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In this issue:

Ireland tax authorities outline transfer pricing compliance review program

The Irish Revenue has issued guidance on its new Transfer Pricing Compliance Review (TPCR) program. Ireland introduced a formal transfer pricing regime for companies within the charge to tax in Ireland on their trading activities for accounting periods beginning on or after 1 January 2011. The first corporate tax returns for companies subject to the new regime were filed in September. It is expected that the reviews will commence with immediate effect. Companies will be selected for review from across a wide range of industries and it is not believed that Irish Revenue is focusing on a particular industry segment or type of transaction.

Overview of TPCR program

Under the TPCR, it is intended that authorized officers from Irish Revenue will send out notifications to selected taxpayers inviting them to self-review their transfer pricing and report back to the tax authorities within three months. The self-review will be for a specific accounting period and the report to be prepared for Irish Revenue will need to include information on the following:

- Group structure;
- Details of transactions by type and associated companies involved;
- Pricing and transfer pricing methodology for each transaction or group of transactions;
- Functions, assets and risks of the parties involved;

- List of documentation available/reviewed by the taxpayer; and
- The basis for establishing if the arm's length standard is satisfied.

In most circumstances, an existing transfer pricing study should be adequate. Under the Irish transfer pricing regime, counterparty documentation can suffice where it contains sufficient information relating to the Irish operations and transactions undertaken.

Once the TPCR report is submitted to the Irish authorities, a post-review letter will be issued: either that no further enquiries will take place or issues will be identified that require further consideration and discussion within the TPCR process. The fact that further inquiries are to be addressed within the TPCR process should mean that a formal audit still will not have begun and any additional tax liability will be treated as arising from an unprompted disclosure carrying only mitigated penalties. An audit may be initiated where the outcome of the TPCR is not satisfactory from the perspective of the Irish Revenue.

Comments

The new TPCR process should not be a significant additional burden on taxpayers within the remit of Ireland's transfer pricing regime, in particular where transfer pricing documentation addressing the requirements outlined above already is in place. In addition, the three-month time frame should provide taxpayers with adequate time to ensure that the information required can be gathered and made available.

It should be noted that the TPCR process is not a formal tax audit and that a taxpayer will have the opportunity to make a tax disclosure before it is notified of a formal audit.

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Update on Mexican tax developments

Several recent developments in Mexico could have an impact on companies doing business in the country:

- The Congress approved an extensive reform to the Federal Labor Law (LFT) on 13 November 2012, which may affect the profit-sharing obligations of certain employers in Mexico.
- On 3 December 2012, representatives of the three main political parties and the president signed the "Pact for Mexico," which aims to establish a political agreement, under which the government will commit to take certain administrative actions and the political parties will promote reforms to current legislation and/or approve and enact new laws.
- The Executive Branch submitted the 2013 Economic Package to Congress on 7 December 2012, which contains tax proposals.

New Federal Labor Law

Mexico's Congress approved an extensive reform to the Federal Labor Law (LFT) on 13 November 2012, which will have implications for both Mexican employers and foreign companies doing business in the country. While the general objective of the reform is to improve the terms and conditions of employment and expand employee benefits, the new rules may affect the profit-sharing obligations of employers in Mexico. Further, the government may make consequential amendments to the Income Tax Law reflecting the changes introduced by the LFT in order to prevent what it perceives to be tax avoidance structures involving the use of service companies. The new amended law is effective as from 1 December 2012.

The new labor law introduces restrictions on the use of service companies and procedural rules that will apply when a service company is used. For these purposes, the law provides a definition of a "subcontracting agreement:" an agreement under which a "contractor" (in the services company structure, the services company) carries out work for a "contracting party" (the operating company) or provides services to a contracting party by supplying personnel. The contracting party determines the tasks to be performed by the contractor and supervises the provision of the services or the performance of contracted work. In these circumstances, the contracting party will be deemed to be the employer for all labor law purposes, including social security and profit sharing unless:

- The agreement does not encompass all activities of the same or a similar nature performed at the contractor's workplace (i.e. the contractor does not perform any such activities that are not covered by the contract);
- The agreement is for specialized activities; or
- The work under the agreement is not of the same or a similar kind as that performed by the workers employed by the contracting party.

Subcontracting will be prohibited when the employees of the contracting party are transferred to the contractor so that the contracting party can avoid its obligations under Mexico's labor law. A fine, ranging from 250 to 5,000 times the general minimum wage, will be imposed in such cases.

Affected companies, both Mexican and foreign, will need to carefully review all aspects of their services agreements and works contracts to ensure they are in compliance with the new rules.

Pact for Mexico

The goal of the Pact for Mexico is to expedite the legislative process by having a common understanding for an integrated tax reform that the president would submit to Congress. The following has been agreed upon with respect to taxation in Mexico:

- Tax privileges will be abolished, specifically those relating to tax consolidation;
- Steps will be taken to reduce the underground economy;
- A review of the design of the direct and indirect tax systems will be undertaken; and
- A review will be made of all existing tax incentive programs to ensure they achieve their intended goals.

Economic package

The economic package for 2013 does not propose any major reforms to the federal tax laws; instead, it only introduces some changes contained in the Federal Revenue Bill, including the following:

- The 30% income tax rate would continue to apply in 2013 for corporations and would be extended to apply to individuals (the rate had been expected to be reduced to 29%).
- The surcharge, tax incentive and exemption rates would remain unchanged.
- The 4.9% withholding tax rate on interest paid to a nonresident bank would remain unchanged.
- The new income tax regime for interest applicable to individuals receiving interest from financial institutions would take effect as from 1 January 2014.
- Nonresidents would not be deemed to have a permanent establishment in Mexico with respect to their maquila activities carried out through companies under the "authorized shelter modality."
- A change would be made to the tax exemption applicable to companies whose shareholders are foreign pension and retirement funds. Under existing law, such companies qualify for the exemption provided 90% of their total receipts are derived from real property in Mexico or from the alienation of shares that derive more than half of their value from real property in Mexico. The 2013 budget proposal would exclude the annual inflation adjustment and any foreign exchange gains derived in the relevant period in calculating the 90% threshold.
- The tax exemption applicable to nonresidents who receive interest from financial derivative transactions would apply to all derivative transactions in which part of the transaction is referenced to the TIIE (the Mexican inter-bank equilibrium rate) or instruments covered by the regular exemption.

- The deadline for filing the annual tax return for the Business Flat Tax would remain unchanged for the 2013 return, as would the requirement that taxpayers must provide information on what they used to compute the tax base for determination of the tax. The inability to set off excess flat tax credits against a taxpayer's income tax liability also would not be changed.
- The rate on certain excise taxes would be increased.

The Congress is expected to debate the economic package in the near future with the rules coming into effect as from 1 January 2013.

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Austria:
Update on requirement for expert opinion in connection with R&D credit

Beginning 1 January 2013, taxpayers wishing to obtain the research and development (R&D) tax credit will need to submit their applications through an electronic portal of the Austrian tax authorities in order to obtain an "expert opinion" issued by the Austrian Research Promotion Agency (FFG). The application for the R&D credit itself still has to be made with the tax authorities.

Austrian taxpayers are entitled to a cash credit of 10% of their Austrian R&D expenses if the requirements described in the OECD Frascati Manual 2002 are met. Qualifying R&D includes basic and applied research, experimental development (including industrial design and industrial engineering), as well as unsuccessful R&D work. Qualifying expenses include personnel costs, direct R&D-related expenses, acquisition costs of assets that are sustainably used for R&D purposes (depreciation, however, does not qualify), financial expenses and certain overhead expenses. The credit is available even if the taxpayer is in a tax loss situation.

New documentation requirements relating to the 10% R&D credit were introduced for business years starting on or after 1 January 2012. Previously, a taxpayer only had to submit a form to the tax authorities that included a cost break-down of the relevant R&D expenses before the (corporate) income tax assessment for the relevant year became final. Additional documentation had to be produced only if so requested by the tax authorities or in the event of a tax audit. Now taxpayers also must obtain an expert opinion issued by the FFG. The FFG will examine the taxpayer's R&D activities carried out during the business year and assess whether the Frascati Manual requirements are met. It will then issue an opinion, which the tax authorities will use to determine whether to grant the R&D credit. Although the expert opinion is not legally binding on the tax authorities, it is likely that they will rely on it in most cases. If the FFG opinion is negative, the tax authorities should contact the taxpayer so he can explain his position.

The procedure for obtaining the expert opinion of the FFG is set out in a draft decree prepared by the Ministry of Finance, which is expected to be finalized without any major changes in the near future.

The application for the FFG opinion must be submitted via the electronic portal of the Austrian tax authorities; the portal will be open for submissions as from 1 January 2013. The portal will only allow a maximum of 20 R&D projects to be included – a taxpayer with more than 20 projects will have to aggregate them into a total of no more than 20 "core areas." The application must contain a description of each project (using a maximum of 3,000 characters), including the following information: project title, contents and objective of the project, methodology, innovation, percentage of total R&D expenses (which may be exceeded in practice by no more than 10%), as well as general information on the enterprise and the R&D department. Investments that cannot be attributed to a single project must be listed separately. Once an application is submitted via the portal, it may not be changed and no additional information may be provided (unless so requested by the FFG). The FFG generally will issue its opinion within two months (and no later than four months) and it may contact the taxpayer once to request additional information.

In lieu of the expert opinion, a taxpayer may obtain a "project opinion" from the FFG (the character limit for a project opinion request is 10,000 characters) and request a ruling from the tax authorities that the Frascati Manual requirements are met with respect to the project concerned. If the tax authorities grant the ruling, they will be bound by it for the year of application and up to three additional years. To obtain certainty with respect to the cost base for the R&D credit, a taxpayer can request a notice of assessment from the tax authorities, but this will have to be supported by an opinion issued by a certified public accountant.

Taxpayers that wish to claim the R&D credit for a normal 2012 business year (in the case of a non-regular business year, the new procedure applies for the business year ending in 2013) should begin to collect the relevant data and initiate the application process as soon as possible.

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Australia:
Government comments on long-term sustainable tax base

Australia's Assistant Treasurer delivered a speech on 22 November 2012 focusing on the threat posed to Australia's corporate tax base by digital disruption, emerging structural changes in the global economy and more recent tax planning practices adopted by multinationals. This speech should be read in the context of similar discussions that have been taking place in other countries, and similar issues are being addressed by the OECD in its Base Erosion and Profit Shifting (BEPS) project, which is expected to deliver a progress report in early 2013.

While the speech specifically refers to technology companies, the broader concern of the government is that the "weaknesses that technology companies have exposed in the international tax architecture are spreading to other industries and activities." Accordingly, multinational taxpayers across a wide range of industry sectors should consider the underlying themes in the speech.

Summary of speech

The speech outlines the steps the Australian government is already taking to protect the corporate tax base. These include the recently announced reforms to the general anti-avoidance rule (GAAR) in Part IVA of the *Income Tax Assessment Act 1936* and the transfer pricing rules. In addition, in recognition that these statutory integrity rules are not sufficient, the government has instructed Treasury to develop a scoping paper setting out risks to the sustainability of Australia's corporate tax base and looking at potential solutions. No further details on the development of this paper have been provided.

The tone and content of the speech, as accompanied by the proposed reforms outlined above, indicate that the government has substantial concerns about the practices of multinationals and the impact on the Australian tax base.

The speech specifically identifies particular taxpayers and a particular tax planning practice, known as the "double Irish Dutch sandwich," under which the source of income paid by Australian customers is taken to be in Ireland. Following a series of related party transactions, much of the profit arising from such income is ultimately not subject to tax in any jurisdiction. The example highlights the government's concern with the sales and IP structures adopted by multinationals.

The changes in the way in which economic activities take place challenge the "building blocks of the current international tax architecture," being the concepts of source, permanent establishment and residence. Whilst this architecture, combined with tax treaties, has served stakeholders well in preventing double taxation and in promoting international trade, the concern is that this architecture, coupled with certain domestic tax regimes, can result in "double non-taxation."

With respect to the recently released amendments to the GAAR provisions, it is suggested that these rules "could play a role in countering multinationals who seek to defeat Australia's taxing rights by artificially altering the source or character of profits they generate from economic activity in Australia." The speech also refers to the current reforms to the transfer pricing rules, describing them as a "wholesale modernization" of the regime aimed at making it more effective and relevant to the environment in which multinational taxpayers operate.

Next steps

Taxpayers should monitor the developing debate in Australia and the Treasury project. That said, the issue is not limited to Australia, but reflects the concerns of many countries. In framing a response to the BEPS issues, the OECD has stated that "collaboration (amongst countries) to address BEPS concerns will enhance and support individual governments' domestic policy efforts to protect their tax base whilst protecting multinationals from uncertainty or double taxation."

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Belgium:
Corporate tax measures in 2013 budget

After a challenging budgetary negotiation process, the Belgian government reached an agreement on a federal budget plan for 2013 on 21 November 2012, with the Council of Ministers approving the pre-draft program bill containing some of the measures on 30 November. Further steps and discussion will need to be completed before the budget is finalized. The following summarizes the measures that affect companies.

Capital gains on shares

The current corporate tax regime governing capital gains derived from the disposal of shares would remain intact. Currently three regimes apply:

1. A full exemption on the gains if a one-year holding period and a "subject-to-tax" requirement are met;
2. A 25.75% tax if the subject-to-tax requirement is met, but the holding period requirement is not; and
3. A 33.99% tax if the holding period is met, but the subject-to-tax requirement is not, or if neither requirement is met.

The budget proposal would add a fourth component to the tax treatment of capital gains: gains that otherwise qualify for the full exemption would be subject to a tax of 0.412% (assuming the tax would be subject to the additional 3% crisis contribution).

The new tax would only apply to large companies (not SMEs), with the tax calculated on the net amount of the gains that would be exempt. It would not be possible to net capital gains subject to the 0.412% separate tax against capital losses on shares. The tax would not be deductible, and the taxpayer would not be allowed to offset tax attributes (such as prior year tax losses) against the 0.412% separate tax. This measure is expected to be effective as from tax year 2014, although it is possible that it may apply to capital gains realized on or after 21 November 2012 for taxpayers that have not yet closed their tax year 2013 at the time the law is published in the official gazette.

Notional interest deduction

The current maximum NID rates of 3% for large enterprises and 3.5% for SMEs would remain unchanged. However, to align the NID rate with recent changes to the 10-year government bond rate, the NID rate would be calculated based on the average 10-year government bond rate of applying in July, August and September of the year before the tax year (rather than calculating the rate based on the average for the full year). This new reference rate would apply as from tax year 2014 (based on the 10-year government bond rate for July, August and September 2012), resulting in a lower effective NID rate of 2.742% for large enterprises and 3.242% for SMEs.

Secret commissions tax

Further clarification – likely in the form of an administrative circular letter – would be issued on the application of the 309% secret commissions tax to fringe benefits that are not properly reported. A distinction would be made based on the nature of the expenses and whether it was still possible to tax the fringe benefits in the hands of the beneficiary. The secret commissions tax generally would apply only to fringe benefits for which a company refuses to reveal the identity of the beneficiaries upon audit or where it is no longer possible to subject the beneficiaries to personal income tax on the benefits.

The government also may be considering a reduction in rate of the secret commissions tax.

Withholding taxes and surcharge

As from 1 January 2013, a uniform withholding tax rate of 25% would apply to dividends, interest, royalties and movable income taxable as miscellaneous income. Under current rules, dividends generally already are subject to a 25% rate (with a lower rate of 21% applying under certain conditions and a rate of 10% applying to liquidation bonuses). Interest is generally subject to a 21% withholding tax (with a lower rate of 15% applying to interest on certain government bonds ("Leterme" bonds) and interest from regulated savings deposits in excess of the tax-exempt amount). Royalties are subject to a 15% withholding tax. Under the budget proposals, the rate on liquidation bonuses, interest from Leterme bonds and regulated savings deposits would remain unchanged, as would (under certain conditions) the 15% rate applicable to royalties resulting from authors' and neighboring rights, and from legal and compulsory licenses. Dividends from qualifying residential real estate investment companies would become subject to a 15% withholding tax rate.

The 4% surcharge that has applied since 1 January 2012 would be abolished. Investment income derived in 2012 would remain subject to the surcharge rules, but special transition rules would apply for personal income tax purposes.

Before the end of 2012, a proposal would be presented to the Council of Ministers to bring Belgian law in line with the decisions of the Court of Justice of the European Union on Belgium's withholding tax on foreign investment companies and the dividend withholding tax on foreign investors.

General anti-abuse rule (GAAR)

The tax authorities are expected to publish a circular letter with practical examples on the application of the new GAAR for income tax purposes. General guidelines also would be issued to the tax inspectors relating to the manner and situations in which the GAAR can be applied.

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Costa Rica:
Unilateral relief for double taxation abolished

Costa Rica's National Congress approved an amendment to the Income Tax Law (ITL) on 26 November 2012 that will abolish section 61 of the ITL, a provision that allows foreign taxpayers and/or local withholding agents to request a full or partial exemption from withholding tax (normally levied at a rate of 15% or 25%, depending on the type of income) on certain remittances made abroad from Costa Rica. Although the bill is still awaiting the president's signature and publication in the official gazette before it can become effective (which is expected to take place before the end of 2012), affected companies should take steps to mitigate the impact of the abolition of section 61.

The abolition of double taxation relief is part of the Costa Rican government's efforts to reduce the increasing fiscal deficit.

Under section 61, the Costa Rican tax authorities grant a full or partial exemption from withholding tax levied on dividends, interest, patent and royalty income, commissions, and reinsurance and insurance premiums provided the foreign recipient entity or its withholding agent in Costa Rica can demonstrate to the satisfaction of the authorities that the recipient is not entitled to a credit or deduction in its country of residence for the tax paid in Costa Rica. As relief is only granted for one year, a request for relief must be made on an annual basis. This provision has been frequently used by Mexican and U.S. multinationals, because the tax authorities of those two countries have confirmed in rulings that the Costa Rican withholding taxes under ITL section 61 are not creditable taxes.

Companies that currently benefit from a waiver of withholding tax should consider whether their Costa Rican subsidiaries or branches can make a dividend or dividend equivalent distribution before the new law comes into effect. In the absence of section 61, there will only be two circumstances in which foreign recipients of the relevant Costa Rican income will be able to obtain double tax relief: (1) where they are resident in a country that grants a foreign tax credit or a deduction for Costa Rican taxes paid; or (2) where they can benefit from reduced rates of withholding tax under Costa Rica's tax treaty with Spain (Costa Rica's only tax treaty). That treaty provides for a 5% withholding tax on dividends paid to a company that holds directly at least 20% of the capital of the payer company, and a 12% rate in all other cases (the domestic withholding tax rate on dividends is 15%). The treaty reduces the withholding tax rate to 5% on loan interest where the loan has a term of at least five years; otherwise, the rate is 10% (the domestic rate on interest is 15%). Finally, the treaty provides for a 10% withholding tax on royalties (the domestic rate is 25%).

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Dominican Republic: Tax reform passed

The government of the Dominican Republic passed a tax reform on 10 November 2012 that makes broad changes to the income tax and VAT rules, and abolishes certain incentives and tax exemptions. The reform aims to meet the objectives set forth in the National Development Strategy, ensure that fiscal stability and public debt is consistent with the state's ability to pay, raise revenue to finance education and reduce expenses arising from the various exemptions and tax incentives. Unless otherwise noted below, the new rules apply as from 10 November.

The most relevant changes introduced by the tax reform are as follows:

- The corporate income tax rate will remain at 29% for 2013. The rate will drop to 28% in 2014 and 27% in 2015.
- The withholding tax on dividends paid by a domestic company or profits remitted by a branch or permanent establishment of a foreign entity out of Dominican-source income to a resident or nonresident will be reduced from 29% to 10%.
- The withholding tax on interest (whether paid to a resident or nonresident) will be 10%.
- The tax on income derived from the provision of goods or services to the government or government entities increases from 3% to 5%, which may be credited against the taxpayer's final tax liability.

- New thin capitalization rules will limit the deduction of interest. The deductible amount may not be higher than the result from multiplying the total amount of all interest accrued in the fiscal period by three times the annual average balance of equity divided by the annual average balance of all of the taxpayer´s interest-bearing debt. After applying the annually allowed interest deduction, any excess interest may be carried forward for deduction in the following three fiscal years (subject to the same limitation).
- The VAT rate will increase from 16% to 18% for 2013 and 2014, reducing to 16% as from 2015. A reduced rate of 8% will apply to certain goods (generally food) during 2013, increasing to 11% in 2014, 13% in 2015 and 16% as from 2016.
- Companies established in the export free trade zones will see an increase in the income tax rate applicable on the gross amount of their sales to the local market from 2.5% to 3.5%; a 5% rate will apply to the gross sales of companies in commercial free trade zones (these companies previously were exempt).
- The income tax exemptions on the supply of renewable energy have been abolished and the tax credit granted to self-producers of renewable energy is reduced from 75% to 40%.
- The tax credit granted to the film and audiovisual industry will be available only for production purposes.

While not part of the tax reform law, the National Congress also has approved a tax amnesty, which should be enacted in the near future. The amnesty will cover income tax, VAT, inheritance tax, real estate tax, unpaid debts, etc., and will apply for taxes due for fiscal years 2009, 2010 and 2011. Taxpayers that participate in the amnesty will not be subject to any surcharges, interest or penalties.

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Estonia:
New tax treaty signed with Cyprus

The tax treaty signed by Estonia and Cyprus on 15 October 2012 is the first treaty between the two countries, since Estonia did not apply the 1982 tax treaty between Cyprus and the former Soviet Union.

The new treaty is based on the 2010 OECD model treaty, and its most significant feature is that dividend, interest and royalty payments will not be subject to withholding tax.

Under Estonian domestic law, dividends and (generally) interest paid to a nonresident are not subject to withholding tax. Further, no withholding tax is levied on royalty payments that meet the criteria for application of the EU interest and royalties directive (i.e. at least a 25% participation relationship between the payer and the recipient for the previous two-year period). Thus, from an Estonian perspective, the new treaty will affect only royalty payments that do not fall within the scope of the directive.

Another important aspect of the Cyprus treaty from an Estonian perspective concerns the definition of a permanent establishment (PE), i.e. because the definition of a PE follows the wording of article 5 of the OECD model, it will limit the broad definition under domestic law and consequently reduce the circumstances for creating a PE in the contracting country. (Under Estonian domestic law, a PE is defined as a business unit through which the permanent business activity of a nonresident is carried out in Estonia. A PE is created as a result of an economic activity of (1) a geographically localized or mobile nature; or (2) a representative authorized to conclude contracts in the name of the nonresident.)

The signing of the new tax treaty increases prospects for greater economic cooperation between the two countries and represents the latest addition to Estonia`s and Cyprus`s already extensive treaty networks. The treaty will come into force once ratified by both parties.

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Iceland:
Tax proposals announced for 2013

Iceland's government submitted detailed direct and indirect tax proposals to parliament on 29 November 2012. These proposals follow from the 2013 budget presented in September, which alluded to tax increases but did not provide specifics. The following are the most relevant:

- The rate of the Financial Activities Tax would increase from 5.45% to 6.75% as from 1 January 2013. The Financial Activities Tax is levied on insurance companies and financial institutions (e.g. banks, securities and brokerage companies, and other lending institutions), with the taxable base being the total amount of salaries paid by these entities. The Financial Activities Tax is collected monthly and is deductible for corporate income tax purposes.
- The tax rate on persons with limited tax liability in Iceland on income from derivatives (excluding income from interest rate swaps) would be increased from 10% to 18% for legal entities and to 20% for individuals.
- The tax exemption for capital gains derived by companies on the sale of investment and trading shares (regardless of the length of the holding period) would be extended to apply to gains on derivatives where the underlying assets are shares. The current "exemption," which takes the form of a deduction from the income base, applies to gains on shares in resident and nonresident companies (EU and OECD countries).
- The withholding tax on interest paid to nonresidents would be abolished as from 1 January 2013.
- The general rate of the social security contributions (required on all remuneration paid for dependent personal services) would be lowered from 7.79% to 7.69%.
- The VAT rate on hotels and accommodation would be increased from 7% to 14% as from 1 May 2013.

The proposals are expected to be enacted by the end of December 2012 (although it appears there is not majority support for the VAT rate increase).

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Italy:
Incentives introduced for innovative start-up companies

A decree law published by the Italian government on 18 October 2012 introduces a new type of company, the "innovative start-up company," and temporary corporate tax incentives for such companies, with a view to encouraging technological development and promoting employment in the country. The regime, which applies as from 20 October 2012, still must be approved by the EU, with specifics of implementation of the incentives to be provided in a Ministerial Decree.

For a company to qualify as an innovative start-up, all of the following requirements must be met:

- It must be resident and subject to tax in Italy;
- It must have been established for no longer than 48 months (and may not result from a merger, split-off or transfer of a business);
- It must not be listed on a stock exchange;
- The majority of the company's share capital and voting rights must be owned by individuals;
- The company may not be distributing profits or dividends;
- The exclusive purpose of the company must be the development, production and marketing of innovative products and services with high technological value;
- The total turnover of the company may not exceed EUR 5 million as from the second year of operations; and
- One of the following requirements must be met:
  - R&D costs (except lands and buildings) as shown in the most recent financial statements are at least equal to 30% of the higher of the value of production and total costs; or

- o At least one-third of the total work force are individuals with higher level education (e.g. PhD, etc.); or
- o The company holds at least one patent related to its business activities.

The following tax incentives are available for the period 2013 to 2015:

- A corporation that invests in a qualifying innovative start-up company will be able to deduct an amount equal to 20% of the investment up to a maximum of EUR 1,800,000 annually (provided the investment is held for at least two years). The deduction will be 27% for investment in start-ups operating in the social or energy sectors;
- Innovative start-up companies will not be subject to the provisions relating to "non-operating companies," including the measures applying to taxpayers showing "a recurrent loss position;" and
- An exemption will be granted from stamp duties and fees for registration and filing with the registrar of companies.

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Malta:
2013 budget bill announced

Malta's budget bill for 2013 published on 29 November 2012 contains several favorable tax proposals designed to maintain financial stability and ensure that the country continues to be an attractive venue for investment. These include broadening the tax exemption for royalties to trademark royalties, extending the participation exemption to branch profits and introducing the possibility of developing rules on establishing a fiscal unity between companies.

Publication of the bill was preceded by a budget speech on 28 November where the Minister of Finance announced that the Maltese economy expanded by 2.1% in real terms during 2011 and is expected to grow by 1.2% in 2012, while the EU economy is expected to shrink by 0.4% in 2012. During 2012, a number of economic sectors experienced a growth in value added, including financial services, ICT, professional, technical and scientific services, together with arts, entertainment and leisure. This translated into the creation of new jobs, so that Malta now has the fifth lowest unemployment rate in Europe.

Royalty exemption

Since 2010, royalties payments derived from patents in respect of qualifying inventions, whether registered in Malta or elsewhere, are exempt from tax in Malta, irrespective of the place where the underlying R&D has been performed. This exemption was extended in 2012 to cover royalty income from copyrights, although guidelines for obtaining the exemption have not yet been issued. The 2013 budget bill includes a proposal to further extend the exemption to include royalty income from trademarks.

Participation exemption

Since 2007, Malta has operated a full participation exemption with respect to dividends and capital gains derived from qualifying shareholdings. A qualifying shareholding exists where a Maltese company holds at least 10% of the equity shares in an eligible entity, has made an equity investment of at least EUR 1.2 million in an eligible entity that is held for at least 183 days or where any one of four supplemental, alternative tests is satisfied. The 2013 budget includes a proposal to extend the participation exemption to include profits and gains derived by a Maltese company that are attributable to a permanent establishment (PE) outside Malta, or to the transfer of such PE. The profits and gains would be calculated as if the PE were an independent enterprise operating in similar conditions and at arm's length.

Fiscal unity concept

Finally, the budget includes a proposal that would open the door for the introduction of a fiscal unity regime. It is proposed that the Minister of Finance would be empowered to make rules under which bodies of persons under common ownership would be permitted to elect to compute and bring to charge their profits and losses on a collective basis as a single taxpayer.

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Russia:
Tax treaty expands in 2013

Russia recently has accelerated the ratification process of signed treaties and protocols. This article briefly overviews the main provisions of the treaties with Argentina and Latvia, and the protocol to the treaty with Switzerland, all of which become effective on 1 January 2013. It should be noted that two previously ratified treaties – those with Chile and Cyprus – also come into effect on the same date.

Treaty with Argentina

The 2001 treaty between Russia and Argentina, which entered into force on 16 October 2012, is generally based on the OECD model treaty. The treaty provides for reduced rates of withholding tax on dividends, interest and royalties, and contains an extensive exchange of information provision. The withholding tax on dividends will be limited to 10% when the beneficial owner of the dividends is a company that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. Interest and royalties will be subject to a maximum withholding tax of 15%.

Treaty with Latvia

The 2010 treaty between Russia and Latvia entered into force on 6 November 2012 is also generally based on the OECD model treaty and sets the stage for closer cooperation between the tax administrations of the two countries to combat tax avoidance by means of an exchange of information. The treaty is a positive and important step in the further development of economic cooperation between Russia and Latvia, which is necessary considering the growing volumes of trade between the states.

The treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company, provided the amount invested exceeds USD 75,000 or its equivalent in Russia or Latvia’s national currency; otherwise, the rate will be 10%. The reduced rate of 5% on dividends, combined with Latvia’s new holding company regime that will apply as from 2013, will make Latvia an attractive location for holding companies, for structuring investments in the EU and for holding shares in Russian entities. The withholding tax on interest will be 5% for interest paid on loans between banks or other financial institutions; otherwise, the rate will be 10%. These rates significantly reduce Russia’s domestic rate of 20%. Royalties will be subject to a maximum withholding tax rate of 5%, again a beneficial provision considering the 20% rate under Russia’s domestic law.

The definition of a permanent establishment is based on that provided in the OECD model, which will provide more certainty for Latvian and Russian investors planning their activities Russia or Latvia, respectively. Deviating from the OECD model, the treaty provides that a construction or building site will create a PE after nine months.

Protocol to treaty with Switzerland

The 2011 protocol to the Russia-Switzerland treaty entered into force on 9 November 2012 and will apply as from 1 January 2013

The protocol provides for an exemption from withholding tax on interest income received by residents of Switzerland, which may make Switzerland more attractive as a finance location. In addition, under new anti-abuse provisions in the protocol, the unilateral Swiss anti-abuse decree (which in many cases limited the amount of treaty protected income that could be on paid abroad to 50%) will no longer apply, which will be beneficial for IP companies, in particular.

Another significant change made by the protocol concerns the taxation of capital gains derived from the disposition of shares in real property companies (i.e. companies with more than 50% of their assets invested in real property). The protocol allocates priority taxing rights to the state in which the immovable property is located. The treaty currently allocates taxing rights to the country in which the selling entity is resident.

The other income article is amended so that Russian-source income of a Swiss resident derived from the alienation of certain types of movable property will be exempt from tax in Switzerland only if actual taxation of the gains in Russia is confirmed. Finally, the protocol provides for a new and OECD-compliant exchange of information clause.

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Taiwan:
New tax agreement with Germany in force

The tax treaty between Taiwan and Germany, which was signed in 2011, entered into force on 7 November 2012 and will apply to income derived on or after 1 January 2013. Germany is Taiwan’s largest European trade partner and the largest economy in Europe and the treaty is expected to boost future trade and investment activities between the two countries. This is Taiwan’s 24th tax treaty, while Taiwan was one of the jurisdictions missing from Germany’s extensive tax treaty network.

This article looks at the key features of the treaty from both Taiwan and Germany tax perspectives.

Permanent establishment

The treaty includes the general OECD definition of a permanent establishment (PE). However, unlike the OECD model, it provides that a building site, construction, assembly or installation project will constitute a PE if it lasts more than six months, a much stricter threshold than the 12 months provided in the OECD model treaty. On the other hand, an enterprise providing services, including consultancy services, will create a PE in the other jurisdiction only if the enterprise, through employees or other personnel engaged for the same or a connected project, provides services for a period or periods exceeding six months in the aggregate within any 12-month period. This services PE article provides an opportunity for companies in either jurisdiction to benefit from the exemption under the business profits article.

Dividends

The maximum withholding tax on dividends paid to a resident of the other country is 10% and there is no participation requirement to enjoy this preferential rate. The 10% rate is a significant reduction in the 20% withholding tax under Taiwan’s domestic law.

On German side, the withholding tax rate, which under German domestic law, including the solidarity surcharge, is 26.375% (or 15.825% for dividends paid to a nonresident corporation in a non-treaty/non-EU directive situation where the corporation has a certain level of substance and application is made to the Federal Central Tax Office) can be reduced to 10%. However, the rate will be 15% where the dividends are distributed by a “real estate investment company,” as defined in the German Act on Real Estate Stock Corporations with Listed Shares.

The treaty also contains a most favored nation clause. If Taiwan subsequently concludes a tax treaty with another OECD country that reduces the withholding tax rate on dividends below 10%, that lower rate will apply under the treaty with Germany.

Interest

The maximum withholding tax rate on interest paid to a resident of the other country is 10%, which should encourage financing and investing activities between Taiwan and Germany. On the Taiwan side, the 10% cap is helpful because it is lower than the 15% or 20% withholding tax under domestic law levied on interest paid to nonresidents, depending on the type of debt instrument. A 15% rate will apply where the interest is paid by a real estate investment trust or a real estate asset trust governed by the provisions of the Taiwan Real Estate Securitization Act.

Germany generally does not levy withholding tax on German-source interest under domestic law, except on interest on deposits with German banks/financial institutions (25%) and certain hybrid instruments, for example, typical silent partnerships, convertible bonds and certain profit participating loans where a German resident company is the debtor. In these cases, the withholding tax is 26.375%, including the solidarity surcharge. The treaty reduces the rate to 10%.

Royalties

The maximum withholding tax on royalties paid to a resident of the other country is 10%. This is a significant reduction in the 30% royalty withholding tax under Taiwan's domestic law and the 15.825% tax, including the solidarity surcharge, on the German side.

Procedural rules for taxation at source

The treaty contains procedural rules for the withholding of tax at source, requiring tax to be withheld at the domestic rate, with the possibility of claiming a refund (for the difference between the tax at the domestic rate and the tax at the treaty rate) by the end of the fourth year following the calendar year in which the tax was withheld on the dividend, interest, royalty or other items of income. However, if a contracting state has procedures for a taxpayer to obtain benefits under the treaty, the reduced tax rate or exemption will apply according to those procedures.

Under Taiwan's Regulations Governing the Application of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income, the withholding tax rates on dividends, interest, royalties or other items of income can be reduced to the relevant treaty rate, provided a tax residency certificate and beneficial ownership letter are presented. If the documents are not sufficient at the time the income is paid and tax withheld, the taxpayer can submit a refund application within five years from the date of the withholding (i.e. the above four-year deadline does not apply).

From a German tax perspective, the German payer company has to withhold tax according to the German domestic tax law and the recipient parent company may apply for a reduction to the lower rate of withholding tax under the treaty if certain substance requirements are met. A refund is possible until the end of the fourth year following the calendar year in which the tax was withheld. However, the payer company also can apply the reduced rate of withholding tax under the treaty if the parent company obtained an exemption certificate from the German Federal Tax Office before the payment was made. The exemption certificate is valid for a maximum period of three years.

Other provisions

To be in accordance with German domestic law, the protocol to the treaty and the treaty itself contain clarifications and regulations to the articles that differ from provisions in Taiwan's other treaties. The following are the most relevant:

- From Germany's side, dividends and interest may be taxed in the country in which the income arises when the dividends and interest are derived from rights or debt claims carrying a right to participate in profits, including income derived by a silent partner from his participation as such, or from a loan with an interest rate linked to profits of the borrower or from "profit-sharing bonds" as defined under domestic law, and provided the dividends and interest are deductible in calculating profits. This measure does not apply to Taiwan-source dividends or interest because Taiwan does not have any domestic rules regulating these situations.

- To prevent individuals who cease to be German tax resident from avoiding expatriation tax by using the Taiwan-Germany treaty, the capital gains article provides that if an individual was a resident of Germany for at least five years and subsequently becomes a resident of Taiwan, the German tax authorities can tax the capital appreciation of shares in a company resident in Germany that are attributable to the individual's period of residence in Germany. As Taiwan does not have an expatriation tax, this article will not apply to Taiwan.

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In brief

China – The Ministry of Finance and the State Administration of Taxation have issued further guidance and clarifications on the VAT reform pilot project. The guidance is particularly relevant for the transportation sector.

European Union – Advocate General (AG) Jääskinen has issued two opinions in the infringement proceedings initiated by the European Commission over VAT grouping. In *European Commission* v *Ireland*, the AG has concluded that allowing nontaxable persons to be members of a VAT group does not infringe the VAT directive. The Commission also has challenged a number of member states on the issue of whether nontaxable persons can be members of a VAT group. In *European Commission* v *Sweden*, the AG was of the opinion that if a member state provides for VAT grouping, the option cannot be restricted to the financial and insurance sector (as is the case in Sweden). The Court of Justice of the European Union will now rule in the cases.

European Union – The European Commission has presented an Action Plan for an EU response to tax evasion and avoidance and has adopted two Recommendations. The first Recommendation envisages an EU stance against tax havens going beyond the current international measures. EU member states are encouraged to identify tax havens using common criteria and place them on national blacklists. The second Recommendation looks at legal loopholes and suggests that member states reinforce their tax treaties to prevent them from resulting in no taxation at all. It also recommends the adoption of a GAAR common to all member states. The Plan will now go to the Council of Finance Ministers and the European Parliament.

France – The Prime Minister has announced planned changes to the VAT rates, intended to take effect on 1 January 2014. The plan is to increase the standard rate from 19.6% to 20% and the intermediate rate from 7% to 10%. The 5.5% reduced rate would drop to 5%. The increases in the standard and intermediate rates have been presented as a means of raising revenue to fund a direct tax credit for businesses, while the reduction in the reduced rate is intended to support consumption and social aims by reducing the cost of food, domestic energy and other essentials. The proposals still must be approved by parliament.

Tax treaty round up

At the end of each month, *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

Austria-Czech Republic – The protocol to the treaty entered into force on 26 November 2012 and will apply as from 1 January 2013. The protocol contains a clause under which if the Czech Republic agrees with all other EU member states that royalties may be taxed at a rate of 10% in the source state, that rate also will apply instead of the 5% rate that currently applies under the treaty with Austria.

Cyprus-Poland – The 22 March 2012 protocol to the 1992 treaty entered into force on 9 November and will apply as from 1 January 2013. When in effect, the protocol provides for a 0% withholding tax on dividends paid to a company that holds directly at least 10% of the share capital of the payer company for a period of two years; otherwise, the rate will be 5%. The withholding tax on interest and royalties will be 5%.

Estonia-Cyprus – See article in this issue.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/121214_8.html

Germany-Ireland – The 2011 treaty entered into force on 28 November 2012 and will apply as from 1 January 2013. When in effect, the treaty provides for a 5% withholding tax on dividends paid to a company (other than a partnership or German real estate investment trust company) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 0%. The rate on royalties may be adjusted, however, if Ireland amends its rules to allow a greater amount of royalties to be disregarded for purposes of the Income Tax Act and if Germany renegotiates the royalties article of the treaty.

India-Uzbekistan – The 2012 protocol to the treaty between India and Uzbekistan entered into force on 20 July and applies generally in Uzbekistan as from 1 January 2013 and as from 1 April 2013 in India. The protocol reduces the withholding tax on dividends, interest and royalties from 15% to 10%.

Japan-New Zealand – When in effect, the treaty signed on 10 December 2012 provides for a 0% rate of withholding tax on dividends paid to a company that holds directly or indirectly at least 10% of the voting power of the capital of the payer company for the six-month period ending on the date entitlement to the dividends is determined and that the company that is the beneficial owner of the dividends (1) is a qualified person under the limitations on benefits (LOB) provision in the treaty; (2) has at least 50% of its voting power in the aggregate owned directly or indirectly by five or fewer companies referred to in (1); or (3) is granted benefits with respect to those dividends under a specific clause of the LOB. The rate in all other cases will be 15%. The rate on interest will be 10% and that on royalties, 5%.

Latvia-Turkmenistan – The treaty signed on 11 September 2012 entered into force on 4 December 2012 and will apply as from 1 January 2013. When in effect, 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%.

Latvia-United Arab Emirates – When in effect, the treaty signed on 11 March 2012 provides for a 5% withholding tax on dividends and royalties and a 2.5% rate on interest.

Lithuania-Mexico – The 2012 treaty entered into force on 29 November 2012 and applies as from 1 January 2013. When in effect, the treaty provides for a 0% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Mauritius-Nigeria – Mauritius and Nigeria signed a tax treaty on 10 August 2012, but the treaty is not yet in force. When in effect, the treaty provides for a 7.5% withholding tax on dividends, interest and royalties.

Mexico-Ukraine – The 2012 treaty entered into force on 6 December 2012 and applies as from 1 January 2013. When in effect, the withholding tax on dividends will be 5% where the dividends are paid to a company that holds directly at least 25% of the shares of the payer company; the rate in all other cases will be 15%. Interest and royalties will be subject to a maximum withholding tax rate of 10%.

Russia – See article in this issue on the treaties with Argentina, Chile, Cyprus, Latvia and Switzerland.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/121214_12.html

South Africa-Democratic Republic of the Congo – The 2005 treaty entered into force on 18 July 2012 and applies as from 1 January 2013. When in effect, the treaty will provide for a 5% withholding tax where dividends are paid to a company that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Taiwan-Germany – See article in this issue.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/121214_13.html

United Kingdom-Isle of Man – The two governments confirmed on 7 December 2012 that they will be adopting tax information sharing arrangements. They will adopt new enhanced reciprocal tax information sharing arrangements, under which they will automatically exchange information on tax residents on an annual basis. The approach will follow closely the FATCA intergovernmental agreement currently being negotiated by the Isle of Man with the U.S.

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Australia
Draft changes to GAAR legislation released
The government has released exposure draft legislation that would amend the general anti-avoidance rule found in Part IVA of the "*Income Tax Assessment Act 1936*." [Issued: 26 November 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/f25fc3b3c804b310VgnVCM3000003456f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dttl_tax_alert_Australia_261112.pdf

Brazil
More changes to IOF on "short-term" external loan transactions
The government published a decree on 4 December 2012 that amends the Financial Transactions Tax by again changing the definition of "short-term" for purposes of inbound loans and offshore bond issues. [Issued: 6 December 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/e7c1e04d8017b310VgnVCM3000003456f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dttl_tax_alert_Brazil_061212.pdf

Ireland
2013 budget announced
The 2013 budget, presented by the Finance Minister on 5 December 2012, confirms the government's commitment to maintaining the 12.5% corporation tax rate and contains measures to stimulate the indigenous small and medium-sized enterprise sector. [Issued: 5 December 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/11d817832ee6b310VgnVCM1000003256f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dttl_tax_alert_Ireland_051212.pdf

United Kingdom
Autumn statement contains measures to encourage growth
The Chancellor's Autumn Statement – an outline of the budget and economic plans – was presented on 5 December 2012 and contains tax measures designed to encourage growth. These include a further reduction in the rate of corporation tax to 21% as from April 2014. [Issued: 5 December 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/69d22a321dc6b310VgnVCM3000003456f70aRCRD.htm
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