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# CFE Fiscal Committee

## National Reports

April 2011

122th Meeting

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# AUSTRIA

**National Report on tax policy developments**
since January 2011

## 1. Place of supply of services (Art 53 VAT-Directive)

According to the directive 2008/8/EC from 1st January 2011 the place of supply of services relating to cultural, artistic, educational […] or similar activities to a taxable person acting as such (B2B) shall be the place where that person has established his business. This rule has been implemented in Austrian Law. Thus, the general rule (§ 3a Abs 6 UStG) is applicable with the exception of admission to cultural, artistic, educational […] or similar events, such as fairs and exhibitions, supplied to a taxable person. The place of supply of such services shall be the place where those events actually take place (§ 3a Abs 11 und 11a UStG from 1.1.2011).

## 2. Reverse Charge mechanism in certain cases

Austrian VAT Act stipulates that the person liable for payment of VAT is the taxable person to whom the supply of „construction work" is rendered if the person also supplies construction services. From 1st January 2011 **cleaning services** in relation to immovable property are also included under the term of „construction work" (§ 19 Abs 1a UStG from 1.1.2011). Thus, the reverse charge mechanism applies in such cases.
From 16.6.2010 the Reverse Charge mechanism is also applicable in case of trading with **greenhouse gas emission allowance** when rendered B2B (§ 19 Abs 1e UStG from 16.6.2010).

## 3. VAT returns by electronic means

From 1st January 2011 taxable persons rendering supplies and services between EUR 30.000 and 100.000 are obliged to file their VAT statements and returns by electronic means. Yearly VAT returns only have to be filed, if supplies and services rendered exceed a maximum threshold of EUR 30.000 a year (§ 21 para 2 and para 6 UStG from 1.1.2011).

## 4. New threshold for Distance selling

From 1st January 2011 Austria lowered the threshold for distance selling. If the level of sales rendered to private individuals in Austria exceed a threshold of EUR 35.000

(former threshold EUR 100.000) then the supplier must register for VAT and charge VAT at the rate applicable in Austria (Art 3 BMR from 1.1.2011).

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# CZECH REPUBLIC

**Tax news from January to March 2011 in the Czech Republic**
Prepared by Marie Konecna

### *Changes brought by the Tax Procedure Rules*

Starting from 1 January 2011 the new Tax Procedure Rules enter into effect. The new Tax Procedure Rules primarily regulate the tax procedure in much more detail, and hopefully more exactly.

### *Tax exemption of royalties*

Starting from 1 January 2011, companies may benefit from tax exemption when paying royalties. The exemption applies to fees paid from the Czech Republic to group companies resident in an EU member state, Switzerland, Norway or Iceland. Certain conditions have to be met to claim the exemption, namely a ruling has to be obtained from the tax administrator.

### *Changes relating to solar power plants*

Effective from 1 March 2011 state support will not be provided to the photovoltaic power plants that are situated in open areas but will only be provided to those that are located on buildings and do not exceed the maximum output of 30 kilowatts. Support will also not be provided to the so-called insular operations of photovoltaic plants – in other words, to producers generating electricity for their own consumption. In addition, tax holidays applicable to renewable sources have been cancelled and mandatory straight-line tax depreciation of equipment for producing electricity from solar energy has been introduced.
From the beginning of 2011 to the end of 2013, only part of expenses connected with the support of renewable sources will be reflected in the electricity prices set by transmission and distribution network operators. Expenses that will not be covered in the electricity price will be financed from the state budget. Operators will apply for their reimbursement at the Ministry of Industry and Trade. The state budget will acquire the funds for reimbursement of these expenses from three sources introduction of mandatory payments for producing electricity at solar power plants, increased mandatory payments for the removal of land from the agricultural land fund and introduction of a gift tax on emission rights.

### *Amendment to the Accounting Act*

Starting from 1 January 2011 the amended Accounting Act entered into effect. The changes occurred in the area of duty to prepare consolidated financial statements, the possibility to apply International Accounting Standards as Adopted by the European Union, the penalties for unlawful conduct in keeping accounting records and some other minor changes.

### *VAT amendment from 1 April 2011*

A brief summary of major changes in the VAT Act from 1 April 2011:

- VAT payers may claim a VAT deduction at the earliest when they have the relevant tax document
- VAT payers will have the option to make a VAT correction and reduce their tax liability for receivables that are uncollectible.
- To prevent tax evasion, the amendment introduces a “reverse-charge” mechanism for some local supplies (supplies of construction and assembly work, supplies of scrap metal and waste, and trading in emission allowances).
- The amendment contains an entirely new concept of customer liability (VAT payer) for a tax payment to be made by a supplier.
- The amendment extends the time limit for adjusting a tax deduction when the use of the property has changed, from 5 to 10 years.
- The change in the rules for determining the place of taxable supply for these services follows the amendment to the relevant EU Directive.

### *Pension reform concept*

The economic ministers have agreed on the concept of pension reform. A definitive draft should be discussed by the Government at the beginning of March. The reform has been divided into two phases – a minor pension reform and a major pension reform.
The minor pension reform must be completed by 30 September 2011 and has been initiated based on the finding of the Constitutional Court, which held Section 15 of the Act on Pension Insurance to be unconstitutional as it was too equalitarian and the pension of citizens with higher income was too low by comparison. The proposed changes include mainly a decrease of the maximum assessment base for insurance to four times the average wage (currently it is six times), the gradual extension of the decisive period for pension calculation from the current 25 years to the whole-life period and changes in the limits and percentages of income to be considered for calculating pensions.
The major pension reform is still in a conceptual form, which should be put into practice in January 2013. This reform involves the supplementation of the basic (continuous) pension insurance scheme with an individual capitalisation pillar, which would be managed by pension funds to which citizens would contribute on a voluntary basis. In such a case, 3% of the current 28% insurance premium would be paid to these funds

and another 2% of the income of a participant in these savings would have to be additionally sent to the pension fund. This option, called an opt-out, will be voluntary. The savings in the individual accounts will then be used to pay lifetime pensions or pensions over a period of twenty years. It will not be allowed to withdraw these savings in a single amount.

Both the existing pension funds and newly established pension companies will be obliged to fulfil certain conditions and acquire a licence. The property of a fund's/company's administrator will be mandatorily separated from the property of savings participants.

The implementation of the capitalisation pillar will result in a relatively large deficit in the national budget, which the Government plans to compensate by the unification of VAT to 20%, with certain exceptions. This measure is intended to be adopted for the 4th quarter of 2011 or effective from 1 January 2012. In order to reduce the negative impacts on low-income citizens and retired persons, the Government plans to valorise pensions and the subsistence minimum as well as adopt other measures relating to tax, such as an increase of child support of CZK 250 monthly per child.

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# FRANCE

**DIRECT TAX NEWS (April 2011)**

## 1. Treaties

- The following exchange of information agreements concluded by France entered into force: with Andorra on December 22, 2010; with Antigua and Barbuda on December 28, 2010; with Bermuda on October 28, 2010; with Guernsey on October 4, 2010; with Gibraltar on December 9, 2010; with the Isle of Man on October 4, 2010; with the Caiman Islands on October 13, 2010; with the British Virgin Islands on November 18, 2010; with Jersey on October 11, 2010; with Liechtenstein on August 19, 2010; with Saint Kitts and Nevis on December 16, 2010; with Saint Lucia on January 20, 2011; with Vanuatu on January 7, 2011.

- A tax treaty between France and Hong-Kong has been signed on October 21, 2010 (not yet in force).

- French domestic law provides, since January 1, 2011, for provisions for the avoidance of double taxation with Taiwan (it is not a tax treaty).

## 2. Income tax

A withholding tax applies to gains realized as from April 1st, 2011, by non residents on stock options or free shares upon conditions.

The gain is taxable in France only on the part which represents the activity exercised in France by the individual (a prorata is determined according to the number of days worked in France).

As regards stock options, the tax rates are variable: the normal rate (i.e. 30% up to EUR 152, 500 and 41% for the excess) applies if the disposal takes place after the unavailability period and a special withholding tax rate (i.e. for 2011: 0% until EUR 14 245; 12% between EUR 14 245 and EUR 41 237 and 20% beyond EUR 41 237) applies if the disposal takes place before the expiration of this period.

As regards free shares, the gain is subject to a fixed tax rate of 30%.

## 3. Wealth tax and "tax shield"

### *3.1. Proposals*

Regarding wealth tax two options are currently examined by the French Government: its removal or its amendment. The tax shield of 50% is likely to be abolished. (Under the mechanism of the "tax shield", the total amount of direct taxes to be paid by a taxpayer may not exceed 50% of his annual income. This system allows the taxpayer to claim for a refund of the taxes paid in excess of the 50 % ceiling.)

### *3.2. Guidelines*

Guidelines have been issued in order to allow certain non-residents to benefit from the tax shield and the specific ceiling of wealth tax. (The specific ceiling of wealth tax sets at 85% of the income the maximum amount of wealth tax, subject to conditions).

Non residents are now eligible if they would be viewed as French resident for tax purposes under domestic law but are considered as non resident under the applicable tax treaty and if they have at least 90% of their wealth located in France.

## 4. Corporate income tax

Dividends received by a company from a subsidiary are exempt (assuming that the participation exemption regime is applicable) except for a 5% portion. Previously this portion could not exceed the amount of expenses effectively borne by the parent company; for tax years closed as from December 31, 2010, this ceiling is no longer applicable.

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# GREECE

**HELLAS NATIONAL REPORT 04/2011 by P.O.F.E.E**

The main amendments on taxation introduced by a recently adopted Greek Tax Law are the followings:

## 1) Taxation of Individuals*

The scales for the taxation of individuals for 2011 have remained unchanged (see national report Jan 2011)

## 2) Corporate Taxation*

- ✓ For the fiscal year starting 1/1/2011 the tax rate is reduced from 24% to 20% for companies having the legal status of SA and Ltd.. An advanced withholding of 25% is foreseen for the profits to be distributed. Dividends are also included in the taxation scale, but the tax burden is limited (20% for legal entity and 25% in the withholding of dividends). For those with low income, a privilege of tax return of the withheld tax is foreseen.
- ✓ The tax rate of stock transactions increases from 1,5‰ to 2‰ whether these transactions took place in the Greek stock exchange market or abroad, effective as of 1/1/2011 and onwards.
- ✓ The extra 50% tax discount rate of R&D spending realized in the fiscal year is extended to 4 years, until 31/12/2014.

## 3) Other legislative amendments

- ✓ In case of a legal pursue, the 25% of pre-acknowledgement (advance payment, in order to bring the case in front of the court) increases to 50%. With regards to tax penalties, the 25% level remains the same, as the standard 1/3 provision exists in case of a compromise.
- ✓ A Taxcard is being legislated in order for the accounting of the receipt of expenses which are required for the tax discount on the personal income taxation. It is a magnetic card, with no personal information on it for the protection of sensitive information. The Taxcard measure is voluntary.
- ✓ Removal of tax secrecy and disclosure of debtors and offenders
- ✓ A special Tax Referee Body is being formed
- ✓ Opportunity for VAT payments in 6 instalments in cases where the amounts have been accounted for (following a tax revenue control and not following the legal path) under special provisions

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# IRELAND

**National Report for the CFE Fiscal Committee on Recent Tax Policy and/or Legislation Developments**

The following is an outline of the recent tax developments in policy and legislation in Ireland since January 2011

## Finance Act 2011

Finance Act 2011 was signed into law on Sunday, 6 February 2011. It provides the legislation to bring into effect the taxation measures announced in Budget 2011 (on 7 December 2010). Much of the contents of the Bill were already signaled in the Budget but extra new measures were also contained. Included among the new measures are:

- An economic assessment to be completed before restricting property-related tax incentives as announced in Budget 2011. This follows strong representations by the Institute over the previous two months to all levels of Government in which we highlighted the potential damaging effects of the immediate withdrawal of these reliefs.
- The introduction of an “excess bank remuneration charge” which is a 45% charge on performance related bonuses (in excess of €20,000) paid or payable to certain employees of financial institutions.
- Legislation amending the tax treatment of securitisation companies.

## Programme for Government

Our new Government published their Programme for Government on 6 March 2011 setting out the broad policy, including tax policy, of the Irish Government for the next 5 years. A number of key tax issues from the Institute’s representations are reflected in the Programme, in particular those relating to a simpler tax regime for smaller businesses and those on making R&D tax relief more accessible for smaller businesses.

**Jobs Fund**

The new Government has committed to introducing a ‘Jobs Fund’ (also referred to as a ‘Jobs Bill’) and this is expected to be published in mid to late May 2011. This Fund will contain a number of tax measures to support Irish SMEs as follows:

- Cut the 13.5% rate of VAT to 12% up to the end of 2013.
- Halve the lower 8.5% rate of social security (PRSI) up to the end of 2013 on jobs paying up to €356 per week.

**Finance (No. 2) Bill 2011 – Tax Changes for Civil Partners and Cohabitees**

To facilitate the accelerated timeframe for the passing of the Finance Act 2011, the legislative changes to give effect to the taxation changes arising from the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 were deferred. It is now expected that the legislation will be put before the House shortly as a Bill or as part of a Finance (No. 2) Bill 2011. The Revenue Commissioners have advised that the draft legislation is nearing completion and will include all necessary changes across all tax heads.

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# ITALY

***Update of the Report on Italian Developments since January 2011***

**Direct taxation**

The Italian Tax Regime was amended in the first Quarter 2011 by:

- Ministerial Decree No. 40, dated 10 February 2011, and
- Circular No. 4, dated 15 February, 2011,

both containing implementing provisions and clarifications regarding Article 31 of Decree-Law No. 78/2010 (tax offsetting).

*Tax offsetting*

With the aim to speed up the collection of taxes, Article 31 of Decree-Law No. 78/2010, converted into Law No. 122, dated 30 July, 2010, does not allow the offsetting of any credits for tax overpayment in presence of tax debts which have been definitively assessed by the Tax Authorities.

In particular, starting from 1 January, 2011, the offsetting – through the F24 form – of any credits for tax overpayment against tax debts is no longer allowed if the following requirements are met:

- the total amount of taxes – definitively assessed and not paid by the taxpayer when due – is higher than Euro 1.500,00;
- taxes to be considered for the above calculation do not qualify as "*local taxes*" or "*social security contributions*". Fines are also excluded from the calculation.

The offsetting is not allowed for amounts higher than the total amount of taxes definitively assessed. In case of violation, a penalty equal to 50% of taxes definitively assessed applies, within, however, the limit of the amount which has been unduly offset.

Ministerial Decree No. 40, dated 10 February, 2011, contains implementing provisions of the above rules, and allows the payment of any amounts for taxes due and definitely assessed by the Tax Authorities, by offsetting any credits for the same categories of taxes. With the enactment of the Ministerial Decree, the regime under Article 31 of Decree-Law No. 78/2010 has become effective.

Circular No. 4, dated 15 February, 2011 clarifies that any credits for tax overpayment – if higher than tax debts definitely assessed – may not be offset, unless the taxpayer pays the entire amount of the outstanding taxes already due. Consequently, the offsetting through the F24 form is not allowed if the taxpayer does not pre-emptively pay the tax debt definitely assessed, also in the case in which the credit for tax overpayment is higher than the tax debt.

*Transfer pricing: follow-up*

With the enactment of Regulations dated 29 September, 2010 and Circular No. 58/E of 15 December, 2010, a "*proper*" documentation on transfer pricing is being prepared by all Italian multinational companies.
The Regulations dated 29 September, 2010 implement Article 26 of Decree-Law No. 78/2010 and establish type and content of the documentation on transfer pricing to be made available to Tax Authorities to benefit from the penalty protection regime introduced by Decree-Law No. 78/2010. Taxpayers may avoid the application of administrative penalties in case of transfer pricing adjustments, provided that "*proper*" documentation has been prepared and promptly handed over. The documentation requirements broadly replicate the recommendations of the EU Code of Conduct on transfer pricing documentation, by providing for the following two sets: the Masterfile and the Country-File ("*Documentazione Nazionale*").
Circular No. 58/E of 15 December, 2010 provides further explanation as to the new transfer pricing documentation regime set by the Regulations. The transfer pricing documentation will be deemed compliant if it provides the Tax Authorities with all data and elements necessary to perform a complete and comprehensive analysis of the transfer pricing policies adopted by the taxpayer. During a tax audit, tax officers may ask for further information other than that included in the documentation delivered by the taxpayer.
Taxpayers already subject to tax audits may benefit from penalty protection if no formal notice of assessment has been issued before filing the "*communication*" of transfer pricing compliance. Even if the tax assessment has already been formalized, the Revenue Agency may discretionarily grant penalty protection to taxpayers that have proven cooperative behaviour during the tax audit.
As far as the implementation of new Article 7 of the OECD Model is concerned, no changes in the Italian legislation may be registered at 1 April, 2011.

## VAT

As from 1 March, 2011, Italy has entered into the VIES system only for the identification numbers (ID) of taxpayers having asked to be authorized to sell or purchase goods or services within the EC. Existing VAT numbers will be included in case they have been actually used in 2009 or 2010; all other ID numbers will be removed. Persons not included in the VIES system, in order to carry out an intra-community transaction, should allow to tax administration a delay of 30 days, for the check of taxpayer's request.
This new system has been adopted in order to increase tax audits on these subjects, and requires – so it has already happened in other countries, like Spain – that EC counterparties should check that even an old customer/supplier has been confirmed in the VIES. Only 500.000 VAT identification numbers (on a total number of 8 millions) are at present included in the Italian section of VIES. Concerning the implementation of regulation 904/2010 – in accordance with Article

18 of regulation 282/2011 – Italian tax authorities are prepared to disclose the name and address of taxpayers reported in the VIES data base.
A new listing has been introduced by Article 21 of Law No. 122/2010, concerning tax-relevant transactions amounting to sums not lower than Euro 3.000. Considering that another listing has already been introduced for relationship with *black list* countries (for this purpose also Luxembourg, Monaco and the Isle of Man have been included), the intra-community transactions are to be listed twice, once in the INTRASTAT forms and a second time in one of the two lists (*black list* for any amount, the other list for consideration of the relevant amount). In case of omitted, incomplete or fraudulent communication, a pecuniary penalty shall be applied.
Italy has been authorized to introduce the reverse charge system for internal sales of mobile phones and integrated circuit devices. Austria and Germany have also been authorized by the same Council Act (decision 2010/710 of 22 November, 2010), but for amounts in excess of Euro 5.000. Italy has no lower limit, but the instructions by tax administration have excluded this system in retail sales. This procedure is effective by 1 April, 2011.

**1 April, 2011**
***Raffaele Rizzardi – Piergiorgio Valente***

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# RUSSIA

**Russia – tax policy developments in 2011**

The major trends in development of tax policy in 2011 appear to be the strengthening of anti-avoidance measures, simultaneously with creating incentives for investing in Russia.

## 1. Skolkovo Innovation Centre incentives

Federal Law 243-FZ has amended the Russian Tax Code with the aim of promoting and supporting investment in the Skolkovo Innovation Centre. The centre, near Moscow, is a specially designated area for research and development in various scientific fields, including energy efficiency and nuclear, information technology, telecommunications and medical technology.

The amendments provide for benefits on an unprecedented scale for participants in the Skolkovo project. Participants will benefit from:

- value-added tax (VAT) exemption;
- profit tax exemption;
- property tax exemption;
- exemption from compulsory insurance contributions to social and medical funds;
- a reduced rate of contributions to the state pension fund.

### Application of benefits

Until its annual revenues exceed RUR 1 billion, an entity is not liable for profit tax and therefore need not keep accounting records for tax purposes. From the year in which that threshold is exceeded, the entity must keep such records in order to calculate its taxable profit. Such profit is subject to a 0% rate until profits equalling RUR300 million have been accrued and accounted for under the 0% rate, at which point the organisation must pay tax at the generally applicable rate. The RUR300 million limit is cumulative and is not reset at the start of each tax year. The property tax benefit will terminate at the same point and VAT also becomes payable.
Once an entity becomes a project participant, it may apply the VAT and profit tax exemption for a maximum of 10 years. However, this time limit does not apply to the property tax benefit.
From 2011, the rate for insurance contributions on payments to a project participant's employees is 14%. Such contributions are allocated to the state pension fund - no contributions to social or medical funds are levied. This benefit also has a 10-year time span and is subject to the same conditions as the VAT exemption.

## Other features

As long as a participant has a revenue of under RUR1 billion, it is not required to maintain full accounting records. Moreover, Federal Law 244-FZ of 28 September 2010 provides that in certain cases VAT and customs duty paid on goods (except for excisable goods) imported into Skolkovo will be reimbursed under the procedure laid down in budgetary legislation. This legislation provides for the establishment within the centre of special sub-divisions of the tax authorities and the authorities with responsibility for extra-budgetary funds. These sub-divisions will be responsible for record keeping and supervision in relation to project participants.

## Additional benefits

Before deciding whether to participate in research within the Skolkovo framework, interested parties should carry out a comprehensive evaluation of the financial regime and the benefits that it offers. They should also consider the rules on project implementation and the advantages available in general tax legislation. In particular, the following considerations may be relevant:

- General benefits are available to entities undertaking research and development in Russia, allowing them to:
  - deduct expenses in full;
  - deduct one-and-a-half times the value of expenses connected with certain types of research and development; This benefit may be deducted from taxable profit in an amount 50% greater than the sum actually spent. Although this benefit applies only to expenses for certain types of work, the list is relatively broad.
  - amortise tangible fixed assets, multiplied by a factor of three;
  - enjoy VAT exemption when foreign contractors perform research and development in Russia or when rights to research and development are transferred to foreign licensors; and
  - enjoy VAT benefits granted to scientific organisations and granted in respect of specific types of research and development.

  These benefits may be used both before gaining Skolkovo project participant status and once such status expires.
- The State *Duma* has approved the third reading of a draft law which would introduce a beneficial rate of 14% for contributions by IT companies to extra-budgetary funds, with retrospective effect from January 1 2010.
- Companies can pay dividends to foreign members that participate in investment projects with a withholding tax rate of 5%, which is permissible under many Russian double taxation treaties. Where the dividends received are exempt from tax in the recipient's country, these benefits are an attractive incentive for foreign investors.

## 2. New Participation Exemption Regime

As of 2011 the Russian participation exemption regime was significantly improved. First of all, it became easier to qualify for the exemption. The amendment excludes the requirement of a Russian company's minimum value participation in the capital of its subsidiary distributing dividends for the purpose of exempting such dividends from taxation. Consequently, more companies will be able to benefit from the Russian participation exemption soon. .

The Federal Law No. 368-FZ of 27 December 2009 will be enacted from 2011. The Law abolishes the requirement of minimum RUR 500 mln. participation of a Russian parent company in its subsidiary distributing dividends for the purpose of participation exemption.

At present dividends, received by a Russian parent company from its subsidiary, are subject to Russian CIT 0% rate only if the following requirements are simultaneously met:

- at the date of taking the decision on distribution of dividends the parent Russian company receiving the dividends has to permanently own not less than 50% of the subsidiary's capital on the ownership basis during at least of 365 calendar days, and
- the minimum value of acquisition or reception of this participation in the subsidiary's capital distributing dividends has to exceed RUR 500 mln., as well as
- the subsidiary distributing dividends does not have to be a resident of any country from the “black list” of offshore zones, approved by the Order of the Russian Ministry of Finance No. 108n of 13 November 2007, which includes in particular Cyprus, Malta and British Virgin Islands.

The Federal Law No. 368-FZ of 27 December 2009 has abolished the second requirement concerning the minimum RUR 500 mln. value of participation in the subsidiary's capital distributing dividends. This provision is applicable from the 1 January 2011 only, however from that date its application will be extended to taxation dividends, distributed as a result of the subsidiary's business activity during 2010 and subsequent fiscal years.

Therefore for the Russian outbound tax structuring it will be crucial whether Cyprus is excluded from the Russian “black list” of offshore zones in 2010 or not. If Cyprus stays in this list, this amendment can intensify the companies' migration from Cyprus to countries with lower withholding tax rates on dividends, but not on the Russian “black list”, such as Luxembourg, Belgium and the Netherlands.

As a consequence, as of 2011 a considerable number of Russian companies and multinational groups are able to apply the Russian participation exemption rule.

In addition to this, for the first time Russia introduced participation exemption for capital gains. Gains on alienation of shares in non-listed Russian companies acquired after 1 January 2011 and held for more than 5 years are exempt from tax. The same exemption applies to shares in Russian listed companies qualifying as hi-tech companies in accordance with the list of such companies issued by state authorities.

Interesting enough, there is no particular limitation in respect of percentage of shares or their value.

### 3. Limitation on interest deduction

For many years, debt financing has remained one of the most common forms of the financing of Russian companies by foreign group financing companies. Therefore limitation on interest deduction as of 2011 is of significant importance.
For a long time, the allowable interest rate on loans in foreign currency, such as USD or EUR remained relatively high – 15% per annum, or even higher (up to 22%) in certain fiscal periods (1 September 2008 to 31 December 2009).
Many Russian companies made use of this possibility and chose the rate of 15% for loans in foreign currency granted by affiliated non-resident financing companies.
In accordance with law No. 229-FZ dated 27 July 2010, in 2011 and 2012 the permitted deduction rate for loans in foreign currency will be substantially reduced and will amount to 80% of the Central Bank refinancing rate.

**Table of interest deduction**

<table>
<tr><th>Fiscal period</th><th colspan="2">Loans in Roubles</th><th>Loans in foreign currencies</th></tr>
<tr><td></td><td>Loans granted November 2009</td><td>Loans granted as 1 November 2009</td><td></td></tr>
<tr><td>01 Jan 2010 – 30 2010 (inclusive)</td><td>Refinancing rate of sian Central Bank tiplied by 2</td><td>Refinancing rate of sian Central Bank tiplied by 1,8</td><td rowspan="2">15%</td></tr>
<tr><td>01 July 2010 – 31 cember 2010 (inclusive)</td><td colspan="2" rowspan="2">Refinancing rate of Russian Central Bank multiplied by 1,8</td></tr>
<tr><td>01 Jan 2011 –<br>31 December 2012 (inclusive)</td><td>Refinancing rate of sian Central Bank tiplied by 0,8</td></tr>
</table>

On the basis of the current Central Bank rate, the permitted deduction rate on foreign currency loans would be at present 6.4%.
This is almost 2.5 times less than the currently permissible rate of 15%. For loans with fixed interest rate where rate never changed during existence of loan, the basis for calculating 80% Central Bank rate limitation would be the Central Bank rate at the time of the issuing of the loan. Hence for calculating the allowable level of interest deduction for fixed interest rate loan agreements it will be required to analyze the Central Bank rate in the period of issuing of the loan.

Obviously, in many cases existing debt financing arrangements will need to be restructured and rulings for many non-Russian financing companies, such as domiciled in the Netherlands or Luxembourg, should be revised. The issue is also relevant for SPVs established in securitizations, syndicated loans and other similar structures.
Re-issuing loans with replacement of foreign currency with Russian currency appears to be one of the most obvious remedies. In fact, it was claimed that the underlying idea behind the amendment was to encourage the use of Russian currency.

## 4. Russia Cyprus tax treaty

7 October 2010 saw the signing of a Protocol on Amendments to the 1998 Double Taxation Treaty (DTT) between the Russian Federation and the Republic of Cyprus. The new Protocol has received much publicity in recent months and this is not surprising since it promises to bring about changes in the current taxation regime between the two countries. Although the 1998 DTT created a reciprocal trading and investment relationship between the two Countries, Cyprus was included in 2008 in the Russian Tax Authorities "List of Offshore States" amongst 42 countries. The Russian black list essentially barred Cypriot subsidiaries of Russian Companies to obtain a tax exemption on their dividends. In particular one of the most important and widely discussed amendments was the new Article 26 on exchange of information.
The Treaty was significantly amended by the Protocol. Many of the Protocol's provisions clearly aim to combat aggressive tax planning. At the same time, the Protocol should create a better playing field and Russian businesses incorporated in Cyprus will not be seen with a suspicious eye. It was reported that as soon as the Protocol is brought into effect, Cyprus will be removed from the blacklist. The ratification of the Protocol will probably occur within the next year and it is expected to be put into force on 1 January 2012.

Article 26 (Exchange of Information)

It is noteworthy to state that the new Article 26 utilises an identical wording with the Organisation for Economic Cooperation and Development's (OECD) Model Tax Convention on Income and Capital.
The new Article 26 will allow the Competent Authorities of the Contracting States to exchange information which is deemed relevant for the administration or enforcement of domestic laws concerning all types of Taxes, insofar as these taxation laws are not contrary to the DTT. Any information received by a Contracting State shall be treated as confidential and may be disclosed by the Competent Authorities in court proceedings. The latter change has led to widespread criticism since it is feared that it might be used by Russian Tax Authorities to obtain unscrupulous information about the Russian beneficial owners of many Cypriot Companies.
The new Article 26 provides certain safeguards to the application of the general rule of exchange of information. The Contracting States shall need to follow procedures of collecting and supplying information which are in accordance with their domestic laws

(or the laws of the other contracting state). In the case of Cyprus Authorities, Cypriot Law 72(I)/2008 on the Collection of Taxes, provides that the Director of the Inland Revenue shall only supply foreign tax authorities (signatories of a DTT) with information if he has received substantial details about the concerned person and the reason for the requesting of information. This provision seems to have been put in place to ensure that the foreign Tax authorities do not engage in "fishing expeditions" without having any real evidence against the person under investigation. As a further control mechanism, the Cypriot Law provides that the Director of the Inland Revenue shall only supply information if he has obtained the written consent of the Attorney General of Cyprus.
The Protocol makes further provisions that a contracting state authority cannot refuse to supply information merely on the grounds that it has no domestic interest in that information. A further ground of non-refusal is for information held by a bank, nominee, agency or fiduciary capacity. In addition, according to the Protocol, information which could qualify as trade, business or industrial secrets will not be caught with the ambit of the Protocol. That is, this information will not be exchanged.
The business community fears that there will be an abuse of power by the Tax Authorities, in the sense that they will proceed to obtain more information than authorised by the Article. Therefore it is expected that the Attorney General of Cyprus will exercise his powers with great care before giving his consent.
The table below shows the other principal amendments for Russian investors and comments thereon:

| | **Type of income / subject matter of the Treaty** | **Current version of the Treaty** | **Amended version of the Treaty** | **Comments** |
|---|---|---|---|---|
| 1 | Dividend | 5% withholding tax applies to direct investment of at least USD 100,000, subject to all necessary requirements | 5% tax rate applies to direct investment into share capital of at least EUR 100,000<br>Distributions from mutual funds regarded as dividends and taxed at source | Where direct investment is less than EUR 100,000, the 5% tax rate may be kept if investment is brought up to that level.<br>As there is no share capital in mutual funds, it may be that distributions therefrom will be always taxed at source at 10%. |
| 2 | Interest treated as dividends under Article 269 of the Russian Tax Code | Treated as interest | Treated as divi-dends for the pur-poses of the Treaty. | For the purposes of this provision of the Treaty, interest in excess of allowable limits under Article 269 |

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| | | | | of the Russian Tax Code (thin capitalisation) will be treated as dividends, and such interest being subject to Russian withholding tax will not be in conflict with the Treaty. |
| 3 | Rendering services with respect to one or several related projects through one or several authorised persons who is present in the contracting state over 183 days during a 12-month period | No special provisions | Such activities give rise to a permanent establishment | Granting powers of attorney for conducting activities on behalf of a Cyprus company leads to increased permanent establishment exposure, especially in the case of management or advisory activities where the authorised person is a beneficiary and works actively in Russia on behalf of such company. It must be noted that the 183 days test refers only to presence and not provision of service, i.e. much shorter timing of provision of service may suffice to create a PE. |
| 4 | Income from a mutual fund established primarily for property investments | No special provisions | Such income is treated as property income and may be subject to withholding tax in Russia. | Tax structuring has often involved using mutual funds for property investments. Once the amendments come into force, income received by corporate and individual non-residents from mutual funds will |

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| | | | | be taxed in Russia at 20% and 30%, respectively. In many cases, such structures will have to be modified. |
| 5 | Income on sale of participations in Russian companies which have over 50% of their assets in real estate | Exempt from Russian tax | Will be taxed at 20% in Russia. Alienation of shares in the context of reorganisation as well as shares in companies listed in a recognised stock exchange are excluded from this provision. | This provision is designed to combat the widespread way of selling property under the appearance of selling equity interests. The provision will become effective in 4 years after the Protocol itself comes into force. |
| 6 | Assistance in collection of taxes | The article existed but did not specify any rights or obligations | The article sets forth a more detailed procedure for tax collection assistance and applies to all types of tax.<br>It also defines what can amount to a revenue claim and provides that "an amount owed in respect of taxes of every kind" but also any "penalties and costs of collection" related to such amount. | This article will allow the Russian tax authorities to send tax collection requests to the Cyprus tax authorities, who, subject to the applicable requirements, will have to comply with such requests without going through any further administrative or judicial procedures. The article will come into effect once Cyprus adopts the relevant legislation. |
| 7 | Limitation of Benefits | The article is not included in the current version of the Treaty | Under the article, benefits available under the Treaty may not be granted if obtaining benefits under the Treaty is the primary purpose or one of the primary purposes for which | The provision does not apply to companies registered in Cyprus or in Russia. However, the provisions do apply, inter alia, to UK or BVI companies that have chosen to be tax residents of Cyprus. In- |

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| | | | the company was established. | come received by such companies may be taxed in Russia at rates specified by the domestic tax law, regardless of any benefits that were made available under the Treaty. |

The signing of the Protocol is expected to make Cyprus more transparent for the Russian tax authorities. As a result, not all of the solutions currently used owing to the non-transparent nature of Cyprus will work going forward. Russian companies having Cyprus structures need to assess the implications of the amended Treaty for their existing structures and, where necessary, take steps to bring them up to date.

## 5. Permanent establishment: court's warning for representative offices

On December 8 2010 the Moscow State Commercial Court issued its decision in a case involving an analysis of whether the collection of information can result in an entity being deemed to constitute a permanent establishment under Russian law and the double tax treaty between Russia and the United States. The case number is A40-94391/10-142-134.

### Facts

The taxpayer, Bloomberg LP, produces information products, including analytical databases. Between 2006 and 2007 it had a representative office in Moscow, where a number of employees gathered information which was incorporated into its databases. Sales of the products were made primarily from the UK office, but payments for these sales were made directly to a US bank account. However, Russian value-added tax (VAT) legislation required that VAT returns on such sales be filed in Russia and that VAT be paid there.
The outcome of the taxpayer's field audit for the fiscal year 2006 to 2007 was that the authorities held the taxpayer's activities in Russia to constitute a permanent establishment. Accordingly, they issued a claim for additional tax. The taxpayer disputed the finding and appealed.

### Issues

The two principal issues were:

- whether activities related to information gathering result in an entity being deemed a permanent establishment, given that under the US-Russia tax treaty,

collecting information as a preparatory and auxiliary activity is excluded from the general definition of the activities of a permanent establishment; and
- if a permanent establishment existed, how much income should be attributable to such activity.

*Tax authorities' view*

The authorities maintained that a permanent establishment existed and that the activities of employees in Russia were an integral part of the taxpayer's activities, which were aimed at creating databases and assembling analytical data. The taxpayer derived revenue from clients for such databases and data. Thus, such activity formed part of the taxpayer's core activities, rather than being an auxiliary or preparatory activity.
On the issue of the income attributable to such activity, the authorities considered that, in general, all payments for products which were sold to Russian customers and on which VAT was paid should be regarded as revenue of the permanent establishment. It agreed to take into account certain expenses incurred by the taxpayer.

*Taxpayer's view*

The taxpayer argued that as the collection of information is mentioned in the list of exclusions from the general definition of the term 'permanent establishment' under the relevant tax treaty, and as such activity was auxiliary and preparatory in nature, the fact of collecting such information does not make an entity a permanent establishment. Moreover, the taxpayer stressed that such information was not sold, but was provided free of charge.
On the second matter, the taxpayer referred to the Amadeus database to demonstrate that similar activities in Europe resulted in profits of between 4% and 6%. Hence, the taxable base for corporate profit tax should not include all payments on which Russian VAT was paid, as most of them effectively related to sales from non-Russian offices, while payments were made directly to a US bank account.

**Decision**

Overall, the court upheld the tax authority's reasoning. It concluded that collecting information and selling products based on such information were the taxpayer's principal business activities. As the Russian office not only collected information, but also analysed and processed it, its endeavours were part of this principal business activity. Thus, the Russian office's activities could not be regarded as auxiliary or preparatory, and therefore the taxpayer had had a permanent establishment in Russia in between 2006 and 2007. On this point, the court referred to the Organisation for Economic Cooperation and Development (OECD) Commentary to the Model Tax Treaty, despite the fact that Russia is not an OECD member. Moreover, the court made numerous references to the Ministry of Finance's guidance on interpreting tax treaties.
On the issue of the attribution of profits, the court declined to refer to the Amadeus database, as it stated that there was no evidence that its information was reliable. Moreover, it stated that the activities of similar companies in Europe did not necessarily

present an appropriate point of comparison or mean that such activities are deemed to be profit making in Russia.
The court agreed with the authorities' argument that a tax base is determined on the basis of the deduction of permitted expenses from the taxpayer's gross revenue from Russian sources. In so doing, it apparently disregarded the separate and independent enterprise approach for which the Russia-US tax treaty explicitly provides. Instead, it used the direct method, taking into account all of Bloomberg's sales in Russia, including those unrelated to the activities of a permanent establishment. Tax professionals have been highly critical of this approach.

**Comment**

The court which decided the matter was a first instance court, but the decision was not appealed and is now in force.
However, tax practitioners and others have criticised some of the court's conclusions, particularly regarding the attribution of profits. It appears that a significant part of the revenue in question related to sales activities of the taxpayer's offices outside Russia and therefore should not be taxed in Russia, as there is no 'force of attraction' principle under Russian law and no tax treaty applied. Previously, Russian courts have upheld the principle of attribution of profits to a permanent establishment on the basis of a separate enterprise approach. The present decision appears to contradict the findings of higher jurisprudence and may yet be revised. Also at issue is the question of whether a tax treaty may be reinterpreted in a manner that differs from the literal meaning of the text on the basis of the OECD commentary.
Nevertheless, the immediate conclusion from this case is that the activities of non-resident companies in Russia through a representative office should be re-assessed. It is important to:

- mitigate the risk of activities that the taxpayer regards as auxiliary and preparatory giving rise to classification as a permanent establishment; and
- ensure that such an entity is properly registered if its activities may meet the standard for being classified as a permanent establishment.

As a result of the decision, representative offices that submit VAT returns without paying profits tax, although they make no sales in Russia, are now in a high-risk group. The contributory factors to the decision appear to include:

- the absence of clear job descriptions indicating the auxiliary nature of the activities;
- the apparent absence of a clear description of the office's representative functions;
- the failure to separate activities; and
- an underestimation of the risks of being classified as a permanent establishment.

The court's frequent references to the Ministry of Finance's interpretations of the tax treaty were also significant. Although they are not binding, such clarifications will evidently play an influential part in the consideration of such cases.
*The report is prepared by Roustam Vakhitov, Head of International Tax Section at the Scientific and Expert Council of the Russian Chamber of Tax Consultants. The report is*

*based on alerts prepared for Pepeliaev Group. The author thanks Chris Damianu of Eurofast (Cyprus) for his contribution in respect of the note on Russia-Cyprus tax treaty.*

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# SLOVAKIA

## Amendment to Slovak Income Tax Act

We summarise some of the changes that took effect as of 1 January 2011 based on the amendment to Slovak Income Tax Act ("ITA"):

- the income from emission trading rights assigned to taxpayers in years 2011 and 2012 is subject to tax at the rate of 80%; the income tax from emission trading rights is considered as tax non-deductible expense,

- goodwill/badwill is excluded from depreciation of intangible fixed assets. Godwill/badwill which arose during the contribution or sale of business or its part or merger and demerger of companies recognised for tax purposes in fair value is included into the tax base within maximum of 7 years,

- withholding tax withheld is not anymore considered as tax prepayment upon filing of the tax return (e.g. tax on interest income from deposits in bank, etc.) – tax liability of the tax payer is considered as settled. The exception from this rule applies on income from share certificates and in some other case relating to the income achieved by tax non-residents (income from bonds and treasury bills, income from the right to use copyrights, etc.),

- in case of expenses relating to the amount of VAT paid in another EU Member State where the tax payer is entitled for its refund, the respective VAT is considered as tax deductible only in case the receivable and related revenue from the entitlement for the VAT refund is recorded in the taxpayer's books. In case the VAT paid abroad has not reached the minimum amount to be refunded, such VAT paid abroad will still be considered tax deductible provided that the related goods purchased or services rendered are considered tax deductible,

- following the amendment to the Act on travel allowances as amended which cancelled the obligation of the employer to provide pocket money (up to 40% of the meal allowance) for a foreign business trip, any expenses on pocket money provided to employees or applied by self-employed persons are considered non-deductible expense for the employer and taxable income of the employee,

- application of general tax allowance on a tax payer and on his wife (her husband) was limited only to the so-called active income (income from dependant activities and income from business activities or from the activities of the self-employed person). Taxpayers having only passive income (rental income, capital gains, interest income, etc.) are not allowed to apply for general tax allowance,

- tax allowance for individuals on specific purpose savings scheme, life insurance and supplementary pension insurance was cancelled,

- exemption of rental or capital gains for individuals up to 5-times the subsistence level (up to the amount of EUR 925.95 in 2010) was replaced by fixed amount of EUR 500,

- exemption of income from the sale of the immovable property in which a tax payer permanently resided for at least 2 years was cancelled,

## Amendment to Slovak Value Added Tax Act

As of 1 January 2011 a new amendments to Slovak Value Added Tax Act (“VATA”) have entered into force:

- temporary increase of the basic VAT rate from 19% to 20%,

- reduced VAT rate of 6% applicable on sale of groceries from yard was cancelled,

- the place of supply of cultural, art, sport, scientific, educational, amusement and other related services in case of its provision to the taxable person was changed to the State of the recipient. Exception is applied for services connected to the entrance to the above-mentioned services supplied to the taxable party where the place of supply is the state where such events take place,

- goods or services invoiced repeatedly and partially are considered as delivered/ provided on the last day of the period to which the delivery of provision relate to at the latest,

- the range of transactions which are subject to reverse charge mechanism was extended - the person obliged to pay VAT from the services purchased according to the sections 16 (1-4) and (10-11) of the VAT Act (services where exceptions are applied upon determination of the place of supply – e.g. services related to immovable, short-term rental of means of transportation, transportation of persons, restaurant services and other) provided by the foreign person will be the domestic taxable person who received goods or services also in case the foreign person is VAT registered payer in Slovakia,

- upon transfer of emission trading rights with the place of supply in Slovakia, the person obliged to pay the tax is the recipient of service,

- the period for the adjustment of the deducted VAT from the immovable property in respect of the change of the purpose of its use is prolonged from 10 years to 20

years. The period for the archiving of the received invoices in this respect was also prolonged to 20 years,

## Amendment to Slovak Health Insurance Act

As of 1 January 2011 a new amendments to Slovak Health Insurance Act ("SHIA") have entered into force:

- **harmonization of the assessment base for the health insurance with the taxable income** of the natural persons in respect of the:

  - all parts of employment income including e.g. leaving compensation, redundancy compensation, income for the usage of employer's motor vehicle, employee option income, etc.,

  - dividends – insurance rate in the amount of 10% from the assessment base,

  - capital income and other income (sale of shares) - insurance rate in the amount of 14% from the assessment base,

  - rental income - insurance rate in the amount of 14% from the assessment base.

## Amendment to Slovak Social Insurance Act

As of 1 January 2011 a new amendments to Slovak Social Insurance Act ("SSIA") have entered into force.

- **harmonization of the assessment base for the social insurance with the taxable (active) income**:

  - subject to social insurance is income from dependent activity including the leaving compensation, redundancy compensation, etc., (except the income from the agreements outside the employment relationships); such income include regular and also irregular income,
  - the income from business activities or from the activities of self-employed person

The passive income like income from rental, capital income and other income as well as income subject to withholding tax is not subject to social security contributions.

## Amendment to Slovak Act on Excise Duty on Mineral Oil

As of 1 January 2011 a new amendments to Slovak Act on Excise Duties on Mineral Oil have entered into force.

- specifies definition of **biogenic material**,
- determines **increased tax rate in case of supply of fuels** which do not contain biogenic material,
- decreased tax rate on **agricultural diesel** and provision connected to supplies of mineral oil at reduced tax rate **was cancelled**.

## Amendment to Slovak Accounting Procedures

New amendments dated on 13 December 2011 to Slovak Accounting Procedures have entered into force.

- accounting for deferred tax asset/liability relating to goodwill/ negative goodwill are performed and no deferred tax asset/ liability are recorded in cases of temporary tax differences at the point of first recognition of goodwill/ negative goodwill. Accounting for deferred tax relates to temporary tax differences of goodwill or negative goodwill (effective from 31 December 2010),
- accounting for construction contracts was more specified (effective from 1 January 2011),
- accounting for construction contracts of immovable property determined for further sale, adjustment relates to the cases where the immovable property is being constructed while conditions for accounting for construction contracts are not fulfilled (effective from 1 January 2011).

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# THE NETHERLANDS

**Developments in VAT law of the Netherlands since January 2011 until 1 April 2011**

Tax developments first quarter 2011

## I. Performing acts and work of arts - (Annex I sub 14)

As of 1 July 2011, on the admission to music shows, theatres (such as opera's, operettas, dance and musicals) and acts of performing artists and lectures, the standard VAT rate of 19% must be applied (instead of the reduced VAT rate of 6%).

As a transition measure, advance purchase of tickets in 2010 for shows etc in 2011 can still benefit from the reduced VAT rate. Tickets purchased in 2011 for shows taking place after 1 July are subject to the standard VAT rate.

As of January 2011 the following will also be subject to the standard VAT rate of 19% VAT (instead of the reduced rate):

import of artworks and objects for collections and antiques;
supply of artworks by the creator or a occasional taxable person.

## II. Temporary reduced VAT rate for renovations of immovable property (stated in the end of year notice of the Ministry of Finance)

With regard to labour costs of renovations and repair of immovable property 2 years after the first occupation a temporary reduced VAT rate of 6% applies. This measure is adopted for the period October 2010 until July 2011.

## III. Implementation of the Technical Revision Directive (stated in the end of year Notice of the Ministry of Finance)

The Technical Revision Directive has been implemented in Dutch law effective January 1, 2011. As a consequence thereof no VAT is due on the free of charge private use of immovable property owned by a taxable person. Therefore the taxable person will not be allowed deduction of any input VAT in respect of expenses relating to the private use of the immovable property.

## Developments in Direct Tax of the Netherlands since January 2011 until 1 April 2011

### Dutch decree on attribution of profits to permanent establishments

On 27 January 2011, a new Dutch decree was published in the Government Gazette concerning the attribution of profits to permanent establishments (the Decree).[1] This Decree provides further insights into the position of the Dutch Tax Administration (DTA) regarding this important topic, following the publication of the 2010 OECD report on the attribution of profits to permanent establishments (PE Report) and the OECD work on article 7 of the OECD Model Tax Convention (MTC), including commentary, in recent years. The Decree, applicable as of 28 January 2011, provides that Dutch policy concurs with the conclusions laid down in the PE Report. Furthermore, it clarifies the DTA's position regarding certain issues, including the endorsement of the conclusions of the PE Report, the dynamic approach in interpreting tax treaties, the preference for the capital allocation approach, certain issues regarding dealings involving group services, intangible assets and financial assets, and certain specific topics, including advance certainty. This Decree is particularly important for those multinational enterprises that operate through a permanent establishment (PE) in the Netherlands.

### Dutch Ministry of Finance releases Memorandum on Dutch tax treaty policy

On 11 February 2011, the Dutch Ministry of Finance has released a Memorandum on Dutch tax treaty policy. This memorandum discloses the major policy principles that the Netherlands will adhere to during future tax treaty negotiations. In addition, it demonstrates on which issues the Dutch tax treaty policy deviates from the OECD Model Tax Convention and the Dutch tax treaty policy as it was published in the '80s and '90s.

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# UNITED KINGDOM

**Report on UK developments in the period January to April 2011**

**Direct Tax**

The annual Budget took place on 23 March and the Finance Bill 2011 was published on 31 March 2011.

The main rate of corporation tax comes down from 28% to 26% from April 2011 and then reduces by a further 1% each year until it will be 23% from April 2014 onwards.

Companies with small profits, up to £300,000, will pay tax at 20% on those profits from April 2011. When profits reach £1.5 mn they are all taxed at the full 26% rate which means that profits between those two thresholds are taxed at 27.5%.

To compensate the government for the reduction in the rate of tax the capital allowance for expenditure on plant and machinery is to be reduced from 20 to 18%, which will widen the tax base.

There is to be a full review of the existing CFC regime during 2011 and a new system is to be introduced in 2012.

The new government has confirmed that it will introduce a patent box regime from 2013 under which royalties from patents will be taxed at 10%.

A Bank Levy is being introduced for banks which have liabilities in excess of £20bn. This will raise about £2.5 bn each year.

There is to be a windfall tax on the oil and gas sector to raise about £2 bn in additional taxes.

The government has set up an independent study to consider the introduction of a General Anti Avoidance Rule in the UK. The study group will report to the government by the end of October 2011.

In the meantime the government continues to introduce a considerable number of specific anti avoidance provisions but in the main any changes to the law are only to be introduced at Budget time and in the autumn. There is now a protocol which the government will adhere to if it wants to introduce changes to come into effect at other times of the year.

The government is introducing a Tax Consultation Framework with five stages for policy development and implementation:

Stage 1 Setting out objectives and identifying options.
Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
Stage 3 Drafting legislation to effect the proposed change.
Stage 4 Implementing and monitoring the change.
Stage 5 Reviewing and evaluating the change.

Non domiciled individuals who are resident in the UK only pay tax on their overseas income to the extent it is remitted to the UK. After they have been resident in the UK for twelve years they will only be able to continue to be taxed just on the overseas income that is actually remitted to the UK if they pay an annual charge of £50,000.

**Indirect Tax**

Regulations for the Customs & Excise Management Act 1979 bring in record keeping requirements, time limits for assessments and HMRC inspection powers from 1 April 2011 so that this tax is in line with other taxes.

Revisions to computations for the adjustment mechanism on a change of use of buildings and also refinements to the disapplication of the option tax rules and provisions where the grantor occupies minor parts of the building, and where ATM's are a factor, come into effect on 1 March 2011.

HMRC issue their view of what constitutes 'building materials' in the context of expenditure on items potentially qualifying for input VAT refund under the DIY scheme.

HMRC issue guidance on the VAT treatment of postal services following amendments to UK legislation effective 31 January 2011.

HMRC issue VAT toolkits on (i) Output tax and (ii) Partial Exemption.
Consultation issued on draft legislation to come into effect on 1 May 2011 to remove the restriction of the right to recover VAT incurred on the business entertainment of overseas customers.

HMRC issues a non-mandatory framework for Higher Education Establishments which wish to formulate partial exemption special methods.

Measures announced in the 23 March 2011 Budget include:

*Registration & deregistration thresholds*

Effective 1 April 2011: The annual turnover limit beyond which compulsory VAT registration is required has been increased from £70,000 to £73,000. The turnover limit for deregistration will be increased from £68,000 to £71,000. The registration and deregistration limits for acquisitions of goods from other EU Member States will be increased from £70,000 to £73,000.

*Low Value Consignments*
Low value consignment relief (LVCR) allowing items costing less than a certain value to be imported into the UK from outside the EU free of import VAT will reduce from £18 to £15 on 1 November 2011.

*On line filing*
Mandatory on-line filing for all VAT registered businesses will come into effect on 1 April 2012. From 1 August 2012, online filing will be mandatory for all applications for VAT registration or de-registration, and for any notification of changes to the business

*VAT grouping concession*
A VAT grouping anti-avoidance concession will be legislated: Certain services "imported" within UK VAT groups to be capped so that it only applies to the value of services brought in from external suppliers.

*Diplomatic privilege*
Legislation is to be introduced concerning diplomatic privilege reliefs so that the VAT reliefs contained in current extra statutory concessions can be applied to diplomatic missions, international bodies, and visiting NATO forces.

*Measures outside the Budget*
Legislation is to be introduced to enable Academy Schools to recover certain VAT, to attack avoidance on splitting of certain business supplies, and to allow for recovery of VAT on entertaining overseas customers. There is also ongoing consultation on "cost sharing" legislation.

**ICAEW Tax Faculty / CIOT / Institute of Indirect Tax**
**1 April 2011**

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