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In this issue:

Enhanced powers of French tax authorities could affect taxpayer rights

A series of legislative and administrative measures over the past few years have enhanced the powers of the French tax authorities (FTA) and reinforced the arsenal of the FTA to combat tax fraud and evasion. Although these expanded tools are meant to be used to detect significant fraud and evasion, they have the potential to prejudice individual freedoms since the tools may be used for purposes other than those for which they were introduced.

Reinforced powers of control

The enhancement of the FTA's audit powers principally takes the form of a new "tax police" in France, a procedure for dealing with "flagrant tax abuse" and more sophisticated software:

- The French Parliament set up a National Unit for the Prevention of Tax Delinquency under Decree No. 2010-1213 (dated 4 November 2010). Officers in this tax police force have the same authority as French police officers and can conduct searches related to tax fraud and evasion and supply information to the regular police and the FTA. This unit became functional as from 1 January 2011.
- The Finance Act for 2007 (in effect since 1 January 2008) introduced the "flagrant tax abuse" procedure, which allows the FTA to act immediately in cases of blatant fraud where there is a serious risk that a failure to act could result in an inability to collect tax. For example, the FTA uses this procedure against limited duration companies. The procedure is justified where the collection of tax is in jeopardy, and it applies only to businesses and only in respect of a tax period that has not been reported.

- The National and International Audits Department is responsible for the tax audits of large companies and their subsidiaries, as well as relationships with foreign tax authorities. The Audits Department has established mixed teams of auditors by bringing together agents from various sectors (e.g. banking, transfer pricing, finance and VAT) to improve and reinforce the efficiency of the department. In addition, the department has implemented a new software system, called Altoweb, which enables companies to transmit in a computerized format their book records to the Audits Department. The combination of these new measures enables the FTA to exercise more efficient controls.

Enhanced tax collection measures

The General Department of Tax and the General Department of Public Accounting were merged in 2007 into the General Department of Public Finance (DGFP). Before the DGFP was formed, the General Department of Tax was in charge of the tax base and the General Department of Public Accounting was responsible for tax collection. Now the DGFP deals with receipts, expenditures and the collection of tax. The merger of the two departments has resulted in more rigorous tax collection practices (e.g. collection efforts are now initiated shortly after a notice of assessment is sent to a taxpayer).

Threat to legal certainty

Sections L80 A and L80 B of the Tax Procedure Code constitute two of the most important guarantees provided to taxpayers, particularly in the event of an audit. These provisions allow taxpayers to rely on and invoke previous administrative positions taken by the FTA.

Section L80 A provides that the FTA cannot reassess a taxpayer who has followed the FTA's formal interpretation of a tax rule and, where a taxpayer applied the tax rules according to an FTA interpretation in a public notice or publication (the first paragraph of section L80 A applies to a first assessment and the second paragraph sets out a broader scope of guarantee), the taxpayer cannot be subject to a reassessment based on a new interpretation of the same rules. Section L80 B provides details on how section L80 A is applied.

Guidance issued on 20 September 2010 clarified the possibility of applying the abuse of law procedure to the application by taxpayers of certain published public notices. The guideline states that, if a taxpayer applies such a notice in a different way or in a manner that is contrary to the purposes intended by the authorities, the abuse of law procedure may be enforced against the taxpayer even if the notice goes beyond what is provided for in the tax legislation. This guideline is not consistent with the case law of the French Administrative Supreme Court and creates legal uncertainty.

Search of premises

Where there is presumption of tax fraud, section L16 B of the Tax Procedure Code allows the FTA to conduct a search of a taxpayer's premises. Such a search can result in a tax audit or in the issuance of a notice of reassessment without an audit being initiated ("*taxation d'office*" procedure). In the latter case, the burden of proof shifts to the taxpayer if it decides to challenge the FTA claim before an Administrative Court. This measure is potentially detrimental to individual freedoms and should be limited to extreme cases in which the FTA determines that income tax may be evaded or where there is serious risk that evidence will be destroyed. The search of premises must be approved by a judge, who is charged with protecting the interests of the taxpayer and private property.

Section L16 B has been used by the FTA to visit the offices of French companies without notice (but relying on a court order) to gather information and documents. While it was previously only used in the context of VAT schemes/VAT fraud, the tax authorities now seem to be invoking section L16 B to demonstrate the existence of a French permanent establishment of a foreign entity, particularly in cases where the foreign entity is based in a low tax jurisdiction. This use of the procedure seems disproportionate in comparison with its purpose because the FTA could use other means to obtain the relevant information, i.e. by initiating a tax audit, requesting information directly from the taxpayer or its bank, etc.

A French taxpayer can challenge the use of the section L16 B procedure before the First President of the relevant Court of Appeal within 15 days of the FTA visit, especially if the FTA failed to observe the rules governing the raid procedure. Should the taxpayer prevail before the Court of Appeal, a reassessment decision made by the FTA will not be valid if it is based on information and documents gathered during the visit, regardless of whether the FTA subsequently initiated a regular tax audit or directly issued a reassessment.

The “search” procedure has been held to be in conformity with the French constitution (Constitutional Court decision of 30 July 2010, No. 2010-19/27 QPC). The FTA recently lost several cases (before the Supreme Court) because it failed to produce evidence supporting the existence of a PE, so the raid procedure is likely to become increasingly attractive to the authorities and to be used more frequently.

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Australia moves one step closer to the codification of the tax treatment of sovereign investments

On 20 April 2011, the Assistant Treasurer released a Proposals Paper, *Options to codify the tax treatment of sovereign investments*, which sets out two policy options for the tax treatment of sovereign investments in Australia.

Deloitte supports the Australian government’s focus on codifying the doctrine of sovereign immunity (SI) to the extent that the proposed rules are fair and do not subsidize unfair tax competition against Australian-based enterprises. Clear rules will enhance Australia’s attractiveness as a regional financial center in the Asia Pacific region and encourage inbound investment by foreign governments, which will provide Australia with a significant additional source of capital.

Background

Certain income and gains derived by foreign governments and Sovereign Wealth Funds have traditionally been exempt from Australian taxation under the doctrine of SI, although the precise scope of SI has not been clear and has largely been regulated by the administrative practice of the Australian Taxation Office. With the release of the Proposals Paper, we are now one step closer to the codification of the tax treatment of sovereign investments in Australia.

The Assistant Treasurer had previously released two Consultation Papers setting out the “framework rules” for providing more certainty for sovereign investments. Deloitte welcomes the greater certainty provided by the Proposals Paper and believes that the second option contained in that Paper is the appropriate way to proceed.

Briefly, the first option, sets out how broadly the concept of “sovereign” should be defined, identifies which income and gains should be exempt and introduces a safe harbor test for certain “debt interests” and “equity interests.” Sovereign investors will be permitted to self-assess their tax position. The second option includes all the rules of the first option and extends the SI exemption to certain equity investments that fail the safe harbor test but are nonetheless treated as non-commercial investments.

Eligible entities

“Foreign government agencies” and “Sovereign Funds” (SF) will be eligible entities.

“Foreign government agencies” as currently defined in the law (i.e. the government or an authority of the government of a foreign country or parts of that country), will be eligible for relief from Australian taxation under the proposed SI rules. The concept of “foreign government agencies” includes governments that take the form of kingdoms or monarchies when acting in their official public capacity and covers all level of governments including regional, local, provincial and other political subdivisions.

Importantly, the SI exemption would extend to income or gains derived by an SF, which are entities that are wholly-owned (whether directly or indirectly) by one or more foreign government agencies, such as wholly-owned companies or investment vehicles. An entity is treated as being wholly-owned by a foreign government agency if all of the membership interests in the entity are beneficially owned by a foreign government agency or through joint-ownership by a foreign government agency(ies) and/or one or more SFs. There is currently no guidance as to how the SI exemption flows through fiscally transparent vehicles.

The proposed rules disregard any equity interest in a vehicle issued to an investment manager as incentive-based remuneration for providing investment management services. Due to the fact that it is normal practice to provide remuneration for funds management services through an equity holding, such arm's-length arrangements will not prevent a vehicle from being an eligible sovereign entity.

An SF must be financed solely with public money or public property provided by a foreign government agency, whether directly or indirectly, from sources such as fiscal surpluses, proceeds of privatizations, proceeds of commodity exports, etc. Assets, income or gains of a foreign government agency or SF cannot be transferred to non-governmental owned entities.

Tax treatment of sovereign investments

Ordinary or statutory income and capital gains made in respect of an "eligible interest" will be non-assessable non-exempt (NANE) income (meaning, effectively exempt from Australian income tax) and not subject to any Australian withholding tax if the income or gain is derived by a foreign government agency or SF.

Broadly, an eligible interest is a capital gains tax (CGT) asset (other than a direct interest in taxable Australian real property or an option or right to acquire such an interest) that also is a qualifying debt interest or a qualifying equity interest under the "safe harbor" tests (see below).

Accordingly, there will be no liability to income tax or withholding tax on interest income, dividend income, distributions from trusts and distributions from managed investment trusts (including capital distributions) where the relevant investment is an eligible interest. Losses or deductions incurred in respect of an eligible interest will be disregarded.

Under the second option, the concept of an eligible interest will be extended to certain equity investments that fall outside the safe harbor but are nonetheless treated as non-commercial.

Eligible interests

The initial determination a sovereign investor needs to make is whether the interest in question is a debt interest or an equity interest (as characterized under the Australian debt/equity rules).

Income or gains arising from a debt interest – Debt interests will prima facie be eligible interests and thus exempt, subject to the carve out below. A debt interest would typically include a legal form loan, but can also include certain forms of share interests and hybrid instruments.

A debt interest will not be eligible if the interest contains a right, whether existing or contingent, to vote at a meeting of the Board of Directors (or other governing body) of the borrower, participate in making financial, operating and policy decisions of the borrower, or deal with assets of the borrower. However, where the holder has any of the above rights solely as a result of a breach of the terms of the debt interest by the borrower, the debt interest will remain an eligible interest.

Income or gains arising from an equity interest – less than 10% – Income and gains arising from an equity interest will be exempt where the foreign government agency has a total participation interest or voting interest (whichever is higher) of less than 10% (portfolio interest) in a corporate tax entity, fixed trust or partnership (the "safe harbor test"). An equity interest would typically include legal form shares, but will also capture certain hybrid instruments.

This 10% threshold effectively deems such an investment to be non-commercial in nature. Equity interests of less than 10% will automatically benefit from the SI exemption. This "safe harbor test" eliminates the need for any consideration of facts and circumstances.

Income or gains arising from an equity interest – 10% or more – If an eligible entity holds an equity interest in excess of the 10% safe harbor (i.e. a non-portfolio interest), the Proposals Paper offers a fallback option (the second option), being the "commercial activity test." This test is applied on an interest-by-interest basis. Importantly, if one interest of an eligible entity is found to be a commercial investment, other interests held by the eligible entity are not tainted by that characterization.

The Proposals Paper sets out a range of factors to test the commercial nature of the interest:

1. The size of the interest held by the eligible entity in the right to vote on financial, operating and policy decisions made in respect of the corporate tax entity, trust or partnership;
2. The degree of influence over the corporate tax entity, trust or partnership, such as representation on the board of directors, participation in the policymaking processes, influence with respect to material transactions, interchange of managerial personnel or the provision of essential technical information;
3. The potential degree of influence over the corporate tax entity, trust or partnership (i.e. looks beyond the explicit rights conveyed by an interest); and
4. The overall activities of the eligible entity.

If, under the "commercial activity test," the non-portfolio equity interest held by the eligible entity is characterized as a non-commercial equity interest, such equity interest will receive the concessional SI tax treatment subject to the following exclusion.

- If such a 10% or greater equity interest is an indirect interest in Australian real property (as defined under the nonresident CGT rules), or an option or right to acquire such an interest, then any income or gains in respect of that asset will not be exempt.

This is broadly consistent with the general rules applicable to "taxable Australian property" such as 10% or greater interests in companies that are Australian "land rich." Losses and deductions incurred in respect of a 10% or greater equity interest that is an indirect Australian real property interest, or an option or right to acquire such interest will not be disregarded.

Income or gains arising from a CGT interest that is neither a debt interest nor an equity interest – The Proposals Paper is structured based on the debt/equity tax rules currently operating in Australia, and effectively assumes that all investments can be categorized as either a debt interest or an equity interest. It seems that under the proposed rules, income or gains arising from an investment that is neither a debt interest nor an equity interest would not be exempt. We believe the SI exemption should also cover these types of investments to the extent that they relate to non-commercial investments.

Rulings

Private rulings and advance opinions should no longer be required for eligible interests. Where eligible entities already have private rulings that are inconsistent with the new proposals, these rulings will continue to be operative in the normal manner.

Submission

Treasury has requested that submissions on the Proposals Paper be made by 20 May 2011. Deloitte Australia has a dedicated team working on SI issues, including Peter Madden, David Watkins (currently based in New York), Alyson Rodi, Joe Galea, Vik Khanna, Claudio Cimetta and Isabelle Mac Innes. Deloitte will be drafting a submission. If you have any concerns or comments on the proposed rules that you would like to contribute, please do not hesitate to contact us.

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Greece:
Deadline approaching for special annual real property return

According to article 17 of Law 3091/2002 (as currently in force), 20 May 2011 is the deadline for submission of the special annual real property tax return for legal entities that had full or bare ownership or usufruct rights over real property in Greece on 1 January 2011. The format for the return is provided in Pol. 1159/2010.

If a legal entity falls within the scope of the exemption under article 15 of Law 3091/2002, it is not required to file the special annual real property tax return, but it must retain documentation demonstrating that the exemption applies (as described in Pol. 1093/2010 and 1075/2010). The documentation must be retained for 20 years and be presented to the tax authorities if so requested during a tax audit.

It should be noted, however, that both domestic and foreign corporations (SAs) and limited liability companies (Ltds) whose scope, according to their articles of association, is the purchase, management and exploitation of real property, are obliged to file the special annual real property tax return by 20 May, even if they fall within the exemptions in article 15. In such cases, the special return must be submitted along with all the relevant documentation (in Greek) for securing the tax exemption.

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India:
ITAT rules on sufficiency of tax residence certificate

The Mumbai bench of the Indian Income Tax Appellate Tribunal (ITAT) ruled on 31 January 2011 that a tax residence certificate issued by the Netherlands tax authorities was sufficient to demonstrate beneficial ownership of income under the India-Netherlands tax treaty (*ADIT v. Universal International Music BV*). As a result, the taxpayer was entitled to the concessional rate of withholding tax on royalties and fees for technical services.

Taxpayers have relied on tax residence certificates issued by the authorities in the home country to substantiate beneficial ownership. However, on various occasions, the Indian tax authorities have challenged the taxpayer's position and denied the benefit of the lower rate, disregarding the residence certificate altogether.

The taxpayer in this case, Universal International Music BV, is a company incorporated under the laws of the Netherlands and is part of the Universal group of companies. The business of the Universal group includes the acquisition, alienation, exploitation, and assigning and managing of copyrights, licenses, patents, etc. Under the business model of the group, some group companies, known as "repertoire companies," enter into contracts with various artists, singers, etc. The repertoire companies are free to license the products to other group companies for exploitation. For any business outside the home territory of the repertoire company, the commercial exploitation rights are transferred to other group companies and, at the request of another group company, the licensee can sub-license the rights to exploit the intellectual property in the home territory of the requesting company. The taxpayer had acquired musical recording rights from other repertoire companies and had been granted commercial exploitation rights of the musical tracks in India, which it sub-licensed to Universal Music India Pvt. Ltd. in lieu of royalty payments.

The taxpayer claimed the reduced 10% rate of withholding tax on royalties under article 12 of the India-Netherlands treaty and provided a tax residence certificate issued by the Dutch tax authorities stating it was a tax resident of the Netherlands and the beneficial owner of the income received from Universal Music India Pvt. Ltd. The Indian tax officer rejected the claim, arguing that the taxpayer, as an intermediary company, was not the beneficial owner of the royalty income. As a result, the 30% Indian withholding tax was applied.

The ITAT, however, upheld the taxpayer's claim primarily based on the tax residence certificate. The ITAT also relied on the 2003 landmark decision of the Indian Supreme Court in the case of *Azadi Bachchao Andollan*, in which the Court upheld the validity of a tax circular issued by the Central Board of Direct Taxes in 2000 (Circular 789) in the context of the India-Mauritius tax treaty. Circular 789 provided that a tax residence certificate issued by the tax authorities of a contracting state is sufficient evidence for accepting the status of residence and beneficial ownership.

The ITAT ruling reiterates the principle that a tax residence certificate issued by the tax authorities of the home country could be considered sufficient evidence to establish beneficial ownership of income, and it seems to support the view that Circular 789, although issued in the context of the treaty with Mauritius, could be relied on by foreign companies from other jurisdictions.

In certain cases, a tax residence certificate might not specifically state that the recipient of income is the beneficial owner, so it would be interesting to see whether the Indian tax authorities would use that argument to distinguish the ITAT ruling.

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Malta:
Reduced rate of tax applicable to highly qualified expatriates

A legal notice issued on 25 March 2011 by the Minister of Finance, the Economy and Investment provides details on a new beneficial tax scheme available to qualifying expatriates in Malta. Effective from 1 January 2010, highly qualified persons may opt for a flat 15% rate of tax on emoluments instead of the standard tax rates. The scheme, designed to further attract foreign investment to Malta, is industry-specific and primarily focuses on a narrow range of industries comprising the banking, financial, investment and insurance sectors.

The Malta Financial Services Authority (MFSA) is the competent authority for the scheme.

Requirements

The scheme is available to employment income earned by an expatriate under a qualifying contract of employment on or after 1 January 2010. The scheme also applies if the expatriate was in receipt of income earned under a qualifying contract of employment requiring the performance of duties in Malta for a period not exceeding two years before 1 January 2010. To benefit from the reduced tax rate, the following requirements must be met:

- The employment or office must be an *eligible office*, as defined;
- The employment activity under the eligible office must be governed by a *qualifying contract of employment*, as defined; and,
- The qualifying contract of employment must be in respect of the employment of a qualifying beneficiary.

Eligible office   An eligible office consists of the following employments or offices:

- Chief Executive Officer, Chief Risk Officer, Chief Financial Officer, Chief Operations Officer or Chief Technology Officer;
- Portfolio manager, Chief Investment Officer, senior trader/trader, senior analyst (including structuring professional), actuarial professional, Chief Underwriting Officer or Chief Insurance Technical Officer; and
- Head of Marketing or Head of Investor Relations.

Qualifying contract of employment A qualifying contract of employment:

- Consists of employment income derived by a beneficiary;
- Involves at least EUR 75,000 per annum (excluding the value of any fringe benefits); and
- Is related to work that falls within the definition of an eligible office.

In addition, the employer or any person related to the employer may not have benefitted from any business incentive laws or arrangements under such laws.

Beneficiary A beneficiary is an individual who satisfies all of the following conditions:

- Is not domiciled in Malta;
- Derives emoluments payable under a qualifying contract of employment that are received in respect of work or duties carried out in Malta (or in respect of any period spent outside Malta in connection with such work or duties);
- Is protected as an employee under Maltese law;
- Has proved to the satisfaction of the MFSA that he/she holds professional qualifications, including educational qualifications;
- Has not applied for benefits under the Investment and Insurance Services Expatiate Scheme under the Malta Income Tax Act;
- Fully discloses for income tax purposes and declares emoluments received in respect of income from a qualifying contract of employment and all income received from a person related to the employer paying income under a qualifying contract as chargeable to tax in Malta; and
- Has demonstrated to the satisfaction of the MFSA that he/she performs activities of an eligible office, is in possession of valid travel documents and, for the individual and his/her family, has sufficient resources, accommodation and insurance.

Tax treatment

The minimum tax payable under the rules is EUR 11,250 (equivalent to a minimum annual income of EUR 75,000) and the maximum tax payable is EUR 750,000 (equivalent to income of EUR 5 million). Income exceeding EUR 5 million in respect of a qualifying contract of employment is not subject to tax in Malta. Income charged to tax at the reduced rate of 15% will be deemed to constitute the first part of the individual's total income and the tax on the remaining income is to be calculated at the standard rates applicable to the individual.

In the case of EEA (including EU nationals) and Swiss nationals, the rules will apply for a consecutive period of five years, and for third-country nationals, the rules will apply for a consecutive period of up to four years, after which the employment income will be chargeable to tax at the standard rates of tax applicable to the individual. The reduced rate applies as from the year in which the individual is first liable to tax in Malta, post-1 January 2010.

Any period of employment exercised in Malta before 1 January 2010, but after 1 January 2008, will be deducted from the period of the scheme, and therefore:

- EEA and Swiss nationals who, for up to two years before 1 January 2010, were under a contract of employment that required the performance of their duties in Malta can benefit from the reduced rate for up to three years (four years where the individual was employed for up to one year before 1 January 2010); and
- Third-country nationals who, for up to two years before 1 January 2010, were under a contract of employment that required the performance of their duties in Malta can benefit from the reduced rate for up to two years (three years where the individual was employed for up to one year before 1 January 2010).

In the case of third-country nationals, any rights under the scheme will be withdrawn with retroactive effect if the individual either physically stays in Malta, in the aggregate, for more than 1,460 days or directly or indirectly acquires real rights to immovable property situated in Malta or holds a beneficial interest directly or indirectly consisting of, inter alia, real rights to immovable property in Malta. A person who exercised employment in Malta before 1 January 2008 is not eligible to opt into this scheme.

Application for incentive

To opt into the reduced 15% rate scheme, a qualifying beneficiary must:

- Apply for a formal determination from the MFSA relating to his/her eligibility and submit any documentation or information required by the Commissioner of Inland Revenue;
- Attach a declaration duly endorsed by the MFSA to his/her personal tax return for the relevant year of assessment (the declaration must be completed in a form and manner as prescribed by the Commissioner); and
- File a personal tax return, together with all the required declarations and attachments, no later than the tax return date.

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Singapore:
New GST compliance program launched

The Singaporean authorities introduced a new goods and services tax (GST) initiative on 5 April 2011 to help companies better manage their GST risks and costs. Successful applicants of the Assisted Compliance Assurance Program (ACAP) will perform a full review of their compliance processes that will be later assessed by the tax authorities and will then be granted several tax and compliance benefits.

The ACAP system aims to encourage businesses to proactively adopt a good tax risk management system and enhance high voluntary compliance. The most relevant aspects of the ACAP system are as follows:

- Application and review – A business must fulfill a number of requirements to be eligible for ACAP. Once an application is accepted, the business must perform a full review of its internal compliance processes in accordance with the guidelines laid down by the authorities. The review is submitted to the authorities within 12 months from the approval to participate.
- Participation incentives – The authorities will cover the internal review costs up to 50% of the external consultant fees, subject to a cap of SGD 50,000 per applicant. Additionally, an applicant will benefit from an exceptional one-time waiver of penalties for past GST errors provided no fraud is involved.
- Assessment and benefits – Once the ACAP review is submitted, the authorities will grant the applicant ACAP status for either five or three years. Businesses with ACAP status will enjoy the following benefits:
  - Step-down of GST compliance activities unless significant anomalies are noted in GST declarations;
  - Expedition of GST refunds if no anomalies are noted;
  - A dedicated team from the authorities to handle GST rulings and resolve GST issues; and
  - Auto-renewal of GST simplification schemes.

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Vietnam:
Corporate income tax payment deferred for SMES

In an effort to curb inflation and stabilize the macro economy in 2011, Vietnam's Prime Minister issued a decision on 6 April 2011 that grants a one-year deferral to qualified small and medium-sized enterprises (SMEs) to make their corporate income tax payments for 2011. The deferral covers tax liabilities for quarterly provisions and year-end finalizations in 2011, including outstanding tax payable on the 2010 year-end finalization, which is due 90 days after the 2010 year end. The decision takes effect as from the date of issuance.

The one-year deferral does not apply, however, to a subsidiary or other company established in Vietnam where a holding company owns more than 50% of the subsidiary. Foreign subsidiaries set up in Vietnam by overseas holding companies are not subject to this restriction and may benefit from the deferral since the holding company structure was not formed entirely in Vietnam.

In addition, the deferral does not apply to tax payments relating to income derived from banking, financial services, real estate, insurance, securities or the provision of services subject to the special consumption tax.

Although the decision allows deferral of the payment of corporate income tax for 2010, it does not set out any specific guidance on the deferral timeline. Further guidance from the Ministry of Finance is therefore expected.

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In brief

Australia The federal government issued a discussion paper on 15 April 2011 that explores the merits of making tax advice privileged, similar to the way legal advice is privileged. The paper considers a recommendation by the Law Reform Commission to protect certain tax advice documents from the information-gathering powers of the Commissioner of Taxation. Public comments on the paper are due 15 July 2011.

Finland The Supreme Administrative Court has requested a preliminary ruling from the European Court of Justice on whether a Finnish parent company can deduct the final tax losses of its Swedish subsidiary after a cross-border merger. Under Finland's tax rules, such deductions are not allowed in cross-border mergers involving companies from EU Member States.

Greece Under Greek law, companies are required to submit a list of all intercompany transactions within four months and 15 days from the end of the relevant accounting year. Therefore, the deadline for the accounting year 1 January 2010 to 31 December 2010 is 15 May 2011. Since the deadline falls on a Sunday, companies should submit their lists to the relevant authorities of the Ministry of Development (currently the Ministry of Regional Development and Competitiveness) by Friday, 13 May 2011. The list should include *all* intercompany transactions, irrespective of their value. Failure to comply with the reporting obligation triggers a penalty of 10% on the value of the transactions.

United States The Internal Revenue Service has released a March 2011 revised Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts) and instructions to reflect final foreign bank account reporting rules issued 24 February 2011. This version of the form should be used for all filings for 2010 and prior years. The instructions were updated to make them consistent with the final rules and include explanations for specific items, such as who must sign the form, relevant definitions and exceptions to filing requirements.

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France

SICAV transparency on distributions extended to nonresidents

The tax authorities have issued guidelines relating to the withholding tax regime that will apply to distributions made by a French SICAV as from 7 April 2011. The new rules extend the "compartmentalization" concept to distributions made to nonresidents. [Issued: 29 April 2011]

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