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Overview of 2010 tax developments in Singapore

In 2010 Singapore's corporate income tax rate held steady at 17% – merely half a percentage point above archrival Hong Kong's corporate profits tax rate – and the government introduced attractive tax incentives to encourage productivity, innovation, mergers and acquisitions, angel investors, sovereign wealth funds and other growth areas.

On the international front, Singapore signed new tax treaties with Ireland and other countries and continued to incorporate the internationally agreed information exchange standard into its treaty network.

Looking to the future, the government may be laying the groundwork for further tax cuts, Singapore appears poised to become a favorite gateway to India, and many U.S. multinationals are asking about the status of the proposed Singapore-U.S. tax treaty.

Domestic tax changes

The government introduced a new productivity and innovation credit scheme that allows businesses in any sector to deduct 250% of their expenditures on the following activities, up to a maximum of SGD 300,000 for each activity: acquisition or leasing of automation equipment, registration and acquisition of intellectual property rights, research and development, training and design activities. Eligible businesses can opt to convert up to SGD 300,000 of their productivity and innovation credit each year of assessment into a cash grant of up to SGD 21,000. This scheme and many of the incentives discussed below are subject to a five-year sunset provision.

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Singaporean Minister for Finance Tharman Shanmugaratnam noted in his fiscal 2010 budget speech that the economic recovery, both locally and abroad, provides a window of opportunity for growth. To facilitate mergers and acquisitions, the government will provide a one-time tax allowance equal to 5% of the value of a qualifying share acquisition, up to a maximum of SGD 5 million in any year of assessment. The government will also waive stamp duty on transfers of unlisted shares for deals worth up to SGD 100 million in any year. Listed shares are already exempt from stamp duty.

An approved angel investor who commits a minimum of SGD 100,000 of equity investment in a qualifying start-up company in a given year can claim a 50% tax deduction at the end of a two-year holding period, up to a limit of SGD 500,000 of investments in each year of assessment.

The government introduced a new tax incentive to promote approved sovereign wealth funds (SWFs) as a niche class in Singapore's financial sector. Approved SWFs and approved foreign-government-owned entities managing the funds of approved SWFs can claim a tax exemption for prescribed income.

The government will phase out industrial building allowances and replace them with land-intensification allowances in nine sectors to increase land productivity among industrial users.

The government will extend the development and expansion incentive scheme to law practices providing international legal services; expand the global trader program to include structured commodity financing activities as qualifying activities; and enhance existing incentives for financial services, transportation and other activities. The government reduced the withholding tax rate for nonresident public entertainers from 15% to 10%.

The government will shift the property tax system from a flat property tax rate for all owner-occupied residential properties to progressive property tax rates based on the annual values of the properties. Tharman has stressed that income tax rates must be kept low for the economy to stay dynamic. A moderately progressive property tax system, together with a personal income tax system that collects more taxes from wealthier individuals and a flat goods and services tax that everyone pays will form a fair Singapore tax system, according to Tharman.

Tax treaties

Singapore signed new comprehensive income tax treaties with Albania, Ireland, Panama, Saudi Arabia and Slovenia. The treaty with Ireland provides a withholding tax exemption for dividends and limits the general withholding tax rate for interest and royalties to 5%.

Singapore signed treaty protocols with China, Japan and South Korea to incorporate the internationally agreed tax standard for the exchange of information.

China's State Administration of Taxation on 26 July 2010 issued Circular 75, providing its interpretation of the China-Singapore tax treaty, signed on 11 July 2007, as amended by protocols. The guidance is helpful because Singapore is a favorite go-through country for investments in China.

A peek into the crystal ball

Singapore's shift to a progressive property tax system may provide the government with an alternative means to finance any necessary future tax cuts, instead of having to rely on GST increases. The Hong Kong General Chamber of Commerce on 19 August called on Hong Kong's government to return its corporate profits tax rate to 15% and added that "the increase in fiscal reserves by an additional [HKD] 151 billion from the end of 2007 through the last fiscal year suggests that there is room to act." Any tax cut by archrival Hong Kong would put pressure on Singapore to follow suit.

With 63 comprehensive tax treaties in force, Singapore has a much bigger network than that of Hong Kong, which has four double tax agreements and one double tax arrangement in force, but the gap is narrowing. As of this writing, Hong Kong has signed 13 new treaties in 2010, whereas Singapore has signed only five. Singapore will likely step up its efforts to expand and update its treaty network.

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Singapore may become a more popular gateway for investment in India if India's proposed Direct Taxes Code Bill (which likely will be effective from 1 April 2012) introduces a general antiavoidance rule. Singapore has an attractive tax treaty with India, which provides a tax exemption for specified capital gains, subject to limitation on benefits provisions. It may be easier for some investors to put substance in a Singapore holding company than in other offshore jurisdictions. Mauritius is currently the favorite go-through country for investments in India.

On 19 October 2009, Tharman told the Singaporean Parliament, "Both Singapore and the U.S. are keen to explore a comprehensive [income tax treaty] and I expect the process to get under way next year." However, the two governments have not yet scheduled any treaty negotiations.

Manal Corwin, the U.S. Treasury's international tax counsel, speaking at the 2010 fall meeting of the National Foreign Trade Council Tax Committee in Washington, said that the business community and the Singapore government want treaty negotiations but that Treasury is not convinced there is evidence of double taxation that would be eliminated by a treaty. She has asked the business community to provide evidence of double taxation. As Corwin explained in her testimony before the Senate Committee on Foreign Relations on 10 November 2009, if a country does not impose significant income taxes, there is little possibility of double taxation of cross-border income, and an agreement that focuses exclusively on the exchange of tax information (a tax information exchange agreement) may be more appropriate.

However, Singapore was number two on the tax treaty wish list of respondents to the National Foreign Trade Council's 2010 survey. It received 76% of the vote, moving up significantly from 2009 on the priority list. Permanent establishment; business profits; and dividends, interest, and royalty withholding were uniformly important to respondents. There was also considerable concern about mutual agreement procedures. Recent calls on the U.S. and Singapore governments to enter into treaty talks from the Tax Executives Institute, the Silicon Valley Tax Directors Group, the American Chamber of Commerce in Singapore and others are further evidence that U.S. multinationals see a real need for a treaty. A treaty would also help the U.S. tax authorities prevent tax evasion through exchange of information.

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Yemen introduces new tax law

The Republic of Yemen enacted a new tax law on 29 August 2010 (Presidential Decree No. 17/2010 (PD 17)) that repeals the Income Tax Law No. 31 of 1991 and its amendments. PD 17, which makes broad changes to the 1991 law, takes effect for tax years ending on 31 December 2010 for business income and income from real estate, and as from that date for salaries, wages and property tax.

In addition to expanding the tax base and reducing tax rates, the law includes many new terms and clarifications. For example, new definitions are introduced for "foreign taxpayer," "Yemen-source income," "foreign tax credit," "permanent establishment" (PE) and "royalties," among others. PD 17 introduces the concept of related parties and the arm's length price and requires that transactions between affiliated parties conform to the arm's length principle. Two parties will be deemed to be related if: (1) where the second party is a company, the first party holds, directly or indirectly, at least 50% of the shares, value or voting power of that company; (2) where both parties are companies, the same third person holds at least 50% of the shares, value or voting rights in both of those companies; or (3) where the second party is a partnership, the first party is an acting and/or limited partner of that partnership. The government will be issuing executive bylaws to provide more detail on the basis and methodologies to be used in related party transactions.

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Scope and imposition of tax

It is now enshrined in legislation that Yemeni companies will be taxed on their worldwide income, even though previously this was the case in practice. A company will be deemed to be resident if its place of business or management or supervision is in Yemen. Nonresident companies will be taxed only on Yemeni-source income. Individuals will be subject to tax on income earned in Yemen from a foreign source.

The law also formalizes the classification of taxpayers as large, medium and small. The Minister of Finance may define the bases and levels of taxpayer categories through a Ministerial decree if proposed by the Chairman of the tax authorities.

Corporate income tax

Income tax rates – The general corporate tax rate is reduced from 35% to 20%. Investment projects are to be taxed at 15% (previously 20%). However, projects that were registered under the Investment Law before the enactment of PD 17 generally will remain exempt from tax until the expiration of the tax holiday period (generally five to seven years). Mobile phone service providers are to be taxed at 50% and international telecommunications service providers and cigarette manufactures/importers at 35%. Small firms (i.e. those whose annual turnover is more than YER 1.5 million but less than YER 20 million and that have between three and nine employees) are subject to progressive rates ranging from 10% to 20%, depending on the type of activities.

The provisions on lump sum taxation applied to revenue have been abolished – under the 1991 law, taxpayers that failed to maintain proper books of accounts were subject to a lump sum rate. PD 17 requires all taxpayers to maintain proper books of accounts/records, with certain exceptions for small and micro businesses.

Taxable income – PD 17 introduces measures to broaden the tax base whereby worldwide income will now be subject to corporate tax, although a foreign tax credit is granted on certain taxes paid overseas. The definition of Yemen-source income is extended to include:

- Capital gains, gains derived from a merger or liquidation, currency exchange differences, income from communications and information technology, proceeds derived from abroad from licenses in Yemen and income of companies in the oil and gas sector;
- Income from rent, license fees and royalties received from a PE/nonresident; and
- Income from services carried out in Yemen by a nonresident.

Dividend income received by all types of legal entities is exempt from tax. However, the new law abolishes the tax exemptions available to the Central Bank and certain financial institutions.

Loan interest and bad debts are deductible expenses for tax purposes provided certain criteria are met (an exception applies where the interest is on a loan from an acting partner or individual that is exempt from, or not subject to, tax). Employee-related deductible expenses are expanded to include training costs and medical reimbursements. Additional deductions are available for creating new employment opportunities for Yemeni nationals.

Accelerated depreciation is allowed for IT equipment, software and other assets in addition to the normal depreciation rates for the first year. Further, the annual depreciation rates for IT equipment and software are increased from 25% to 50%.

Losses – Losses may be carried forward for five years (previously four), unless there has been a 100% change in ownership. The carryback of losses is allowed only on long-term contracts accounted for under the percentage-of-completion method

Withholding tax – PD 17 law includes rules governing withholding taxes and applicable rates, which previously were regulated by various tax circulars and ministerial decrees. Liability to withholding tax is extended to include more types of payments made to nonresidents and it is now specifically required to remit tax withheld to the government within 15 days from the date that tax has been withheld.

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A 10% withholding tax applies on payments made to residents in respect of brokerage and commissions; and nonresidents in respect of interest, commissions, patent, trademark and copyright royalties, service fees, fees for the transfer or use of technology/licenses, technical know-how and administrative knowledge. No withholding tax is levied on interest paid to foreign banks approved by the Yemeni Central Bank and payments made to nonresidents in respect of transport, shipping, insurance, training and head office expenses.

Thin capitalization rules – PD 17 introduces thin capitalization rules for the first time and sets a general debt-to-equity ratio of 70:30. If interest is paid to an affiliate party, the loan interest amount may not exceed prevailing international rates or the Central Bank of Yemen rate plus 4%. Interest exceeding these amounts is nondeductible.

Permanent establishment – PD 17 specifically defines activities of a nonresident that will give rise to a PE in Yemen. Activities that will create a PE include: having a place of management, branch, office, farm/plant, factory, construction or assembling equipment and supervision.

Tax year – PD 17 clarifies that a tax year other than the calendar year may be adopted and a taxpayer can choose a tax assessment period of 12 months (tax year) that coincides with its accounting/reporting period.

Compliance – PD 17 introduces a self-assessment system, under which a taxpayer must determine its own tax base and calculate tax due. The taxpayer is required to pay the amount due based on the return. All taxpayers (even if exempt) must submit a tax return. The tax authorities reserve the right to audit selected returns and issue additional assessments.

The tax return must be certified by a licensed chartered accountant and submitted along with original audited financial statements. The chartered accountant will be subject to penalties for issuing a misleading audit opinion on the financial statement (e.g. stating they are prepared/presented according to generally acceptable accounting principles when they are not) or for certifying a misstated taxable amount in the tax declaration. Exempt taxpayers also are required to have their returns certified. Failure to comply with the certification requirements could lead to penalties.

The tax return is due by 30 April or within four months of the end of the tax year. A tax rebate of 0.5% to 1.5% will be available for filing the tax declaration within the first three months of the following year, as an incentive for early payment of tax.

The provisions for calculating penalties for a delay in the submission of a tax return are clarified by including specific provisions for entities incurring losses or that are exempt from tax. In such cases, penalties range from YER 200,000 to YER 5,000,000, depending on the type of legal entity. The penalty for tax evasion is increased from 50% to 150% on the amount of tax evaded to 100% to 150%.

Individual income tax

Tax rates – Individuals are taxed under the new rules at progressive rates ranging from 10% to 15% (previously, 10% to 35%). For resident salaried individuals, the top rate is 15% (down from 20%). Nonresidents are taxed at a flat rate of 20% (previously subject to progressive rates). The exempt annual income ceiling is increased from YER 36,000 to YER 120,000.

Benefits, privileges and rewards, regardless of what they are called, are taxable at a flat rate of 15%.

Taxable income – Details of deductible allowances from employment income will be defined in executive regulations. PD 17 clarifies the income that is subject to salaries and wages tax to include income received by an employee for work done outside Yemen for a resident employer, income received by a nonresident from a PE in Yemen and salaries, rewards and allowances paid to the chairman, members of the administration board and managers of capital associations.

Comments

The reductions in the tax rates are generally welcomed, although the telecommunications sector is subject to a rate higher than the standard corporate income tax rate of 20% (50% for mobile phone service providers and 35% for international telecommunications service providers). The provision for accelerated depreciation and the increase in the depreciation rates, however, will facilitate investment in new technologies and the replacement of old equipment.

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Companies in the oil and gas sector will be governed in accordance with the provisions of Production Sharing Agreements. Exploration companies normally are subject to the exploration tax during the exploration phase and a corporate tax of 35% during the development period. Corporate taxes during the latter period are assumed by the Ministry of Oil and Minerals, which discharges the taxes on behalf of oil and gas companies. PD 17 does not make any changes to these practices, although it is now an obligation to file a tax return duly certified by a licensed chartered accountant and the tax return must be accompanied by the audited financial statements.

The classification of taxpayers likely means that oil and gas companies will fall into the large taxpayer category, thus subject to more regulations and significant penalties for noncompliance.

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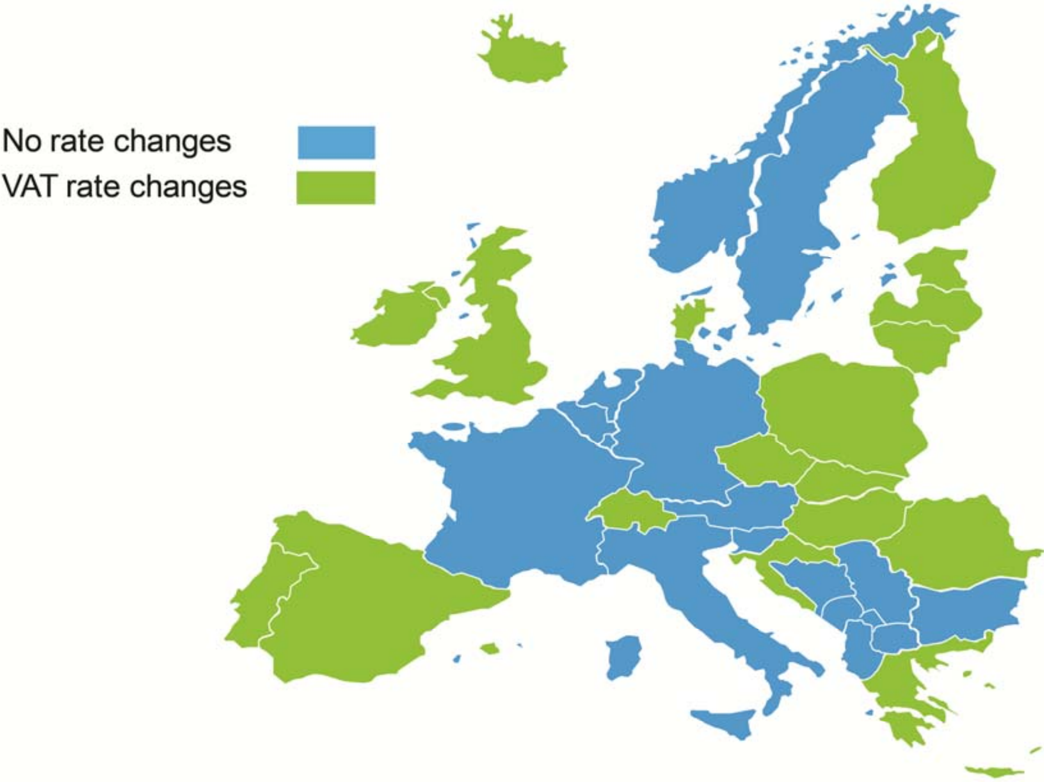
2011 VAT rate changes in the EU and Switzerland

VAT has proven to be an important source of revenue for governments during the economic downturn in Europe. Since October 2008, 20 European countries have modified their VAT rates (including the changes that apply as from January 2011). Rates were reduced in only three countries, with two of the three countries raising their rates back to the previous rates after 12 months. In seven countries, the VAT rates have increased more than once in the last two years. Taking into account changes to the scope and the standard rates, almost all EU countries will have changed their rates in the past two years.

The following article overviews the upcoming rate changes, as well as the current VAT rates, in Europe.

The countries in green have changed their VAT rates in the past two years:



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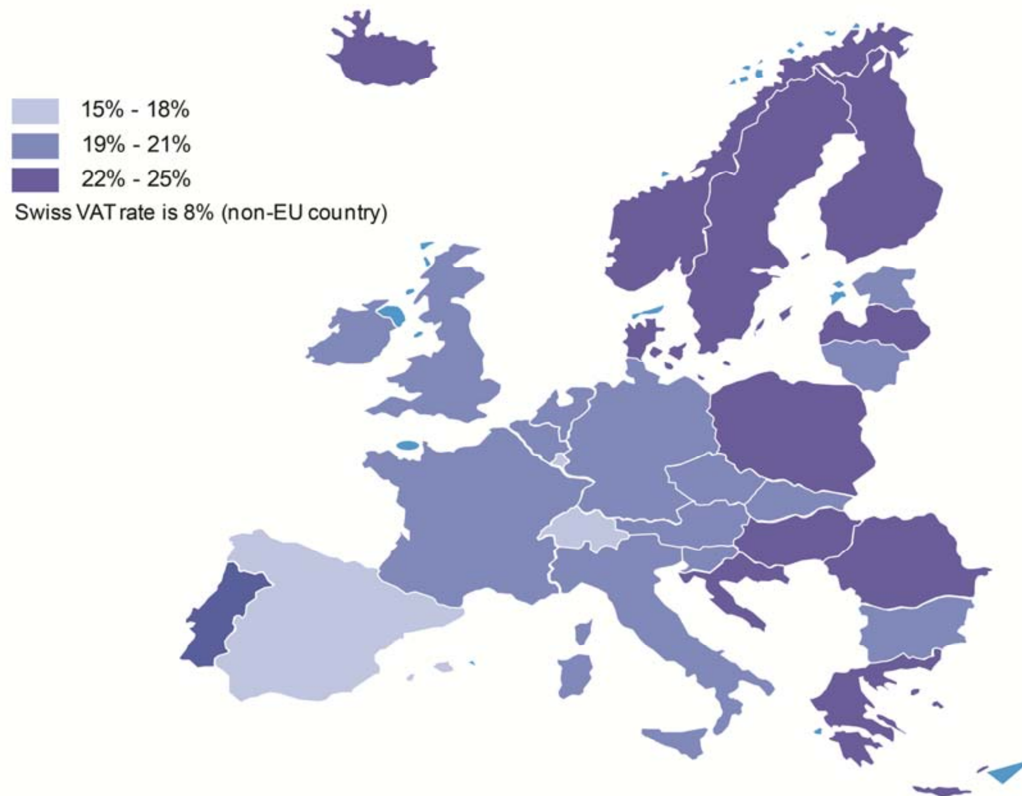
The VAT Directive provides a legal framework enabling Member States to determine their VAT rates. The general rule allows Member States to tax supplies of goods and services from a minimum rate of 15% to a maximum of 25%. Additionally, Member States may apply one or two reduced rates of not less than 5% to goods and services specified in a restricted list. There are, however, many derogations, which prevent the VAT rate system from being coherent in all EU countries. In this respect, exceptions have become the general rule. The following map overviews the VAT rates currently applicable in Europe (including the 2011 changes):



VAT rate changes as from January 2011

Cyprus – Cyprus will increase the VAT rate on food and pharmaceutical products from 0% to 5%.

Greece – For the third time in 2010, Greece will increase its VAT rates. The reduced rate will be increased from 11% to 13% for the goods and services in Annex III of the Greek VAT Code. The super reduced rate, where it applies, will increase from 5.5% to 6.5% for Annex III goods and services, with some new goods and services qualifying for the super reduced rate. For certain Aegean Sea Islands, however, the reduced rate will be 9% and the super reduced rate will be 5%. The new rates, which were approved 14 December 2010, will apply as from 1 January 2011.

Latvia – The government has announced its intention to increase the standard VAT rate from 21% to 22% and the reduced rate from 10% to 12% as from 1 January 2011.

Poland – The increase in the VAT rates will bring the 22% standard VAT rate to 23%. The reduced rates will be increased from 7% to 8% and from 3% to 5%. The scope of the VAT rates also will be changed, so that some rates could go down; goods subject to the 7% rate will, under the new law, be subject to the 5% rate. This change should be approved in the coming days.

Portugal – The Parliament has recently decided to increase the standard VAT rate from 21% to 23% as from 1 January 2011, and the applicable VAT rates in the Autonomous Regions of Madeira and Azores will increase from 15% to 16%.

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Slovak Republic – The government has announced an increase in the VAT rate from 19% to 20% as from 1 January 2011 (the reduced rates will remain unchanged).

Switzerland – The standard rate will increase from 7.6% to 8% and the reduced rates from 2.4% to 2.5% and from 3.6% to 3.8%. The rate increase has been approved and is final.

U.K. – The U.K. also has decided to increase the standard VAT rate as from 4 January 2011 from 17.5% to 20%.

Changes in the VAT rates have been proposed in Ireland to address the current economic problems; the standard VAT rate would increase from 21% to 22% in 2013 and again from 22% to 23% in 2014. However, this has not yet been confirmed. Also, Lithuania will substantially review the scope of its reduced rates. There will be no increase in the VAT rate in the Czech Republic in 2011, but most likely there will be in 2012.

Challenges

VAT rate changes raise a number of issues for taxpayers:

- From a systems perspective, adapting ERP systems with sufficient time to avoid last minute problems is essential to comply with local invoicing and reporting requirements. Companies may be exposed to penalties and VAT deduction refusals where there is incorrect reporting or invoices. The main areas to consider are: the issuance of credit notes, applicable tax points and late/early invoicing. Rules on all these areas differ from country to country. Therefore, global ERP systems must be adapted considering each local regulation.
- The VAT treatment of supplies that span the VAT rate can be confusing and difficult for businesses to comply with. Again, these rules differ from country to country, as do the rules regarding the ability to advance invoices and/ or payments, which could be relevant for businesses (or private consumers) considering making large purchases. It is therefore important to consider the risks and opportunities for each country.
- The timing of the VAT rate change can have significant consequences. For example, in the U.K., the VAT rate will change on 4 January, the first working day of the year, instead of 1 January, a public holiday.

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Czech Republic:
Withholding tax exemption for royalties under IRD to become effective

As from 1 January 2011, the Czech Republic will be able to grant an exemption from withholding tax for royalties paid to related parties that are resident in another EU Member State, Iceland, Norway and Switzerland.

The Czech Republic was granted a transition period to fully apply the EU Interest and Royalties Directive (IRD), meaning that it has been permitted to continue to levy withholding tax in situations where the payments otherwise would be exempt under the directive. With respect to interest payments, the country was authorized not to apply the IRD until the Savings Directive entered into effect on 1 July 2005; the transition period for royalty payments expires on 31 December 2010.

Beginning in 2011, it will be possible for royalties paid to qualifying companies in other EU Member States, Iceland, Norway and Switzerland to be exempt from withholding tax provided the following requirements are met:

- The recipient of the royalty receives a ruling from the competent authorities granting the exemption (the application must include requirements stated by legislation in accordance with the provision included in Section 38 nb of the Income Tax Act; the application may also be submitted by the payer on behalf of the recipient);

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- The payer and the recipient must be directly related through capital (i.e. holding directly at least 25% of the share capital or voting rights) for at least 24 consecutive months (the exemption can be applied before the expiration of the 24-month period, provided the holding requirement is subsequently met);
- The recipient of the royalties is the beneficial owner; and
- The royalties are not attributable to a permanent establishment located in the Czech Republic or a third country.

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European Union: ECJ rules payment handling services subject to VAT

The European Court of Justice (ECJ) issued its decision in the *Everything Everywhere Ltd* (*formerly T-Mobile (UK) Ltd*) case on 2 December 2010, concluding that payment processing charges are not consideration for a supply that is distinct and independent from the principal supply of telecommunication services. As a result, such charges are subject to VAT.

Facts

Everything Everywhere provides mobile telephone and other services delivered through a mobile telephone network. At issue was a GBP 3 fee that Everything Everywhere charges to customers who do not pay their bills either by direct debit or by BACS (Bankers' Automated Clearing Services). No separate company was involved and the payment processing transaction was between Everything Everywhere and its customers who chose to pay other than by direct debit or BACS. Having previously accounted for VAT on the fee, in August 2005 Everything Everywhere made a claim to the U.K. tax authorities for overpaid VAT, claiming that the charge should be exempt from VAT as a payment handling service (an exempt supply). The U.K. authorities disagreed. At issue was whether the fee is consideration for an exempt supply, separate from the supply of mobile telephone services. In 2007, the U.K. VAT & Duties Tribunal held that the payment processing services supplied by Everything Everywhere were not financial services, nor were the services separate from the supply of telecommunications services. Everything Everywhere appealed to the High Court, which referred the case to the ECJ.

ECJ decision

The ECJ ruled that the charge is not consideration for a supply distinct and independent from the principal supply of telecommunication services, but rather an additional charge for the principal supply. The Court also concluded that the company's situation is entirely different from an economic operator that provides financial services to its clients as the principal supply.

In view of the above, the ECJ found it unnecessary to consider whether the charges were a consideration for an exempt supply, so the answer to this question remains unclear.

Comments

The *Everything Everywhere* decision is important for businesses that charge a fee for providing a payment handling service and is relevant to any business that effects payments and transfers for (or on behalf of) its customers or others in the U.K., as it might potentially impact existing arrangements.

Whilst the ECJ addressed the question of whether the payment processing charge was a separate supply from the supply of mobile telephone services, it did not address the exemption question, so if processing payments are capable of being distinct and separate, it is unclear whether the exemption could apply. Read in conjunction with the ECJ's recent decision in *AXA/Denplan*, the *Everything Everywhere* decision makes the application of the exemption for separate payment processing charges difficult, unless the supplier is engaged in the provision of financial services. Applying the decision, one

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could argue that, if a separate company was providing mainly financial services, the exemption for payment handling services could be applied. The exemption currently used for similar payment processing services in a number of commercial sectors (e.g. ticket agencies, travel agents and airlines, utility companies, etc.) should be reviewed to determine the correct VAT liability of these charges.

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European Union:
ECOFIN reaches agreement on renewed mutual assistance and information exchange directive

The Economic and Financial Affairs Council (ECOFIN) reached political agreement on 7 December 2010 on the draft of a renewed directive on mutual assistance and exchange of information that will update the existing directive dating from 1977 and last updated in 2006. The Council will adopt the renewed directive without further discussion during its next meeting after the text has been finalized, at which point the effective date should be clear.

The draft will extend the directive to all taxes except those already harmonized under EU law (e.g. VAT and customs duties). Most importantly, EU Member States will no longer be able to refuse to provide information requested by the tax authorities of another Member State on the grounds that the information is held by a bank or financial institution. In other words, bank secrecy laws will no longer justify rejecting information requests. A Member State, however, cannot be obliged to exchange information that it would be unable to obtain for its own use.

Information will be exchanged either upon request, automatically or spontaneously. To avoid "fishing expeditions," however, the Council agreed that tax authorities should include in their information requests at least the identity of the taxpayer under investigation and the tax purpose for which the information is sought. While the Council may eventually expand the categories for which information will be exchanged automatically to eight (covering employment income, directors' fees, dividends, capital gains, royalties, certain life insurance products, pensions and ownership of, and income from, immovable property), Member States will be required to meet the automatic exchange condition for a maximum of five of the categories by 2015. A report on the automatic exchange of information (and additional proposals if necessary) is due no later than 1 July 2017, possibly extending the number of categories for automatic exchange of information from five to eight.

The revised directive also will establish time limits for the provision of information upon request and other administrative enquiries. For example, the party receiving a request for information will need to provide proof of receipt of the request within five business days and the requested information will have to be provided within six months after the request (no time limits are set for the provision of additional information). The directive also will allow officials to participate in administrative enquiries in the territory of another EU Member State.

Finally, standard forms for the exchange of information will be created, and while the forms are not mandatory, they likely will be used for all requests.

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Germany:
E-Tax Balance Sheets on the way

Companies in Germany soon will be required to file an electronic tax balance sheet and an electronic profit-and-loss-account (E-Tax Balance Sheet) as an appendix to their annual electronic company tax returns. These new requirements, which are likely to apply for fiscal years starting after 31 December 2011, may necessitate changes to software and accounting systems.

As from fiscal year 2011, all company income tax returns also will have to be submitted electronically, although XBRL will not have to be used for these purposes. No changes are planned for tax assessments, which will still be issued only in hard copy. All German companies with major book/tax differences that determine their profits using double-entry accounting will need to electronically submit the E-Tax Balance Sheet (again, most likely for all fiscal years starting after 31 December 2011).

In a circular dated 19 January 2010, the German Federal Ministry of Finance (MOF) defined e**X**tensible **B**usiness **R**eporting **L**anguage (XBRL) as the mandatory technical format for all data transmissions by companies related to the E-Tax Balance Sheet. XBRL is a global and open technical standard for the exchange of company information and was developed within the last 10 years by XBRL International, a consortium in which approximately 600 organizations worldwide participate. The XBRL taxonomy is a hierarchically structured data scheme, comparable to a model chart of accounts, which is comprised of balance sheet and profit-and-loss account positions. Each value in an XBRL document is clearly attributed to an element from the XBRL taxonomy so that the document is fully machine-readable. The taxonomy can be understood as a rule of grammar, which technically allows semantic denotations to be given to the content of XBRL documents.

In August 2010, the MOF released a first draft of the general taxonomy that will apply for most companies, followed by a hearing on the draft. The MOF reportedly is planning to publish first drafts of special taxonomies (applicable, e.g., to banks and insurances) and complementary taxonomies (applicable to certain industries subject to special accounting rules and regulations) by 31 December 2010.

The draft general taxonomy released by the MOF requires very detailed new tax information, which is not available in standard charts of accounts used by most companies for financial accounting purposes. It is likely that the German tax authorities will want to see, at least mid-term, all mandatory tax information for the E-Tax Balance Sheet on individual accounts directly in all companies' charts of accounts.

All companies should discuss the E-Tax Balance Sheet with their software providers as soon as possible to determine whether their currently used accounting software has interfaces allowing the use of external XBRL software tools. It is expected that all major providers of accounting software will offer either partial or comprehensive software solutions for XBRL. Companies whose accounting software has no XBRL interfaces (e.g. old software), or where the software provider will not offer an XBRL update, should consider obtaining new software in 2011.

Special E-Tax Balance Sheet issues arise for all companies that do not maintain German GAAP accounting books (and do not control their chart of accounts) but conduct all their financial accounting in accordance with U.S. GAAP or IFRS, with a one-time annual adjustment to German GAAP.

Comments

Even though the MOF taxonomy drafts have not yet been finalized and the exact implementation dates are not yet clear, all companies in Germany should act to address the following issues that can arise in the context of the E-Tax Balance Sheet:

- Is the company subject to the general taxonomy or will one of the special or complementary taxonomies apply? Depending on the applicable taxonomy, when is the taxonomy likely to be applicable?
- Is the accounting software XBRL compliant, and if not, can an XBRL update be expected from the software provider?

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- Does the company already prepare a hard copy tax balance sheet? If so, how is this process structured and does preparation of the balance sheet need to be adjusted for purposes of the E-Tax Balance Sheet? What costs and benefits could arise from changes to the preparation process?
- On which accounts does the company book tax-relevant information? What are the potential implications for the E-Tax Balance Sheet?
- How can the company, assuming that no changes to the charts of accounts are made, extract the detailed compulsory tax information for its E-Tax Balance Sheet (e.g. data flagging or sorting)?
- Which employees are currently supporting the tax balance sheet preparation? Is there a need for training and/or information?
- Does the company plan to use its E-Tax Balance Sheet for tax compliance purposes only or as a basis for a tax management system?

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Korea:
Tax authorities announce plan for tax audits

Korea's National Tax Service announced on 5 November 2010 its "Plan for Tax Audits," the main features of which are as follows:

- Companies with annual sales revenue of KRW 500 billion or more will be audited every four years;
- Companies with annual sales revenue of KRW 5 billion or more will be audited depending on an analysis of the extent of their tax filing compliance; and
- Companies with annual sales revenue of less than KRW 5 billion will be audited depending on an analysis of the extent of their tax filing compliance, but they also will be randomly selected for audit.

According to the plan, tax audits of small and mid-sized (SMC) companies (those whose annual revenue is less than KRW 50 billion) will be carried out by a district tax office rather than a regional tax service. However, an SMC with annual revenue less than KRW 50 billion (KRW 2 billion for an individual taxpayer) that has operated a business for more than 20 years (30 years for an SMC located in a metropolitan area) and is in compliance with its filing obligations will be excluded from being considered a tax audit target company.

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Switzerland:
Protocol with Denmark enters into force

The 2009 second protocol to the 1973 tax treaty between Switzerland and Denmark entered into force on 22 November 2010. The protocol will apply as from 1 January 2011, with the exception of the arbitration clause, which will be effective once Denmark has the necessary internal legal processes in place or concludes an agreement with another country that includes a similar clause.

In addition to confirming Switzerland's new position with respect to the exchange of information and arbitration, the introduction of a final withholding tax on dividends and new taxation rules concerning pension funds may have a negative

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impact. The protocol does not change the status of shares of real estate companies qualifying as movable property, so the sale of such shares will continue to be subject to tax only in the country of the seller.

The main amendments made by the protocol are as follows:

Dividends

Changes to the dividends article bring the provision more in line with the standard OECD model treaty. Under the protocol, dividends will be subject to a maximum withholding tax of 15%, with an exemption available where dividends are paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company. The exemption also will apply where dividends are paid to a qualifying pension fund or similar institution.

The relationships between Swiss and Danish group companies will need particular attention because deemed dividends could result in a 15% final withholding tax compared to the exemption available under the current treaty. Individuals and companies also will need to consider whether a foreign tax credit is available in the residence state where the final withholding tax charge imposed by the source state is 15%.

Interest and royalties

The protocol introduces the concept of "effective beneficiary" to the existing exemption for interest and royalties, such that interest or royalties *beneficially owned by* (rather than merely paid to) a resident of the other contracting state are taxable only in that other state. As is currently the case, the exemption will not apply if the beneficiary, being a resident of a contracting state, carries on business in the other contracting state in which the interest or royalties arise through a permanent establishment situated therein and the debt claim in respect of which the interest is paid or the right or property in respect of which royalties are paid is effectively connected with that PE. In addition, the protocol denies the exemption for persons carrying out independent personal services through a fixed place of business in the other contracting state.

Pensions

The right to tax pensions from private pension schemes will now lie primarily with the source state instead of the beneficiary's state of residence to the extent the social contributions previously paid by the taxpayer were deductible from his/her taxable income in the source state or the social contributions paid by the taxpayer's employer were not considered additional income to the taxpayer in the source state.

"Other" income

Other income (i.e. income not specifically mentioned in the treaty) may be taxed by the source state if the beneficiary of the income carries on business in the source state through a permanent establishment situated therein or performs independent personal services through a fixed place of business. Before the protocol, such income could only be taxed in the residence state.

Information exchange

The protocol adopts the OECD standard for exchange of information. This is Switzerland's third agreement (the other agreements are those with France and Luxembourg) in accordance with the OECD standard on administrative assistance in tax matters.

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In brief

Azerbaijan – On 12 November 2010, the President signed a decree on the implementation of the Law on Investment Funds, which entered into effect on 22 October 2010 and replaces the 1999 Law on Investment Funds. The new law sets out the types of investment funds and provides a framework for establishment and licensing procedures for local and foreign investment funds and their representative offices. Unlike the old law, the new regime allows an investment fund (in addition to a joint stock company) to be established as a shared investment fund (open, interval and closed) that does not have a legal personality. It is expected that the new law will have a positive impact on the emergence of new financial tools and increase the volume of operations in the field of capital and real estate markets and other investment projects. The State Committee on Securities is appointed as a responsible body for coordinating implementation of the issues arising from the Law.

European Union – On 8 December 2010, the Council of the European Union announced the adoption of a directive maintaining the current minimum standard rate of VAT at 15% until 31 December 2015.

Indonesia – The Director General of Tax issued a circular letter on 23 November 2010, clarifying 2009 VAT changes for banking services. Because the law changes became effective 1 April 2010, the circular also is technically effective from that date, raising the possibility of potential underpayments and penalties. The circular details financial services carried out by banks that should be subject to VAT at 10% and services that are VAT-exempt (the latter covering factoring, credit card business, certain financing and/or other activity based on Shariah principles, financing services that receive compensation in the form of interest, and (non-financing) financial services provided by a bank directly to its customers).

Tax treaty round up

At the end of each month, the World Tax Advisor provides an update on recent tax treaty developments, with a focus on items that directly affect the withholding tax rates of the key jurisdictions covered by the Deloitte International Tax Source (DITS). Additional coverage may include stated negotiating priorities and other important tax treaty trends. For updates on tax information exchange agreements, visit our DITS special feature.
URL: http://www.dits.deloitte.com
URL: http://www.dits.deloitte.com/Administration/ManageHomePage/Popup.aspx?ChildPage=InfoExchange

Unless otherwise noted, the developments discussed are not yet in force.

Canada-U.S. – The Canadian and U.S. competent authorities signed a memorandum of understanding on 12 November 2010 that sets out how the mandatory binding arbitration provision in the tax treaty between the two countries will operate.

Denmark-Switzerland – See article in this issue.

Estonia-Albania – The April 2010 treaty entered into force on 25 November 2010 and applies as from 1 January 2011. When in effect, dividends will be subject to withholding tax at 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends; otherwise, the rate will be 10%. The rate on interest and royalties will be 5%.

Greece-Azerbaijan – The 2009 treaty has entered into force and will generally apply as from 1 January 2011. When in effect, the withholding tax rate on dividends, interest and royalties will be 8%.

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Greece-Tunisia – The 1992 treaty has entered into force and will generally apply as from 1 January 2011. When in effect, the treaty provides for a 35% withholding tax rate on dividends. The rate on interest and royalties will be 7%.

Hong Kong-New Zealand – When in effect, the treaty signed 1 December 2010 provides for a 0% rate on dividends paid to a company that holds directly or indirectly at least 50% of the voting power of the payer company and the recipient company (1) has its principal class of shares listed and regularly traded on a recognized stock exchange; (2) is owned directly or indirectly by one or more companies (a) whose principal class of shares is listed and regularly traded on a recognized stock exchange, or (b) which, if that company or each of those companies owned directly the holding in respect of which the dividends are paid, would be entitled to equivalent benefits in respect of the dividends under a tax treaty between the party of which that company is a resident and the contracting party in which the payer company is resident; or (3) does not meet the requirements of (1) or (2), but the competent authority of the first-mentioned contracting party determines that there is no motive to take advantage of the dividends article. The rate will be 5% where dividends are paid to a company that holds directly at least 10% of the voting power of the payer company and 15% in all other cases. The rate on interest will be 10% and that on royalties, 5%.

Hong Kong-Switzerland – When in effect, the treaty signed 6 December 2010 provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company, dividends paid to a pension fund or scheme, and dividends paid to the Hong Kong Monetary Authority or Swiss National Bank. The rate in all other cases will be 10%. Interest will be taxed only in the residence state of the recipient. Royalties will be subject to a 3% withholding tax.

Ireland-Kuwait – When in effect, the treaty signed 23 November 2010 provides that dividends and interest will be exempt from withholding tax. Royalties will be subject to a 5% withholding tax rate.

Luxembourg-Switzerland – The 2009 protocol entered into force on 19 November 2010 and will apply as from 1 January 2011. The protocol amends the dividends article to provide an exemption for dividends paid to a company (other than a partnership) that holds at least 10% of the capital of the payer company for an uninterrupted period of two years preceding the date the dividends are paid. The rate will be 5% where the dividends are paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%.

Mexico-Panama – The treaty and protocol signed on 23 February 2010 enters into force on 30 December 2010 and applies generally as from 1 January 2011. The provisions relating to the exchange of information, however, will apply retroactively as from 1 January 2008. When in effect, the treaty provides for a 5% withholding tax on dividends paid to a company that holds directly at least 25% of the capital of the payer company, and 7.5% in all other cases. The rate on interest and royalties will be 10% (with an exemption on interest if paid to a bank).

Mexico-Uruguay – The 2009 treaty enters into force on 29 December 2010 and will apply as from 1 January 2011. When in effect, the treaty provides for a 5% rate on dividends and a 10% rate on interest and royalties.

Singapore-Albania – When in effect, the treaty signed on 23 November 2010 provides that the withholding tax rate on dividends, interest and royalties will be 5% (with an exemption for dividends paid to the government of the other contracting state).

Singapore-Slovenia – The January 2010 treaty entered into force on 25 November 2010 and will apply as from 1 January 2011. When in effect, the treaty provides for a 5% withholding tax on dividends and interest The treaty does not contain a royalties article, so the domestic rate will apply.

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Australia

ATO freezes assets of private equity investor

The tax authorities have successfully applied to the Federal Court to freeze Australian assets of a private equity investor to protect a successful judgment in favor of the Commissioner of Taxation in respect of tax alleged to be due by the fund.
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/75c2c4e1ba0cc210VgnVCM1000001a56f00aRCRD.htm?id=us_email_Tax_WTA_121710
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dtt_tax_alert_Australia_071210.pdf?id=us_email_Tax_WTA_121710
Issued: 7 December 2010

Belgium

Authorities issue circular on payments made to tax havens

The tax authorities have published an administrative circular that clarifies the scope of a 2009 law on payments made to tax havens.
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/478dbbf74d1ec210VgnVCM2000001b56f00aRCRD.htm?id=us_email_Tax_WTA_121710
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dtt_tax_alert_Belgium_131210.pdf?id=us_email_Tax_WTA_121710
Issued: 13 December 2010

Brazil

Spanish ETVEs suspended from gray list

The tax authorities have announced that Spanish holding companies will be temporarily suspended from the effects of inclusion on the list of privileged tax regimes.
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/60785e93f4bac210VgnVCM2000001b56f00aRCRD.htm?id=us_email_Tax_WTA_121710
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dtt_tax_alert_Brazil_21210.pdf?id=us_email_Tax_WTA_121710
Issued: 2 December 2010

Ireland

12.5% rate of corporation tax reconfirmed in Budget 2011

The Minister for Finance has confirmed in the 2011 budget that the 12.5% corporate rate will be retained. However, the patent income exemption is abolished.
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/8e15a80c1c3cc210VgnVCM2000001b56f00aRCRD.htm?id=us_email_Tax_WTA_121710
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dtt_tax_alert_Ireland_071210.pdf?id=us_email_Tax_WTA_121710
Issued: 7 December 2010

Mexico

R&D cash benefit extended for 2011

Funds have been allocated by the Mexican legislature to extend R&D grant programs to provide direct tax cash subsidies for qualified R&D projects undertaken in 2011. The R&D incentive can represent between 22% and 90% of eligible R&D expenses paid by a Mexican company.
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/98b84ee9fc6ec210VgnVCM1000001a56f00aRCRD.htm?id=us_email_Tax_WTA_121710
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dtt_tax_alert_Mexico_141210.pdf?id=us_email_Tax_WTA_121710
Issued: 14 December 2010

Saudi Arabia

Participation exemption introduced

The Minister of Finance has released a circular that introduces a participation exemption.
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/b32eaec63c3ec210VgnVCM2000001b56f00aRCRD.htm?id=us_email_Tax_WTA_121710
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dtt_tax_alert_Saudi%20Arabia_131210.pdf?id=us_email_Tax_WTA_121710
Issued: 13 December 2010

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United States

Transition guidance issued for foreign tax credit splitter legislation

The tax authorities have issued a notice providing initial guidance on the suspension of foreign taxes that accrue as a result of a foreign tax credit splitting event.

URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/e6b1311a215cc210VgnVCM2000001b56f00aRCRD.htm?id=us_email_Tax_WTA_121710

URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dtt_tax_alert_United%20States_071210.pdf?id=us_email_Tax_WTA_121710

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