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International Tax

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In this issue:

Oman introduces Executive Regulations to Income Tax Law

The long-awaited Executive Regulations to Oman's Income Tax Law were issued on 16 January 2012 and apply generally to all accounting years ending after 1 January 2012. The provisions relating to the payment and collection of tax, notification of taxpayer data to the Secretariat General for Taxation (SGT) and tax exemptions, however, apply as from 29 January 2012. The regulations are considered part of the Income Tax Law and they repeal previous relevant Ministerial Decisions.

The current Income Tax Law was passed in 2009 and applies as from 1 January 2010. Measures in the 2010 law include the following:

- A 12% corporate income tax applicable to all businesses, including branches and permanent establishments (PEs) of foreign companies (oil companies continue to be subject to the 55% rate).
- Resident companies are subject to tax on worldwide income with a foreign tax credit granted for certain taxes paid overseas up to the amount of the Omani tax liability regardless of whether Oman has concluded a tax treaty with the source country.
- In determining whether a PE exists, a foreign company will be considered to have a taxable presence in Oman only if the company is present in the country for 90 days in the aggregate in any 12-month period.
- A final withholding tax of 10% is levied (on a gross basis) on payments for royalties, research and development and computer software and management fees made to foreign companies without a PE in Oman.
- Interest on loans is deductible in accordance with the rules in the Executive Regulations. A loan for these purposes includes any kind of loan, advance or financial arrangement or financial facility entered into between related parties (a loan from a related party is governed by the newly introduced thin capitalization rules (see below)).
- Tax exemptions and other incentives granted to specific industries engaged in the development of tourism, qualifying manufacturing businesses and projects of strategic economic importance with substantial export and employment potential continue to apply.

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The Executive Regulations, which provide details and guidance on a number of areas, are divided into eight chapters. The regulations are likely to have a significant impact on taxpayer obligations relating to tax registration, tax filing, tax assessments and interactions with the tax authorities. A summary of the various chapters is provided below.

Highlights of changes and new provisions

- Guidance on the requirements to constitute a dependent agent of a foreign company;
- Introduction of registration requirements for certain professional activities;
- Clarification of deductible expenses;
- Detailed guidance on the deduction of interest expense and the introduction of thin capitalization rules;
- Restrictions on the deduction of sponsorship fees;
- Elimination of the averaging clause for the deduction of head office overhead expenses;
- Clarification of the accounting and tax treatment of finance leases;
- Clarification of the criteria and process for obtaining a tax exemption;
- Introduction of new requirements for tax filing and the submission of financial statements;
- Introduction of additional information to be included in the tax return; and
- Introduction of rules allowing on-site inspections.

Chapter 1 – General definitions and rules

The key words and terms used in the Executive Regulations will have the same definition as prescribed in the Income Tax Law. Chapter 1 also addresses the tax treatment of Gulf Cooperation Council (GCC, comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) citizens in accordance with the Economic Treaty signed by the GCC Supreme Council in 2001.

Chapter 2 – Taxpayers

Chapter 2 defines the term "taxpayer" and provides rules for determining who is covered. Taxpayers include an Omani establishment, an Omani company and a PE of a foreign company.

Foreign person – A foreign person (without a PE in Oman) that derives royalty income, payments for R&D, payments for the use of or the right to use computer software and management fees from Oman will be subject to a 10% withholding tax.

Agent – A dependent agent of a foreign person that meets the following requirements will create a PE of the foreign principal in Oman:

- The agent is affiliated with and economically and legally dependent on the foreign person;
- The agent habitually exercises the authority to act and conclude contracts in Oman on behalf of the foreign person; and
- In respect of foreign insurance companies operating in Oman, the dependent agent undertakes to collect premiums or practice risk insurance activities.

This chapter also addresses professional activities carried on by a foreign person in Oman that require registration with the tax authorities. Such activities include medicine, dentistry, physiotherapy, lab analysis, accounting and auditing, veterinary, engineering, architectural advisors, advocacy and legal consultancy, administrative and economic consultancy, court experts, etc. Ministries and government bodies that are authorized to issue licenses and registration to carry out these professional activities must provide details of licenses issued, renewed, expired, canceled or suspended to the SGT.

Chapter 3 – Taxpayer registration

Chapter 3 sets out taxpayer registration requirements, as well as exemptions from the requirements. A taxpayer is required to register with the SGT within three months from the time business activities or services commence, unless the following applies:

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- The company's capital does not exceed OMR 20,000;
- Total annual income realized does not exceed OMR 100,000; and
- The average number of employees of the company does not exceed eight persons.

As a result, smaller companies are excluded from the registration requirement.

Chapter 4 – Deduction of expenses

Chapter 4 sets out the general rules for the deduction of expenses when computing taxable income:

- The expenses must be actual, genuine and incurred during the year;
- The expenses must relate to the taxpayer's business activities;
- The expenses must be incurred to generate taxable income;
- The expenses must be recorded in the taxpayer's books of account and generally be substantiated by relevant documentation;
- If the taxpayer obtains any services, the proportionate value of the services, as deemed by the SGT, will be allowed as a deduction; and
- The expenses must not be disallowed by the law.

The chapter also addresses the deduction of specific expenses:

- Interest expense – A deduction may be allowed for interest expense on loans. In addition to meeting the general requirements for deductibility, the loan may not be obtained to finance or capitalize a business.

  The Executive Regulations introduce thin capitalization rules with a 2:1 debt-to-equity ratio, so that interest on related party loans exceeding the 2:1 ratio may not be deducted in full or in part. The rules, however, do not apply to banks, insurance companies and PEs of foreign companies. Oman is now the only country in the GCC to have specific thin capitalization rules.

- Bad debts – A deduction for bad debts will be allowed only if the debt arose during the course of the taxpayer's business and is related to the production of gross income, the amount of the debt is accounted for in the taxpayer's books of account and the taxpayer has taken steps (including legal action) to recover the debt (the Executive Regulations provide detailed procedures for the collection of debts).

- Rent for real estate – A deduction is allowed for rent paid for real estate used for carrying on business activities, subject to the following conditions:
  - The rental agreement is registered with the relevant authorities;
  - The amount paid as rent is reflected in the accounting records; and
  - The taxpayer submits details of the rent paid and other information with the annual tax return.

- Sponsorship fees (agent's fees) – A deduction for sponsorship fees will be allowed if there is a documented relationship between the foreign company and the Omani agent and the foreign company actually incurred the fees (these rules apply only to foreign companies or PEs of foreign companies in Oman). Amounts paid to an Omani sponsor under a sponsorship agreement fall within this category and will be eligible for deduction. The allowable deduction is the lesser of the actual sponsorship fees or 5% of taxable profits before claiming the deduction and after the setoff of loss carryforwards. This provision is not applicable to companies engaged in the business of petroleum exploration.

- Agency commissions – A deduction is allowed for commissions paid to an authorized agent that holds a valid license to act as an insurance agent on behalf of an insurance company to carry on the agency activities regularly and independently. The deduction may not exceed 25% of the net premiums collected for calculating the agency commission.

- Donations – Donations may be deducted up to 5% of taxable gross income provided they are made to ministries, government units, municipalities, public authorities or other units of the state for specified purposes, or to certain non-governmental charitable associations or authorities.

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- Remuneration paid to board of directors – Remuneration paid to members of the board of directors of a joint stock company, members of an Omani company or owner of an establishment may be deducted as follows:
    - The annual remuneration and sitting fees paid to the chairman and members of the board of a joint stock company (within the limits specified in the Commercial Companies Law) may not be more than 5% of the net profit for the previous year before taking certain deductions and complying with other conditions;
    - Remuneration paid to partners, members or owners of an Omani company or establishment up to OMR 1,000 per month per member or 10% of taxable income before such remuneration; and
    - In respect of establishments or companies carrying on professional activities, the actual remuneration paid or OMR 3,000 per month per member or 10% of taxable income before such remuneration, whichever is less.

- Contributions to pension funds – Amounts contributed to a pension fund in Oman may be deducted provided the following conditions are satisfied:
    - The pension fund is independent and separate from the taxpayer's own capital, cash and bank balances;
    - Contributions to the pension fund are computed in accordance with the fund's own rules and requirements;
    - The taxpayer provides a copy of the rules and regulations of the fund and the fund license to the SGT; and
    - The taxpayer submits the statement of accounts and audited financial statements of the fund.

    Amounts contributed to a pension fund located outside Oman may be deducted if the following conditions are satisfied:

    - The pension fund complies with the rules and regulations applicable in the country in which it is established;
    - The pension fund has its own rules, regulations and processes and is licensed to operate a social security scheme for the taxpayer's employees;
    - The pension fund consists primarily of contributions remitted by the taxpayer and its employees;
    - The amounts in the pension fund are used for payment of end-of-service benefits on retirement to employees and to beneficiaries in the event of an employee's death;
    - The pension fund is independent and separate from the taxpayer's capital, cash and bank balances;
    - Contributions to the pension fund are computed in accordance with the rules and conditions adopted by the pension fund;
    - The taxpayer provides a copy of the rules and regulations of the fund, as well as the license issued, to the SGT; and
    - The taxpayer submits the statement of accounts and audited financial statements of the fund.

- Contribution to savings funds – Amounts contributed by the taxpayer as an employer to a savings fund may be deducted provided the savings fund is registered with the Ministry of Manpower and the taxpayer in its capacity as an employer is required to contribute to the fund, which will be used to pay end-of-service benefits to its employees.

- Head office overhead – A deduction is allowed for expenses directly and specifically incurred by a head office on behalf of its PE in Oman if certain requirements are met. A deduction also is allowed for expenses allocated to a PE by its head office, and is restricted to the lesser of the following:
    - Actual expenses allocated; or
    - 3% of the gross income of the PE (increased to 5% for branches of foreign banks and insurance companies and 10% for branches of major industrial companies using the latest production techniques or technologies).

    The deduction based on the average of the past three years (which was considered draconian) has been abolished.

Chapter 5 – Finance leases

The Executive Regulations require the consistent accounting and tax treatment of leased assets in accordance with International Accounting Standards or IFRS. Guidelines are provided for the treatment of expenses (e.g. depreciation, loan interest, gains (or losses) on the sale of assets) relating to a capital lease both in the hands of the lessor and the lessee.

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Chapter 6 – Tax exemptions

Chapter 6 sets out the general rules, procedures and requirements for exemptions (including renewal of an exemption) for the following activities: carrying on a shipping business by Omani companies/establishments or a shipping or air transport business carried on by foreign companies; and investments funds.

Chapters 7 and 8 – Tax compliance

Chapter 7 sets out the general rules for the submission of the tax return, new income tax forms and due dates for the return. There is a considerable increase in the additional information required to be submitted with the tax return. For example, the principal officer of a company is now required to provide his/her Omani resident card, ID card or passport with the return.

The Executive Regulations specify the circumstances under which a tax return (and financial statement) need not be submitted; for example, a financial statement will not be required when a company's registered capital does not exceed OMR 50,000, its gross annual income does not exceed OMR 300,000 and the company's average number of employees for the relevant period does not exceed 10. This exemption applies only to Omani companies and establishments; foreign companies are not eligible.

Chapter 7 of the Executive Regulations outlines the assessment procedures to be followed by the SGT and provides that the tax authorities can conduct on-site inspections at a taxpayer's business to examine documents and records for purpose of completing an assessment.

Chapter 8 provides the general rules for the payment of tax, including additional taxes, fines and penalties. At the request of a taxpayer, the SGT can allow installment payments and can grant an exemption, in certain cases, from the payment of additional tax.

The tax authorities have demonstrated a willingness to assist taxpayers that have real financial difficulties by offering an opportunity to pay tax in instalments and waiving additional tax on delayed payments. The authorities are taking positive steps towards self-assessment by exempting certain companies from registration requirements, as well as the requirement to file returns and/or prepare financial statements.

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Cyprus:
Protocol to 1992 treaty with Poland signed

Cyprus and Poland signed a protocol to the 1992 treaty on 22 March 2012, with the more substantive changes affecting the taxation of dividends, interest and royalties, the remuneration of directors and the tax sparing clause. Other provisions address the treaty's scope (both territorial and taxes covered), the method of calculating an individual's residence period to determine taxing rights on income from professional services and employment, the definition of license fees and the adjustment of profits of associated enterprises.

In place of the currently applicable 10% withholding tax rate on dividends, the protocol provides an exemption for dividends paid to a company that holds directly at least 10% of the share capital of the distributing company for a period of two years, with a 5% rate applicable in all other cases. The rate on interest will be reduced from 10% to 5%. While the 5% rate on royalties is unchanged, "royalties" will be re-defined to align with the OECD model treaty.

The protocol also removes the tax sparing clause that currently allows for a decrease in the effective tax rate on passive income derived by residents of both Cyprus and Poland.

One of the most significant changes is in the article on directors' fees and other similar payments derived in the capacity of a member of the board of directors or the supervisory board or other similar organ of a company. The treaty currently

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allows such fees paid to individuals who are a resident of one contracting state to be taxed only by the country in which the company is resident. Under the protocol, such fees will be taxable only in the country in which the individual is resident. Polish negotiators insisted on this change to stop tax planning by Polish residents who were directors of companies in Cyprus (which taxes directors' fees of nonresident individuals only to the extent the duties are carried out in Cyprus) so that, through use of the exemption method to relieve double taxation under the treaty, they could receive directors' fees tax free. Under the protocol, such income of Polish residents will be taxed in Poland. Cypriot directors of Polish companies can benefit as well because such income will be taxed only in their place of residence.

The protocol adopts a tax information exchange clause based on that found in the OECD model treaty, making it possible to obtain information about the income of residents, including information held by a bank.

Cyprus and Poland must complete the ratification procedures required under their respective domestic laws, with the protocol entering into force on the date of receipt of the latter of the notifications of ratification. The protocol will apply in both countries on 1 January of the year following that in which the protocol enters into force. The protocol is expected to strengthen the already strong business ties between the two countries, especially in the areas of investment and shipping.

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India:
AAR treats shared services as FTS under treaty with France

The Authority for Advance Rulings (AAR) ruled on 7 February 2012 in *Areva T&D Limited* that equipment owned/hired by a nonresident parent company to provide information technology sharing services to an Indian subsidiary creates a permanent establishment (PE) in India and that the provision of information technology (IT) sharing services makes technical knowledge available in India and, hence, payments for such services qualify as fees for technical services (FTS) under India's Income Tax Act, 1961 (ITA).

Facts of the case

Areva T&D India Limited (Applicant) is a manufacturer and supplier of electrical power generating equipment in India that is proposing to enter into an IT shared services agreement with its French parent company. Pursuant to the agreement, the parent company will provide a worldwide data transfer network between all entities in the group, including intranet and internet applications, a messaging system for group email communications, etc., with a subcontracting right for services. The parent used a third-party service provider for the provision of data network services through an undersea cable link with India. Accordingly, the Applicant had to prepare for the installation of the IT equipment by the service provider at the gateway sites in India integrated into the group's global network, which were operated, controlled and maintained by the French parent company.

The amount payable by the Applicant was based on the allocation of services, taking into account, inter alia, the share of aggregate direct and indirect costs of internet protocol bandwidth, license user rights, the number of users per application, payments to third parties and the costs of personnel, travel and equipment related to the services. The Applicant requested a ruling from the AAR on the withholding tax obligations (if any) on the payments made to the French parent company under the proposed IT shared services agreement.

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Positions of the parties

The Applicant made the following arguments in support of its position that the payments are not taxable in India:

- The payments are not for the use of equipment, but for support services, so the payments cannot be considered royalties under article 13(3) of the India-France tax treaty or under the ITA. Reliance was placed on the most favored nation (MFN) clause (point 7) in the protocol to the India-France tax treaty, the argument being that the more restrictive definition of a royalty under article 12(3) of the India-Sweden treaty, which was signed in 1997 (i.e. subsequent to the signature of the India-France treaty), would apply to exclude the payments from the scope of royalties for purposes of the India-France treaty.
- The contracted services to be provided by the French parent company cannot be considered FTS (and hence were not chargeable to tax in India) because they do not "make available" technical knowledge, skill, know-how, etc., to the Applicant. The more restrictive definition of technical service fees pursuant to the operation of the MFN clause requires the Applicant to be able to make use of these technical services in furthering its business, and it cannot do so except in the course of its day-to-day operations by using certain standard services.
- The payments are simply a reimbursement of the costs incurred by the French parent to which no markup was applied; the French parent does not derive any actual income from the payments so no tax needs to be withheld.
- The French parent company does not have a PE in India under the terms of the India-France tax treaty.

The Indian tax authorities took the following positions:

- The French company's main purpose in setting up an exclusive platform is not to provide IT support services, but rather to enable the Applicant to use data in the form of designs, plans, models and engineering formulae, etc., in its day-to-day business, so that the payments fall within the definition of "royalties" under article 13(3) of the India-France tax treaty.
- The equipment installed in India constitutes a PE in India because the equipment is used by the French company in the course of its business while providing technical data to group companies.
- The agreed price for the services cannot be said to be paid to reimburse the cost of the services provided by the French parent.

AAR ruling

In considering whether the equipment installed in India gives rise to a PE in India of the French parent, the AAR looked at the Commentary to the 2001 UN model treaty, noting that the place of business of an enterprise that includes equipment must be "at the disposal" of the foreign enterprise for the purpose of its business activities if that place of business is to constitute a PE. The AAR also referred to the book, "The Law and Practice of Tax Treaties: An Indian Perspective," noting that the "at the disposal" test in relation to a PE may be met whether equipment is owned or leased by the foreign company. Based on these considerations, the AAR held that an enterprise can have a fixed place PE if the business of the enterprise is carried on mainly through automatic equipment and the activities of the personnel are restricted to setting up, operating, controlling and maintaining the equipment. The AAR ruling confirms the UN model treaty position that even the existence of a computer server can create a PE.

The AAR went on to conclude that the French parent company has a PE in India, even though there is no contractual obligation between the Applicant and the third-party service provider, and that all the equipment under the IT agreement *is* at the disposal of the French parent company. The payment made by the Applicant to the French company under the IT agreement is treated as business profits and is liable to tax under the business profits article of the India-France tax treaty.

With respect to whether the payments constitute FTS for purposes of Indian domestic law, the AAR noted that, under the IT agreement, the French parent company is to provide support services to the Applicant and its other subsidiaries worldwide through a centralized IT team. The provision of services by the parent would itself make available the technical knowledge/experience to the Applicant. Relying on a previous ruling (*Perfetti Van Melle Holding BV*), the AAR observed that the technology is made available because the IT services provided are applied in the operation of the Applicant's business and its employees will become qualified to operate the systems independently without reference to the parent company. The AAR rejected the Applicant's cost reimbursement argument on the grounds that the French parent has the capacity and resources to provide and coordinate IT services provided to the Applicant.

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The AAR concluded that the IT sharing services made available technical knowledge/experience to the Applicant, resulting in such services being characterized as FTS and therefore as subject to Indian withholding tax.

Comments

The definition of FTS under Indian domestic tax law traditionally has been broader than is implied by the ''make available'' concept under some of India's tax treaties. However, the AAR ruling confirms the position that, if the nature of support services rendered ''make available'' technical knowledge to the service recipient, the payment is liable to tax in India. The ruling also indicates that a PE can arise if the foreign enterprise meets the requirement that a fixed place of business be "at the disposal" of the foreign enterprise by rendering services through automatic equipment. It should also be noted that the recently announced 2012 India budget proposes to expand and clarify the term royalties, and it will be interesting to see how technical services are impacted.

The ruling will have substantial implications for the pricing of similar cross-border services, which are commonly rendered to Indian companies.

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Sweden: Court rules on interpretation of Nordic treaty

Sweden's Supreme Administrative Court (SAC) has issued a decision confirming that article 15.1 of the Nordic tax treaty is to be interpreted in line with the OECD model treaty when determining "where the employment is exercised." In a decision issued on 15 March 2012, the court held it is the physical presence of the individual that is decisive rather than the place where the employment is located.

The Nordic tax treaty is a multilateral treaty between Denmark, the Faeroe Islands, Finland, Iceland, Norway and Sweden to prevent double taxation and tax avoidance. The Nordic treaty is based on the OECD model treaty.

The case involved an individual who was resident in Sweden according to article 4 of the Nordic treaty and who received income from an employer in Finland. The work for the Finnish employer had been carried out in Finland and on business trips in other countries. The individual claimed that all work performed for the Finnish employer, including the work in other countries, should be exempt in Sweden according to articles 15 and 22 of the Nordic treaty.

The SAC, however, ruled in favor of the Swedish Tax Agency, which had argued that Sweden, as the state of residence, had the right to tax the part of the Finnish income that did not relate to the time the individual had physically spent working in Finland, i.e. income related to work carried out in Sweden and other countries. Only the income the individual earned while physically present in Finland was exempt from tax in Sweden.

In reaching its conclusion, the SAC made reference to the Commentary to the OECD model treaty, which states that physical presence is required for work to be deemed to be exercised in the working state.

The SAC's decision is not surprising. However, because there have been different views in Sweden on the interpretation of article 15 with respect to where work should be deemed to be exercised, there is now a precedent confirming that the OECD Commentary to the model treaty is to be followed.

The decision emphasizes the importance of keeping track of an individual's whereabouts, as this information is relevant when determining how the individual's employment income should be reported for tax purposes. Further, individuals who are a resident of Sweden (for Nordic tax treaty purposes) and who work in other Nordic states should be aware that income they earn while physically present outside the working country will be taxed in Sweden, unless such income is taxed in that other working country.

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United Kingdom: U.K. bank levy update

Under the U.K. Budget announced on 21 March 2012, the bank levy rate will increase on 1 January 2013 from 0.088% to 0.105% for short-term chargeable liabilities and from 0.044% to 0.0525% for long-term chargeable equity and liabilities (and uninsured customer deposits other than deposits from financial institutions). The bank levy is a permanent tax in respect of certain equity and liabilities on banks' balance sheets, with the Budget changes affecting, e.g., U.K. banks, banking groups, building societies and foreign banking groups operating in the U.K.

Certain deductions are allowed in calculating the levy, including Tier 1 capital, protected deposits and certain insurance liabilities. The netting of assets against liabilities also is permitted if specific conditions are satisfied. The levy is not deductible for corporate tax purposes and is not charged on the first GBP 20 billion of equity and liabilities. Additionally, the levy rate is calculated on a daily basis throughout the period; hence, a bank with a 31 March 2013 year end would have an effective (full) rate of approximately 0.092% (0.088% to 31 December 2012 and 0.105% from 1 January 2013).

On a welcome note in light of the above rate increase, regulations providing a mechanism for double taxation relief in the case of levies by Germany and France equivalent to the U.K. bank levy entered into force 14 March 2012. The regulations apply to periods of accounting ending on or after 1 January 2011, except for the priority of credits provision under the regulation addressing Germany, which applies to accounting periods beginning on or after 14 March 2012. The regulations offer credit for double taxation, rather than exemption. The only exception is that a German permanent establishment of a U.K. bank will be exempt from the German bank levy.

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In brief

European Union – The European Commission has formally requested the U.K. to amend its legislation on exit taxes on companies, because it considers the U.K. taxation of unrealized capital gains when the place of effective management of a company is transferred to another EU/EE infringes the freedom of establishment principle. The Commission also has referred Germany to the European Court of Justice on its rules excluding certain nonresident companies from its corporation tax fiscal unity regime. Under German law, a company cannot be part of a fiscal unity if its registered office is outside Germany even if its place of effective management is in Germany. If such a company is liable to pay tax in Germany, it still would be deprived of the tax benefits of the regime, including offsetting profits and losses within the fiscal unity. Germany published an administrative circular in 2011 to eliminate the infringement, but EU case law makes it clear that this can only be achieved by amending the legislation.

Russia – It has been reported that the Ministry of Finance and Ministry for Economic Development have proposed a reduction in the overall rate of the social insurance contributions from 30% to 26%. Social contributions are payable by the employer.

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United States – The Internal Revenue Service (IRS) announced on 27 March 2012 organizational and administrative changes and transitional procedures in connection with the creation of the Advance Pricing and Mutual Agreement (APMA) program within the Large Business and International (LB&I) Division, to include the realignment and consolidation of the APA program and Competent Authority (CA) functions (including mutual agreement procedures) related to transfer pricing and other allocation issues and determinations of permanent establishment status. Other CA functions are the responsibility of a new LB&I Treaty Assistance and Interpretation team. The IRS intends to revise the existing related guidance, but taxpayers should continue, until then, to follow Revenue Procedure (RP) 2006-9, as modified by RP 2008-31, for APA requests and RP 2006-54 for Competent Authority requests, with the following exceptions: APA program references refer to APMA; the user fee is USD 27,500 for requests received after 4 February 2012 for determinations regarding limitation on benefits; the address for submitting APA requests and requests for Competent Authority assistance has changed.

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.

Australia-Mauritius – The 2010 treaty entered into force on 25 November 2011 and applies as from 1 January 2011. The treaty does not cover dividends, interest or royalties, so domestic rates continue to apply.

Australia-Samoa – The 2009 treaty entered into force on 24 February 2012 and will apply as from 1 January 2013. The treaty only covers payments to individuals and does not address dividends, interest and royalties, so domestic rates will apply.

Chile-Russia – The 2004 treaty entered into force on 28 February 2012 and will apply as from 1 January 2013. When in effect, the withholding tax rate on dividends will be 5% if paid to a company that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. (As a result of special wording in the treaty, however, the reduced rates do not apply on dividends paid from Chile, which are instead subject to the 35% domestic rate, with the 17% corporate tax rate (18.5% before 2013) creditable against the withholding tax on dividends.) The rate on interest will be 15%. The rate on royalties will be 5% if paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise the rate will be 10%.

Cyprus-Germany – The 2011 treaty to replace the treaty dating from 1974 entered into force on 16 December 2011 and applies from 1 January 2012. The withholding tax rate on dividends is 5% if paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate is 15%. Interest and royalties are exempt from withholding tax.

Cyprus-Poland – See article under Cyprus.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/120330_2.html

France-India – See article under India.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/120330_3.html

Germany-Hungary – The 2011 treaty to replace the existing treaty dating from 1977 entered into force 30 December 2011 and applies from 1 January 2012. The withholding tax rate on dividends is 5% if paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate is 15%. Interest and royalties are exempt from withholding tax.

Hong Kong-Spain – The 2011 treaty will enter into force on 16 April 2012 and will apply as from 1 April 2013. When in effect, dividends will be exempt if paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest and royalties will be 5%.

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India-Georgia – The 2011 treaty entered into force on 8 December 2011 and applies in India from 1 April 2012 (1 January 2012 in Georgia). The withholding tax rate on dividends, interest and royalties is 10%.

India-Netherlands – On 13 March 2012, the Dutch State Secretary for Finance published a decree on the application of the most-favored nation clause concerning dividends under the 1998 treaty with India. The treaty provides for a reduction of the withholding tax on dividends if, after the signing of the treaty, India signs a new treaty with another OECD member state providing for a lower withholding tax rate on dividends. The 2003 India-Slovenia treaty, which entered into effect in 2006, provides for a 5% withholding tax on dividends where the recipient company owns directly at least 10% of the capital of the payer company. Slovenia joined the OECD on 21 July 2010. As a result, the withholding tax on dividends paid by a Netherlands resident company to an Indian company that holds directly at least 10% of the capital of the Dutch payer company is reduced from 15% to 5% with effect from 21 July 2010.

India-Norway – The 2011 treaty to replace the treaty dating from 1986 entered into force on 20 December 2011 and applies in India as from 1 April 2012 (1 January 2012 in Norway). The withholding tax rate for dividends, interest, royalties and fees for technical services is 10%.

India-Tanzania – The 2011 treaty entered into force on 12 December 2011 and applies in India as from 1 April 2012 (1 January 2012 in Tanzania). The withholding tax rate on dividends, interest and royalties is 10%, except in the case of dividends paid to a company that holds at least 25% of the shares of the payer company, in which case the rate is 5%.

Ireland-South Africa – The 2010 protocol to the 1997 treaty entered into force on 10 February 2012 and applies as from 1 April 2012 for dividends paid from South Africa, as well as for the elimination of South Africa's right under the 1997 protocol to the 1997 treaty to impose on the profits attributable to a permanent establishment in South Africa of an Ireland-resident company tax at a rate that does not exceed the rate of normal tax on companies resident in South Africa by more than five percentage points. The protocol replaces the treaty's withholding tax exemption for articles with 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 10%. Other provisions of the protocol generally will apply from as 1 January 2013 and address scope and information exchange.

Ireland-Switzerland – When in effect, the protocol to the 1966 treaty signed on 26 January 2012 provides that dividends will be exempt if paid to a pension scheme or to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. The protocol does not address interest or royalties, which are exempt under the treaty.

Malta-Bahrain – The 2010 treaty entered into force on 26 February 2012 and will apply as from 1 January 2013. When in effect, dividends, interest and royalties will be exempt from withholding tax.

Malta-Guernsey – When in effect, the treaty signed on 12 March 2012 will exempt dividends, interest and royalties from withholding tax.

Malta-Saudi Arabia – When in effect, the treaty signed on 4 January 2012 provides that the withholding tax rate on dividends will be 5% if paid by a company resident in Saudi Arabia to a resident of Malta. The rate on dividends paid by a company resident in Malta to a resident of Saudi Arabia will not exceed the rate chargeable on the profits from which the dividends are paid. In any case, under the full imputation system adopted by Malta, there is no final withholding tax on dividends in addition to the tax chargeable in respect of the profits or income of the company from which the dividends are paid. Interest will be exempt. The rate on royalties will be 5% if paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate will be 7%.

Nigeria – The government has concluded that the country's small tax treaty network (currently 10 treaties in effect) has impeded foreign investment into Nigeria and, therefore, has ordered the tax authorities to carry out a review Nigeria's tax treaty policy. The government wants to conclude more tax treaties and has acknowledged the need to conclude tax information exchange agreements and to reform certain aspects of Nigeria's domestic tax law.

United Nations – The 2011 update of UN model treaty has been published to replace the 1999 version published in 2001.

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Portugal-Timor-Leste – When in effect, the treaty signed on 27 September 2011 provides that the withholding tax rate on dividends will be 5% if paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%.

Sweden – See article under Sweden.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/120330_4.html

Switzerland-Turkey – The 2010 treaty (replacing a pending 2008 treaty) entered into force on 8 February 2012 and will apply to taxable years beginning on or after 1 January 2013. When in effect, 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 20% of the capital of the payer company (dividends arising in Turkey are subject to the additional requirement that relief from Swiss tax is granted by way of an abatement of the profits tax under a specific ratio); otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Switzerland-U.K. – The protocol signed on 20 March 2012 to the 2011 agreement on cooperation in tax matters clarifies that the 2011 agreement will not override the EU-Switzerland Taxation of Savings agreement by only imposing a 48%/50% withholding tax where the savings agreement has not been applied. It also makes provision for U.K. tax rate reductions and for a "finality tax" at 13% to be levied by Switzerland where income previously has been taxed under the EU agreement. These changes are designed to ensure that the agreement is compatible with EU law, while preserving the overall effect of the original agreement.

Ukraine-Pakistan – The 2008 treaty entered into force 30 June 2011 and applies to payments made on or after the 60th day following that day on which the treaty entered into force in respect of dividends, interest and royalties, as well as personal income tax (for tax periods beginning on or after 1 January 2012 in respect of tax on profit (income) of enterprises). The withholding tax rate on dividends is 10% if paid to a company that owns directly at least 25% of the shares of the payer company; otherwise, the rate is 15%. The rate on interest and royalties is 10%.

U.K.-Armenia – The 2011 treaty entered into force on 21 February 2012 and will apply as from 1 January 2013 in the U.K. for withholding tax purposes (as well as generally in Armenia). The treaty will apply in the U.K. as from 1 April 2012 for corporation tax purposes and as from 6 April 2012 for capital gains tax purposes. When in effect, the withholding tax rate on dividends will be 5% if paid to a company that holds at least 25% of the capital of the payer company and has invested at least GBP 1 million in its capital on the date the dividends are paid. A 15% rate will apply where dividends are paid out of income derived from immovable property by an investment vehicle that distributes such income on an annual basis and whose income from such property is exempt. (The U.K. does not levy withholding tax on dividends, except those distributed by a real estate investment trust.) The rate in all other cases will be 10%. The withholding tax rate on interest and royalties will be 5%.

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United Kingdom
Consultation launched on income tax rules on interest
The tax authorities have commenced a consultation on possible changes to the U.K. income tax rules on interest.
[Issued: 28 March 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/b01d98227ba56310VgnVCM3000001c56f00aRCRD.htm
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