Issue n. 29
June 2013

INPACT

E-Tax Bulletin

Summary

Pag. 2 - Cyprus

Pag. 4 - France

Pag. 6 - Germany

Pag. 7 - Guatemala

Pag. 8 - Netherlands

Pag. 10 - Russia

Pag. 11 - Spain

Pag. 14 - Switzerland

Pag. 15 - United Kingdom

Note from the Editor

Welcome to the latest issue of the INPACT E-Tax bulletin. Can I thank all contributors for their efforts in adding to what is a bumper early summer issue.

We would not be able to produce the bulletin without your help, and it continues to be an important tool in sharing tax knowledge throughout the INPACT community. This is one of the important aims of the INPACT International Tax Committee (ITC). It is especially important in this fiscally challenging climate that we share annual changes or budgets relating to individual countries tax regimes and I welcome these summaries from existing and new contributors when they are available.

Please do not hesitate to contact me or the INPACT administration if you have any questions or recommendations.

Have a lovely summer.

Mark Moore, Editor

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E-Tax Bulletin

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CYPRUS

Cyprus adopts intellectual property rights 'box'

In the wake of similar mover by other European jurisdictions, Cyprus has announced plans to introduce an 'IP Box' to protect investment in R&D. The following article considers the proposals.

The package of measures to promote economic growth adopted by the Cyprus House of Representatives in late May 2012 included the introduction of tax incentives aimed at boosting the island's predominantly service-oriented economy. The most notable of these is a series of incentives and exemptions relating to income from intellectual property rights, commonly known as an intellectual property rights box ('IP Box').

The IP Box concept has already been successfully implemented in other EU member states including Luxembourg, the Netherlands, Ireland and most recently the United Kingdom. The underlying rationale is to stimulate a flow of investments into the research and development sector by providing tax incentives to the private sector. Although the financial benefits of successful investment in R&D generally accrue to the private sector, which funds it, the benefits of successful innovation are enjoyed by the public at large and for this reason states are inclined to encourage investment in R&D.

Intellectual property projects are ideal for cross border planning by reason of the mobility of intellectual property rights, which do not consist of tangible assets and can therefore be easily migrated between different jurisdictions and tax systems according to prevailing circumstances and developments in different tax jurisdictions. By amending its tax legislation Cyprus hopes to consolidate its position as a hub for the cross-border holding and exploitation of intellectual property rights.

The amendments to the income tax laws are effective from January 01, 2012 and apply to all expenditure for the acquisition or development of intangible assets incurred by a person carrying on a business, including the rights set out in the Patent Law of 1998 as amended, the Intellectual Property Rights Law of 1976 as amended and the Trademarks Law, Cap. 268 as amended. The amendments effectively apply to all categories of intellectual property.

The main changes are summarized below.

I. Five year amortization period

Following the amendments, the cost of acquisition or development of an IP right acquired by a Cyprus company ('CyCo') may be capitalized and amortised on a straight line basis over five years, giving an annual writing down allowance of 20 per cent.

This is a considerable improvement on the previous regime, in which amortization rated were determined by reference to the estimated useful life of the underlying asset. For example, if a patent had a validity of 20 years and the writing down allowance would be 5 per cent per annum.

The acceleration of writing down allowances will result in substantial cash flow benefits by reason of the deferral of tax liabilities, especially where the value of the IP asset is substantial.

II. 80 per cent exemption of profits from exploitation of IP rights

Four-fifths of the profit earned from the use of intangible assets (including any compensation for improper use) is disregarded for tax purposes. Furthermore, any dividend income generated out of royalty income earned by a CyCo and paid to its non-resident shareholders is fully exempt from Cyprus tax of any description. As such, there is minimal tax leakage in Cyprus in the context of a structure involving a CyCo generating royalties under licensing or similar arrangements with third parties and subsequently distributing profits in the form of dividends to its shareholders.

III. 80 per cent exemption of profits on disposal

Four-fifths of any profit resulting from the disposal of relevant intangible assets is disregarded for tax purposes. However, in most cases a more beneficial result from the taxpayer's viewpoint can be achieved by holding the assets concerned in a separate company and disposing of the shares in that company, rather than the assets themselves. This option, which is discussed more fully below, would result in full exemption of the gain, as well as stamp duty savings, since gains on disposals of qualifying securities (which includes shares) are exempt from all forms of taxation in Cyprus except to the extent that they derive from the disposal of immovable property located in Cyprus.

IV. Overall, an effective tax rate of less than two per cent, the lowest by far in the EU

The amount subject to tax under the new rules is calculated after deducting the amortization of the assets, interest costs of financing the acquisition or development of the assets and any other direct expenses, and dividing the resultant amount be five. Applying the Cyprus corporate income tax rate of 10 per cent, the lowest in the EU, produces an effective tax rate of two per cent of the net income. Given that generous deductions are available against gross income, the effective rate should generally be well below two per cent, as the example at the end of the article shows.

This rate compares very favourably with Cyprus's main competitors: the United Kingdom's optional new 'patent box'

regime introduced in the Finance Bill 2012 and applicable from 1 April 1, 2013 (but not fully operational until 2017) gives an effective rate of 10 per cent on relevant income. The Luxembourg and Netherlands schemes are somewhat better, with effective tax rates of 5.76 per cent and 5 per cent respectively, but they are both considerably less beneficial than Cyprus.

V. Advantages and savings compared to the earlier regime

A. Tax and economic advantages

Before the new rules were enacted, a Cyprus licensing arrangement would typically be structured as follows:

1. A company in a low or no tax jurisdiction (the 'IP Owner') was established and maintained with the sole purpose of acquiring and owning IP rights;
2. The IP Owner would then license the use of its IP rights to a CyCo which would be set up for the purpose of acting as an intermediary licensing vehicle;
3. CyCo would sub-license the right to exploit the IP rights to another entity, usually registered and tax resident in a country with double tax treaty with Cyprus;
4. The royalty fees charged by the IP Owner would usually be equal to approximately 90 per cent of royalty income generated by CoCy leaving a 10 per cent margin subject to Cyprus tax.

Following the introduction of the IP Box, there is no longer a need for a separate IP Owner since CyCo itself can now become the IP Owner with substantial tax savings and planning opportunities.

B. Enhancing legal and jurisdictional protection, eliminating unnecessary costs and red-tape

The new rules will not only result in substantial economic and tax savings opportunities but will also remove unnecessary bureaucracy and reduce administrative and compliance costs. Under the new rules, a CyCo can hold the IP asset and enter into licensing agreements with entities located in jurisdictions accessible to low withholding tax rates, whether via a double tax agreement or the EU interest and Royalties directive, which provides a uniform tax regime for royalties paid throughout Europe. Cyprus has an extensive network of double tax treaties and is also a member of the EU, giving Cyprus resident companies the benefits of the Interest and Royalties directive. Cyprus therefore an ideal location for the establishment and maintenance of the IP Owner which will generate royalty income that will be substantially exempt from taxation in Cyprus. There will no longer be any need to maintain a structure involving entities in several jurisdictions, with the costs that that entails.

C. From a 'Low Tax' to a 'No Tax' disposal of the IP asset

While the new rules make it possible to secure 80 per cent exemption of gains on disposal of an intellectual property asset, another option would be to dispose of the shares in the IP Owner rather than the underlying assets. This option would give 100 per cent exemption, since the disposal of securities is free from all forms of tax in Cyprus except to the extent that any gain derives from immovable property situated in Cyprus. There is no minimum holding time or participation percentage threshold to qualify for exemption. Furthermore, no stamp duty would be payable on the transaction itself. This, combined with the fact that the acquisition or contribution of the IP asset to the share capital of CyCo in the first place can be effected in a tax efficient way without any tax payable in Cyprus, makes such a structure highly attractive from a tax viewpoint.
In summary, it is possible to acquire IP rights for development purposes and subsequently effect a tax free exit by disposing of the shares in the IP Owner. This option becomes even more attractive when combined with a Cyprus International Trust which can act as the shareholder of the IP Owner (see below).

VI. Using a Cyprus International Trust as a shareholder and financier of the CyCo IP Owner

A Cyprus international trust receiving dividends from a CyCo IP Owner (the ultimate source of which is royalty income generated by CyCo) will not be subject to any form of taxation in Cyprus. At the same time, the trust can accumulate income which can be converted into capital at the year end without any Cyprus tax consequences for the trust (to the extent that no beneficiary is a Cyprus tax resident.)
The Cyprus International Trust can also provide interest-bearing finance to the IP Owner for the purpose of acquiring the IP Asset or for working capital. The interest expenses of CyCo under such financial arrangement will be tax exempt in the hands of the trust while being deductible in the hands of CyCo, which optimizes the structure even further from a tax perspective.

VII. The Russian 'Monetka' case in the context of the new law

Under the Cyprus-Russia double tax treaty and in particular Article 12 (i), royalties paid to Cyprus from Russia do not suffer any form of withholding tax in Russia as long as the

double tax treaty requirements are met.
On May 217, 2012 the Federal Arbitrazh Court of the Urals District in Russia its long awaited ruling in Trading House 'Monetka', a high profile intellectual property case in Russia with a substantial Cyprus tax element which attracted a good deal of attention.
The facts of the case are as follows. Element-Trade LLC, a company incorporated and resident in Russia, exploited the trademark MONETKA and paid royalties to a Cyprus company acting as an intermediary licensing vehicle. The Cyprus company paid the royalties it received to the ultimate owner of the trademark, a British Virgin Islands company.
The Russian tax authorities contended that this structure was introduced purely for the purpose of avoiding withholding taxes on royalties paid from Russia to a company in the British Virgin Islands, which is on the Russian Ministry of Finance's blacklist of tax havens, by routing the royalties through Cyprus. The decision of the court was in favour of the taxpayer, but nevertheless the case is a wake up call for taxpayers to take note that the Russian tax authorities are becoming increasingly methodical in preparing and proving their claims and that they are particularly intolerant of structures which lack substance.
The recent changes in Cyprus remove one area of vulnerability from the taxpayer's point of view, namely the need for a British Virgin Islands company and an intermediate 'conduit'. As from January 1, 2012 the Cyprus company can act as owner of the trademark and the royalties can be paid direct to the owner. This greatly enhances the infrastructural substance of the structure and reduces the risk of a successful challenge by the tax authorities. Management substance issues will also have to be taken into account so as to ensure that double tax treaty relief will remain intact.

VIII. Vat dimension

The acquisition of intellectual property rights from anywhere in the world by a Cyprus company is treated as a service rendered to the company which will create an obligation for it to register for VAT and to account for VAT on services received in accordance, with the reverse charge rule. Other things being equal, no registration obligation will be created if the intellectual property right is developed organically rather than being purchased.
If the company charges royalty fees to taxable persons within the European Union area it will also have to register for VIES.

IX. Conclusion

In most cases immediate economic and tax savings can be accomplished by transferring intellectual rights currently held by entities located in low or no tax jurisdictions to Cyprus resident companies in order to take advantage of the new exemptions. The transfer of IP rights into a Cyprus company will not attract any form of taxation in Cyprus and the new benefits and substantial exemptions will become available as soon as the asset is transferred.
The new regime provides very attractive opportunities for structuring the exploitation of IP assets through Cyprus and in particular through the use of Cyprus-resident IP Owners, especially in the context of Cyprus's extensive network of double tax treaties under which the withholding tax rate on royalty income is either eliminated altogether or substantially reduced.

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FRANCE

NEW LAWS IN FRANCE IN 2013 AND INCOME TAX DECLARATIONS

- **"LOI DUFLOT"**

The Loi Scellier, which ceased to exist on the 31st December 2012, has been replaced by the Loi Duflot, named after Cécile Duflot, minister of housing. This is a new tax reduction with stricter conditions than the previous law.
The Loi Duflot is a new incentive for investing in new-build energy-saving. In order to benefit from this tax exemption, French taxpayers must invest between 1st January 2013 and 31st December 2016.
The tax reduction system is a maximum of 18 per cent of the investment made (instead of the previous 21 per cent) and 29 per cent for investments in French overseas departments and territories. In case of renovation works, the amount can be added to the purchase price.

The total reduction is limited to 5.500 euros per square metre and 300.000 euros for the invested amount - spread over nine years. If there is a surplus one year, it cannot be carried forward to the following fiscal year. The owner must rent out the accommodation for a minimum period of nine years and renting must take place within 12 months of construction.
The most important change is that the rent is determined by decree and must be inferior to the market price. The level of resources is determined by decree too and is lower than before. Other differences with the Loi Scellier are:

- renting cannot involve children or parents,
- it is impossible to accumulate these fiscal advantages with other laws like Loi Robien for example,
- the tax reduction can be applicable to two accommodations per year,
- the concerned areas have been reduced.

Finally, the Loi Duflot is more restrictive and it is important to pay attention to the new conditions.

- **CICE (Crédit d'Impôt Compétitivité Emploi)**

The CICE has been introduced to improve the competitiveness of all business structures in France, in an effort to cut employer's Social Security contributions.
To benefit from this new tax credit, businesses must employ salaried workers and be liable for corporate or income tax. But in some particular cases, firms that are temporarily exempt from tax may benefit from it too.
The tax credit is based on all wages (paid during the calendar year) which are not more than 2,5 times the "SMIC" (French minimum wage). The rate is four per cent for wages paid in 2013 and six per cent for the following years.
To partly finance the CICE, new VAT rates in France should apply from 1st January 2014:

- 20 per cent instead of 19,6 per cent for the standard rate,
- 10 per cent instead of 7 per cent for restaurants, transport, renovation and improvement works and certain medicines,
- 5 per cent instead of 5,5 per cent for food, water and non alcoholic beverages and books.

- **INCOME TAX RETURN FOR 2012 UND CHANGES FOR 2013**

The deadlines are the following:

- **Monday 27th May 2013** for residents who fill in the "paper" declaration,
- the online declarations must be submitted by:
  - **Monday 3rd June 2013** for residents living in the French départments 1 to 19,
  - **Friday 7th June 2013** for residents living in the French départments 20 to 49,
  - **Tuesday 11th June 2013** for residents living in the French départments 50 to 974.
- for non-residents, there are two deadlines (for "paper" and online declarations):
  - **Monday 17th June 2013** for Europe, Monaco, the Mediterranean Coast, North America and Africa,
  - **Monday 1st July 2013** for Central and South America, Asia, Oceania and all the other countries.

Income thresholds are the same as last year, except for annual income over 150.000 euros there is a new tax rate of 45 per cent.

Income Tax 2012 (per person)	
Tax Band	**Rate**
Up to 5.963 €	0 %
5.964 € to 11.896 €	5,5 %
11.897 € to 26.420 €	14 %
26.421 € to 70.830 €	30 %
70.831 € to 150.000 €	41 %
From 150.000 €	45 %

There is a discount (décote) for taxpayers who are paying less than 960 euros in income tax in 2012 (instead of 878 euros last year), but tax relief has been reduced for 2013 income:

- the maximum allowance granted by the quotient familial has been reduced from 2.300 euros to 2.000 euros for each dependant,
- the maximum annual tax relief granted for investments or services has been reduced from 18.000 euros to 10.000 euros,
- the 10 per cent allowance for professional costs is limited to 12.000 euros (instead of 14.157 euros in 2012).

And finally, there is another important change for income earned in 2013: if income such as savings and dividends is over

2.000 euros, there will be no more withholding tax of 24 per cent (21 for dividends). This income will be considered as part of total income. As of 1st January 2013, 24 per cent and 21 cent will be taxed at source and the amount will be adjusted according to the tax return.

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GERMANY

Tax news from Germany

In spring a new law was released to tax dividends if not more than 10 % shares are held

What are the basics?

If a German corporation holds shares in another corporation and receives dividends, there is a holding privilege that says that the receiving company has to tax only 5 % and this with the tax rate of approximate 30 % which means the tax is very low.

If the holding company is a company in another country holding shares in a corporation in Germany they have had problems if their shareholders did not exceed 10 % of the German company.
In Germany they did not reimburse the withholding taxes

The European Court has not accepted this rule because of the unfair situation that if the companies are all located in Germany they have to pay less taxes.

So to regularize the past Germany will have to reimburse a lot of taxes for distribution of profit to companies abroad that hold less than 10 % in shares.

Obviously the German tax minister is unhappy about this so they have introduced a new law:

All distribution of profits after February 28th 2013 are taxable if the holding company owns not more than 10 % of shares of the other company and irrespective if it is a holding company in Germany or anywhere in the world.

Way to avoid their charge could be to try to have more than 10 % shares in the company or maybe if more than 2 companies are shareholders they can work together.

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Aspects on the creation of a permanent establishment in Germany in terms of withholding taxes on salaries and income taxes

The case:
Foreign EC-company has two employees in Germany who are involved in research, marketing and administration work for their employer. No premises are provided by the employer. Until now both employees have been undertaking their duties from their home office. Due to the growth of the business and the need of an adequate structure the company has requested whether it makes sense to install facilities as a permanent establishment and what will be the consequences from a tax point of view. Until now and due to the lack of a permanent establishment the employer has not been obliged to file wage-tax returns or to pay wage-tax to tax authorities. The employees have to pay the income taxes and their compulsory social security contributions directly on their own.

The outcome:
The term "permanent establishment" (German:"Betriebsstätte") is defined in local laws and double taxation agreements.
The **local laws** set forth that any kind of facilities provided are considered a "permanent establishment". As a consequence the employer has the obligation to file wage-tax returns and to withhold and to pay the wage-tax and social security contributions to the authorities. Apart from the fact that this

causes some additional administration expense there are no further financial disadvantages.
The **double taxation agreements** however are mainly considering income tax aspects and in many cases they basically follow the local rules and, therefore, also set forth that a permanent establishment is given when there are any facilities. However there are exemptions and a permanent establishment will not be assumed when the activities of the foreign company are reduced to warehousing or auxiliary activities. In such cases there is no obligation to calculate and to declare local income.
It is obvious that the question of the existence of a permanent establishment is very often subject to legal disputes with tax authorities as a consequence of tax audits. There is a considerable risk of income allocation and paying taxes afterwards.

Recommendation:
It is highly recommended that you look to the issue of a permanent establishment at a very early stage when beginning business activities in Germany. With regard to the aspects of clear business structures and minimising tax risks it makes sense to form such a permanent establishment from the beginning. Depending on the type and nature of the business the German tax authorities may accept the allocation of the income on a cost-plus basis for a permanent establishment. Alternatively the foundation of a small capital company should be considered. Such a company also ensures the execution of business activities in Germany on a sound basis at low tax burdens.

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GUATEMALA

TAX REFORM, 2012 AND 2013

In 2012 and 2013, a new Tax Reform came into force in Guatemala. It became applicable in stages from two laws.

1st. ANTI-EVASION LAW II

The first law took effect in 2012, under Decree No. 4-2012, titled "Provisions for the Strengthening of the Tax System and the Fighting against Tax Fraud and Contraband". It was approved by the Congress of the Republic of Guatemala on January 26, 2012; sanctioned by the Government on February 16 of the same year, known as "Anti-Evasion Law II".

"Anti-Evasion Law I" comes from 2006, according to Decree No. 20-2006, under the title: "Legal Provisions for the Strengthening of Tax Administration". It was approved by the Congress on June 6, 2006; and sanctioned by the Government on June 20, 2006. This law included a VAT retention system that anticipated a tax collection for the next years.

2nd. TAX LAW UPDATE

The second law came into force on January 1, 2013; under Decree No. 10-2012, titled "Tax Law Update", approved by the Congress of the Republic of Guatemala on February 16, 2012; and sanctioned by the Government on March 1, 2012.

Therefore, the creation of these two laws is now interrelated. The first one was applied in 2012 and the second one has been recently applied. Both constitute an important change in Guatemalan tax legislation.

The Tax Updating Law is organized in seven books, as follows:

Book	Tax
I	Income Tax
II	Specific Tax on First Vehicle Registration (in Spanish -PRIMA)
III	National Customs Law
IV	Reforms to Decree No. 27-92, Value Added Tax Law -VAT
V	Reforms to Decree No. 70-94, Circulation Tax for Land, Sea, and Air Vehicles
VI	Reforms to Decree No. 37-92, Stamp Tax and Stamp Paper for Protocols Law
VII	Final and Transitional Provisions

However, this article will only be concerned with the Income Tax Law.

Income Tax Law

This is a completely new law with a scheduler structure. It establishes four income categories, as follows:

(i) Income from lucrative activities (with two regimes, profits and Simplified);
(ii) Income for employment relations (salaried employees under contract);
(iii) Capital incomes, capital gains and losses; and,
(iv) Non-residents incomes

Each category has its own technical structure. In other words, each one has an operative event, exemptions, taxpayers, tax base, tax rates, and separated or independent periods of taxation. This way, income enterprises are taxed as remunerative employment income, while dividends that all stockholders receive are taxed in the capital income regime with operative events, tax payers, and different periods of taxation.

The new Income Tax Law contains an ordered and systematic editing, that makes it easier to follow. It is modern because between other characteristics, it contains international standards, transfer pricing control between a company registered in Guatemala and other related entities registered abroad, thin-capitalization rules, permanent and resident establishment. It broadens the tax base, taxing all incomes that do not pay at the moment, as well as, the subjective scope of application, making a clear differentiation between tax payers and retention agents.

It provides a general Income Tax fee for each income:

a) Income from lucrative activities

Regimen	2013	2014	2015
a) Income from lucrative activities	31%	28%	25%
b) Optional simplified incomes	6%	5% of the first Q30,000 monthly and 7% of the exceeded	5% of the first Q30,000 monthly and 7% of the exceeded

b) Employment incomes

5 % of Q300,000 and 7% thereafter

c) Capital incomes and capital gains

- Lease of properties 10 % (applicable to people who do not hold commercial property)
- Interest 10 % (except those supervised by the Superintendence of Banks and Cooperatives)
- Dividends 5 %
- Capital gains 10 %
- Lotteries, raffles, etc. 10 %
- Other cases

d) Non-resident retentions

- Air tickets and freights 5 %
- Phone market and data transmissions 5%
- International news and movies 3%
- Electric energy from external sources 5%
- Dividends 5%
- Royalties 15%
- Fees15%
- Other cases

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NETHERLANDS

Wage Tax

16% Employer tax on high salaries to be extended into 2014 and possibly contrary to EU law?
Employers are to remit the 16% crisis levy, if and to the extent that an employee's salary for 2012 exceeded €150,000.
The 16% crisis levy, to be reported by employers in their payroll tax return for March 2013, will be extended into 2014.
The crisis levy may however be contrary to EU law, given a February 2013 decision of the Court of Appeals Arnhem-Leeuwarden.

The Court of Appeals Arnhem-Leeuwarden decided that a 30% tax rate owed by employers on excessive severance payments was contrary to provisions of the European Convention on Human Rights. Noting that similar arguments could be made

to counter application of the 16% crisis levy, some believe that an employer challenge to the crisis levy could possibly be sustained.

Work-related costs scheme postponed for one year
The Deputy Minister of Finance announced that mandatory implementation of the work-related costs scheme has been postponed for one year until 1 January 2015.

An evaluation of the work-related costs scheme in 2012 showed that only 10% of the employers applied the work-related costs scheme. Currently, the percentage of employers applying the work-related cost scheme is reported to be approximately 20%.

Changes to the work-related costs scheme may be made with respect to areas such as the work-place criteria and to address certain administrative issues (e.g., the tax payment system and the fact that the work-related costs scheme cannot be applied at group level).

The changes are expected to be included in a proposal for the simplification of the work-related costs scheme.

VAT

Holding company may be incorporated into Dutch VAT group
Dutch holding company practice
Under Dutch VAT legislation only taxable entrepreneurs may be included in a VAT group. However, pursuant to a policy Decree (which in practice is still being called "holding resolution") it has been decided that conditions may arise where non-taxable persons, too, may be included in a VAT group. This is solely possible if a holding company has a managing and policy-making function within a group, which would allow the deduction of VAT on any costs the holding company incurs if and insofar as the VAT group is entitled to input tax credits.

Infringement proceedings against the Netherlands
The European Commission has instituted an appeal with the European Court of Justice against several European Member States, among which the Netherlands, about including non-taxable entrepreneurs in the VAT group. The Dutch case dealt with a second issue too: should the Netherlands have consulted the VAT Committee prior to the policy to include holding companies in the VAT group becoming effective. The Court of Justice pronounced its judgment on the Dutch proceedings on 25 April.
It ruled that under the European VAT Directive the Dutch policy to include non-taxable holding companies in the VAT group is allowed. According to the Court, in the event of a change to the national VAT group regulation the VAT Committee must be consulted in advance. According to the Court's judgment, however, when the Netherlands had consulted the VAT Committee in an earlier stage the Commission did not prove that these holding companies were not allowed to be included in a VAT group.

Source: Judgment by the European Court of Justice, 25 April 2013, C-65/11

General Tax

New rules, procedures for interest on tax assessments
New rules relating to interest on tax assessments are effective as of 1 January 2013.
The changes relate both to individual (personal) and corporate income tax returns, and apply to tax returns for 2012 and later tax years.

Under the new rules, a provisional assessment must be requested within a certain time limit (e.g., before the first day of the fifth month after the end of the tax period, or by 1 May), and the tax return must be filed on time (e.g., before the first day of the fourth month after the end of the tax period, or 1 April).

Interest can still be charged even if the 2012 individual or corporate income tax return was filed before 1 April 2013.

However, under the new rules, interest on an amount of tax due cannot be assessed if, after a taxpayer's request for a provisional assessment filed before 1 May (or a tax return filed before 1 April), a provisional assessment is imposed that is the same as the amount stated in the request or reported in the tax return.

If, however, after receiving the tax return, the tax inspector chooses to impose a final assessment and refrains from imposing a provisional assessment, interest on tax due will be charged (although the amount of interest will be limited). In this situation, interest will be calculated over the period 1 July through 13 August 2013.

Under the new rules, the interest on tax due is limited to 19 weeks after the tax return is filed, provided that the tax assessment is imposed for the same amount as reported in the tax return. Furthermore, no interest on tax due will be assessed over the first six months after the end of the tax period.

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RUSSIA

Changes to the application of VAT to bonuses and premiums

On 5 April the President signed into law amendments to the Tax Code relating to transfer pricing provisions and VAT. There has long been a disputed issue regarding the application of VAT to bonuses (premiums) paid to purchasers for meeting certain contractual requirements.

The draft envisages that suppliers should not decrease their output VAT for such bonuses (premiums), e.g. for the acquisition of a defined volume of goods. Similarly, purchasers should not decrease their input VAT. This new treatment does not, however, apply when the contract specifically envisages an adjustment to the value of sales by the amount of a bonus paid.

These amendments do not apply to transfers of property rights. They also leave in doubt the treatment of in-kind bonuses/premiums (e.g., the transfer of additional units of goods).

The amendments also regulate the application of VAT when the sales value increases. If the value increases, the seller should increase its output VAT in the tax period when the documents serving as the basis for the increase are drawn up (which will also serve as the basis for issuing corrective VAT invoices). This means that taxpayers will no longer be required to submit adjusted VAT returns for prior tax periods or pay late-payment interest. This new treatment will apply to all sales, including sales of property rights.

The draft law allows taxpayers to issue a single consolidated corrective VAT invoice for all changes in the value of goods supplied rather than multiple corrective invoices for each originally issued VAT invoice. The existing rules for issuing corrective VAT invoices necessitate a high volume of documentation and require significant administrative efforts. Unfortunately, the rules for issuing corrective VAT invoices do not currently provide any guidance on how to issue a single consolidated corrective VAT invoice.

The above VAT amendments come into force within one month after the date of official publication (following enactment), but not earlier than the beginning of the VAT period following the date of the publication. No retroactive effect is proposed. It is likely that the VAT amendments will come into force from 1 July 2013.

Deductibility of interest under loan agreements with a term spanning multiple accounting periods

In late February the Ministry of Finance issued two letters concerning the deduction of interest accrued in accordance with a loan agreement in cases where the payment of both interest and the loan principal should be made at the end of the loan's term. The ministry cites article 272 of the Tax Code as a basis for stipulating that if a taxpayer uses the accrual method, expenses should be deducted in the period to which they are related, irrespective of the date of payment.

The same article also states that if a loan agreement is concluded for a term falling within more than one accounting period, the interest accrued should be deducted for profits tax purposes at the end of each month.

The position explained in these letters is not a new one, and its confirmation in letters issued in 2013 would not be noteworthy if the Supreme Arbitration Court (SAC) had not expressed the opposite opinion in its Determination No. 10178/12 of 1 October 2012, providing that the interest expenses of the taxpayer in that case can be deducted only after the interest was paid. The position supported by the SAC in Determination No. 10178/12 had previously been set out by the SAC in its Ruling in 2009 (commonly referred to as the SaNiVa case). Unusually, after the publication of that controversial ruling the Ministry of Finance issued several letters disagreeing with the SAC's conclusion.

However, despite the written guidance provided by the ministry, the tax authorities have from time to time sought to deny the deduction of interest under loan agreements stipulating the payment of interest in a later period, and sometimes the tax authorities have successfully defended this position in court.

The Federal Arbitration Court of the North-West district in its Decision No.A53-9654/2012 of 18 March 2013, for example, stated that based on Article 328 of the Tax Code the interest on a loan should be deducted in the amount actually paid to the lender.

Based on such contrasting views of the SAC and the Ministry of Finance, we believe that if a taxpayer takes the position stipulated in the ministry's February letters and in its earlier clarifications the tax authorities will likely challenge the deduction of interest on a monthly basis if the loan agreement provides for a significant deferral of interest payments relative to the term of the loan.

The position of the SAC has been expressed twice; it cannot be dismissed as an aberration unlikely to affect the outcome of litigation on the issue by other taxpayers. The fact is the FTS intends to attach greater weight to SAC decisions which contradict the ministry's clarifications is likely to increase the number of challenges to interest deducted prior to payment.

Some mitigation of tax risk might be achievable by obtaining a private clarification from the Ministry of Finance in cases where interest payments are subject to unusual deferrals.

Russian court rules on VAT invoices

Russia's Supreme Arbitration Court has rejected a call by companies for a new general VAT adjustment form which could be used to record discounts given to customers in the form of bonuses for any amount of supplied goods.

Bonuses are offered in the Russian retail sector to encourage early payment of invoices, or to incentivise a shop to purchase a large quantity of a particular product. However, these bonuses do not reduce the list price of a product, and businesses offering bonuses therefore currently need to provide an adjusted invoice for VAT purposes for each original invoice. Businesses including Jaguar Land Rover, Philips, Volvo, Xerox argued that this requires a vast amount of extra paperwork, to the extent that it may not be possible to continue to offer bonuses.

Further, adjusted invoices must be provided within five days of the purchaser being made aware of the new price, making the issuance of invoices for cumulative periods impossible.

The Court, however, decided that the current rules accorded with Russia's tax code, and that there was therefore no basis for ordering a change.

The VAT rate on freight-forwarding services: recent court practice

A recent court case concerning the VAT rate applicable to freight-forwarding services represents a significant departure from prevailing practice with implications for other service providers and their customers.

Freight-forwarding services related to international transportation are subject to the 0% VAT rate subject to certain conditions. However, the application of the 0% VAT rate to such services by a freight-forwarding agent not arranging transportation itself is not supported by the Ministry of Finance and most taxpayers follow the ministry's guidance. Under the ministry's approach the 0% VAT rate may apply to freight-forwarding services including loading, unloading, warehousing, execution of documents, customs clearance etc. only if these are services rendered in addition to the arrangement of export or import transportation under the freight-forwarding agreement.

Court Case between Transneft-Service and Surgutneftegas

A dispute arose between a freight forwarder and its client. The freight forwarder rendered certain services related to goods located in a port which were to be exported from Russia. The freight forwarder provided information services, executed documents, and coordinated other parties. The freight forwarder did not arrange the transportation of the goods. The freight forwarder applied the 18% VAT rate to its services. The client refused to pay the VAT charged. The freight forwarder litigated to secure payment of the VAT.

The court ruled in favour of the client and said that the freight forwarder should have applied the 0% VAT rate even if the freight forwarder neither transported the goods itself nor arranged such transportation. This conclusion was based on the fact that the services rendered by the freight forwarder were performed for the purposes of the transportation of the goods from Russia and they should, therefore, be subject to the 0% VAT rate.

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SPAIN

RECENT DEVELOPMENTS IN LATE PAYMENT IN COMMERCIAL TRANSACTIONS

Given the difficult economic situation the country is currently going through, with the aim to try and ensure the survival of Spanish companies and meet the requirements laid down by the European Union, a series of measures to support business people, SMEs and the self employed have recently been adopted. Among them are measures aimed at reducing late payment in commercial transactions.

For this reason, on the 23rd of February, Royal Decree Law 4/2013, of 22nd of February "of measures of support for business people and stimulus for growth and jobs creation", came into force. With this decree various changes to the latest law regarding late payments were introduced, the main points of which can be summed up in the following points:

- **<u>With respect to the payment period for paying invoices:</u>** The normal payment period (with very few exceptions) is as follows:

  • Where the parties have not agreed a payment period: this is set at **30 days** (previously it was 60).

  The payment period will be counted from the actual receipt of the goods or provision of the services, even if the invoice has been previously received .

  • Where the parties have agreed a payment date or period: the payment period will be that agreed by both parties and can NEVER exceed **60 days.**

  In this case, the receipt of the invoice by electronic means (by email, for example) will have the effect of starting the calculation of the payment period, so long as the identity and authenticity of the signatory and the integrity of the invoice and its reception are guaranteed.

- **<u>Possibility of batching invoices:</u>** To facilitate the management of the invoice payment process, invoices may be batched throughout an established period no longer than **15 days**, by means of one only invoice which will cover all deliveries made in this period.

- **<u>With respect to charging interest for late payment:</u>** The legal interest rate for late payment has been increased to **8 percentage points** (instead of 7) <u>which the debtor is legally required to pay</u> as of the payment due date on the invoice, taking as reference the rate of interest applied by the European Central Bank to its most recent principal financing operation. (The interest rate for late payments can be checked as it is published twice yearly in the Official Gazette of the Spanish State (BOE) and there are also several pages on Internet which give the interest rate charged for late payment in commercial transactions).

- **<u>With respect to debt recovery costs:</u>** When an invoice has not been paid by its payment due date, this debt can be automatically increased by **€40**, without the need for justification or prior notification.

  If the debt recovery costs amount to more than €40, the creditor can also claim the payment of the corresponding indemnity for all the debt recovery costs incurred (for example, the legal costs for claiming the debt) so long as these can be duly accounted for.

- **<u>With respect to abusive clauses and practices:</u>** Clauses which exclude an indemnity for debt recovery costs are considered abusive and are therefore null and void.

It is important to emphasise that all contracts, including those formalised prior to the coming into force of the aforementioned Royal Decree Law (23rd of February), have a year from that date to comply with these requirements.

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SPANISH TREASURY TIGHTENS THE SCREWS: AFTER TAX AMNESTY, REPORTING OF OVERSEAS ASSETS

The filing period for the tax amnesty ended on the 30th of November. As a complementary measure to this, the Government, in its enthusiasm to prevent and fight against fraud, approved the Law 7/2012, of 29th of October (developed in the Royal Decree 1558/2012, of 15th of November), whereby a new tax requirement was formally established: the requirement for information about overseas assets. The law is extremely tough, both as regards the amount of information to be filed as to its penalty system.

In this post we will discuss "the day after" of the tax amnesty, as well as the new tax requirements facing us in relation to the prevention and fight against fraud:

1.- What was the result of the tax amnesty? Did the Government collect the 2,500 million euros it was aiming to collect with this measure? Or was it a failure, as much of the

media had originally predicted?

When the Government made public the results of the revenue collected until the end of last July, a lot of the media described the measure as a failure given that only 50 million euros had been collected (of the envisaged total of 2,500 million euros). It is true, nevertheless, that since then there have been many regularisations, and the Government has not breathed a word about the amount finally collected. On the basis of information this law firm has had access to, while the Government did not manage to collect the proposed 2,500 million, the amount it did finally collect from Special Tax Returns (DTE) and supplementary tax returns was around 2,000 million euros, an amount not too far off the figure originally envisaged.

2.- What is the situation for those who didn't regularise?

Those who didn't avail themselves of the tax amnesty could file supplementary tax returns, but this had to be done by 31st of March of this year.

3.- What should those who didn't regularise their situation do?

3.1.- Obligation to inform the Bank of Spain: People who have a foreign bank account must inform the
Bank of Spain of its existence, by filing form DD1.

3.2.- Registered holder, beneficial holder: People who hold an account overseas in the name of a holding company not resident in Spain and who have regularised their tax situation by filing the special tax return (DTE), and declaring they are the beneficial holder of this account, must now "turn into" the registered holders of the account by the 31st of December 2013. In other words, they must first put the account in the name of the beneficial holder, and then wind up the holding company.

3.3.- They will need to get and keep an account statement of their holdings, valued on the day on which they filed the Special Tax Return (DTE).

3.4.- Gather the information needed for the integration of earnings and capital gains and losses obtained overseas, in their next income tax return.

4.- What new obligations do we tax payers have as a result of the law of prevention and fight against fraud?

The requirement to regularise didn't end with the tax amnesty. Now there is the Law of prevention and fight against fraud, established in Law 7/2012, of 29th of October, and developed in the Royal Decree
1558/2012, of 15th of November. This law makes it compulsory for all persons, companies and other legal bodies to fill out and file annually an information report on the assets they hold overseas on the
31st of December each year.

4.1.- Tax return filing period: The first tax return was due to be filed by the 31st of March 2013 and must refer to the situation of each taxpayer on 31/12/2012. It must be filed by all taxpayers who own assets overseas acquired with money declared in Spain, including those who regularised their situationn under the umbrella of the tax amnesty or by supplementary tax returns.

4.2.- Penalty system: Non compliance with this information requirement will be considered a very serious tax offence. The penalty system envisaged is extremely tough, as it does not take into account the economic situation of those who break the law, or the possible damage that the non filing of this report could cause. The penalties envisage a fixed financial penalty of €5,000 for every piece of information or set of data referring to the same account, with a minimum fine of €10,000 .

4.3.- Undeclared assets are not statute barred: Now that the filing date for this information report has passed (31st of March 2013), the discovery by the Spanish Treasury of any overseas asset which has not been reported by its owner could be considered as a non justified wealth increase, a classification which would not be changed even if it had been acquired in a statute barred time period. Thus, the taxation on these discovered assets could reach up to 56% of their value, plus the interest for late payment, and a penalty which will be levied at its maximum rate, that is, at 150%.

If you would like any further information on this subject, we would ask you to look at our latest episode of LEGAL TV to which we invited José M. Sánchez Alborch, founder of Asesoría Financiera, S.A. and a tax specialist and authority on this subject. In the programme he deals with all the points discussed in this post. Legal TV: Results of tax Amnesty http://bit.ly/13teiNk

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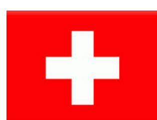

SWITZERLAND

"Changes in the taxation of employee stock options from January 1, 2013 impose additional requirement on employers"

On June 27, 2012 the Swiss Federal Council passed the Employee Stock Option Ordinance (MBV) into law. An urgently needed reform, the ordinance is intended to harmonize the dif-fering practices for levying direct federal tax in the cantons. It entered into force together with the Federal Act on the Taxation of Employee Stock Option Plans on January 1, 2013.

The core objective of the legislation ordinance is to define the details of the new federal law with regard to the allocation of equity-based compensation in cross-border situations, known as imported and exported employee stock options.

The allocation basis is determined by the period from the date stock-options are granted until they become vested (known as the grant to vest allocation). The legislation also cites further special cases illustrating how to calculate the taxable income or costs of employee stock options taxed at the date of grant, when stock options are released before the end of the vesting period or are returned prematurely to the employer due to a planned determination of the employment relationship. This serves at the basis for fulfilling the corporate obligations according to the law.

The legislation describes in detail the obligation to provide proof and retain taxes (at source) in relation to equity based compensation. Proof must be supplied in all annual salary statements provided by employers as from 2013. It should be noted that many cantons have already raised their requirements in this respect; in many cases however the new obligations to provide proof go beyond the existing ones. For employees who work internationally, however the procedure for complying with the duty to provide proof and retaining taxes will have to be adjusted. The tax retention obligation requires more precise information with respect to employees who, after leaving Switzerland, continue to receive income from employee stock options that in some cases is attributable to residency in Switzerland. This is taxed at the federal level at a uniform tax rate of 11.5% and at the cantonal level 15% (Zug). In Zurich the applicable tax rate is 20%. In the case of imported and ex-ported stock options, the employer must also provide proof of the number of working days in Switzerland during the vesting period.

In order to comply with the legal obligation to provide proof, employers face the challenge of gathering information required by the new ordinance from various departments (e.g. personnel, payroll administration, finances and plan administration). Employers are advised to review their employment stock options plans and related advanced ruling certificates in light of the new federal law and ordinance in order to make sure they comply with its requirements.

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Withholding tax agreements with the United Kingdom and Austria entered into force – Negotiations with other countries

On 1 January 2013, the withholding tax agreements between Switzerland and the United Kingdom and Austria entered into force. All British and Austrian taxpayers with a bank account or securities deposit in Switzerland are affected. The agreements solve the problem of untaxed funds. Clients either pay a withholding tax, which is deducted directly from their account and transferred anonymously to their country of domicile, or they must disclose their account details.

Banks must inform their affected clients about the new regulation by the end of February 2013. Clients will have until the end of May at the latest to announce whether the withholding tax is to be deducted from their account or whether they wish to disclose their account details. Already in the course of January 2013, the United Kingdom received an upfront payment of CHF 500 million from the banks in accordance with the terms of the agreement. This sum will be reimbursed to the banks in stages with anonymous retrospective taxation payments received from mid-year. No such upfront payment was agreed with Austria.

The actual implementation of the tax agreements will be governed by the Federal Act on International Withholding Tax (IWTA), which was brought into force by the Federal Council on 20 December 2012. The IWTA contains provisions on organization, procedure, judicial channels, criminal law provisions and domestic procedural rules for the upfront payment.

Negotiations on similar agreements are under way with Greece

and Italy. Other countries both within and outside Europe have also shown an interest. The signed agreement with Germany was not ratified by the German parliament in December 2012. The withholding tax model is part of the Federal Council's new financial market policy, the aim of which is to ensure that no untaxed foreign funds can be hidden in Switzerland.

First double taxation agreement between Switzerland and Hong Kong has entered into force

The agreement entered into force on 15 October 2012, and is applicable from 1 January 2013 with regard to Swiss taxes, and from 1 April 2013 concerning Hong Kong taxes. This is the first such agreement between the two parties.

Withholding tax exemption was agreed for dividend payments to companies that hold a stake of at least 10% in the company making the payment as well as for dividend payments to pension funds. In the other cases, the withholding tax will be 10%.

Interest will generally be exempt from withholding tax.

The limit for the tax the source state is entitled to levy on royalty payments will be 3%.

Hong Kong will be able to tax Swiss companies that do not have a fixed place of business in Hong Kong only under certain conditions and in the case of service activity lasting more than 270 days.

First double taxation agreement of this kind between Switzerland and United Arab Emirates has entered into force

The agreement entered into force on 21 October 2012, and applies to withholding taxes paid from 1 January 2012 and all other taxes starting 1 January 2013. It is the first agreement of this kind between Switzerland and the United Arab Emirates.

Withholding tax exemption was agreed for dividend payments to pension funds. Withholding tax of 5% was agreed for dividend payments to companies that hold a stake of at least 10% in the company making the payment. In the other cases, the withholding tax will be 15%.

Interest as well as royalty payments will generally be exempt from withholding tax in the source state.

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UNITED KINGDOM

UK SPRING 2013 BUDGET SUMMARY OF TAXATION PROVISIONS

Chancellor George Osborne's fourth Budget statement was delivered on 20 March 2013 against ongoing challenges within the domestic and global economies. The UK economy shrank by 0.3 per cent at the end of 2012, and lost its Moody's AAA credit rating in February for the first time since the 1970's.

Announced alongside the Budget, the Office for Budget Responsibility (OBR) revised down its forecast for growth in 2013 to 0.6 per cent from 1.2 per cent. It cited weaker than expected outlooks for consumer spending, business investment and exports for its decision.

Below we summarise the main announcements.

Business Tax

As previously announced, the main rate of corporation tax reduces to 23 per cent from 1 April 2013 and will be further reduced to 21 per cent from 1 April 2014.

In addition, it was announced in the Budget that from 1 April 2015 the main rate of corporation tax will be reduced to 20 per cent, providing the UK with the lowest corporation tax rate of any of the G7 member states and the joint lowest rate of corporation tax in the G20. This further reduction will result in the unification of the small profits rate and main rate to produce a single rate of corporation tax, simplifying the corporation tax system.

Employment Related Loans

From 6 April 2014, employers who provide their employees with interest free or low interest loans will no longer be required to report the cash equivalent on small loan balances

where the outstanding balance is £10,000 or less throughout a tax year. This is double the current threshold of £5,000.

Research and Development Tax Credits

The Government will proceed as planned to introduce a new 'above the line' (ATL) credit for large company research and development (R&D) investment from April 2013. The rate however, will be increased from the 9.1 per cent planned in the 2012 Budget to 10 per cent. The ATL credit is designed to make R&D relief more visible to those making R&D investment decisions and provide greater cash flow support to companies with no corporation tax liability.

Employment allowance: Employers' National Insurance Contributions

From April 2014 every business and charity will be entitled to a £2,000 Employment Allowance towards their employers national insurance contributions (NICs) bill. The scale of the allowance means that 450,000 of the UK's small businesses will no longer pay any employer NICs. Up to 1.25 million employers will benefit with over 90 per cent of the benefit going to small businesses.

The Employment Allowance will be introduced from April 2014, delivered through standard payroll software and HM Revenue & Customs Real Time Information system. To ensure maximum take-up, it will be simple to administer: employers will only need to confirm their eligibility through their regular payroll processes. The Government will engage with business representative bodies on the details of the design and operation of the new allowance, in order to ensure the system is as simple and effective as possible.

Enhanced Capital Allowances

Subject to state aid approval this measure will update the list of technologies and products that qualify for the energy-saving and water efficient enhanced capital allowances schemes. This will see the introduction of one new sub-technology and the removal of four existing sub-technologies for the energy saving scheme. A new gray water re-use technology will be added to the water efficient scheme along with two sub-technologies.

Employer Shareholder Status

In October last year the Government announced its intention to introduce a new 'employee shareholder' employment status. Those individuals adopting the status will be eligible to receive between £2,000 and £50,000 of capital gains tax exempt shares.

In the Autumn Statement 2012 the Government announced that it was considering options to reduce income tax and NICs liabilities that arise when employee shareholders receive shares, including an option to deem that employee shareholders have paid £2,000 for shares they receive.

The decision to proceed with this option, which will ensure that the first £2,000 of share value received is also tax free from income tax and NICs was confirmed in the Budget.

These tax changes will apply to shares received through the adoption of the new 'employee shareholder' status on or after 1 September 2013. It is considered that this new entitlement will be of benefit, in particular, to small and medium size firms.

OTHER BUSINESS ANNOUNCEMENTS

Bank Levy

The full rate of the Bank Levy will be increased to 0.142 per cent from 1 January 2014.

Foreign Currency Assets and Chargeable Gains

Legislation will be introduced in the Finance Bill 2013 to simplify the rules for companies making chargeable disposals of ships, aircraft, shares or interests in shares which have, or have had a functional currency other than sterling at some time during the ownership of the assets, or which have made a designated currency election. The measure will require companies to compute their chargeable gains and losses using their functional currency at the date of disposal. The chargeable gain or loss will then be translated into sterling using the exchange rate on the date of disposal.

Payment deferral of Corporation Tax Exit Charges

UK and other EU and EEA incorporated companies that intend to move their operations to another EU or EEA member state will have the option to elect to defer the payment of corporation tax payments in respect of exit charges. This measure applies retrospectively to allow a deferral for exit charges arising on or after 11 March 2012.

Controlled Foreign Companies Regime

Further measures will be introduced in Finance Bill 2013 to deal with controlled foreign companies (CFC) with most applying to CFCs with accounting periods beginning on or after 1 January 2013. The new CFC rules should better reflect the way businesses operate in global economy whilst maintaining protection against the artificial diversion of profits.

Anti-avoidance

Several anti-avoidance measures were announced. These included the clarification of existing legislation with respect to

the corporation tax deduction for employee share acquisitions; Changes to tackle the avoidance of the tax change on loans from close companies to their participators; and rules to govern the loopholes in the legislation which allow companies to access corporation tax loss relief more quickly or contrary to the underlying principles upon which the legislation is based.

PERSONAL FINANCES

Income Tax Personal Allowance

The income tax personal allowance for individuals born after 5 April 1948 is increasing from £8,105 to £9,440 for 2013/14 and further increasing to £10,000 in 2014/15. In subsequent years the income tax personal allowance will be amended by the increase in the consumer prices index.

To compensate for this the basic rate limit is reducing from £34,370 in 2012/13 to £32,010 in 2013/14. It will further reduce to £31,865 in 2014/15.

Individuals will therefore start to pay 40 per cent income tax from a higher rate threshold of £42,475 in 2012/13, £41,450 in 2013/14 and £41,865 in 2014/15.

For 2013/14 there will still be three main levels of personal allowance – but availability will depend upon an individual's date of birth, rather than on their age in the tax year. The higher allowances for individuals born before 6 April 1948 will not be increased and they will be removed from the statute book when the income tax personal allowance for individuals born after 5 April 1948 catches up.

Additional Tax Rate

As previously announced the additional rate of income tax will be reduced from 50 per cent to 45 per cent from 6 April 2013.

Seed Enterprise Investment Scheme – CGT Reinvestment Relief

The seed enterprise investment scheme (SEIS) was introduced in 2012 in order to assist small, early stage companies to raise equity finance by incentivising individuals to purchase new shares in the company. One of the original incentives was to enable an individual to shelter a capital gain in 2012/13 by reinvesting the gain in shares that qualify for SEIS income tax relief. The sum reinvested was exempt from capital gains tax, subject to a £100,000 investment limit.

This capital gains tax relief is being extended to gains accruing to individuals in 2013/14 providing the gains are reinvested in SEIS shares in 2013/14 or the following year. The extension of the relief is for half of the qualifying reinvested amount.

Taxation of high value UK residential property held by certain non-natural persons

A range of tax measures was announced in Budget 2012 that affected UK residential properties valued at over £2 million and held by non-natural persons. The intention was to ensure that those persons paid their fair share of UK duties on those UK properties. A consultation document was issued and draft legislation resulted that included the following:

- Stamp duty land tax (SDLT) at a rate of 15 per cent on the acquisition of the residential property. SDLT applied from 21 March 2012 and further reliefs will be introduced with effect from the date of Royal Assent to Finance Act 2013.

- An annual tax on enveloped dwellings (ATED) which will be effective from 1 April 2013. There will be four ATED bands, starting with an annual charge of £15,000 for properties valued between £2 million and £5 million. The maximum annual charge is £140,000 on a property valued at over £20 million.

- Capital gains tax at 28 per cent will be payable on any gain arising on the disposal of the property. This will come into effect on 6 April 2013. If the property was purchased prior to 6 April 2013, the capital gains tax charge only applies on the increase in the value of the property after that date.

Transfer of Assets Abroad

An anti avoidance measure is introduced that targets UK residents who have transferred assets abroad so that income becomes payable to an overseas person where that or another resident can benefit from such transfers.

An infraction notice (Reasoned Opinion) was issued by the EU on 16 February 2011; this was followed by a consultation document which was published on 30 July 2012.

The new measure adds an exemption from the transfer of assets charge where EU treaty freedoms are engaged. This focuses on the objective nature of transactions and activities related to the transfer rather than their purpose. There are existing exemptions where there is no tax avoidance purpose, or where the transactions are genuine commercial transactions, and any tax avoidance purpose is merely incidental.

The measures will be retrospective with effect from 6 April 2012 for the new exemption and from 6 April 2013 for the clarification changes announced in the Budget.

Inheritance Tax – Nil Rate Band

INPACT

INPACT

E-Tax Bulletin

Issue n. 29
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The Government announced in Budget 2010 that the nil rate band for inheritance tax would be frozen at £325,000 until April 2015. It will remain frozen at this level until April 2018 in order to help pay for the cap on 'reasonable care costs' of £72,000 for older people from April 2016.

Inheritance Tax Spouses and Civil Partners Domiciled Overseas

All individuals, whether domiciled in the UK or overseas, benefit from the inheritance tax nil rate band of £325,000. Transfers of assets between spouses or civil partners are generally exempt from inheritance tax. However if the recipient spouse is not domiciled in the UK the lifetime cap on tax free transfers to that spouse is only £55,000.

The law is being amended with effect from 6 April 2013 so that the £55,000 lifetime cap will be lifted to £325,000. In addition, the non-UK domiciled spouse or civil partner will be able to elect to be treated as if they are domiciled in the UK for the purposes of inheritance tax, should they so choose.

Capital Gains Tax

	2013/14	2012/13
Lower rate	18%	18%
Higher rate	28%	28%
Annual exemption individual	£10,900	£10,600
Settlements	£5,450	£5,300
Entrepreneurs' relief applicable rate	10%	10%
Lifetime limit	£10m	£10m

SAVINGS

Reducing the Pension Annual and Lifetime Allowances

The pension annual allowance has been £50,000 since 2011/12, but it is being reduced to £40,000 from 2014/15. Unused annual allowance from the three previous 'pension input years' (annual periods commencing when the pension started or from when the first contribution was made after 6 April 2006 if the pension started before this date) may be carried forward and added to this annual allowance. If an individual's pension savings for a tax year exceed this total, the annual allowance charge is applied to the excess. The annual allowance charge is linked to the individual's marginal rate of income tax.

The pension lifetime allowance for an individual has been £1.5 million since 2012/13. It is being reduced to £1.25 million from 2014/15. If an individual accrues pension benefits in excess of the lifetime allowance then the lifetime allowance tax charge is applied to the excess. The tax rate is 25 per cent if the excess is taken as a pension and 55 per cent if it is taken as a lump sum.

A transitional protection regime will also be introduced for individuals with UK tax relieved pension rights of more than £1.25 million, or who think they will exceed £1.25 million by the time they take their pension benefits. This is known as 'fixed protection 2014' and individuals will need to inform HM Revenue & Customs by 5 April 2014 if they wish to rely on it. The downside of the protection is that individuals in a defined pension contribution scheme must ensure that no further pension contributions are made to the scheme after 6 April 2014.

VEHICLE TAXATION

Company Car Tax Rates

From 2015/16, two new appropriate percentage bands will be introduced for company cars with a rate of five per cent for cars emitting 0-50 g/km of carbon dioxide and a rate of nine per cent for cars emitting 51-75 g/km of carbon dioxide. As announced previously, the remaining appropriate percentages will be increased by two per cent for cars emitting more than 75 g/km, to a new maximum 37 per cent. For cars without CO2 emissions, the appropriate percentage will be set at five per cent for cars incapable of producing CO2 emissions under any circumstances when driven, and at 37 per cent for other cars.

VAT

From 1 April	2013	2012
Standard rate	20%	20%
VAT fraction	1/6	1/6
Taxable Turnover Limits		
Registration – last 12 months from 1 April or next 30 days over	£79,000	£77,000
Deregistration – next year under	£77,000	£75,000
Annual accounting scheme	£1,350,000	£1,350,000
Cash accounting	£1,350,000	£1,350,000
Flat rate scheme	£150,000	£150,000

Changes to registration and deregistration thresholds

From 1 April 2013, the taxable turnover threshold, which requires a person to register for VAT will be increased from £77,000 to £79,000 per annum; the threshold below which a VAT registered person may apply to deregister will be increased from £75,000 to £77,000 per annum, and the relevant registration and deregistration threshold for intra-community acquisitions will also be increased from £77,000 to £79,000 per annum.

The simplified reporting requirement (three line accounts) for the income tax Self Assessment return will continue to be aligned with the VAT registration threshold.

The new simpler income tax cash basis intended to simplify the way in which small businesses can calculate their trade profits, will be available to them from the 2013/14 tax year and onwards. The eligibility conditions for the cash basis will be linked to the VAT registration threshold in place at the end of the tax year.

Changes to Zero-rating of Exports from the UK

The Government has announced a consultation affecting the zero rating of certain supplies of goods for export outside the EU. At the moment, supplies of goods to businesses that are registered for VAT in the UK, but do not have a business establishment here, and which then arrange for export of goods to a final destination outside the EU, are standard rated. These changes would make such sales zero rated in line with EU law.

After the consultation period, a statutory instrument will be laid. This is planned for late summer or early autumn. A minor change will also be made to UK law on zero-rating of goods dispatched to other EU Member States (Intra-Community sales). This will change an outdated reference to excise law.

OTHER MEASURES ANNOUNCED

Stamp Duty Land Tax

A measure to amend section 45 of the Finance Act 2003 (transfer of rights) is introduced to support the Government's anti avoidance strategy with regard to stamp duty land tax (SDLT). The Government seeks to put beyond doubt that a certain type of SDLT avoidance scheme is ineffective. The scheme(s) in question involve an onward sale which is not to be completed for a number of years. This measure is yet further notice of the Government's anti-avoidance strategy. This measure has effect where the transfer of rights takes place on or after 21 March 2012 and before Royal Assent to Finance Bill 2013.

Data-gathering from Card Payment Processors

It is proposed that HM Revenue & Customs will improve their data-gathering to support a more effective risk assessment of businesses who they consider are not declaring their full tax liability. The data they will be able to access will cover the monthly totals paid to merchants. It is envisaged that this will provide HM Revenue & Customs with information that enables them to identify those businesses that are not declaring their full sales. This measure will have effect on and after the date that Finance Bill 2013 receives Royal Assent.

Offshore Funds

The measure which took effect on or after 15:00 on 20 March 2013 will be followed by a further statutory instrument to be published shortly. These changes seek to address aspects of the Offshore Funds Regulations 2009 and are intended to make aspects of the Regulations fairer for UK investors in offshore funds, and ensure that they are taxed in a similar way to investors in equivalent UK funds.

The 2013 Finance Bill is currently passing through the UK Parliment and is expected to be ratified (receive Royal Assent) by the end of July.

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