. The contribution will be due together with the (non-resident) corporate income tax for assessment year 2013. The contribution may however be paid in a 3-year period (ass. years 2013, 2014 and 2015), at a 0,60% rate for each year. It is not considered as a business expense and as a consequence, should not be tax deductible.

Key man insurances cannot be used anymore to finance individual pension commitments. However, the mandatory externalization does not apply to contracts concluded before July 1, 2012 in order to finance such pension commitments. These contracts can be further financed, but contributions may not finance higher benefits than those initially provided by the contracts.

In order to stimulate the externalization of existing internal provisions and key man insurances, the law provides for a tax neutral transfer to insurance companies, pension funds or institutions for occupational pensions. Such transfer will be exempted from the 4,4% annual tax on life insurance contributions.

Sabine Graziosi
Jos Goubert

KPMG Tax Advisers
Brussels
17/09/2012

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CZECH REPUBLIC

Tax news from May to September for the Czech Republic

Unrealised FX gains

In its newly published decision 5 Afs 45/2011 from 19 April 2012, the Supreme Administrative Court came to the conclusion that unrealised FX gains do not qualify as taxable income under the Income Tax Act. The reason is that unrealised FX gains, unlike realised gains, do not represent real income but only arise for accounting purposes. This is a ground breaking court decision as it fundamentally changes the approach to unrealised FX gains. The court decision does not explicitly deal with unrealised FX losses. The language however implies that also unrealised FX losses might need to be excluded from the tax base. Although the court decision does not represent law in the Czech Republic, it may be reasonably assumed that if a taxpayer follows this interpretation, the tax administrator should not challenge it.

The Czech Supreme Tax Directorate issued a guidance that the Czech tax authorities would not challenge a procedure when the Czech tax payers would apply the pre-ruling method, i.e. the tax base derived on tax gains and losses as booked.

Olga Holubová and Martin Houska
Members of fiscal committee delegated by Chamber of Tax Advisors of the Czech Republic

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GERMANY

Tax agreement between Germany and Switzerland

On 21 September 2011 Germany and Switzerland agreed on a tax agreement to ensure taxation of German capital assets in Switzerland for the present and the future and thereby place relations between Switzerland and Germany on a forward looking basis. A supplementary protocol was signed on 5 April 2012 adding a few points to the agreement. The agreement is highly controversial. The parliamentary opposition demands stricter rules as currently agreed on. The finance committee of the lower house of parliaments has arranged a public hearing for experts on 24 November 2012. In the run-up to the hearing Deloitte took the opportunity for a written opinion along with other. The opinions are published on the official website of the German parliament.

Draft Taxation Act 2013

The Federal Ministry of Finance (BMF) issued a draft "Taxation Act 2013" bill on 6 March 2012 that includes a variety of changes to German tax law adopting changes of EU tax law and judgments of the European Court of Justice. The Upper House of Parliaments issued its opinion on the draft bill on 6 July 2012. The opinion consists of requests for changes as well as requests for reviews as to whether change to existing legislation should be made. The government will now review and forward the opinion of the Upper House and its own comments to the Lower House of Parliament.

The most significant change for corporate investors concerns the possible elimination of the 95 % exemption for dividends and capital gains derived from portfolio investments (i.e. less-than-10% shareholdings in subsidiaries). The proposed change is combined with a number of other proposed modifications to the loss carryforward rules and the calculation of EBITDA for purposes of the interest deduction limitation rule relating to dividends which are taxable under the new rule. According to these proposals, taxable dividends received from less-than-10 % shareholdings would not increase the relevant tax EBITDA for purposes of the interest deduction limitation rule and any expenses and losses resulting from a less-than-10% shareholding could be offset only against income from other portfolio investments.

Further, the application of the "held-for-trading" exception to banks and financial institutions within the meaning of the Banking Act shall be limited. Under this exception, dividends and capital gains realized by a financial institution are not entitled to the 95 % exemption if the participation is held with the intention to engage in short-term trading activities (and losses are fully deductible in these situations). According to recent jurisprudence of the German courts, regular holding companies also fall within the scope of this rule, which is the reason why the Finance Committee decided to propose restricting the scope of the rule.

The opinion also comprises a request for a review of the Real Estate Transfer Tax (RETT) rules. The Upper Houses of parliaments proposes an amendment to eliminate "RETT blocker structures", which are used by taxpayers to minimize their RETT liability in share acquisitions.

Draft for amended guidelines to the Income Tax Act

The Ministry of Finance issued a draft for amended guidelines to the Income Tax Act on 10 May 2012. The Upper House of parliaments needs to agree to the amendment. The final version of the amended guidelines is supposed to be published at the end of the year. The guidelines should instruct the tax authorities for a consistent application of the income taxation, to prevent unreasonable tax severity and to reduce bureaucracy. The new guidelines should be used for the tax assessment period 2012. They should also be used for tax assessment periods before 2012 as far as the amendment only explains the prevailing legal norms.

The most controversial amendment should be made regarding manufacturing costs. According to the draft guidelines the expenses for general administration, appropriate expenses for social facilities of the company and for the company pension scheme, as far as it is caused by the produced commodity, shall be included in the manufacturing costs for tax purposes. Thus, those expenses have to be booked as an asset in the tax balance sheet and consequently will not lead to immediately deductable expenses any longer.

Draft taxation bill to amend and simplify corporate taxation and tax rules for travel expenses

The German Federal Government agreed on a draft taxation bill to amend and simplify corporate taxation and tax rules for travel expenses on 19 September 2012. The law for travel expenses for tax purposes shall be simplified and amendments shall be made to corporate taxation, especially the taxation of tax groups.

The loss carry backward and should be increased up to 1 million Euro (resp. 2 million Euro for spouses which are taxed jointly). The current tax rules for a tax group should be simplified and modified according to current judicature. In detail, those changes concern the execution of the obligatory profit transfer agreement as well as the formal requirements for the closure of the profit transfer agreement. Furthermore, the rules for corporate tax groups shall be amended to conform to EU law.

Double Tax Treaties (DTT)

The legislative procedures to the Double Taxation Treaty (DTT) between Germany and Liechtenstein, Luxembourg and the Netherlands are in progress. The official documents can be found on the websites

of the Lower House of parliaments. The new DTT with Turkey has entered into force retroactively as of 1 January 2011. The ratification documents were exchanged on 1 August 2012. Since the former DTT with Turkey was terminated with effect 1 January 2011 the new DTT is applicable retroactively as 1 January 2011.

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FRANCE

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DIRECT TAX NEWS

A number of changes in direct tax have been implemented by a law of 16 August 2012 following the change of Government. The most significant provisions that may be of interest in an international context are as follows.

1. Additional taxes on real estate income earned by non-residents

Non-resident individuals are subject to income tax on real estate income and on capital gains realized upon the sale of real estate; with respect to income tax, the rates vary up to 41% and regarding capital gains tax the rates are either 19% (for EU residents) or 33,33% (for resident in third countries). An additional tax burden of 15.5% in total is now to be added as those taxpayers are henceforth subject to additional social taxes whereas, in the past, only resident individuals were subject to such taxes. The increase is however limited to income and capital gains from real estate and does not apply to all income earned by non-resident individuals.

2. Non deductibility of financial waivers of claims

For financial years opened as from 4 July 2012, waivers of claims and subsidies of any kind granted by an enterprise to another enterprise are no longer tax deductible except where the motive is commercial. This prohibition is applicable where the beneficiary is a French company as well as a non-resident company and even if the subsidy is taxable upon receipt in the hands of the beneficiary. The intent is however to target mostly foreign subsidiaries of French groups as granting a tax-deductible financial subsidy was, in the past, a means to allow foreign losses to be taken into account for French tax purposes, thus circumventing the territoriality principle.

3. Creation of a 3% tax on dividends distributed

In order to balance the tax cost resulting from the decision explained in 4 below, the FTA have decided to create, in addition to the standard corporate income tax of 33.33% (additional contribution to be added), a new tax of 3% on any amount distributed by French or foreign entities subject to corporate income tax in France (including permanent establishments of foreign companies). The tax is applicable irrespective of the characteristics of the shareholders, i.e. individuals or legal entities and resident or non-resident of

France. Regarding foreign companies that have a permanent establishment in France, the 3% tax is applicable to amounts that cease to be at the disposal of the French establishment.

This tax should not be viewed as a withholding tax as it is not paid out of the dividends and accordingly does not legally reduce the amount distributed; so it may not be reduced or cancelled in application of tax treaties or EU law. In addition, the legislation is likely to be in accordance with the EU directives as interpreted by the ECJ as the taxpayer is not the shareholder but the distributing company.

4. Withholding tax on dividends paid to most foreign UCITS

The French tax authorities have drawn the consequences of the ECJ ruling of 10 May 2012 in *Santander*; dividends are now exempt from any withholding tax when paid to the foreign equivalent of French UCITS and other similar collective investments vehicles provided that they satisfy simultaneously the following tests:

- they are situated in a state that belongs to the European Union or in another state or territory having concluded with France a treaty providing for administrative assistance with a view to combat tax fraud or tax evasion[1];

- they raise funds from a number of investors with a view to invest such funds in accordance with a defined investment policy, in the interest of such investors;

- their characteristics are similar to those of their French collective investment vehicles (SICAV, FCP, OPCI and SICAF).

5. Withholding tax on dividends paid to Real estate investment vehicules

During the Parliamentary debate on the consequences of *Santander*, an issue has been raised as regards dividends paid to foreign UCITS by French tax-exempt real estate investment companies.[2] In order to avoid full exemption in France on dividends paid by such entities to foreign UCITS, a withholding tax has been created at the rate of 15% on dividends paid by French SIIC and similar entities to French UCITS and to foreign UCITS meeting the conditions set forth in 4. above.[3] This tax is not discriminatory as it is applicable also to distributions to French UCITS.

[1] This includes tax treaties and tax information exchange agreements.
[2] In particular SIIC ("*sociétés d'investissements immobiliers cotées*").
[3] The standard withholding tax on dividends (30% or 55%) is maintained if the conditions are not met.

6. CFC legislation (article 209 B of the French tax code)

For financial years closed as from 31 December 2012, the conditions for avoiding the CFC legislation on income earned by entities established outside the EU and benefiting from a privileged tax regime (subsidiaries or permanent establishments) have been changed. The exemption now assumes that the French parent company provides evidence that the main purpose and effect of the operations carried out by the foreign entity is not to locate income in a state or territory where the entity enjoys a privileged tax regime; the burden of the proof is now clearly on the French parent. The condition is met notably where the foreign entity exercises mainly an industrial or commercial activity on the territory of its place of establishment or seat.

Bruno Gouthière

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IRELAND

Report on Irish tax developments in the period since April 2012

Department of Finance Consultations

The Department of Finance conducted a number of consultations on tax matters over the summer months. Our last National Report to the Fiscal Committee contained details of the consultation on the scheme of tax relief for charitable donations and the consultation on the tax residence rules for individuals. Further consultations were conducted on the tax treatment of receiverships and tax relief for film investments:

Receiverships

As a result of the increase in the level of personal and corporate receiverships in Ireland in recent times, certain tax implications have emerged which require a review of the existing direct taxes and VAT provisions as they pertain to receiverships. The Department of Finance issued a consultation paper outlining a number of proposals for addressing the difficulties currently being encountered where a lender appoints a receiver over property or obtains possession of a property. Specific questions for consultation were also posed, and alternative suggestions were sought. The Irish Tax Institute made a comprehensive response to the consultation. It is anticipated that draft legislation will be published in conjunction with Budget 2013.

Tax relief for film investments

Ireland currently offers a tax incentive for investments made by individuals or companies in film production projects. At the end of May, the Minister for Finance published a consultation paper setting out preliminary analysis and data on the relief, and inviting interested parties to make submissions as part of an economic impact assessment of the operation, status and future development of the relief. The Irish Tax Institute also made a detailed response to this consultation. It is hoped that the impact assessment will enable the Department to better understand the benefits that may accrue to the exchequer in terms of additional tax yield as well as consequences for investors, the audiovisual industry, and the wider economy arising from potential changes to the relief.

Budget 2013

The Government is in the process of making preparations for Budget 2013, which will be delivered in early December. As part of our agreement with EU/IMF troika, the Government is committed to raising €1.25bn in tax revenues in this Budget, by implementing the following measures:

- Broadening of the personal income tax base
- A value-based property tax
- Restructuring of motor taxation
- Reduction in general tax expenditures
- Increase in excise duty and other indirect taxes

A further €2.25bn will be raised through expenditure adjustments. The Government also plans to publish an update to its "Medium-Term Fiscal Statement", which outlines its tax and spending plans for the period up to the end of 2015, in mid-October.

Certificate in Tax Policy-Making

The Irish Tax Institute launched a Certificate in Tax Policy-Making course in September 2012. The course offers participants a unique insight into the policy-making process in Ireland, and best practice in policy-making internationally. The course is delivered by a panel of expert Irish and international speakers, including representatives from the Department of Finance, the tax authorities, the European Commission, the OECD, and expert economists and tax practitioners.

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ITALY

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

Draft Bill on Delegated Tax Law

On 16 April 2012, the Italian Cabinet approved the Draft Bill on the Delegated Tax Law containing reform proposals for the furthering of a more equitable and transparent tax system aimed at economic growth while pursuing the fight against tax evasion.

The main revisions involve real estate and the cadaster, corporate income, law abuse, the struggle against tax evasion, and the rationalization of tax rates as well as indirect tax requirements.
Reform proposals contained in the Delegated Tax Law are under the technical scrutiny of the IMF (i.e., International Monetary Fund).

Direct Taxation

Major tax news for the period going from April to August 2012 are set forth under Decree-Law 83 of 22 June 2012 (so-called "*Decree for Growth and Development*"), published on the Regular Series No. 129 of the Italian Official Gazette No. 147 of 26 June 2012, and entered into force on 26 June 2012.

Decree-Law 83/2012 provides measures for the re-launching of economic growth and support of the national productive system.

Amendment of Tax Regime for Bonds Issued by Special Purpose Vehicles (hereinafter "SPVs")

The Decree-Law 83/2012 assimilated – for tax purposes - bonds issued by so-called "*Special Purpose Vehicles*" to public debt securities; thus, interests are taxed at 12,50% at underwriter's level while the resulting capital gains contribute to the taxable base to the extent of 62,50% of their amount.

SPVs may deduct payable interests without any restrictions although rates applied exceed threshold rates, hence being placed, from this specific standpoint, on the same level as Large Issuers.

The tax regime on bonds and financial bills of exchange, issued by companies that "*do not issue financial instruments listed on regulated markets or on multilateral negotiation systems, different from banks or micro-enterprises*", starting from 26 June 2012 is the same as the one provided for securities of the so-called "*Large Issuers*" (tax substitution regime ex Leg. Dec. No. 239/96, exclusion from withholding tax ex. Art. 26 of Pres. Dec. No. 600/73, entirely deductible for payable interests at underwriter's level).

Debt Reduction and Irrelevance of Contingent Assets

The scope of debt reductions generating non-taxable contingent assets has been extended, re-proposing in such case certified recovery plans (Art. 67, par. 3, Bankruptcy Law) published in the Register of Companies, and the debt restructuring agreement (art. 182-*bis* of the Bankruptcy Law). Where debtor has concluded a debt restructuring agreement, credit losses (Art. 101, par. 5 TUIR, "i.e., Italian Income Tax Code") are deductible in any case (therefore, without the requirement of sure and precise elements).

VAT

Decree-Law No. 83/2012 amends VAT rules on transfers and rentals of buildings for dwelling and instrumental purposes.

Transfer of non dwelling buildings, if carried out by construction or restoration enterprises within five (5) years from completion of the construction or intervention, is taxable; in all other cases, transfer is exempt, although the option is granted – while drawing up the notarial deed – for the application of tax (the new provision under Decree-Law No. 83/2012 consists in the abolition of mandatory taxation cases).

The transfer of buildings for dwelling purposes, where carried out by construction or restoration companies within five (5) years from completion of the construction or intervention, is taxable; application of tax is optional, even where transfer occurs subsequently, while transfer effected by entities other than construction or restoration enterprises remains exempt. Where taxation is opted for, VAT is settled by transferee by applying the reverse charge mechanism.

The letting of instrumental buildings is exempt, save where lessor opts for taxation in the relevant agreement (the new provision under Decree-Law No. 83/2012 consists in the abolition of mandatory taxation cases).

The letting of buildings for dwelling purposes is exempt, save where lessor opts for taxation – at the reduced rate of 10% - of buildings designated for social purposes (as defined by Ministerial Decree of 22.04.2008) i.e., rented by enterprises that built or restored them (new provision ex Decree-Law No. 83/2012).

A provision for an increase of VAT tax rates is retained by law if the results of a spending review in the public budget are not achieved.

August, 2012

Raffaele Rizzardi – Piergiorgio Valente

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POLAND

Proposed income taxation changes

The Ministry of Finance has published the draft law introducing important and far-reaching changes in the income taxation (both in the corporate income tax and personal income tax laws). Their overall aim is to put an end to certain commonly used tax planning solutions and promote efficiency of the tax system.

Among the planned amendments to the respective laws the following deserve particular attention.

- Partnerships limited by shares (*spółka komandytowo-akcyjna*; further: SKA), so far transparent for tax purposes (with tax levied on partners/shareholders only), will become subject to corporate taxation. This change is to neutralize the impact of the Supreme Administrative Court resolution of 16 January 2012 (case file no. II FPS 1/11). The resolution stated that income tax is not payable by shareholders in the SKA on the monthly basis throughout the tax year, but only upon the distribution of dividend (provided that and when it occurs). This effect was perceived by the Ministry of Finance as undesirable for the state budget, not only (or even not primarily) for cash-flow reasons. The availability of such deferral (by itself or/and in combination with other features of the Polish system of income taxation, including full exemption for investment funds) made the SKA particularly apt to be used in tax optimization schemes; notable was the increase in the number of SKAs set up after the resolution. The Ministry of Finance seeks to exclude this possibility; as a result of the proposed changes the SKA itself will become a taxpayer liable to pay corporate income tax (monthly, on the basis of income recognized from the beginning of the tax year).
- Thin capitalization rules will be amended, with the view to make subject to restrictions also interest on loans where the lender is only indirectly related to the borrower, i.e. the latter holding indirectly the minimum of 25% in the borrower's capital or being a company in which a shareholder holds indirectly such stake (other rules remaining basically as they stand now).
- The law will explicitly indicate the rules of calculating revenues and costs to be recognized by the company making in-kind transfers, including in particular distribution of dividends or paying out remuneration for redemption of shares in-kind (as a result the position of the administrative courts that such event should not give rise to revenue recognition on the part of the company making the payment will no longer be valid, viz. applicable).
- The draft law proposes limitation on dividend exemption for profit participating loans. Dividends will benefit from participation exemption only insofar as they are not included in the tax costs and do not reduce the tax base or tax due in the country of the receiving company (i.e., where the shareholder is resident).
- The TP documentation requirements will be extended to, i.a., the split of profits between partners in a partnership, joint venture projects and 'internal' transfers between the company and its permanent establishment (whether foreign or domestic).

- It will be clarified that in the case where a company being a corporate entity is transformed into a partnership undistributed profits are to be treated as dividend-like income, subject to tax, also if allocated to reserve capital.
- The rules of establishing initial value for the depreciation purposes of fixed assets and intangibles of a European company (*Societas Europaea*), European cooperative society (*Societas Cooperativa Europaea*) and permanent establishment located in Poland will be explicitly determined.
- The list of qualifying companies will be updated following coming into force of the Council Directive 2011/96/EU.

The proposed law, received with much criticism, may still be subject to certain modifications in the course of the legislative process. Stakeholders demand in particular proper transitory provisions to enable smooth adaptation to such significant changes in the legal environment.

The new law is generally scheduled to come into force as of 1 January 2013.

Proposed changes in VAT

The Ministry of Finance has published the draft law amending the VAT Act. According to its justification, the draft aims, i.a., to implement the Council Directives 2010/45/UE and 2008/8/WE, to reflect better the provisions of the Council Directive 2006/112/WE in the domestic law, as well as adjust the latter to the ECJ case-law.

The draft law is extensive, detailed and technically complex. In what follows we comment only on crucial changes to be expected.

- The tax liability, as a rule, will arise when goods or services are supplied. However, a number of specific provisions determining tax point, having the status of exceptions to the above general rule, will sustain.
- Correspondingly, as a rule, the right to deduct the input VAT will arise in the period in which – with respect to the acquired or imported goods – the tax liability arose for the supplier (it will mirror the tax point).
- The provisions determining the tax base will be amended, with the view to adapt them better to the Council Directive 2006/11/EC and ensure more precision in their wording.
- Invoicing rules will be changed. In particular, self-billing invoices will be simplified, there will be no obligation to issue an invoice supporting exempt supply (unless the acquirer requests so), collective (global) VAT invoices will be allowed, internal invoices will no longer be required. Taxpayers will be permitted to issue simplified invoices (for transactions of value not exceeding EUR 100 or PLN 450). The rules fo issuing electronic invoices and e-storage will be significantly liberalized. Moreover, following the ECJ ruling in the C-588/10 *Kraft Foods Polska* case, in order to reduce the tax base the confirmation of the correction invoice reception will not be required provided that the supplier is able to demonstrate both that the attempts to deliver correction invoice proved ineffective and that the acquirer knows that the transaction was in fact performed on conditions indicated in this invoice.

- Reference to incidental (‘*one-off*’) activities will be removed from the definition of the ‘*business activity*’.
- Fee limit for ‘*gifts of small value*’ (which transfer, if made for the purposes of business activity, is not treated as taxable supply) will increase from PLN 100 to PLN 160 (where a taxpayer registers the name of a beneficiary) and from PLN 10 to PLN 20 (for the gifts not so registered). Also, ‘*samples*’ will be defined in a way accomodating the findings of the ECJ in the C-581/08 *EMI Group* case.
- General increase of the VAT rate is not expected in the next months. However, there will be an increase in VAT rates on certain supplies of goods and services. Selected postal services provided by *Poczta Polska* which has so far been exempt from VAT now will be charged with 23% VAT. The same rate will apply to various television and film production services. Folk art, previously taxed at 8%, will be subject to the standard rate. Tax rate for ice-cream and ready meals will rise from 5% to 8% and for drinks based on coffee and tea distillate – to 23 %; up to 23% will increase the rate of VAT for wool and animal waste.
- Restrictions on the deduction of input VAT on acquisition of passenger cars and fuel will remain in force until 31 December 2013.

Whereas the main date of entry into force of the amendment is 1 January 2013, the majority of most important changes are scheduled to become effective as of 1 July 2013.

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SLOVAKIA

Major developments (April 2012 – September 2012)

CORPORATE INCOME TAX (EMISSIONS TAX)

As of 1 January 2011 a new tax on emissions allowances allocated under the EU Emissions Trading Scheme was introduced through an amendment to the Slovak Income Tax Act. Broadly speaking, the emissions tax was imposed on certain emissions allowances allocated for free in 2011 and 2012 under the EU Emission Trading Scheme.

As there were doubts in respect to compatibility of emissions tax and the procedure through which the relevant amendment to Slovak Income Tax Act was incorporated with the Constitution of the Slovak Republic, there was a motion filed with the Slovak Constitutional Court *inter alia* on the grounds of violation of principles of non-retroactivity and legitimate expectations. The Constitutional Court accepted the motion for further proceeding and through a preliminary decision dated 29th June 2012 it postponed the effectiveness of the provisions regarding the emissions tax.

Eventually, the National Council of Slovak Republic abolished the emissions tax through an amendment to the Slovak Income Tax Act with effect from 30th June 2012.

DOUBLE TAX TREATIES

Slovak Republic entered into a Double Tax Treaty with Georgia with the effect from 29th July 2012. The structure of the treaty corresponds to the structure of the OECD Model Tax Treaty.

As of 8th August 2012 a protocol to the Double Tax Treaty between the Slovak Republic and the Swiss Confederation came into effect. The protocol amends articles 4, 10, 11, 12, 18, 24 and 25 of the treaty and adds article 25a (Exchange of information) to the treaty. The protocol inter alia introduces more advantageous treatment of dividends, interest and royalties.

VAT

On 1 October 2012 comes into force the amendment to the Slovak Act on Value Added Tax as amended. The amendment introduces several important changes concerning the process of VAT registration and several other VAT aspects.

VAT registration deposit

Taxable persons will be obliged to make a financial deposit in the amount from EUR 1,000 through EUR 500,000, if any of the following conditions applies on the day of the filing of the application for VAT:

1) the applicant, or its shareholder/statutory representative either
    a) has a VAT backlog or its VAT registration was cancelled by the tax authorities for reasons of non-compliance; or
    b) is a shareholder / statutory representative of an entity to which conditions under letter (i) apply (applied as of the time when the applicant was its shareholder/statutory representative); or

2) the applicant is neither delivering goods nor providing services yet and is only taking preparatory steps for future business conduct.

In case the taxable person applies for optional VAT registration, the non-compliance with the deposit obligation will result in rejection of the VAT registration by the tax authorities.

Specific reasons for cancellation of VAT registration

The tax authorities will be entitled to cancel the VAT registration of a VAT payer, if the VAT payer:
(i) is not conducting or ceased to conduct its business activities; or
(ii) within one calendar year repeatedly failed to file a VAT return or pay the payable VAT; or is repeatedly unavailable for contact at the address of the registered seat nor at the address of the fixed establishment; or repeatedly fails to comply with its obligations during the tax audit.

Public List

The Financial Directorate of Slovak Republic shall maintain the Public List of VAT payers with pending decision on cancellation of VAT registration, which will be publicly available on its web site.

If there are conditions for cancellation of VAT registration of a taxpayer for reasons of non-compliance, this taxpayer will be added to the Public List.

Guarantees for VAT liabilities

Purchaser registered for VAT in Slovak Republic will be held liable for VAT liabilities of its seller/service provider, if the purchaser had known or should have known the provider will not pay the VAT. It is deemed the purchaser should have known the provider will not pay the VAT if:
(i) the consideration stated on the invoice is unreasonably high/low;
(ii) the purchaser continued in accepting deliveries from the provider after the provider was listed in the public list; or
(iii) the shareholder/statutory representative of the purchaser was also a shareholder/statutory representative of the provider on the day when the VAT liability occurred.

Change in the default VAT tax period

The tax period for all VAT payers will be one (1) calendar month by default.
The VAT payer may choose a calendar quarter as a tax period only after twelve (12) months from its VAT registration and its turnover for twelve (12) consequent calendar months did not exceed EUR 100,000. The turnover is calculated from value of goods delivered and services provided within the Slovak territory less the value of goods and services that are exempt from the VAT.

Amendment to the commercial code

In connection with the above mentioned changes, the amendment to Slovak Act on Value Added Tax amends the Slovak Commercial Code as amended. The purpose is to prevent activities which severely obstruct the performance and finalisation of the tax audit.

Consent of the tax authorities

No founder of a Slovak Limited Liability Company shall have an overdue tax liability exceeding EUR 170. The founders shall present consent of tax authorities with the establishment of company to the Slovak Commercial Register in addition to documents required for registration of Limited Liability Company to the Slovak Commercial Register.

Furthermore, consent of tax authorities will be required for transfer of majority ownership interest in a Slovak Limited Liability Company. If a minority ownership interest is transferred the consent of tax authorities is not required. In this case the acquirer of the ownership interest shall present a sworn affidavit that the consent of tax authorities is not required.
If the conditions for issuance of the consent are fulfilled, he tax authorities will be obliged to issue the consent within three (3) days from the filing of the application.
The amendment does not provide a clear cut answer on how to proceed with foreign founder/acquirer of the ownership interest. According to legislation which is yet in preparation the persons/entities, who are not taxable subjects under the Slovak law, will be able to enclose to the application for registration into the Slovak Commercial Register a sworn affidavit instead of the consent of the tax authorities.

Amendment to the criminal code

Furthermore, by amending the Slovak Criminal Code the amendment to Slovak Act on Value Added Tax introduces the following new actions that will be considered as criminal acts:.
Tax Fraud

According to the amendment, an individual will commit a tax fraud if he/she claims a VAT refund or concise tax refund in the amount exceeding EUR 2,660 with the intention to bring unlawful financial gain to himself or other person.

Serious Obstruction to Tax Administration

An individual will commit serious obstruction to tax administration in case he/she:
a) states untrue or grossly distorting information in documents addressed to the tax authorities, or conceals information necessary for correct assessment of tax;
b) amends, renders unusable or destroys documents necessary for correct assessment of tax;
c) fails to fulfil notification obligation imposed by law; or
d) fails to fulfil obligation imposed by law during the tax audit
despite the fact that this person has been sanctioned for such conduct during the period of preceding twelve (12) months.

EXCISE TAXES

The excise tax rates were increased throughout 2012 due to the need to consolidate the public finances.

NEW ACT ON SPECIAL LEVY OF UNDERTAKINGS IN REGULATED AREAS

The Act on Special Levy of Undertakings in Regulated Areas, which came into force on the 1st September 2012, introduced a special levy to entities conducting business in selected areas of economy of the Slovak Republic.

According to this act the regulated entity is a person/entity or the branch of foreign entity which has a license/permit to carry out activities in the following areas: energy, insurance, reinsurance, public health insurance, electronic communications, pharmacy, postal services, rail transport, public water systems management, air transport and healthcare services.

Levy base is calculated from the gross profit (before tax) for accounting period in which the entity had a license/permit to carry out the regulated activity. Currently the levy rate amounts to 0.00363.

NEW ACT ON SPECIAL LEVY OF SELECTED FINANCIAL INSTITUTIONS

The Act on Special Levy of Selected Financial Institutions came into force on the 1st January 2012 and was already amended with effect from the 1st September 2012.

The special levy is calculated from the liabilities (in Slovak *pasíva*) of a bank or of a branch of a foreign bank conducting business in Slovak Republic. The rate of the levy is 0,4 % from the assessment base.

Furthermore, a one-time extraordinary levy has been introduced with the amendment at the rate 0,1 % from the assessment base. The extraordinary levy will be applicable only in 2012.

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

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SLOVENIA

CORPORATE INCOME TAX

The new tax reliefs introduced by the Law on Corporate Income Tax of legal person on 26 March 2012 and shall apply from 1.1.2012 as follow:

- the point a article 55: a relief for investments, 30% of the amount invested in equipment and intangible assets are replaced with 40% of the amount invested in equipment and intangible assets
- the restrictions of € 30,000 is deleted
- for 2012 the tax rate is changed from 20% to 18%
- for 2013 the tax rate is 17%, for 2014 the tax rate is 16% and for 2015 the tax rate is 15%.

VAT ACT

Slovenia removes restrictions on input VAT deduction

Changes relating to input VAT deduction, which were formally approved through the Slovenian parliamentary process, have now been entered in the Official Gazette to be effective from 26 May 2012.

Following receipt of a formal Infringement Notice from the EC at the end of February, changes were proposed to the VAT Act by the Ministry of Finance. These changes have resulted in Article 66a of the Slovenian VAT Act being removed.

Article 66a had required businesses to have paid or part-paid invoices within statutory payment periods before having the right to deduct VAT in full or in part respectively.

The EC Infringement Notice considered the Article to be in breach of Article 167 of 2006/112/EC which safeguards VAT neutrality. Art. 167 simply states that "A right of deduction shall arise at the time the deductible tax becomes chargeable". It does not qualify the statement in terms of payment requirements.

The Slovenian government agreed on July 12, 2012 on a draft amendment to the VAT Act. This must be passed by the National Assembly before it can become law.

The draft shall contain the following major changes to the VAT Act:

- the transposition of EU Directive 2008/8/EC regarding the place of service, introducing a special rule for the place of supply of a long-term lease of vehicles and pleasure boats to a person other than the taxable person;
- the transposition of EU Directive 2010/45/EC regarding the rules on invoicing, introducing equal treatment of paper and electronic invoices, changing the rules for issuing invoices, establishing rules for the issue of regular and simplified accounts and specifying how to store accounts;

- increase in the taxable turnover threshold of € 25,000 to € 50,000 in order to simplify the administrative obligations of small businesses. The measure is linked to the introduction of flat-rate income tax for natural and legal persons. The positive effects of this can only be achieved if the same group of taxpayers can also invoke the administrative simplification for VAT invoicing;
- the period over which interest and penalties are calculated with respect to the recovery of VAT has been precisely defined;
- the definition of the threshold for the use of the special cash accounting scheme has been revised and the scheme has been simplified;
- some editorial and technical corrections have been made.

Correction of errors in terms of VAT

Error associated with the statement, deduction or adjustment to VAT under the Law on value added tax (hereinafter VAT-1) corrected in the calculation of the tax period in which it was found.

If the error was discovered in the tax period in which it was made, taxable person can replaced already filed VAT-O by a new account.

At error fault, we have to think if we need to correct any document or issue, any other document, with which is the fault corrected? Many errors are corrected on the basis of credits, but this is not true for all. It is necessary in each case to ascertain on the basis of which document will be corrected.

It is also stipulated that if the amount of any VAT charged on the importation of goods by a taxable account as a deduction of input VAT on the basis of the customs document or a decision of the customs authority can correct deduction of input VAT for the difference.

A taxable person may adjust the amount of VAT on an invoice for goods delivered or services provided in the current period before the deadline for the submission of VAT to the tax authority. In this case, the issuer of the invoice has to inform the recipient about the correction and issued a new invoice with reference to the number of the original invoice and correct VAT statement.

PUBLIC FINANCE BALANCE ACT

The new Slovenian Public Finance Balance Act has been published in the Official Gazette No. 40 of 30 May 2012, with validity from 31 May 2012. The act has amended more than 40 other valid acts with the aim of balancing the state budget.

Among all, the below amendments have impacts also on foreign investors which are as follows:

- The Personal Income Tax Act has been amended and the withholding tax rate for individuals on income stemming from interest, dividend and capital gain will be increased from 20% to 25% with effect from 1 January 2013.

- Please be reminded that in line with the new tax procedure effective from 1 July 2010 dividends and interest paid to cash accounts of intermediaries, which are not beneficial recipients of the income, are taxed at the highest rate in Slovenia - therefore, as of 1 January 2013, the rate of 25% will become also valid for dividends and interest income stemming from non-tax exempt fixed income instruments for undisclosed final beneficial owners legal entities.

EXCUSE DUTY

On 26 June 2012 were approved changes regarding the Act amending and supplementing the Act on Excise Duty as follow:

- Specific excise duty changes from 20% to 30% from 01 July 2012, to 40% from 01 October 2012, to 50% from 01 January 2013, the total tax burden on cigarettes in the class of the weighted average retail selling price.
- In the 5th paragraph article 51 has been added: since 1 January 2013 at least € 97 per 1000 pieces of cigarettes in class weighted average retail selling price of cigarettes.

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SPAIN

1 INTRODUCTION

Royal Decree-Law 20/2012 of 13 July ("**RD-Law 20/2012**"), has introduced a series of modifications to Spanish tax legislation, especially regarding Value Added Tax ("**VAT**") and Corporate Income Tax ("**CIT**").

2 VALUE ADDED TAX

RD-Law 20/2012 increases the general and the reduced VAT rates from 18% to 21% and from 8% to 10%, respectively.

Also, a number of transactions that were previously taxed at the reduced rate are now taxed at the general rate. These include the sale of flowers and ornamental plants, certain hotel services, tickets for theatres, circuses, bullfighting events and other spectacles and attractions, services provided by artists, funeral services, hairdressing services, digital television and certain transactions on art objects.

Services consisting in the renovation and repairing works to housing are subject to the reduced rate of 10%, provided that the cost of the materials supplied by the person who carried out the works does not exceed 40% of the taxable base[4].

The super-reduced tax rate of 4%, which is applied to essential goods and services, has not been increased.

In relation to the sale of houses, buildings or parts of buildings that may be used as residences, including up to two parking spaces annexed to the dwelling that are sold at the same time as the dwelling itself, the super-reduced rate of 4% will continue to apply until 31 December 2012.

RD-Law 20/2012 also increases the tax rates applicable under two of the special regimes established in the VAT Law: the special regime for agriculture and fisheries and the so called "*régimen especial del recargo de equivalencia*".

3 CORPORATE INCOME TAX

3.1 Temporary restrictions on the application of carried forward losses

As a temporary measure, just for tax periods beginning in 2012 and 2013, taxpayers with an annual turnover exceeding EUR 6,010,121.04 (calculated according to article 121 of Law 37/1992) in the twelve months previous to the tax periods beginning in 2012 or 2013 must apply the following rules:

- CIT taxpayers with a turnover between EUR 20 million and EUR 60 million during the twelve previous months: carried forward losses are limited to 50% of the taxable income.
- CIT taxpayers which turnover is EUR 60 million or higher during the twelve previous months: carry-forward losses are limited to 25% of the taxable income.

Therefore, RD-Law 20/2012 toughen the temporary restrictions on the carried forward losses offsetting which were initially introduced by Royal Decree-Law 9/2011, which established limits of 75% and 50% of the taxable income, respectively, to the above referred CIT taxpayers.

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[4] This threshold was set in 33% previously.

3.2 Payments in advance on account of CIT

As a temporary measure, just for tax periods beginning in 2012 and 2013, RD-Law 20/2012 increases the payments in advance on account of CIT (which are payable in April, October and December) with effects as of 15 July 2012. Specifically:

- Where the payments in advance are calculated on the basis of the current taxable income (article 45.3 of the Corporate Income Tax Law): (i) 25% of tax-exempt foreign dividends must be included as taxable income, and (ii) the percentages applicable on the current taxable income to calculate the payments on account of CIT are increased as described in the following table:

Net turnover in the 12 months prior to the start of the tax period	Fraction of the tax rate to determine the percentage applicable on the taxable basis
Less than EUR 10,000,000	5/7 (i.e., 21% when applied to the general rate)
EUR 10,000,000 - EUR 19,999,999	15/20 (i.e., 23% when applied to the general rate)
EUR 20,000,000 - EUR 59,999,999	17/20 (i.e., 26% when applied to the general rate)
EUR 60,000,000 or more	19/20 (i.e., 29% when applied to the general rate)

- The minimum payment in advance on account of CIT for those taxpayers whose turnover in the 12 months prior to the start of tax periods beginning in 2012 or 2013 is EUR 20 million or more is increased. In April, October and December, they must pay in advance on account of CIT at least an amount equal to 12% (previously this percentage was 8%) of their accounting income accrued during the first three, nine or eleven months of the relevant calendar year. Only previous payments in advance on account of CIT may be deducted from this minimum payments (RD-Law 20/2012 eliminates the possibility to take into account carried forward losses pending to offset).
  The percentage to calculate this minimum payment in advance is halved to 6% if at least 85% of the accounting income in the first three, nine or eleven months of each calendar year derives from subsidiaries or permanent establishments and takes the form of: (i) dividends and capital gains from the sale of shares in non-resident companies that are entitled to apply the exemption set out in article 21 of the CIT Law; (ii) income obtained through a permanent establishment entitled to apply the exemption set out in article 22 of the CIT Law; and (iii) dividends or a share in the profits of companies resident in Spain to which the 100% tax credit set out in article 30.2 of the CIT Law applies.

3.3 General restriction on the deduction of financial expenses

Royal Decree-Law 12/2012, which introduced several tax and administrative measures to reduce the public deficit ("**RD-Law 12/2012**"), replaced the thin capitalisation rule with a general restriction on the deduction of financing expenses. As a result, net financing expenses exceeding 30% of the operating

profit in a given tax year will not be deductible for CIT purposes when they exceed EUR 1 million. RD-Law 12/2012 established that the general restriction on the deduction of financing expenses did not apply to entities that do not belong to a group of companies (as defined in article 42 of the Commercial Code) and to financial entities. According to RD-Law 20/2012, only credit entities and insurance companies are excluded from the general restriction on the deduction of financing expenses.
In addition, RD-Law 20/2012 clarifies that for CIT taxpayers with a tax period of less than a year, the threshold on their unlimited deductible financial expenses will be the result of multiplying EUR 1 million by the proportion that their tax period represents of the calendar year.
Lastly, the general restriction on the deduction of financing expenses will not apply when an entity is dissolved and does not transfer the right to deduct financial expenses to another entity.

3.4 Depreciation of intangible assets with an indefinite useful life

As a temporary measure, just for tax periods beginning in 2012 and 2013, RD-Law 20/2012 limits the tax deduction for the annual maximum depreciation of intangible assets with an indefinite useful life to 2% of their value (previously it was 5%).

3.5 Special tax on dividends and income deriving from the sale of shares in non-resident companies

RD-Law 12/2012 had established a new and temporary special tax to ease the repatriation of income. In particular, this special tax applies on dividends and capital gains derived from the sale of shares in non-resident companies provided that (i) the relevant income is accrued before 30 November 2012; (ii) the direct or indirect shareholding in the relevant non-resident company is 5% or higher, and (iii) certain other requirements were met. Now, RD-Law 20/2012 eliminates any other requirement than (i) and (ii) and increases the rate of this tax from 8% to 10%.

4 PERSONAL INCOME TAX

4.1 Tax deduction for investment in the taxpayer’s permanent residence

The additional tax credit applicable to taxpayers who acquired a dwelling before 20 January 2006 is eliminated.

4.2 Withholding rates on certain items of income

RD-Law 20/2012 increases 15% to 19% the withholding rate applicable to income from professional activities and income obtained from giving courses, conferences, seminars or similar teaching events, or income obtained from the performance of literary, art or scientific works.
However, with temporary effects from 1 September 2012 to 31 December 2013, will transitorily be 21%.

4.3 Other measures

RD-Law 20/2012 lays down that, during the tax periods initiated in 2012 or 2013, the CIT limits on the annual goodwill depreciation and the annual depreciation of intangible assets with an indefinite useful life will not be applicable to personal income taxpayers whose turnover is less than EUR 10 million.

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THE NETHERLANDS

CFE National Report on recent developments in tax law

On 18 September 2012, a proposal with Tax Measures for 2013 has been sent to Dutch parliament.

The most important tax measures are:

- Corporate income tax
  - Introduction of a restriction of excessive interest expense deductions for debts used to finance shareholdings qualifying for participation exemption for tax years 2013 and onwards. This measure was already taken in July 2012.
  - Cancellation of thin capitalization rules for tax years 2013 and onwards.
  - Additional shareholding requirements for fiscal unity. Due to the introduction of flexibility in private company law, it will be possible for private companies to issue shares without voting rights. For the fiscal unity, it will be required that a parent company owns shares that represent at least 95% of the voting rights in a subsidiary.
  - Extended tax liability for director's fees. As from 2013, not only statutory activities of members of a board of directors are subject to Dutch corporate income, but also actual management activities or management services. Of course, the Netherlands will only able to actually levy this tax if the relevant tax treaty enables them to do so.
- VAT
  - Increase of general VAT percentage to 21% as from October 1 2012. This measure was also taken in July 2012.
- Personal income tax
  - Limitation of mortgage interest deduction for mortgages concluded on or after 1 January 2013. Interest on these newly concluded mortgages will only be tax deductible if the mortgage will be redeemed, at least on an annuity basis, during no longer than 30 years.
- Real Estate transfer tax
  - Extension of compensation for real estate transfer tax in case of subsequent transfers. The term on which a subsequent transfer should take place in order to apply for compensation is extended from 6 months to 36 months.
- Landlord tax
  - Introduction of a tax on the rental of houses in the so-called regulated sector. The tax will be levied on both domestic and foreign taxpayers that own homes in the regulated sector. The tax amounts 0.0014% on the value of these homes in 2013. As from 2014, the tax percentage will increase to 0.231%.

Culemborg, October 4 2012

Dr. Ruud Zuidgeest

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UNITED KINGDOM

Report on UK developments April to September 2012

Direct Tax

The 2012 Finance Act received Royal Assent in July.

The UK government continues to aim for the most competitive corporate tax regime in the G20.

Direct Tax: corporates

Corporation Tax rate is to be progressively reduced from 24% in 2012-13, to 23% in 2013-14 and then to 22% in April 2014.

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 is to be introduced, which will come 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 5.5%. It will continue to tax overseas entities, rather than bad income, but will only tax in the UK the part of the overseas entity's income that falls within the new CFC regime.

General Anti-Abuse Rule (GAAR)
The Government is consulting on a GAAR which will be introduced from 2013.

Direct Tax: individuals

Income Tax Rates
The top rate of income tax (applying to individuals with income over £150,000) will be 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.

CONFEDERATION FISCALE EUROPEENNE

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.

Indirect Tax

- HMRC updates Notice 742 (Land and Property) clarifying the interpretation of licence to occupy, changing the interpretation of when parking provided with a dwelling is liable to VAT, and clarifying the VAT treatment of land and buildings at de-registration (May 2012),

- Change to the UK VAT treatment of vouchers announced (10 May 2012), removing single purpose vouchers from VATA Schedule 10A. Instead, where a single purpose voucher is sold both initially and by retailers or distributors, it is treated as a supply of the goods or services for which it can be redeemed. This will apply whether the voucher is issued by the person from whom it can be redeemed or by a third party.

- May 2012 HMRC consults on VAT relief on freight transport services performed wholly outside the EU.

- The European Commission has asked the United Kingdom to amend its legislation which allows a reduced VAT rate for the supply and installation of "energy-saving materials". (June 2012).

- The case of Robinson Family Ltd calls into question the guidance included in HMRC Notice 700/09 at 2.5 and 6.2 & 6.3 on what is and what is not a TOGC in respect of a property rental business, subject to the other conditions for a TOGC being met (June 2012).

- June 2012 amendments to the Finance Bill proposals on addressing VAT and borderline anomalies announced, refining the changes to VAT treatment of hot food and self storage, deferring the introduction of changes to VAT on Caravans from 1 October 2012 to 6 April 2013, and extending the transitional provisions for changes to VAT on works to listed buildings.

- HMRC issues technical note on forthcoming changes to invoicing rules (July 2012).

- Consultation announced on new reduced VAT rate for small cable suspended transport systems.

- 17 July 2012 Finance Bill 2012 receives Royal Assent.

- 19 July 2012 On 19 July the Court of Justice of the European Union (CJEU) released its decision in the case of Deutsche Bank (C-44/711), confirming as expected that a discretionary portfolio management service did not qualify for VAT exemption. More controversially, however, the Court also ruled that where charges for the purchase and sale of securities under such a contract cannot be separated from the advisory element, the whole service should be regarded as a single, taxable supply.
- 2 August 2012 Revenue & Customs Brief 22/12 provides a statement of HMRC's' policy on the place of supply of services connected to land following discussions at EU level. It affects whether

a supply is regarded as a supply of land and property or not in the areas of exhibition stands, storage of goods for overseas customers and the provision of airport lounge services.

- HMRC Brief 25/12 comments on the referral of questions on whether golf club green fees are liable to VAT in the case of Bridport & West Dorset Golf Club (August 2012)

- HMRC issues guidance on the application of the cost sharing exemption (August 2012)

- HMRC issues guidance on partial exemption special methods for Higher education institutions.

ICAEW Tax Faculty / Chartered Institute of Taxation
September 2012

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