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International Tax

World Tax Advisor

28 September 2012

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Luxembourg rolls out the red carpet for alternative investment funds

The Luxembourg government submitted a draft law to parliament on 24 August 2012 that would transpose the EU alternative investment fund managers directive (AIFMD) into national law. The draft also contains changes to other laws in order to modernize the legal framework for partnerships and introduce related tax provisions.

The AIFMD, which was approved by the European Parliament on 11 November 2010, sets out the rules for the authorization, ongoing operation and transparency of alternative investment fund managers (AIFMs) managing and/or marketing alternative investment funds (AIFs) in the EU. The AIFMD will impact:

- How AIFMs distribute their funds, cross border or otherwise;
- How they remunerate their personnel;
- How they operate their business; and
- The support required to maximize their potential.

EU member states have until 22 July 2013 to transpose the AIFMD into their national law. Luxembourg's parliament is expected to approve the draft law before the end of 2012.

In addition to transposing the AIFMD into Luxembourg law, the main measures in the draft bill are as follows:

Modernization of partnership law

The draft law contains changes to the "Law of 10 August 1915 on commercial companies" to modernize the common limited partnership (SCS or *société en commandite simple*) and ensure that both AIFs and non-alternative funds that are outside the scope of the AIFMD can use the limited partnership as an investment vehicle. The proposals are based on practices developed over time, as well as the Anglo-Saxon concept of partnerships, and they emphasize the broad contractual freedom inherent in this type of investment vehicle. The proposals would make it possible for an SCS to:

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- Keep the identity of its limited partners confidential;
- Appoint a manager that (provided it is not a general partner) is only liable for the execution of its mandate and any misconduct in the management of the SCS, and that can delegate power to a representative that, in turn, is only liable for the execution of its mandate;
- Allow the limited partners to carry out some internal (as opposed to external) management functions, such as advisory and supervisory functions and the granting of loans or guarantees to the SCS or its affiliates;
- Derogate from the "one share, one vote" principle;
- Exclude a partner from sharing in the profits and/or losses of the SCS; and
- Preclude the claw-back of distributions to partners.

The draft law also would enhance the rules on partnerships limited by shares (SCAs or *Sociétés en Commandite par Actions*) and would create a new vehicle – the special limited partnership (SCSp or *société en commandite spéciale*). The SCSp regime generally would be similar to the SCS regime, but an SCSp would not have legal personality. Unregulated funds, SIFs (specialized investment funds) and SICARs (risk capital investment companies) would be able to be established as SCSps. This new vehicle will broaden the tax structuring opportunities for investors setting up a Luxembourg fund.

Full tax transparency for SCS/SCSp

One of the main tax measures in the draft law would provide for full tax transparency treatment of an SCS/SCSp provided its Luxembourg corporate general partners own less than 5% of the SCS/SCSp, which is typically the case for AIFs.

Currently, an SCS is transparent for Luxembourg corporate income tax and net wealth tax purposes, but is subject to the municipal business tax, unless it is a SICAR set up as an SCS, which always is exempt from the municipal business tax; the draft law would extend this exemption to entities set up in the form of SCSps. The lack of transparency for purposes of the municipal business tax is the result of *Geprägetheorie*, a theory that has its origins in German jurisprudence and deems an SCS as realizing commercial profits regardless of the nature of its activities if at least one of the general partners of the SCS is a Luxembourg capital company (i.e. a private limited company (SARL), a public company (SA) or an SCA), because the commercial form of the general partner "taints" the nature of the SCS's profit, resulting in the income derived by the SCS being subject to municipal business tax (at a rate of 6.75% for Luxembourg city).

The draft law would limit the application of the *Geprägetheorie* to instances where at least one of the general partners is a Luxembourg capital company that holds a partnership interest of at least 5% in the SCS/SCSp, thus achieving full tax transparency for an SCS/SCSp that has a Luxembourg general partner below the 5% threshold to the extent the SCS/SCSp does not carry on activities of a commercial nature (e.g. the active trading of securities). The commentary to the draft law states that recourse to a manager or consultant by the SCS/SCSp should not jeopardize the SCS/SCSp's lack of a commercial activity. By maintaining the concept of the *Geprägetheorie*, but with a limited scope, the draft law preserves the ability of some SCSs/SCSps to benefit from the favorable effect of the theory in certain cases. This would be the case, in particular, for Luxembourg resident shopkeepers carrying on their commercial activities through an SCS with real estate allocated to such activities. If these commercial activities were suspended, the real estate would otherwise be deemed to have been disposed of as a result of the suspension and, consequently, latent gains would become taxable even if the real estate was not actually sold. As noted in the commentary to the draft law, the strong ownership link between the general partner and the SCS/SCSp would reflect the commerciality of the vehicle through the reinforced position of the general partner.

Taxation of carried interest and new regime for managers/management companies

The draft law would clarify the Luxembourg tax regime that applies to carried interest paid to employees of AIF managers and management companies of an AIF (collectively "employees") and would introduce a temporary beneficial regime for new residents. There has been a long-standing discussion over whether carried interest should be treated as salary income or capital gain. The draft law would introduce a new regime whereby carried interest would be treated as "miscellaneous income" subject to the beneficial regime for new residents (see below) or to normal taxation (i.e. the marginal rate) if the beneficial regime is not applicable.

Under the regime for new residents, income derived by employees from their rights to participate in the profits of an AIF ("carried interest") would be subject to a reduced maximum rate of 10.335% (the current marginal rate is 41.34%). This regime would apply to an employee who:

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- Transfers his/her residence to Luxembourg during the year the law enters into force or in one of the following five years;
- Has not been a Luxembourg tax resident or subject to tax on his/her professional income in Luxembourg during the five-year period before the year the law enters into force;
- Has not received an advance payment relating to his/her carried interest; and
- Can demonstrate that committed capital has been fully repaid to investors before the payment of carried interest.

Qualifying employees would be able to benefit from this regime for 11 years from the year they take on the position (i.e. activity starts) in Luxembourg that entitles them to the carried interest.

The draft law also confirms that capital gains derived by an employee from the sale or redemption of his/her shares/units of an AIF would be taxable under the regular regime applicable to capital gains (i.e. the gains would be exempt if the shareholding did not exceed 10% at any time during the five-year period before the sale or redemption and the employee held the shares/units for more than six months).

The benefits of the proposed regime, combined with the benefits granted under the existing tax regime for highly skilled workers, likely will make Luxembourg the location of choice for fund managers (it is already a leading location for investment funds). For example, an executive who benefitted under the tax regime for highly skilled workers with, on average, an annual saving ranging from EUR 40,000 to EUR 50,000 also would save 30% tax on his/her carried interest through the temporary beneficial regime for new residents.

VAT impact of AIFMD implementation

While existing investment vehicles remain eligible for the VAT exemption for "management services," the draft law would expand the scope of eligible vehicles to similar investment vehicles located in another EU member state, as well as to an AIF as defined in the draft law. The existing vehicles already include UCITS, SIFs, SICARs, ASSEPs, SEPCAVs, pension funds defined by the law dated 6 December 1991 and securitization vehicles as defined by the law dated 22 March 2004.

By extending the scope of the VAT exemption to similar investment vehicles in other EU member states, the draft law aims to prevent any distortion of competition between the management of investment vehicles registered in Luxembourg and those registered in another member state. A Luxembourg-based management company involved in both domestic and cross-border management of (eligible) investment vehicles would be able to monitor its services from Luxembourg for VAT purposes, regardless of where the investment vehicles are located. A Luxembourg management company should then be able to delegate part of its management functions to a third party provider (established in Luxembourg or abroad) and continue to benefit from the VAT exemption on management services if all of the VAT conditions are satisfied (regardless of whether the relevant investment vehicle is registered in Luxembourg or another member state).

As a result of the EU place of supply rules (i.e. the B2B and B2C rules) and to the extent the investment vehicle established in another member state qualifies as a VAT taxable person in its own country, it still would be necessary to determine whether management services rendered from Luxembourg could benefit from a VAT exemption in the country in which the investment vehicle is registered. In practice, it appears that the scope of management services for funds is not consistently defined in each EU member state (despite the theoretical harmonization of EU VAT), potentially leading to a local VAT liability for the investment vehicle.

The draft law also would allow management services invoiced by an AIFM to an AIF to be VAT-exempt (e.g. management services rendered to the new SCSp acting as an AIF).

Finally, granting a VAT exemption to the management of an AIF, combined with the extension of "cross-border" management to (eligible) EU investment vehicles, could impact the corresponding right of the managers to deduct input VAT, necessitating close monitoring of the management companies' VAT deduction rights and their new VAT reporting obligations.

Cross-border management services

Like the rules on UCITS and in line with the AIFMD, the draft law would allow an authorized AIFM established in Luxembourg to manage AIFs established in other EU member states. From a tax perspective, such cross-border management services should not give rise to any management and control issues because the draft law specifically provides

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that AIFs established outside Luxembourg that have their effective center of management or central administration in Luxembourg would be exempt from tax in Luxembourg.

— Raymond Krawczykowski (Luxembourg City)
Partner
Deloitte Luxembourg
rkrawczykowski@deloitte.lu

Joelle Lyaudet (Luxembourg City)
Partner
Deloitte Luxembourg
jlyaudet@deloitte.lu

Raphael Glohr (Luxembourg City)
Partner
Deloitte Luxembourg
rglohr@deloitte.lu

Chile:
Tax reform enters into force

After months of debate and controversy, Law No. 20,630 has entered into effect, introducing tax reform to finance a major overhaul of the education system and improve the tax system by closing loopholes and eliminating certain exemptions. Unless otherwise indicated in the text of the law, measures will apply as from 1 January 2013.

The president sent a first proposal to Congress in May, but parties in the coalition government objected to certain measures. On 2 August 2012, the president withdrew the reform to avoid an outright rejection and resubmitted a revised version that omitted the controversial measures. Proposals withdrawn in their entirety included those affecting the tax-free reorganization rules; taxation on withdrawals in excess of taxable profits; the thin capitalization rules; reductions in capital; the reinvestment of profits mechanism; reduced customs duties rates; and the introduction of a new green tax.

The Congress informed the president of its approval on 5 September 2012 and the president signed a presidential decree on 24 September 2012. Although the text of the final bill differs from the proposal submitted by the president on 2 August 2012, the differences are not material.

The following changes are included under the tax reform as approved:

- The corporate tax rate (First Category Income Tax) has been increased from 18.5% to 20% on earnings accrued as from 1 January 2012 (from 1 September 2012 for income subject to the First Category Tax as a single tax). (The rate was scheduled to revert to 17% in 2013 after being temporarily increased following the 2010 earthquake.)
- The scope of the corporate tax as a single tax will be expanded to apply to capital gains derived from the transfer of an interest in any type of Chilean legal entity (such as a limited liability partnership). Currently, the tax applies only to capital gains on the disposal of shares issued by Chilean corporations (SAs) and companies-by-shares (SpAs), provided certain requirements are met.
- To conform the tax treatment of SAs and SpAs, the tax basis on the disposal of shares in corporations and companies-by-shares will be the acquisition cost indexed for inflation, unless a Decree Law 600 foreign investment contract is in place, in which case, the tax basis will be the higher of the acquisition cost indexed for inflation and the foreign currency effectively invested in Chile converted into Chilean pesos at the exchange rate on the date of the transfer. (DL 600 contracts are provided for under a special regime available to foreign investors bringing funds into Chile of at least USD 5 million.)
- The concept of Chilean-source income will be broadened to include an indirect disposal made by a resident abroad (whether an individual or entity) of a Chilean entity or Chilean assets to another person domiciled/resident abroad. (The disposal of an indirectly held Chilean entity to a person domiciled/resident in Chile already is taxable in Chile). In general terms, when a nonresident/non-domiciled person disposes of shares in a foreign entity that owns assets situated in Chile, any gain from the disposal will be a taxable event in Chile if the Chilean underlying assets (which are specified in the tax reform) represent 20% or more of the market value of the assets of the entity being disposed of and more than 10% of the value is being transferred. The disposal also will be taxable if the Chilean asset is worth more than 210,000 Annual Tax Units (approximately USD 200 million) and 10% or more is being transferred or if the entity being disposed of is situated in a tax haven and certain disclosures are not made. The new rules do provide relief, however, by excluding disposals resulting from a reorganization.

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- The scope of taxation of a Chilean permanent establishment (PE) of a nonresident company will be expanded to include (in addition to Chilean-source income) any foreign-source income attributable to the PE. Further, a PE will be treated as a separate and independent entity from its head office and all transactions between the PE and its head office will have to be on arm´s length terms.
- New OECD-type transfer pricing rules are established. These new rules address when parties are related, the transfer pricing methods that will be accepted in determining the fair market value in cross-border transactions with related parties, reporting obligations and advance pricing agreements. Transfer pricing studies will be accepted to evidence compliance with the arm's length principle. A 35% tax and a 5% penalty will apply on adjustments, and failure to comply with the transfer pricing obligations could give rise to penalties of up to USD 46,600.
- Under the new transfer pricing rules, taxpayers are entitled to provide transfer pricing studies to evidence that their transfer prices on cross-border operations meet arms' length standards and they also may enter into advance pricing agreements with the Chilean tax authorities.
- Payments made abroad for the use or enjoyment of shrink-wrap software will be exempt from withholding tax.
- Where expenses are disallowed, a 35% tax will be imposed, regardless of the form of the taxpayer.
- The tax treatment of goodwill and negative goodwill for tax purposes will be standardized.
- The progressive tax rates applied to individuals on income arising from employment and independent activities will be reduced in the range of 1.5 to 2.5 base points for each bracket, except for the highest bracket, which remains at 40%.
- Parents will be granted tax relief in the form of a tax credit against their personal taxes to represent expenses associated with the education of their children;
- The minimum stamp tax rate will be generally reduced from 0.6% to 0.4% (from 0.25% to 0.16% for credit instruments payable on demand or without a maturity date).
- The VAT exemption that applies to payments subject to the Additional Withholding Tax will be eliminated for services rendered in Chile that are exempt from additional withholding tax under domestic law or an applicable tax treaty.

— Joseph Courand (New York)
Client Service Executive
Deloitte Tax LLP
jcourand@deloitte.com

China:
Local tax authorities stepping up compliance of foreigners through exchange of information

Using the exchange of information procedure in a relevant tax treaty, the local tax authorities of Guangdong province reportedly have collected underpaid Chinese individual income tax liabilities, along with late payment interest and penalties, totaling RMB 40 million in relation to expatriate individuals.

The case arose when the in-charge local tax bureau considered the taxable income of four expatriate individuals reported by a joint venture (JV) in the steel sector to be lower than the income of individuals in similar industries. After the JV failed to provide a satisfactory explanation to the local tax authorities, the local authorities escalated the case to the State Administration of Taxation (SAT). The SAT sent the competent authority in the expatriates' home country a request for information on the income the individuals had received from the parent company, as well as for records of their tax returns filed in the home country. From the information provided, it was noted that the taxable income the JV reported for the four expatriates in China only accounted for 35% of the total taxable income of the individuals.

The local tax authorities suspected that the same under-reporting existed with respect to other expatriate individuals of the JV, so it conducted a more thorough individual income tax inspection of those individuals. This inspection resulted in the collection of tax, surcharges and penalties of up to RMB 8 million from 11 expatriates.

The local tax bureau of Guangdong province is now requiring that its subordinate local tax bureaus expand the tax audit and inspection through exchange of information to the entire steel industry.

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One of the key areas of focus of the Chinese tax authorities is enforcing compliance of expatriate individuals with the individual income tax rules, and the SAT has been encouraging local tax bureaus to make full use of the exchange of information provision in tax treaties to ensure such compliance. It would now appear that noncompliance resulting from the under-reporting of foreign income seems to have gained the attention of the Chinese tax authorities, and they are using all means available to trace income and recover any underpaid tax.

Companies with expatriate individuals working in China should be aware of this trend, undertake reviews of their current individual income tax compliance (especially for expatriates), and take any necessary steps to reduce noncompliance risks.

— Tony Jasper (Hong Kong)
Partner
Deloitte Hong Kong
tojasper@deloitte.com.hk

Isabel Liu (Shenzhen)
Director
Deloitte China
isliu@deloitte.com.cn

European Union:
ECJ rules on U.K. consortium relief

The European Court of Justice (ECJ) issued its decision in the Philips *Electronics U.K. Ltd* case on 6 September 2012, holding that rules such as the U.K.'s consortium relief rules for losses are incompatible with EU law. The rules at issue effectively preclude the use of losses for consortium relief where the losses may be available for use overseas. The case concerns a loss-making U.K. branch of a Dutch company and whether it could surrender its losses to a U.K. company, under consortium relief. The U.K. tax authorities argued that, since the branch losses could be set off against Dutch profits, they should not be set off against U.K. profits.

The ECJ concluded that treating a branch differently from a company constitutes a clear breach of the freedom of establishment principle and, therefore, is incompatible with EU law. It noted that U.K. losses were being offset against U.K. profits. The court also held that the rule could not be justified on the grounds that it preserved a balanced allocation of the power to impose taxes between the EU member states or that it prevented the risk of double use of losses.

This reasoning is in line with the opinion of the advocate general and the decision of the U.K.'s First-tier Tribunal.

— Fiona Walkinshaw (London)
Partner
Deloitte United Kingdom
fwalkinshaw@deloitte.co.uk

Bill Dodwell (London)
Partner
Deloitte United Kingdom
bdodwell@deloitte.co.uk

Panama:
Estimated income tax reinstated and procedural reforms and MHQ changes enacted

Law No. 52, which generally applies as from 29 August 2012, introduces a number of changes to Panama's tax code. One of the most important measures in the new law is the replacement of the monthly advance income tax with a thrice yearly estimated income tax (EIT). Other changes include shortening the period for an extension of the tax return filing date, expanding the exception to the filing obligation and introducing an income tax exemption for dividends on preferred shares.

Separately, Law No. 45, enacted 10 August 2012, includes changes relevant to licensed multinational headquarters companies (MHQs), such as granting MHQs an exemption from dividend and deemed dividend tax.

Estimated income tax

Law No. 52 replaces the monthly income tax advance (AMIR, which did not perform according to government expectations) with the previously applicable EIT that was abolished in 2010. Under the AMIR, companies in Panama were required to make a monthly advance payment of 1% calculated on gross taxable income, with any adjustment between the actual income tax assessment and the monthly advance payments made in the annual income tax return. By contrast, under

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the EIT system, companies must estimate the following year's income tax liability based on the actual taxable income of the previous year and make three advance payments of tax in equal installments (June, September and December for companies that follow a calendar year).

For fiscal year 2012, the tax authorities will use taxable income from fiscal year 2011 as the tax base. Given that the law was not enacted until August, the first and second 2012 EIT payments (i.e. June and September) are due by 30 September 2012 and the third installment must be paid by 31 December 2012. AMIR paid in the period January to July 2012 will be credited against the first and second EIT payments and any remaining amount against future EIT or corporate income tax payments.

EIT payments for fiscal year 2013 will be due on 30 June, 30 September and 31 December 2013. Taxpayers with special fiscal periods, however, will make their first EIT payment six months after the end of their fiscal year, their second payment nine months after the end of their fiscal year and their third payment 12 months after the end of their fiscal year.

Income tax filing obligations

The rule requiring companies to file a tax return within 90 days after the end of the fiscal year remains unchanged, but Law No. 52 reduces the two-month extension of the filing deadline to one month, effective for fiscal year 2012. Additionally, the exception to filing an income tax return or making any corresponding payment applicable to entities or individuals engaged in agricultural activities that have annual revenue of less than USD 250,000 was amended so that annual revenue must be less than USD 300,000.

Preferred shares

To stimulate the capital market, the payment of dividends or participation shares that correspond to nominative preferred shares will be exempt from income tax provided the shares have a term of five years or less; they are not part of the company's equity capital; are not transferable; their issuance does not exceed 40% of equity; the shares belong to common shareholders of the issuing company; and their accrued yield does not exceed 6% annually.

Miscellaneous tax amendments under Law No. 52

- Legal entities engaged in agricultural or agribusiness activities, as well as importers and manufacturers of foodstuffs, medicinal and pharmaceutical products, with total revenue exceeding USD 300,000 are exempt from ITBMS (Panama's value added tax) effective 29 August 2012 if their activities include the manufacture or import of products already exempt from ITBMS, such as foodstuffs and medicinal and pharmaceutical products, as well as products specified in the section of the custom tariffs related to articles for babies, children and some medical instruments used to apply medication.
- A 5% selective consumption tax will apply to certain electronic equipment (in place of the import tax of the same rate) and must be paid at the time of customs clearance.
- The previously enacted increase in the annual franchise tax for private interest foundations will now take effect from 1 January 2013. The tax will increase from USD 250 to USD 350 for the first installment and from USD 300 to USD 400 for subsequent installments.

Multinational headquarter companies

Law No. 45, which applies as from fiscal year 2012, amends the rules applicable to licensed MHQs. A licensed MHQ is essentially a service company within a multinational group of entities and is licensed by the Panamanian government to perform qualifying operations from within Panama for the group. The MHQ regime provides certain tax breaks to the company and to certain executives (e.g. the licensed MHQ is not subject to income tax on services provided to entities located offshore and is not subject to ITBMS on export services). Notable changes under Law No. 45 are as follows:

- Under the amendment, licensed MHQs are exempt from dividend tax and deemed dividend tax. (Under changes to Panama's dividends regime after enactment in 2007 of the MHQ legislation, an MHQ could be subject to the tax if it provided services to an entity located in Panama.)

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- Legislation requiring use of fiscal printers came into effect in 2012. These printers are used to print invoices to document sales of goods or rendering of services and have special storage to record operations and taxes and include a port for tax auditors to extract the data for tax audits. Law No. 45 provides that licensed MHQs are not required to use fiscal printers, although they must keep records of their transactions (through invoices or other valid documents) so that the Panamanian tax authorities can audit the transactions at any time.
- Foreigners working in Panama under an MHQ visa receive an income tax exemption on wages and other remuneration. As amended, such income is not required to come directly from the head office as was previously required.

— Michelle Martinelli (Panama)
Partner
Deloitte Panama
mmartinelli@deloitte.com

Rubén Irigoyen (Panama)
Director
Deloitte Panama
ririgoyen@deloitte.com

United Kingdom:
Intergovernmental agreement to implement FATCA signed with U.S.

The U.K. government announced on 14 September 2012 that the U.K. is the first country to sign an agreement with the U.S. to implement the foreign account tax compliance (FATCA) rules enacted by the U.S. as part of the 2010 Hiring Incentives to Restore Employment Act. The U.K.-U.S. intergovernmental agreement (Agreement) follows the previously released "Model Intergovernmental Agreement to Improve Tax Compliance and Implement FATCA" (IGA) and includes a previously unreleased annex (Annex II).

Under FATCA, certain U.S. and foreign financial institutions and non-financial foreign entities are required to report information about offshore accounts and investments held by U.S. taxpayers to the U.S. Internal Revenue Service (IRS) annually. These institutions include banks, insurance and real estate companies, hedge funds, mutual funds, and private equity firms. Foreign financial institutions must enter into agreements with the IRS; otherwise, they will face a 30% withholding charge.

U.K.-U.S. Agreement

The Agreement will be considered by the U.K. parliament for a period of 21 days as part of the ratification process. Financial institutions and other interested parties will be consulted on how the Agreement should be implemented into draft legislation in the U.K. The consultation period is expected to begin shortly and the U.K. tax authorities have announced that draft legislation will be published later in 2012.

The Agreement closely follows the content of the model IGA released in July 2012 and provides an alternative framework to collect and send information from U.K. financial institutions (U.K. FIs) to the IRS (via the U.K. HM Revenue & Customs) regarding U.K. accounts held by U.S. persons. The Agreement addresses concerns relating to data privacy laws, introduces a number of new terms and amends some of the obligations for U.K. FIs (such as removing the requirement for U.K. FIs to withhold). However, there are still a number of significant steps to achieve compliance with FATCA. Crucially the Agreement will apply to all FIs, including branches and subsidiaries of foreign entities, located in the U.K. and FATCA will be implemented under domestic law.

As noted above, the signed Agreement includes the previously unreleased Annex II, which outlines a number of U.K. FIs and products that will be out of scope or have reduced obligations for FATCA reporting. The following are included in Annex II:

- "Exempt Beneficial Owners," including U.K. governmental organizations, the U.K. central bank, international organizations (such as the IMF, World Bank and OECD Support Fund) and certain retirement funds;
- "Deemed Compliant Financial Institutions," including defined nonprofit organizations and financial institutions with a local client base. The latter category includes credit unions, building societies and venture capital trusts that meet a number of requirements (chief among these requirements is that the FI must have no fixed place of business outside the U.K. and at least 98% of the accounts must be held by residents of the U.K. or an EU member state); and

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- “Exempt Products,” including certain retirement accounts or products and other tax-favored accounts or products (which includes individual savings accounts, Save As You Earn schemes and premium bonds).

— Denise Hintzke (New York)
Director
Deloitte Tax LLP
dhintzke@deloitte.com

In brief

Argentina – A series of exchange control regulations have been implemented that tighten the central bank’s control over residents’ access to the foreign exchange market to purchase foreign currency and remit funds out of Argentina in certain circumstances. Argentine resident companies and individuals are no longer authorized to purchase foreign currency to acquire certain assets held overseas, including shares in a foreign company.

European Union – The European Court of Justice has issued decisions in two cases that centered on whether noncompliance with the rules applicable to customs relief (temporary importation and customs warehousing, respectively) meant that the taxpayers had to pay duty on the relevant goods. In both cases, the court held that, even though at least some of the goods had been exported and that, had the taxpayers complied with the detailed rules applicable to the duty relief they were using, no duty would have been due, the fact that they had not done so meant that the taxpayers were liable to duty on all the goods concerned, including those that had been exported. The cases reinforce the need for strict compliance with the rules applicable to duty relief.

Indonesia – The Director General of Taxation has issued guidance instructing all corporate taxpayers to submit their corporate income tax return (SPT 1771) for fiscal year 2011 using the 2011 e-SPT format, rather than older versions. The E-SPT form can be downloaded from the DGT website. Corporate taxpayers that already have submitted SPT 1771 for 2011 using the e-SPT format for 2009 are not affected by the new guidance.
URL: http://www.pajak.go.id

Serbia – The VAT rate increases from 18% to 20% on 1 October 2012.

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.
URL: http://www.dits.deloitte.com

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

Denmark-Hungary – The 2011 treaty to replace the existing treaty dating from 1978 entered into force on 19 July 2012 and will apply as from 1 January 2013. When in effect, dividends will be exempt from withholding tax if 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 for an uninterrupted period of no less than one year. Dividends also will be exempt if paid to a qualifying pension fund or similar institution providing pension schemes; otherwise, the rate will be 15%. Interest and royalties will be exempt.

Latvia-Turkmenistan – When in effect, the treaty signed on 11 September 2012 provides that the withholding tax 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%.

Mongolia – The government has submitted a draft law to parliament that would terminate Mongolia’s tax treaties with Kuwait, Luxembourg, the Netherlands and the United Arab Emirates. The main reason for the proposed termination is that the treaties contain provisions that allow a 0% withholding tax rate on dividends and interest. Resident and nonresident taxpayers have structured their Mongolian investments through these four countries, in particular, the Netherlands. The

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Ministry of Finance sent official notification of the terminations through diplomatic channels and had only one response from the Netherlands, which is willing to renegotiate the treaty provisions on dividends and interest. The bill is now before Parliament for discussion.

Portugal-Uruguay – The 2009 treaty entered into force on 13 September 2012 and applies in Uruguay for taxes of a periodic nature as to income taxes relating to fiscal years beginning on or after that date and on that date in all other cases in Uruguay. The treaty will apply as from 1 January 2013 in Portugal. Under the treaty, a 5% withholding tax applies to dividends paid to a company that holds directly at least 25% of the capital of the payer; otherwise, the rate is 10%. The rate on interest and royalties is 10%.

Singapore-Isle of Man – When in effect, the treaty signed on 21 September 2012 provides that dividends will be exempt from withholding tax. The withholding tax rate on interest will be 12% and that on royalties, 8%.

Singapore-Vietnam – When in effect, the protocol to the 1994 treaty signed on 12 September 2012 provides that dividends derived by the Singapore government from the carrying on of commercial activities will not be subject to taxation and the withholding tax on royalties will be reduced from 15% to 10%. The interest article contains a most favored nation clause providing that, if Vietnam has a tax treaty with any other state that provides for a withholding tax rate for interest that is lower than 10%, the lower rate also will apply to the treaty with Singapore.

Slovenia-Isle of Man – The 2011 treaty entered into force on 12 August 2012 and will apply in Slovenia as from 1 January 2013 (1 April 2013 for the Isle of Man). The treaty only addresses the taxation of individuals.

Uruguay-Liechtenstein – The 2010 treaty entered into force on 3 September 2013 and will apply as from 1 January 2013. When in effect, withholding tax rate on dividends will be 5% if paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%.

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Austria
EU/EEA companies may benefit from special dividend withholding tax refund procedure in "Denkavit" situations
Corporate taxpayers resident in an EU/EEA member state may be entitled to receive a refund of Austrian withholding tax levied on dividends as far back as 2007 for refund claims submitted in 2012 under a special reimbursement procedure under Austrian law. [Issued: 24 September 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/f9fd9359479f9310VgnVCM3000003456f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dttl_tax_alert_Austria_240912.pdf

Netherlands
2013 budget includes repeal of thin capitalization rules
The proposed 2013 budget includes the abolition of the thin capitalization rules. A more specific interest deduction limitation applying to the excessive debt financing of acquisitions of participations was adopted earlier this year and will enter into effect on 1 January. [Issued: 20 September 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/11e0fa6e065e9310VgnVCM1000003156f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dttl_tax_alert_Netherlands_200912.pdf

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Sweden

Budget proposals contain further restrictions on deduction of interest on intragroup debt

The 2013 budget contains final proposals on further restrictions to the deduction of interest on intragroup debt. This measure is designed to finance in part the expected loss of tax revenue following from the proposed lowering of the corporate income tax rate from 26.3% to 22%.[Issued: 20 September 2012]

URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/c368b44e535e9310VgnVCM1000003156f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dttl_tax_alert_Sweden_200912.pdf

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