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2011 U.K. Budget: a positive budget for businesses

As expected, the 2011 U.K. Budget, announced on 23 March 2011, contained a number of measures consistent with the government's economic policy objective of promoting sustainable and balanced growth, as well as measures designed to attract and retain investment in the U.K. from multinational groups. Given the U.K.'s continuing level of public sector borrowing, the government has sought to balance these changes with other revenue-raising measures, mainly affecting banks and oil and gas production companies, and provisions designed to counter specific tax avoidance schemes.

Reform of the U.K. controlled foreign company rules (CFC) continues with a number of further announcements in this area, and some new anti-avoidance measures have been announced.

Business tax: Corporation tax rates

The main rate of corporate tax will be reduced to 26% as from 1 April 2011 and will be reduced by 1% in each of the next three financial years to a rate of 23% from 1 April 2014. This is an acceleration of the reductions proposed in the June 2010 Budget, which announced that the main rate of corporation tax would be reduced to 27% from 1 April 2011 down to 24% by 1 April 2014.

The bank levy, introduced in January 2011, will increase as from 1 January 2012 to offset the impact of the additional reduction in the corporate tax rate. The rate will be 0.078% for short-term liabilities and 0.039% for long-term chargeable equity and liabilities. The bank levy is a permanent tax in respect of certain equity and liabilities on banks' balance sheets.

As previously announced, the small profits rate will be reduced to 20% as from 1 April 2011.

Although the further reduction in the corporate tax rate should increase the attractiveness of the U.K. as a place for business, it will also have an effect on the accounting for deferred tax assets and liabilities for all companies reporting deferred taxes in their financial statements under most accounting systems including U.K. Generally Accepted Accounting Principles (U.K. GAAP), U.S. GAAP and International Financial Reporting Standards (IFRS). Under both U.K. GAAP and IFRS, the changes will arise for balance sheet dates falling on or after the substantive enactment of the Finance Bill 2011, which is

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generally understood to be following the third reading in the House of Commons. For U.S. GAAP filers, the changes will apply to balance sheets falling on or after the date of Royal Assent.

The phased rates for 2011 and 2012 will be included in Finance Bill 2011, and so deferred tax calculations will require detailed scheduling of reversals of deferred tax assets and liabilities to enable the appropriate tax rate to be applied.

The supplementary charge levied on profits from oil and gas production in the U.K. and U.K. Continental Shelf will increase from 20% to 32% with effect from 24 March 2011. The legislation enacting this change will include a mechanism for the charge to be reduced where the oil price falls below a trigger price, to be agreed following discussions with interested parties, but currently suggested as USD 75 per barrel.

Business tax: Corporation tax reform previously announced measures

CFC rules Finance Bill 2011 will include a package of interim changes to the CFC rules in advance of the full reform tabled for 2012. These new rules will seek to exempt foreign income that is regarded as commercially justified and that does not erode the U.K. tax base and make it easier for non-U.K. businesses to invest or locate in the U.K. The measures will have effect for accounting periods beginning on or after 1 January 2011 and follow the consultation into the draft clauses published on 9 December 2010.

Consultation into CFC reform remains tabled for May 2011, with draft legislation to be released in the autumn. It is expected that the new rules will introduce a mainly entity-based system that will operate on a territorial basis and will only seek to bring within the CFC charge the proportion of overseas profits that are deemed to have been artificially diverted from the U.K.

In addition, it has been announced that the new rules will include a finance company partial exemption that will mean an effective tax rate on overseas finance income of 5.75% by 2014, being one quarter of the main rate.

Taxation of foreign branches Finance Bill 2011 will also contain legislation to enable companies to elect for profits of foreign branches of U.K. companies to be exempt from tax. This election will be irrevocable and the legislation will have effect for accounting periods commencing on or after Royal Assent. Although the budget announcement states that changes have been made to the draft legislation released for consultation in 2010 (including changes to the anti-diversion rules, transitional rules and capital allowances), details will not be available until the Finance Bill is released.

Patent box regime The Chancellor reaffirmed the intention to proceed with the previously announced patent box regime, with a consultation document to be released in May 2011 and legislation expected in Finance Bill 2012. The government has confirmed that a reduced 10% rate of corporation tax will apply for profits arising from patents; the measure is intended to be effective from 1 April 2013, consultation will continue on details. The government is looking to create a practical and competitive regime to ensure that the U.K. remains an attractive location in which to invest. Limited detail has been published to date and the government is actively consulting with business on the shape of the new regime.

Capital gains A number of measures relating to the taxation of capital gains announced in the 2010 June Budget will be included in Finance Bill 2011, including simplification of the capital gains rules for companies relating to capital losses following a change in ownership, de-grouping charges and value shifting.

Business tax: Corporation tax reform – new measures

Worldwide debt cap The U.K. tax authorities (HMRC) announced that informal consultation will be held in June 2011 on practical issues that have been identified in applying the worldwide debt cap rules, such as the application of the de minimis rule (which removes companies with net finance income or expense of less than GBP 500,000). The debt cap applies only to large (according to the EU definition) worldwide groups with one or more relevant group companies (broadly, 75% subsidiaries). The intention is that legislation to allow businesses to more easily apply the rules will be published for consultation in autumn 2011 for introduction in Finance Bill 2012.

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Anti-avoidance

The government has published a document that summarizes the proposed strategic approach to tackling tax avoidance through prevention, detection and counteraction. Although much of the content of this document has been previously announced, two new proposals are included covering reform of high risk areas of tax policy (income tax losses and unauthorized unit trusts) and a possible additional interest charge for users of listed tax avoidance schemes.

A number of other measures have been announced to counter specific avoidance schemes involving stamp duty land tax, the sale of lessor companies and de-grouping charges. Previously announced measures concerning avoidance from the derecognition of certain loans and derivatives, certain leasing arrangements, disguised remuneration to individuals and group mismatches, have been confirmed with legislation expected in Finance Bill 2011.

In addition to these specific anti-avoidance rules, and of particular interest to multinational groups, is a consultation announced on the proposed introduction of provisions to prevent tax treaty claims where tax avoidance arrangements have been made in relation to the claim. The provisions will be aimed both at U.K. residents that use tax avoidance schemes and overseas residents who enter into arrangements to obtain benefits under the U.K.'s tax treaties. The government includes individuals, trustees and companies within the potential scope. Taxpayers will need to await further details of the proposal in order to understand the potential impact. However, this consultation potentially represents a significant change of approach for the U.K., which does not currently have legislation in this area. Consultation will begin when draft clauses are published in the autumn, with legislation expected in 2012.

Personal and employment taxes

The government has announced that it will consult on the options and timing of reform to integrate the operation of income tax and national insurance contributions. The potential integration of the taxes would be a significant change to the tax system and it is recognized that the complexity involved in any integration means that reform is expected to take a number of years.

Changes have been announced to the tax treatment of nondomiciled individuals resident in the U.K. The existing GBP 30,000 annual charge will increase to GBP 50,000 for nondomiciled individuals who have been U.K. resident for 12 or more years and who wish to retain access to the beneficial remittance basis of taxation. The GBP 30,000 charge will be retained for those individuals who have been resident for at least seven of the past nine years but less than 12 years. In a new measure, the charge will be removed where the individual remits foreign income or gains for commercial investment in U.K. businesses.

Other measures

Changes will be introduced so that more U.K. companies can take advantage of the small companies audit exemption. It will apply to U.K. subsidiaries of multinational groups that do not breach certain criteria at the balance sheet date and is likely to remove a considerable burden on groups with significant numbers of U.K. entities that meet these criteria.

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China:
VAT treatment of asset restructuring transactions clarified

The Chinese State Administration of Taxation recently issued a bulletin (Bulletin 13) to clarify the value added tax (VAT) treatment of asset restructuring transactions. Effective as from 1 March 2011, Bulletin 13 provides that the transfer of all or part of the tangible assets of an enterprise, along with associated receivables, debts and workforce, through a merger, division, sale or swap in an asset restructuring transaction does not fall within the scope of VAT. This is a significant development on the VAT treatment of certain corporate restructuring transactions, an area that historically has been fraught with uncertainty.

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Background and highlights of Bulletin 13

A corporate restructuring transaction involving the supply of tangible or intangible goods is subject to turnover taxes in China unless it falls within the scope of a specific exception. An exception is granted under two circulars dating from 2002 (Circulars 420 and 165), which state that the transfer of an entire business (also called the transfer of the property rights of the enterprise) is outside the scope of VAT and Business Tax (BT). The transfer of an entire business for these purposes is defined as the full transfer of the assets, receivables, debts and workforce of an enterprise. Although the 2002 circulars do not specify the rationale for the exemption, it is usually interpreted to mean that such a transfer is equivalent to the transfer of the equity interest in an enterprise, which is not within the scope of VAT and BT.

Another circular was issued in 2009 (Circular 585) in response to a question on what constitutes the transfer of an entire business. Circular 585 states that a transfer of assets, liabilities and relevant rights and obligations by a transferor that remains a listed company after the transfer is not considered the transfer of a whole business and, thus, the transfer is subject to VAT. This may be interpreted to mean that, where the transferor is a listed "shell company," the entire business is not regarded as having been transferred as the listed shell company is itself a valuable asset.

Bulletin 13 provides a significant change to the VAT treatment of a restructuring of assets as directed under Circulars 420 and 585. According to Bulletin 13, the transfer all or *part* of the *tangible assets* of an enterprise, along with associated receivables, debts and workforce to other units and/or individuals in an asset restructuring transaction via a merger, division, sale or swap, is outside the scope of VAT.

Comments

For non-VAT payers and small-scale VAT taxpayers that are unable to recover VAT incurred on costs, Bulletin 13 brings an immediate VAT savings. Further, Bulletin 13 expands the non-VAT treatment of asset restructurings and provides enterprises with more scope for tax planning, especially those involved in numerous asset restructuring activities. Enterprises may be able to effectively reduce their tax burden and improve cash flows provided a careful and comprehensive analysis of Bulletin 13 is undertaken and the assets, receivables, debts and workforce are transferred together.

However, some caution is needed when reading Bulletin 13:

- The bulletin emphasizes that the right not to charge VAT is possible only if the transfer is *a combination* of tangible assets and associated receivables, debts and workforce of the enterprise.
- Unlike Circular 420, Bulletin 13 states that both a partial and a full transfer of tangible assets in an asset restructuring will not be subject to VAT.
- Although Bulletin 13 is effective as from 1 March 2011, it is applicable for asset restructurings that commenced before 1 March but where the tax has not yet been settled.

Further, Bulletin 13 creates some uncertainties and leaves open practical issues, such as:

- Definitions The definitions of certain terms are unclear:
  - "Asset restructuring" – Bulletin 13 only applies to asset restructuring transactions, but the concept of "asset restructuring" is not well defined under current tax rules and it is unclear whether the tax authorities will issue any qualitative and/or quantitative requirements to further define the concept;
  - "Merger/division, sale and swap" – It is unclear whether "swap" refers to an exchange of two VATable goods; and
  - "Associated receivables, debts and workforce of the enterprise" – It is unclear whether receivables/debts should be calculated based on the percentage of transferred assets or on the actual amount incurred. The use of the word "associated" also requires clarification.
- BT treatment In the course of an asset restructuring, it is possible that the assets transferred may be subject to BT (e.g. intangible property or immoveable property). Circular 165 provides that the transfer of intangible goods (or immovable property) in the course of a transfer of an "entire business" will not fall within the scope of BT. However, Bulletin 13 is silent on the BT treatment of asset restructurings.
- Input VAT of the transferor Bulletin 13 is silent on the treatment of input VAT attributable to transactions falling within the scope of the bulletin. Since the relevant transfer is outside the scope of VAT and Bulletin 13 does not include an option to tax the transfer, it is likely that the tax authorities would disallow any input VAT credit. If the

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tax authorities do take that position, affected enterprises will need to determine how to transfer assets in order to minimize the loss of the deduction of the input VAT. Conversely, it may be necessary to examine whether the deal can be structured to fall outside the scope of Bulletin 13, so that a VATable transaction is created to allow the recovery of input VAT, when this is significant.

- Other issues   Taxpayers that would like to structure transactions so that they fall within the scope of Bulletin 13 also need to consider business issues such as whether the transfer of debt is allowed by the creditors.

In summary, Bulletin 13 brings some welcome clarifications, but a closer reading demonstrates that there are several areas in which further SAT guidance may be needed.

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Sweden:
Court rules on allowances and per diems paid to nonresidents

Sweden's Supreme Administrative Court recently ruled in two separate cases that the different treatment of residents and nonresidents in Sweden with respect to the withholding of payroll tax and social security contributions constitutes an infringement of the free movement of workers principle in the Treaty on the Functioning of the EU.

Under Swedish law, no payroll taxes or social security contributions are withheld/paid on certain allowances and per diems to the extent the payroll tax/social security contributions correspond to the tax-free amounts set by the Swedish Tax Agency. The Swedish Tax Agency has asserted, however, that Swedish employers are required to withhold tax and make social security contributions on mileage allowances and per diems paid to employees who are taxed under the Special Income Tax Act for nonresidents (SINK). There is no such obligation with respect to Swedish resident employees to the extent the allowances/per diems correspond to tax-free amounts.

The Supreme Administrative Court has held that there are no reasons to justify the different treatment of residents and nonresidents and, therefore, an employer is not obligated to withhold tax or pay payroll taxes on mileage allowances and per diems for employees who are taxed according to SINK to the extent the allowances/per diems correspond to tax-free amounts set by the tax authorities.

Employers that have withheld tax and paid payroll tax on mileage allowances and per diems paid to a nonresident individual as from the income year 2005 should consider filing a request with the Tax Agency for a reconsideration of the taxation for previous years.

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United States:
Final rules issued for foreign bank account reporting

The U.S. Treasury Financial Crimes Enforcement Network (FinCEN) issued final rules on 24 February 2011 amending the Bank Secrecy Act with respect to foreign bank account reporting requirements. Each U.S. person with a financial interest in, or signature or other authority over, any foreign financial account is generally required to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), if the aggregate value of all accounts exceeds USD 10,000 at any time during the calendar year. The final rules amend certain sections of the rules and offer some clarification, most notably with respect to reportable accounts and signature authority. The final rules apply to calendar year 2010 FBARs, which are required to be

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received at the Treasury Department by 30 June 2011. No filing extensions are available and there are significant civil and criminal penalties related to a failure to file a required FBAR.

For 2009 and earlier FBAR filings, the U.S. Internal Revenue Service (IRS) had previously issued guidance that (i) suspended the requirements to file an FBAR for certain signature authority filers, (ii) excepted non-U.S. persons in and doing business in the U.S. from the filing requirements, and (iii) eliminated the need to report commingled funds, except mutual funds. Because the previous guidance is not effective for the 2010 calendar year, filers should pay close attention to the filing requirements as stated in the new rules and in the FBAR form and instructions (to the extent the instructions are not changed by the new rules). It is uncertain when the instructions will be updated to make them consistent with the new rules.

U.S. persons required to file

For 2010, the final rules provide that only U.S. persons having a financial interest in, or signature authority over, a foreign financial account are required to file an FBAR. The final rules define a U.S. person as a citizen or resident of the U.S., or an entity, including but not limited to, a corporation, partnership, trust or limited liability company, created, organized or formed under the laws of the U.S., any State, the District of Columbia, U.S. Territories and Possessions or Indian Tribes. Accordingly, non-U.S. persons in and doing business in the U.S. do not have a filing requirement for 2010.

For 2009 and earlier calendar years, Announcement 2010-16 suspended the filing requirement for "persons who are *not United States citizens*, *United States residents*, or *domestic entities* (corporations, partnerships, trusts, or estates)." (Emphasis added.) As a result, non-U.S. persons in and doing business in the U.S. were not required to file for the 2009 and prior calendar years despite the fact that the FBAR instructions required such persons to file.

Reportable accounts

The final rules provide more definitions with respect to which financial accounts are included in the reporting requirements. One area of confusion under the prior rules had to do with the types of mutual funds or other similar pooled funds that were reportable accounts for FBAR filing purposes. The final rules clarify that the types of mutual funds or other similar pooled funds that are reportable accounts include funds that issue shares available to the general public and that have a regular net asset value determination and regular redemption feature. Accordingly, hedge funds and private equity funds that are not available to the general public and do not have a regular net asset value determination and regular redemption feature are not considered financial accounts for which reporting is required.

Signature or other authority

For 2010, the final rules clarify the meaning of signature or other authority over a financial account and provide a test for making the determination of whether an individual has signature or other authority over an account. The final rules state that "signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds, or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained." The test for determining whether a U.S. person has signature or other authority over a foreign account is whether the foreign financial institution will act upon a direct communication from the individual with respect to the disposition of assets in the account.

For 2010, the final rules provide an exception from the FBAR filing requirements for any person with signature or other authority over, but no financial interest in, a foreign financial account and who is an officer or employee of an entity with a class of equity securities, whether foreign or domestic, listed on any U.S. national securities exchange. Additionally, an officer or employee of a subsidiary of a U.S. entity with a class of securities listed on a U.S. national securities exchange need not file the FBAR if the subsidiary is included in a consolidated report on the FBAR of the U.S. parent filed under this section and the officer or employee has no financial interest in the account. The final rules provide that there is no requirement for these individuals to be advised in writing by the chief financial officer or other responsible officer of either the entity's or the parent's filing for this exception to apply.

The final rules also provide an FBAR filing exception for any person with signature or other authority over, but no financial interest in, a foreign financial account and who is an officer or employee of (i) a bank that is examined by federal authorities, (ii) a financial institution that is registered with and examined by the Securities and Exchange Commission or

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Commodity Futures Trading Commission, or (iii) an Authorized Service Provider where there is an account owned or maintained by an investment company that is registered with the Securities and Exchange Commission.

The final rules provide relief similar to the relief available to those who have a financial interest in 25 of more foreign financial accounts by providing that a person with only signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information (not specifically described) in the FBAR. In addition, the person with signature authority will be required to provide detailed information when requested by the government. In prior informal advice by the IRS, these filers were required to fill out items 34 through 42 of Part IV of the FBAR (account owner's name (organizational name if applicable), address and taxpayer identification number) with respect to each owner of record of a foreign account but not items 15 through 23, which seek specific details with respect to a foreign account (value, account number and type of account, as well as financial institution name and address). If the owner of record owned more than one foreign account, items 34 through 42 of Part IV only needed to be filled out once.

For 2009 and prior calendar years, Notice 2010-23 extended the FBAR filing deadline to 30 June 2011 for persons with signature or other authority over, but no financial interest in, a foreign financial account. Persons who availed themselves of this prior extension need to file any required FBAR for 2009 and prior calendar years by 30 June 2011. However, such persons may apply the final rules in determining their filing requirements for reports due 30 June 2011 with respect to foreign financial accounts maintained in calendar years beginning before 2010. For example, an employee of a foreign entity with signature authority over a foreign financial account of such entity where the entity's stock is listed as American Depository Receipts on any U.S. national securities exchange is exempt from reporting for the 2010 year. This exemption may also be applied to this employee's deferred filing for years prior to 2010 with respect to the employee's signature authority over the same financial account.

Consolidated reports

The final FBAR rules make a change in the special rules for consolidated reports on FBARs. Under the prior rules, the ability to make a consolidated FBAR filing only applied to a corporate parent and its subsidiary entities. Under the new rules, a consolidated report may be filed when "an entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities." This means that, for example, U.S. partnerships that own more than 50% of other U.S. partnerships or U.S. corporations may now file a consolidated report on behalf of themselves and such other entities.

Trust beneficiaries and retirement account participants and beneficiaries

The final rules clarify that only a U.S. person who has a present beneficial interest in more than 50% of the assets of the trust or from which such person receives more than 50% of the current income is required to report such a foreign financial account. In addition, such beneficiaries are exempt from reporting if the trust or trustee of the trust is a U.S. person that files a report for such foreign financial accounts.

Participants and beneficiaries in retirement plans under U.S. Internal Revenue Code sections 401(a), 403(a) and 403(b), as well as owners or beneficiaries of individual retirement accounts (IRAs) under sections 408 and 408A (Roth IRAs), are exempt from reporting their interest in foreign financial accounts held through such retirement plans and IRA accounts.

For more information on FBAR requirements, please contact your local Deloitte representative.

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In brief

ASEAN – The revised ASEAN-China Free Trade Agreement Operational Certification Procedures (OCP) signed by China and the 10 ASEAN member countries was due to be implemented on 1 January 2011, but five countries (Cambodia, Indonesia, Myanmar, Philippines and Thailand) indicated they may have difficulties in meeting the implementation schedule. China, Brunei, Malaysia, Philippines, Thailand, Vietnam and Singapore did implement the revised OCP in January 2011, but Cambodia, Indonesia, Laos and Myanmar have still not, and there is no indication as to when they might do so. Key revisions to the OCP include provisions for third party invoicing and movement certificates (operationally similar to a back-to-back Certificate of Origin).

Peru – The standard value added tax rate reduced from 19% to 18% on 1 March 2011.

Sweden   The Ministry of Finance has proposed a new bill that would consolidate all of the existing laws governing tax procedure into a single law. The consolidated law would reduce the administrative burden on companies in Sweden. If approved, the new law would apply as from 1 January 2012.

Ukraine   The corporate income tax rate will drop from 25% to 23% on 1 April 2011, with the 23% rate applying until 31 December 2011. The rate will then be further reduced to 21% for 2012, 19% for 2013 and 16% as from 1 January 2014.

U.K.   The standard corporate tax rate of 28% will reduce to 27% effective 1 April 2011.

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.

Austria-Bosnia/Herzegovina   When in effect, the treaty signed on 16 December 2010 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; the rate will be 10% in all other cases. No withholding tax will be levied on interest paid in connection with the credit sale of industrial, commercial or scientific equipment, the credit sale of merchandise by one enterprise to another enterprise or on a loan guaranteed or secured by the national bank or central bank. The rate in all other cases will be 5%. The rate on royalties will be 5%.

Austria-Bulgaria   The 2009 treaty to replace the 1983 treaty entered into force on 3 February and applies as from 1 January 2012 for withholding taxes and as from 1 January 2011 for other taxes. When in effect, the treaty provides that dividends will be exempt from taxation when paid to a beneficial owner that is a company; the rate in all other cases will be 5%. Interest and royalties will be taxed at a 5% rate.

China-Nepal   The 2001 treaty entered into force on 31 December 2010 and applies as from 1 January 2011 for China and as from 16 July 2011 for Nepal. The treaty provides for a 10% withholding tax on dividends and interest and a rate of 15% on royalties.

China-Turkmenistan   The 2009 treaty entered into force on 30 May 2010 and applies as from 1 January 2011. The treaty provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 25% of the capital of the payer company; the rate is 10% in all other cases. The withholding tax on interest and royalties is 10%.

China-U.S.   The U.S. Internal Revenue Service has released an agreement signed between the competent authorities of the U.S. and China that clarifies the three-year tax exemption for professors and teachers under the China-U.S. tax treaty. The

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exemption period begins to run from the first day the individual enters the "host state," i.e. the state where the teaching, etc., takes place. If the individual continues to teach, etc., for more than three years, the host state may begin to tax the remuneration derived from the teaching starting on the first day of the fourth year. The initial three-year exemption in this case will be unaffected. The agreement also addresses the situation in which an individual departs the host state, but returns before expiration of the three-year exemption period.

Cyprus-Germany When in effect, the treaty signed on 18 February 2011 to replace the existing treaty provides for a 5% withholding tax on dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. Interest and royalties will be exempt.

Czech Republic-Serbia The 2009 protocol to the treaty between the Czech Republic and the former Serbia and Montenegro entered into force on 28 February 2011 and applies as from 1 January 2012. The protocol confirms that the treaty applies to Serbia.

Estonia-Georgia The 2010 protocol to the Estonia-Georgia tax treaty entered into force on 11 March 2010 and will apply as from 1 January 2012. When in effect, the protocol provides that dividends, interest and royalties will be exempt from withholding tax.

Finland-India The 2010 treaty applies as from 1 April 2011 for India (1 January 2011 for Finland). When in effect, a 10% withholding tax will apply on dividends, interest, royalties and fees for technical services.

Germany-Hungary The treaty signed on 28 February 2011 to replace the existing treaty dating from 1977 provides for a 5% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; the rate will be 15% in all other cases. Interest and royalties will exempt.

Hong Kong-Brunei The 2010 treaty entered into force 19 December 2010 and generally applies in Hong Kong from 1 April 2011 (from 1 January 2011 in Brunei). When in effect, dividends will be exempt from withholding tax. The rate on interest will be 5% if received by a bank or financial institution and 10% in all other cases. The rate on royalties will be 5%.

Hong Kong-Hungary The 2010 treaty and protocol between Hong Kong and Hungary entered into force on 23 February 2011 and applies in Hungary as from 1 January 2012 and in Hong Kong as from 1 April 2012. When in effect, the treaty provides that a 5% withholding tax may be levied on dividends paid to a company (other than a partnership that is not liable to tax) that holds directly at least 10% of the capital of the payer company, and 10% in all other cases. The rate on interest and royalties will be 5%.

Hong Kong-Liechtenstein The 2010 treaty between Hong Kong and Liechtenstein entered into force on 16 March 2011 and applies in Liechtenstein as from 1 January 2012 and in Hong Kong as from 1 April 2012. Once in effect, dividends and interest will be exempt from withholding tax. The rate on royalties will be 3%.

Hong Kong-Portugal When in effect, the first-time income tax treaty signed on 22 March 2011 provides for a 5% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; the rate in all other cases will be 10%. The rate on interest will be 10% and that on royalties, 5%.

Hong Kong-U.K. The 2010 treaty entered into force on 20 December 2010 and applies for Hong Kong as from 1 April 2011. For corporate taxes, the treaty will apply for the U.K. as from 1 April 2011 and as from 6 April 2011 for income and capital taxes. When in effect, dividends generally will be exempt from withholding tax, except for a 15% carve-out if paid by a real estate investment trust (to other than a pension scheme) from income (including gains) derived from immovable property. Interest generally will be exempt and a 3% withholding tax will apply to royalties.

India-Mexico The 2007 treaty applies in India as from 1 April 2011 (1 January 2011 for Mexico). When in effect, a withholding tax rate of 10% will apply to dividends, interest and royalties.

Indonesia-Serbia When in effect, the treaty signed on 28 February 2011 provides for a 15% withholding tax on dividends and royalties and a 10% rate on interest.

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Korea-Brunei When in effect, the treaty signed in January 2011 provides for a 5% withholding tax rate on dividends paid to a company that holds at least 25% of the distributing company; the rate in all other cases will be 10%. The rate on interest and royalties will be 10%.

Korea-Malaysia When in effect, the treaty signed on 13-14 January 2011 to replace the current treaty dating from 1982 provides for a 5% withholding tax rate on dividends paid to a company that holds at least 10% of the distributing company; the rate in all other cases will be 15%. The rate on interest will be 10% and that on royalties, 7%.

Malta-Switzerland – When in effect, the treaty signed on 25 February 2011 provides that the Malta tax on dividends paid by a company that is a resident of Malta shall not exceed the tax chargeable on the profits from which the dividends are paid. A 0% rate will apply on dividends paid by a Swiss company to a company (other than a partnership), the capital of which is wholly or partly divided into shares and which holds directly at least 10% of the paying company for at least one year, provided certain other requirements are met. Otherwise the rate will be 15%. The rate on interest will be 10% and that on royalties, 0%.

Malta-Uruguay When in effect, the first-time income tax treaty signed on 11 March 2011 provides that the Malta tax on dividends paid by a company that is a resident of Malta shall not exceed the tax chargeable on the profits from which the dividends are paid. A 5% rate will apply on dividends paid by a Uruguay company to (1) a company (other than a partnership) that holds directly at least 25% of the capital of the paying company, or (2) a collective investment scheme; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%, with a reduced rate of 5% on royalties for the use/right to use industrial, commercial or scientific equipment, and for copyrights of literary, artistic or scientific works.

Norway-Portugal When in effect, the treaty signed on 10 March 2011 to replace the 1970 treaty, provides that dividends will be subject to withholding tax at a rate of 5% if paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company for an uninterrupted period of at least 12 months prior to the payment of the dividends (or for the life of the company if the company paying the dividends has existed for less than 12 months); otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Poland-Isle of Man – When in effect, the treaty signed on 7 March 2011 will apply only to individuals. The treaty does not contain withholding tax provisions covering dividends, interest or royalties, which will remain subject to the domestic rates.

Poland-Saudi Arabia When in effect, the first-time income tax treaty signed on 22 February 2011 provides that dividends and interest will be subject to withholding tax at a rate of 5% and royalties at a rate of 10%.

Romania-Switzerland – When in effect, the protocol signed on 28 February 2011 to the 1993 treaty provides for a 0% rate on dividends paid to a company that holds directly at least 25% of the payer company, and for dividends paid to the other contracting state, pension funds and federal reserve banks. The rate in all other cases will be 15%. Interest will be subject to a 5% rate. The rate on royalties is not addressed by the protocol and will remain 10%.

Singapore-Switzerland – When in effect, the new treaty signed on 11 February 2011 to replace the current treaty dating from 1975 provides for a 5% withholding tax on dividends paid to a company that holds directly at least 10% of the capital of the payer company, and 15% in all other cases. The rates on interest and royalties will be 5%.

South Africa-Kenya – When in effect, the first-time income tax treaty signed on 26 November 2010 provides that dividends, interest and royalties will be subject to withholding tax at a rate of 10%.

Spain-Albania The 2010 treaty will enter into effect on 4 May 2011 and generally apply from that date. When in effect, dividends paid to a company (other than a partnership) that holds directly at least 75% of the capital of the payer company will be exempt from withholding tax; the rate will be 5% if paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer; otherwise, the rate will be 10%. The rate on interest will be 6% and that on royalties, 0%.

Sweden-Switzerland When in effect, the protocol signed on 28 February 2011 to the 1965 treaty provides that dividends will be exempt if paid to a company (other than a partnership) that holds directly or indirectly at least 10% (currently 25%) of the capital or voting power of the paying company. A new exemption also will apply to dividends paid to a "qualifying pension." Interest will be exempt and the current exemption for royalties will be retained.

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U.K.-Libya – The 2008 treaty entered into force on 8 March 2010 and applies in the U.K. for income tax and capital gains as from 6 April 2011 and for corporation tax as from 1 April 2011 (with general application in Libya as from 1 January 2011). When in effect in the U.K., dividends will be exempt from withholding tax if paid to a pension scheme; otherwise the rate will be 15%. Interest and royalties will be exempt.

U.K.-Oman – The 2009 protocol to the 1998 treated entered into force on 9 January 2011 and will apply with respect to withholding taxes from 1 January 2012. When in effect, dividends will be exempt from withholding tax, subject to a carve-out of 15% for U.K. real estate investment trusts. The rate on royalties will be 8%. Interest is not addressed by the protocol and will remain exempt under the treaty.

U.K.-Netherlands   The 2008 treaty and protocol to replace the 1980 treaty entered into force on 25 December 2010 and applies in the U.K. from 1 April 2011 for corporation tax and from 6 April 2011 for income and capital gains taxes (with general application in the Netherlands from 1 January 2011). When in effect, the withholding tax rate on dividends will be 0% if paid (1) to a company that controls at least 10% of the voting power in the paying company (other than where the dividends are paid by an investment vehicle, discussed below); (2) a pension scheme; or (3) an organization established and operated exclusively for religious, charitable, scientific, cultural or educational purposes. A 15% rate will apply to dividends derived from immovable property by an investment vehicle that distributes most of its income annually and whose income from such immovable property is tax exempt. Otherwise, the rate will be 10%. Interest and royalties will be exempt.

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Mexico
Proposed tax reform for 2013 includes repeal of flat tax
The opposition party has submitted a proposed 2013 tax reform to Congress that includes the repeal of the controversial business flat tax. [Issued: 23 March 2011]
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