CONFEDERATION
FISCALE
EUROPEENNE

CFE Fiscal Committee

National Reports

September 2012

124th Meeting

Table of Contents

Belgium (BE) 3

Czech Republic (CZ) 9

France (FR) 11

Ireland (IE) 14

Italy (IT) 17

Poland (PL) 23

Spain (ES) 26

United Kingdom (UK) 30

BELGIUM

2011 overview

The new Belgian federal government reached an agreement on the budgets for the coming years. An initial series of tax measures has already been published in the Belgian Official Gazette. The second series has yet to be implemented into legislation, but the broad outlines have already been decided (subject to modification). In order to give a complete overview, we also report here on a few measures that the previous (caretaker) government had already taken.

New tax legislation

Movable income

Tax on interest and dividend income is as a rule increased from 15 to 21%, except for interest on regulated savings accounts above EUR 1,830 and interest on government bonds issued between 24/11 and 2/12, which continue to be taxed at a 15% withholding rate. The tax rate on profits from share buybacks also rises from 10 to 21%, while the rate on liquidation gains remains at 10%. Interest and dividends that were already taxed at 25% remain subject to a 25% withholding tax rate.

A surcharge tax of 4% is applied to movable income (dividends and interest) exceeding the (indexed) sum of EUR 20,020. The surcharge tax is applicable only to dividends and interest to which the 21% rate applies (in other words, not to dividends and interest taxed at the 10, 15 or 25% rate). In order to determine whether the threshold of EUR 20,020 has been exceeded, the dividend and interest income to which the surcharge tax does not apply is first deducted; liquidation gains and the interest on the aforementioned government bonds (and the exempted interest on regulated savings accounts) need not be taken into consideration. No communal surcharge can be levied on top of the 4% surcharge.

Taxpayers may choose whether this surcharge tax should be withheld at source immediately by the debtor of the withholding tax (not only financial institutions but also, for example, regular companies that pay dividends or interest) or should instead be reported on the individual income tax return.

In the latter case, the debtor of the withholding tax must submit the information regarding the dividends and interest, identifying the recipient of the income in question, to a central contact point . The central contact point sends the information regarding the taxpayer in question to the tax administration upon the latter's request or, if the threshold of EUR 20,020 has been exceeded, automatically. The tax authorities establish the

surcharge tax via the assessment based on the tax return, supplemented from the central contact point, if necessary, by any information not reported therein.

The taxpayer must report all movable income, with the exception of dividends and interest on which the surcharge tax has been withheld at source.

The new rule applies to income paid or payable as from 1 January 2012.

Company cars

Benefits in kind in the form of the free use of a company car must be calculated on the basis of the following formula:
Benefit in kind = 6/7 of the list price * CO2%
The list price should be understood to be the invoiced value including VAT and options but excluding discounts, reductions, rebates or refunds. The CO2 emission coefficient (CO2%) is determined based on a reference coefficient of 5.5% for diesel engines producing 95g/km or for petrol, lpg and gas engines producing 115g/km, to be increased or reduced by 0.1% per g/km with a maximum of 18% and a minimum of 4%.

The minimum benefit per year in 2012 (indexed) is EUR 1,200. As before, the contribution of the recipient of the benefit is deducted from the benefit. The lump-sum business expenses for travel between home and work deducted for individual income tax purposes (EUR 0.15/km) may not be higher than the benefit (the recipient's contribution included).

In corporate tax, 17% of the benefit in kind is included in the disallowed expenses, and no deductions or compensation with the loss of the taxable period may be made on these disallowed expenses.

The new method of calculation applies to benefits in kind as from 1 January 2012.

Notional interest deduction

The maximum rate is reduced to 3% as from assessment year 2013 (for SMEs: 3.5%).

Stock options

For stock options offered as from 1 January 2012, the basic tax percentage is increased from 15 to 18%.

Tax rebate on energy-saving expenditures

A tax rebate of 40% on expenditures on furnaces, solar panels and double glazing in 2012 applies only if the contract was signed before 28 November 2011. The tax rebate

on expenditures in 2012 for the insulation of roofs, walls and floors is set at 40 or 30%, depending on whether the contract was signed at the latest on 27 November 2011 or after that date. The tax rebate for expenditures in 2012 may be carried over only if the contract was signed before 28 November 2011. There is a tax rebate of 30% only on expenditures on roof insulation as from 1 January 2013 (for a maximum of EUR 2,000, increased by EUR 600 provided the increase applies to a carryover of a tax rebate on solar panels).

The tax rebate on low-energy, passive and zero-energy homes will be discontinued as of assessment year 2013 unless the certificate was issued at the latest on 31 December 2011, or at the latest on 29 February 2012 if the application for the certificate was submitted at the latest on 31 December 2011.

The tax rebate on interest on green loans will be reduced from 40 to 30% as from assessment year 2013.

Discount on 'clean vehicle' invoices

The discount will be discontinued for expenditures incurred as from 1 January 2012 (with a transitional scheme for vehicles ordered before 28 November 2011).

VAT

As from 1 January 2012, notaries and bailiffs may no longer be exempted from VAT and the rate on pay television is increased from 12 to 21%.

Stock exchange tax

The rates for transactions carried out as from 1 January 2012 are increased from 0.07%, 0.17% and 0.5% to 0.09%, 0.22% and 0.65% respectively. The ceilings are raised from EUR 500 and 750 to EUR 650 and 975 respectively.

Tax on conversion of bearer securities

The legislator has introduced a tax on the conversion of bearer securities into dematerialised or registered securities (with an exception for securities maturing prior to 1 January 2014). The rate is 1% for conversion in 2012 and 2% for conversion in 2013. The tax will be calculated on the date of deposit, based on the latest market quotation (for listed securities), the nominal value of the debt instrument (in the case of non-listed debt securities), the latest inventory value (units in open-ended investment vehicles), or, in all other cases, the book value (to be determined by 'the one who handled the conversion'). The tax is to be paid by a professional intermediary (if converting into dematerialised securities) or by the issuing company (if converting into registered securities).

Yet to be enacted in law

The carry-forward of excess *notional interest deduction* will be abolished (at the moment, carry-forward to the next 7 taxable periods is possible). The utilization of the stock per 31 December 2011 of excess notional interest deduction carry-forward will be the last step in calculating the tax base before the application of the tax rate. This utilization will be limited to 60% of the remaining profit (not applicable to the first million euro of profit). Any unused deduction on account of the limitation can be carried forward for an extra taxable period.

A general *thin cap* rule will be introduced: interest will be no longer deductible to the extent that a ratio of 5 to 1 between intra-group loans and equity has been exceeded; the condition of the considerably more advantageous taxation of the actual recipient is abolished. For the definition of the concept of a 'group', reference would be made to the former coordination centre regime.

The corporate tax exemption for *capital gains realised on shares* will only apply on the condition that the shares are held for at least 1 year. In the absence of the exemption, a separate tax rate of 25% (instead of the normal rate of 33.99%) would be applied.

The lump-sum benefits in kind for free heating and electricity offered to *company executives* will be raised to EUR 1,820 and EUR 910 respectively (with future indexation). The lump-sum valuation for free use of a built property will also be increased (the multiplier for dwellings with a deemed net rental value above EUR 745 is raised to 3.8).

Individual pension commitments to company executives will be required to be vested in a pension fund or insurance company. For existing internal *pension provisions,* there will be a transitional period of three years during which a reduced insurance tax of 1.75% applies.

The deduction of group insurance premiums for corporate tax purposes will be limited to the extent that the legal + supplementary pension is higher than 80% of the last normal gross annual salary (*80% rule*). The legal + supplementary pension may not in future exceed the highest government pension, which in practice means the introduction of a salary cap of approximately EUR 110,000 (with reservation).

The tax rebate for *individual pension contributions* will be calculated on the basis of a 30% rate for all taxpayers (instead of the special average rate of between 30 and 40% depending on income). The tax on *pension capital* built up via employer contributions will be increased from 16.5 to 20% (if retiring at 60) and 18% (if retiring at 61) (rates of 16.5% at 62-64 years and 10% at 65 years remain).

The *deductible expenses* (with the exception of alimony payments) will be converted into tax rebates at a rate of 45% (i.e. deduction for primary residence, child care costs and donations) and 30% (for the rest).

The price of *service vouchers* will be increased by 1 euro to EUR 8.50 as from 2013 (thereafter the price will be indexed). The tax rebate of 30% remains.

The new federal government reached an agreement on a number of *anti-fraud* measures:
- in the context of the general anti-abuse provision, new legislation will be drafted to allow the authorities to requalify one or more acts without having to demonstrate the existence of identical or similar legal effects;
- the recommendations of the parliamentary investigative committee on cases of major tax fraud will continue to be implemented;
- greater harmonisation (in principle: upwards) of the investigative and procedural rules for federal taxes will be sought;
- usufruct constructions will be opposed either via increased monitoring or via a regulatory initiative that is to determine the values of the benefit in kind;
- reporting all foreign accounts to the central register of the NBB will be made mandatory;
- the notification obligation for notaries will be extended to the inheritance tax return.

Tax legislation under the caretaker government

This has mainly to do with adjustments as a result of European infringement proceedings or case law.

Companies may apply spread taxation also to capital gains realised on tangible and intangible fixed assets as from the 2012 assessment year, provided they reinvest the proceeds in eligible fixed assets that are used for professional activities within the EEA (previously limited to assets in Belgium).

Interest is deductible only if it is not higher than the amount corresponding to the market rate. This limitation was not applied before 1 January 2011 on the deduction of interest paid to Belgian financial institutions. Since that date, this has been extended to interest paid to comparable institutions in the European Economic Area (EEA). In addition, an anti-abuse provision has since come into force that applies the limitation if the debtor of the interest is linked to the institution in question.

The system of the 'dividends received deduction (DRD)' has been changed on various points since 1 January 2011:

- The condition that the shares must qualify as financial fixed assets has been abolished;

- The scope of the carry-forward of excess DRD to later taxable periods has been extended to companies that hold shares which meet the (more advantageous) shareholding conditions laid down by the domestic Belgian legislation – i.e. a share of at least 10% or with an acquisition value of at least EUR 2,500,000 (and no longer the conditions laid down by the European directive).

Since 1 January 2011 tax neutrality has been extended, in the event of a transfer of the registered office of a Belgian company to another Member State of the European Union, to all resident companies as regards the elements of a Belgian company that are maintained in a Belgian establishment (previously limited to transfers of the registered offices of European companies (SE) and European cooperative companies (SCE)).

Since assessment year 2011 (income from 2010), interest and dividend income from investments in other Member States of the EEA collected without the intervention of an intermediary in Belgium (and thus without final withholding tax) are no longer subject to supplementary municipal taxes.

Jos Goubert - Peter Vanlerberghe
KPMG Brussels
20/01/2012

*****

CZECH REPUBLIC

Tax news from September to December 2011 for the Czech Republic

VAT amendment from 1 January 2012

The amendment increases the reduced VAT rate to 14% from 1 January 2012 and from 1 January 2013 unifies both VAT rates at 17.5%. The approved wording contains a number of other points that have been submitted within the Chamber of Deputies as amending proposals. These include: Extending the liability for tax payment, more detailed treatment of summary tax documents; specification of fixed assets, calculation of a proportionate tax deduction, settlement of a tax deduction, and adjustment to a tax deduction.

Pension reform

"Minor pension reform" published in the Collection of laws, effective from 30 September 2011. Pension calculation will newly depend more on the amount of income on which the premium was paid into the pension system. The gradual unification of the retirement age for men and women will take place at a faster pace.

"Great" pension reform includes three bills and is effective from 1 January 2013.

Establishment of Specialised Financial Authority

The Specialised Financial Authority, seated in Prague, started to operate on 1 January 2012. It has responsibility over the following entities:

- "Large entities", i.e. corporate entities with annual turnover exceeding CZK 2 billion
- Banks, branches of foreign banks, savings and credit cooperatives, insurance companies, branches of foreign insurance companies, reinsurance companies and branches of reinsurance companies.
- members of VAT groups where at least one member qualifies as per the above criteria.

News for employers and employees in 2012

As of 1 January 2012 certain changes concerning employers and employees are effective. The tax credit per child has been increased, as well as the tax credit per taxpayer. Shareholders and statutory representatives of limited liability companies will be subject to all components of social insurance (i.e. sickness, pension and

unemployment). So far they have only contributed to pension insurance. For agreements on the performance of work, the existing limit has been increased from 150 hours to 300 hours per year. These agreements will also be subject to social and health insurance if monthly income exceeds CZK 10,000. The maximum assessment bases for social and health insurance will respectively be CZK 1,206,576 and (48 times the average national wage) and CZK 1,809, 864 (72 times the average national wage). Remuneration paid to the collective bodies of legal entities (members of the board of directors and supervisory board) will be tax deductible for companies paying this remuneration.

Martin Houska
Member of fiscal committee delegated by Chamber of Tax Advisors of the Czech Republic

*****

CONFEDERATION FISCALE EUROPEENNE

FRANCE

DIRECT TAX NEWS

1. Tax Treaties

A Tax Agreement between France and Hong Kong entered into force on December 1, 2011 and a tax treaty with Panama will enter into force soon.

2. Individual income tax

In addition to ordinary individual income tax, an exceptional tax on high income applies to income exceeding certain thresholds on an annual basis. For married coupe, a 3% tax is payable on income between €500,000 and €1,000,000 and a 4% tax is payable on income exceeding €1,000,000. For a single taxpayer, a 3% tax is payable on income between €250,000 and €500,000 and a 4% tax is payable on income exceeding €500,000.

3. New withholding tax rates on dividends paid to non-residents

From January 1, 2012, withholding tax on dividend paid to non-residents is generally due at the rate of 30% (previously 25%) subject to tax treaties; the reduced withholding tax on dividend paid to residents of the EU, Iceland, Norway and Liechtenstein is now set at 21% (previously19 %) and the increased withholding tax on dividend paid to residents in Non-Cooperative State or Territories is set at 55% (previously 50%).

4. Abolition of the 1/3 rebate on capital gains made by individuals upon sale of shares

A rebate of one third on capital gains from the sale of shares by individuals was introduced at the end of 2005 and should have been applicable for the first time in 2012. This relief has been abolished without having ever been applied. Instead, a tax deferral has been introduced in limited cases where a taxpayer realizes capital gains; in short, in order to benefit from the tax deferral, the shares must have been held for at least eight

years and must represent at least 10% of the company's share capital; the company which shares are sold must be established within the EU (or Iceland, Norway and Liechtenstein) and must be subject to corporate income tax in its country of residence; the purpose of the company may not be the management of its own assets. Within three years following the sale, 80% of the capital gains must be reinvested as capital increase in a company that meets the same conditions; the new shares must represent at least 5% of the capital of the company, they must be held for at least 5 years and the taxpayer or his family must not be an executive in the company. After 5 years of holding of the new shares, tax exemption is granted (but additional social taxes are still due).

5. Additional corporate income tax on large companies

Companies which turnover exceeds €250m during the financial year are subject to a new additional tax of 5% of gross corporate income tax. This additional tax is due for financial years ending from December 31, 2011 onwards. As a result, companies subject to the standard corporate tax rate of $33^{1/3}$% will now pay a 36.1% corporate rate including all additional corporate income taxes.

6. Limitation on the deduction of financial expenses upon acquisition of shares where control is not in France

Financial expenses incurred by French corporate taxpayers for the purpose of acquiring shareholdings of at least 5% are no longer tax deductible if the acquiring company is not able to provide evidence that the decisions in respect of the acquired shares are actually made by it (or by a parent company or a sister company established in France) and that it actually exercises control or influence over the company. In short, non deductible financial expenses are added back into the profits of the company based on the ratio between the share purchase price and the average amount of debt of the company. An exception is made if the total value of all eligible shareholdings held by the company is less than €1m or if the company provides evidence that the acquisition was not financed by debt or if the debt/equity ratio of the acquiring company does not exceed that of the group.

7. **Assistance in the recovery of tax claims**

The EU directive n°2010/24/UE of March 16, 2010 on assistance in the recovery of tax claims has been embodied into French law by a law of December 28, 2011.

8. **Disclosure imposed on foreign trusts**

Subject to certain exceptions (corporate trusts and pensions funds), all trusts in place on July 31, 2011 have to be disclosed provided that the settlor is a French tax resident or one beneficiary is a French tax resident or one of the trust's assets or rights is located in France (public ruling of December 23, 2011). In addition, where the settlor is a French tax resident or one beneficiary is a French tax resident or one of the trust's assets or rights is located in France, the trustee has to file a yearly return giving details on the fair market value of the assets or rights. However provided that the settlor is not a French resident and no beneficiary is a French resident, only French assets have to be declared with the exception of financial assets.

Bruno Gouthière

*****

IRELAND

Report on Irish tax developments in the period October to December 2011

Budget 2012

Budget 2012 was delivered at the beginning of December. The following were the key tax measures:

Income tax

- No changes to personal income tax rates, bands or credits. The marginal income tax rates were kept at 52% for employees and 55% for the self-employed.
- Exemption threshold for liability to the Universal Social Charge raised from €4k to €10k, taking many low-paid workers out of the tax net
- Deposit interest tax rates increased from 27% and 30% (for frequent and less frequent payments respectively) to 30% and 33%.
- No dilution of tax relief on private pension contributions

Property sector

- New 5% surcharge to apply on high levels of income generated from property incentives
- Mortgage interest relief measures to assist certain first time buyers
- 2% flat rate of stamp duty introduced for commercial property – to replace existing system of multiple rates (from 1% to 6%)
- New capital gains tax relief to encourage property purchases in the period to the end of 2013

Investments and Exports

- Introduction of a Special Assignee Relief Programme to encourage skilled mobile individuals to locate in Ireland
- Foreign earnings deduction relief (FED) to be introduced – a deduction from the income of individuals who spend at least 60 days a year developing markets for Ireland in BRICS countries.

Business taxes

- Extension to relief for start-up companies

- Various enhancements to the R&D tax credit regime, particularly for SMEs, including introduction of a limited volume-basis, an increase in the outsourcing limits and the use of the credit to reward employees.

Capital taxes

- Increases in the rates of capital gains tax and gift/inheritance tax from 25% to 30%
- Amendments to reliefs in order to encourage earlier transfer of family farms and businesses to the next generation.

Further detail on the above measures will be given in the Finance Bill, which will be published in early February.

VAT

- The standard VAT rate increased from 21% to 23% with effect from 1 January 2012.

EU Approval for investment incentive

In November, European Commission state aid approval was granted for the Employment and Investment Incentive – a scheme which gives tax relief to equity investors in private companies, and which replaced an existing scheme. The scheme took effect from 25 November 2011.

Household Charge

The precursor to a full property tax, the Household Charge is payable for the first time in 2012. The charge is €100 per annum and is payable on residential properties, with some exclusions. A full property tax will be introduced in due course, as required under the EU/IMF Programme of Financial Support for Ireland.

Supreme Court Ruling on Tax Avoidance

In December, the Supreme Court delivered its first judgment on tax avoidance and the general anti-avoidance rule in Ireland. The Court found in favour of the Revenue Commissioners in the case.

Administration issues

Phased payment arrangements

The Revenue Commissioners introduced a standardised application form for phased payment applications for taxpayers having tax payment difficulties

Recovering tax debts from wages/salaries

The Revenue Commissioners have published guidelines indicating the circumstances in which outstanding debts may be recovered directly from the wages/salary of the taxpayers concerned.

*****

ITALY

Report Update on Recent Developments of Italian Tax Laws as of September 2011

Direct Taxation

Two are the main provisions that have been set forth in the last four months of 2011:
- Decree-Law No. 201/2011, in force since 6 December 2011;
- Circular No. 53/3 of 6 December, 2011 issued by the Tax Authorities.

Decree-Law No. 201/2011 lays down important provisions to enhance enterprises' equity structure, allow an IRAP (Italian Regional Tax on Productive Activities) deduction relating to labour/employment costs as well as a re-alignment of participations. Decree-Law No. 201/2011 was converted into Law No. 214 of 22 December 2011, published in the Official Gazette No. 300 of 27 December 2011.

Circular No. 53/E of 6 December 2011, provides some important and specific clarifications regarding the new tax regime involving corporate losses introduced by Decree-Law No. 98/2011.

Allowance for corporate equity (ACE)
Art. 1 of the mentioned Decree, indexed as ACE (i.e., "*Aiuto alla crescita economica*", "Allowance for corporate equity", hereinafter "ACE")**,** aims to promote capitalization of enterprises, rather than making use of debt, thus allowing deductibility from the corporate income of part of the increases relating to a company's net equity.

In particular, the allowance (that is the deduction in the amount of tax due) is calculated by multiplying total increase of the net equity by a coefficient fixed at 3% for the first three years (whereas, starting from the fourth tax period, i.e., as of 2014, the percentage shall be determined by Ministerial Decree to be issued within 31 December of each year).
The ACE program shall be applicable starting with the tax period in progress at 31 December 2011; therefore, all cash contributions shall be subject to the tax relief (such as, for example, capital increases, informal capital contributions or sunk funds) that were effected during the tax year, even before promulgation of the Decree in question, as well as 2010 profits earmarked as provision. Increases deriving from cash contributions are tax-relevant starting from date of payment: thus, a pro *rata temporis* criterion shall be adopted.

The incentive concerns stock corporations or partnerships, sole proprietorships, cooperative associations, resident commercial entities that are different from companies,

trusts, permanent establishments in Italy of non-resident companies or commercial entities and entities that file a national consolidated tax return.

Enforcement provisions of the above Art. 1 of Decree-Law No. 201/2011 shall be issued by means of Decree of the Minister of Economy and Finance within 30 days from 28 December 2011, which is the date of the coming into force of converting Law No. 214 of 22 December 2011.

IRAP (Regional Tax on Productive Activities) deduction: benefits on labour/employment costs
Art. 2 of Decree-Law No. 201/2011, allows, as of 2012, to deduct, for IRES (Corporate Income Tax) purposes, an amount equal to IRAP pertaining to expenses incurred for employees and similar agreements. The new deduction, as above, supplements the previous 10% IRAP lump-sum *ex* Decree-Law No. 185/2008.

Therefore, this last deduction is strictly limited to the case in which the taxpayer only has interest expenses, with no further reference to labour/employment costs.

Always with effect from 2012, IRAP deductions - for female employees with permanent employment contracts and for young people under 35 – shall increase up to €10.600; for under-privileged areas [*ex* Art.11, Para. LTR. b) of Leg. Dec. No. 446/1997], deductions shall increase up to €15.200.

Re-alignment of participations
Art. 20 of Decree-Law No. 201/2011 extends the scope of the provisions on the re-alignment of civil and tax values in case of extraordinary operations *ex* Decree-Law No. 185/2008, as amended by Decree-Law No. 98/2011. This latter Decree allowed, through the payment of a 16% substitute tax by 30 November 2011, the re-alignment, in whole or in part, of the higher values recorded on controlling participations acquired through extraordinary operations, ascribable, at consolidated level, to goodwill, trademarks and other intangible assets of consolidated financial statements.
Art. 20 under examination provides for an extension to the objective application scope of the provision, by granting the opportunity to re-align also higher values deriving from acquisitions effected during the tax period in progress at 31 December 2011, and the re-opening of the terms for payment of the substitute tax due in the course of re-alignment for participations acquired in 2010 and during prior tax years. In particular, there is a possibility to re-align participations purchased in 2011 through payment of the substitute tax to be remitted in three instalments:

- The first instalment by 16 June 2013;
- The second instalment by 16 June 2014;
- The third instalment by end-November 2014.

The same payment terms are also extended to the re-alignment of participations acquired in 2010 and during prior tax years, with a warning to apply as of 1 December 2011 interests within the same measure as the legal interest rate.

Re-alignment effects start running from the tax period in progress at 31 December 2015.

Treatment of carry-forward tax losses
The Revenue Office, by means of Circular No. 53/E of 6 December 2011, provided clarifications on the new tax regime involving corporate losses introduced by Decree-Law No. 98/2011 (on which basis losses incurred during a tax year may be computed as an income decrease for subsequent tax years within a measure not exceeding 80%, without there being a five-year term restriction, any longer. In particular, the Revenue Office further clarified that the provision at issue:

- is applicable, for enterprises with a tax period that coincides with the solar year, also to losses accrued during the period going from 2006 to 2010 as disclosed in the 2011 tax return;
- has an impact on the treatment of tax losses disclosed in the consolidated tax return realized during those tax years in which the option was effective; on the other hand, it has no effect with respect to tax losses borne by consolidated companies that were transferred to the fiscal unit;
- is not applicable to losses realized during the first three tax years (provided these may be referred to new productive activities) which may be carried forward without any temporal or quantitative restriction.

VAT

VAT rates
Art. 18 Law Decree n. 201/2011 (so called “Decreto Salva Italia”) foresees an increase of the standard and reduced VAT rates of 2%, thereby setting the rates to 12% and 23% as from 1 October 2012. Such rates are furthermore increased of 0.5 per cent as from 1 January 2014.
The application of such increases is conditioned to an analysis of the resources needed to finance the Italian budged so that their actual application, even if likely, shall not be taken as completely sure.

Amendments to the legislation concerning VAT warehousing arrangements
In the course of 2011 the Italian Parliament enacted new anti-fraud provisions in the field of VAT warehousing arrangements. In particular, by operation of Law 14 September 2011, no. 148, the new first sentence of paragraph 6 of Article 50-bis Law Decree no. 331/1993 (i.e. the one regulating VAT warehousing arrangements in Italy) provides that the taxable persons that may carry out withdrawals from the VAT warehouse (which has then the duty to apply the reverse charge method) must meet special requirements, i.e. (i) it must be registered at the Chamber of Commerce for at least one year; (ii) should

attest to be an actually trading entity; (iii) should attest to have duly performed the VAT payments, if any. An act of the Director of the Tax Agency – that has not been issued yet – will regulate the implementing regulations and specific modalities to attest the above requirements.
The above provisions has entered into force as from 17 September but it is still not applicable due to the absence of the above mentioned act of the Director of the Tax Agency .
That said, it is worth pointing out that under the wording of the new provision apparently only entities registered with an Italian Chamber of Commerce (i.e. "Camera di commercio, industria, artigianato e agricoltura") seems to be eligible for extracting the goods from a VAT warehouse so that non-resident taxable persons which are not established in Italy will (or could) be excluded from the possibility to extract goods from a VAT warehouse.

Small business scheme

Art. 27 of Law Decree no. 98/2011 amended the small scheme adopted by Italy (such scheme, that derogates art. 285 of Directive 2006/112/EC has been authorized by the Council Implementing Decision no. 2010/688/EU of 15 October 2011). The special regime continues to apply limitedly to individuals exercising a business or a liberal profession. Under the new provisions:

- the activity must generate a turnover lower than € 30.000;
- the regime may not be invoked for a period longer than five years (an extension may apply if the individual opted for such regime is younger than 35 years old);
- the possibility to opt for the small business scheme is also subject to special limitations (e.g. in case they opted previously for other).

Individuals opting for such a regime are lifted of most VAT obligations (e.g. issuance of VAT invoices, registration, filing of VAT returns and the like) but have no right to deduct input VAT.

Implementation of EU Directives

Law no. 217 dated 15 December 2011 (published on Official Gazette no. 1 of 2 January 2012) – so called "Legge Comunitaria" for year 2010) - provides some amendments to Italian VAT Law in order to implement recent EU Directives and to avoid infraction procedures at EU level. In short, the main amendments are the following:

- the chargeable event of B2B intra-Community supplies of services occurs when the services are completed or, in case of services supplied continuously, on expiry of the periods to which the relevant consideration becomes payable (implementation of Directive 2008/117/EC dated 16 December 2008 amending Directive 2006/112/EC to combat tax evasion connected with intra-Community transactions);
- for B2B intra-Community supplies of services the taxable person benefiting from the services shall integrate the invoice issued by the foreign supplier,

according to the rules and deadlines provided for intra-Community supplies of goods;

- quarterly VAT refunds can be asked by taxable persons carrying out specific services deemed to be not relevant for VAT purposes in Italy (e.g. works on goods, transport services and related intermediary services) for more than 50% of their turnover;
- the exemption provided for supply of vessels has been limited to "*vessels used for navigation in high seas*" and extended to "*vessels used for the purpose of fishing activities*" and to specific related supplies of services; moreover, the exemption has been limited to warships and repealed for ships supplied to certain public entities (such amendments are a consequence of the infringement procedure no. 2008/4219 started by the European Commission);
- in case of importation of goods destined to be dispatched in another EU Member State, VAT is suspended to the extend the importer provides to the Customs Authorities its own VAT code, the VAT code of the taxable person established in the Member State where the goods are dispatched and, upon request, a set of documents in order to give evidence of the actual dispatch of the goods in that Member State; further rules on the matter will be provided by a Regulation that will have to be issued jointly by the Tax Agency and the Customs Agency (implementation of Directive 2009/69/EC dated 25 June 2009 amending Directive 2006/112/EC as regards tax evasion linked to imports);
- supplies of heat and power refrigeration, like supplies of gas and electricity, through heating or refrigeration networks are taxable at the place of destination; further amendments have been provided in case of importation and intra-Community supplies (implementation of Directive 2009/162/EU dated 22 December 2009 amending Directive 2006/112/EC);
- the supplies of goods and services to EU, ECB and other bodies set up by the Communities, in particular certain joint undertakings established in accordance with Article 187 of the Treaty on the Functioning of the European Union, are exempt for VAT purposes (implementation of Directive 2009/162/EU dated 22 December 2009 amending Directive 2006/112/EC);
- 10% VAT rate applicable to assistance services related to drafting of certain agreements of letting of immovable property has been repealed (in order to avoid an infringement procedure deriving from the principles laid down in the ECJ judgment dated 17 June 2010, related to case C-492/08 "*EU Commission vs France*").

The Revenue Office (*cfr*. Circular No. 39/E of 1 August 2011) provided clarifications regarding the fact that the absence of any VIES (*i.e.*, VAT Information Exchange System) Archive, determines the impossibility to effect EU transactions and to apply the relevant tax regime, since the party cannot be deemed an entity subject to Italian VAT for the purpose of carrying out EU transactions. The said

Office further specified that any operator who files an application to be registered in the VIES Archive is subject to a number of preliminary checks with the purpose of ensuring that the same is not a “risky” person who might adopt fraudulent behaviour. In addition, the following has also been provided:

- further and more thorough checks are to be carried out for the following six months, which may provoke – should evasive behaviours or fraud attempts emerge – exclusion from the VIES Archive;
- constant monitoring of taxpayers that are recorded in the VIES Archive, always for prevention purposes.

January, 2012

Raffaele Rizzardi – Piergiorgio Valente

*****

POLAND

New tax on minerals extraction under way

Striving to keep the gross debt below the threshold of 60% of GDP and to reduce the government deficit below 3% of GDP, the Polish government announced a number of new measures in order to cut public spending and raise budget revenues.

The government's plans to introduce the tax on extraction of certain minerals fall within this ambit. According to the draft law, currently undergoing parliamentary procedure, copper and silver extraction is going to be subject to this new tax. The tax base will be the quantity of minerals extracted (or concentrates produced) and the tax rate will be calculated according to the complex formula, making the level of taxation dependent in particular on the current price of copper and silver, respectively. The current price will be determined monthly by the Minister of Finance, as the arithmetic average of the LME Daily Official and Settlement Price quotations, established at the London Metal Exchange in the preceding month, or the arithmetic average of the London Silver Fixing quotations, established at the London Bullion Market in the preceding month. Depending on the market conditions, the proportion of the applicable tax rate to the price of the minerals will fall between 0,5% (assuming that the price of minerals is extremely low) and approximately 35% (should the price be exorbitant). The level of taxation is viewed as excessive by the producers which point out that the resulting tax burden may put at risk their investment plans.

Tax will be payable monthly and will not decrease the tax base for the corporate taxation purposes.

It is intended that the new tax law should come into force on 1 March 2012, this deadline being tight, however, given the current stage of the legislative procedure.

The tax is forecast to bring substantial revenues for the state budget: ca. mEUR 400 in 2012 and ca. mEUR 500 in the following years. The main taxpayer will be the successful Polish copper extraction company, KGHM Polska Miedź S.A. This public company, state-owned in 31,79% and state-controlled, is the largest producer of copper in Europe.

It is said that in the future this tax regime may be extended to cover also the extraction of shale gas and oil.

The SAC on VAT pro-rata settlement

In its resolution of 24 October 2011 the Supreme Administrative Court ruled that when calculating the VAT ratio used to establish the proportion of recoverable input VAT the volume of transactions outside the VAT scope should not be taken into account (included in the denominator). The is mainly because it is impossible to determine the exact value of such transactions, as they are not exhaustively listed in the law. The justification of the resolution relies upon the legal certainty considerations, as well as neutrality principle.

The resolution should put an end to the long-standing controversy over this issue, which resulted in the inconsistent position of the tax administrative courts.

(case no. I FPS 9/10)

Transport services – reference for a preliminary ruling

On 4 January 2012 the Supreme Administrative Court referred for a preliminary ruling in the case regarding the supply of transport services. The questions asked concerned the issues of i) whether Article 66 point (a), (b) and (c) of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('VAT Directive') should be interpreted as allowing making VAT chargeable when the payment is made, no later than 30 days after the service supply, where a taxpayer issued a VAT invoice; and ii) whether Article 66 point (a) and (b) of the VAT Directive should be interpreted as precluding the national legislation under which the tax point (the moment when the tax becomes chargeable in respect of certain transactions) for transport and forwarding services is set when the payment in totally or partially received, no later than 30 days after the service supply, also where no later than 7 days after the service supply the VAT invoice is issued and delivered on the purchaser, and the purchaser is entitled to recover input VAT in the period when it received the invoice, regardless of the payment for the service.

(case no. I FSK 484/11)

Coal and coke subject to excise duty

Starting from 1 January 2012 coal and coke become subject to excise duty (they were previously exempt thanks to the transition period granted for Poland).

Increase in tax rates

Effective 1 January 2012 the VAT rate for the supply, importation and intra-community acquisition of children's clothes and footwear increased from 8 to 23%. The change results from the ECJ ruling of 28 October 2010 in the C-49/09 case in which the reduced rate imposition was found contrary to the EU law. Also, starting from this year the supply of restoration services, previously exempt, is subject to 23% VAT.

Excise duty rates on petrol, fuel oil, cigarettes and tobacco were also noticeably raised.

*****

SPAIN

The Spanish Council of Ministers approved Royal Decree-Law 20/2011 of 30 December on urgent tax and financing measures to reduce the budget deficit ("**RDL 20/2011**"). The changes affect both direct and indirect taxation:

Individual Income Tax ("IIT")

The national tax rates for general income for 2012 and 2013 has been increased as follows:

NET TAXABLE INCOME– NATIONAL TAX RATES FOR GENERAL INCOME						
Net taxable income (up to EUR)	Gross tax payable (EUR)	Increase on the gross tax payable 2012-2013 (EUR)	Remaining net tax income up to (EUR)	Applicable rate for 2011	Complementary tax burden 2012-2013	Applicable rate for 2012-2013
0	0	0	17,707.20	12%	0.75%	**12.75%**
17,707.20	2,124.86	132.80	15,300.00	14%	2%	**16%**
33,007.20	4,266.86	438.80	20,400.00	18.5%	3%	**21.5%**
53,407.20	8,040.86	1,050.80	66,593.00	21.5%	4%	**25.5%**
120,000.20	22,358.36	3,714.52	55,000.00	22.5%	5%	**27.5%**
175,000.20	34,733.36	6,464.52	125,000.00	23.5%	6%	**29.5%**
300,000.20	64,108.36	13,964.52	Higher amounts	23.5%	7%	**30.5%**

The percentage under this table is increased by the amount under the tax rates approved by each of Spain's Autonomous Regions. Consequently, the total maximum combined tax rate will range from 51.9% in the Autonomous Regions of La Rioja and Madrid, to 56% in Catalonia. Similar legislation will be passed in the Autonomous Regions of Navarra and the Basque Country (which have legislative autonomy on taxation).

The national tax rates and taxable bands for income from savings in 2012 and 2013 is as follows:

NET TAXABLE INCOME– NATIONAL TAX RATES FOR INCOME FROM SAVINGS					
Net taxable income (up to EUR)	Increase on the gross tax payable 2012-2013 (EUR)	Remaining net tax income up to (EUR)	Applicable rate for 2011	Complementary tax burden 2012-2013	Applicable rate for 2012-2013
0	0	6,000.00	9.5%	2%	**11.5%**
6,000.00	120	18,000.00	10.5%	4%	**14.5%**
24,000.00	840	Higher amounts	10.5%	6%	**16.5%**

The percentage under this table is complemented with taxable bands and the tax rates approved by each Autonomous Region (the maximum rate applied to income from savings is 27%).

Amendment of withholding rates for tax years 2012 and 2013

Simultaneously with the amendment to the national tax rates for general income, the tax rates for calculating withholdings on employment income is also amended. The new withholding rates for employment income will be applied as from 1 February 2012.

RDL 20/2011 raises the fixed withholding rate for income obtained by managing directors and members of boards of directors to 42%.

Lastly, the withholding rate for payments on account in connection with (i) movable capital income, (ii) capital gains derived from the transfer of shares in Collective Investments Schemes, (iii) income from real estate property, and (iv) industrial and intellectual property income is increased to 21% (previously 19%).

Reintroduction of tax deduction for investing in permanent residence

RDL 20/2011 has reintroduced the tax deduction for investments in a taxpayer's permanent residence. The deduction is limited to 7.5% of the invested amount, subject to a total maximum deduction of EUR 9,040. The deduction also applies to investments made in 2011.

Tax deduction for improvements to housing

The Spanish Council of Ministers approved the tax deduction for improvements to housing by virtue of Royal Decree-Law 5/2011 of 29 April on measures to regularize and combat undeclared employment and to promote improvements to residences. Under RDL 20/2011, the maximum annual deduction is increased to EUR 12,080 (previously EUR 6,750).

Other amendments

The tax credit for training employees in the use of new communication and information technologies and the tax credit for the creation or maintenance of jobs are extended through 2012.

Corporate Income Tax ("CIT")

From 1 January 2012 to 31 December 2013, the withholding rate applicable to income subject to corporate income tax is temporarily set at 21% (previously 19%).

For CIT taxpayers, the tax credit for training employees in the use of new communication and information technologies has been also extended.

RDL 20/2011 also extends the application of a reduced tax rate on corporate income tax for entities with net turnover under EUR 5 million with an average of less than 25 employees, provided that such entities maintain or create jobs (the first EUR 300,000 of the tax base will be taxed at a rate of 20%, with excess amounts taxed at a rate of 25%).

Non-Resident Income Tax

RDL 20/2011 establishes the following temporary rates for 1 January 2012 to 31 December 2013:

- General tax rate of 24.75% (previously 24%);
- A rate of 21% (previously 19%) on: (i) income obtained from permanent establishments of non-residents that is transferred abroad; (ii) dividends and other income derived from equity stakes; (iii) interest and other income derived from capital transfers; and (iv) capital gains.

Valued Added Tax

Royal Decree-Law 9/2011 of 19 August reduced the 8% VAT rate on new-home purchases to 4%. The reduced rate applies to the delivery of houses, buildings, or parts of buildings that may be used for living purposes and includes up to two parking spaces annexed to the property if they are transferred simultaneously in the same deed. RDL 20/2011 extends the *significantly-reduced* rate of 4% through 31 December 2012.

Local Taxes: Real Estate Tax

RDL 20/2011 increases Real Estate Tax rates for 2012 and 2013. As indicated in the following table, the increase depends on the year of the most recent cadastral revision:

Year of cadastral revision	Increase
Prior to 2002	10%
2002 -2004	6%
2005-2007	0[2]%
2008-2011	4%

To avoid penalising those taxpayer with lower income, the increases under RDL 20/2011 do not apply to low-value residences in each municipality, provided that their cadastral values have been updated after 2001.

Incorporation of European Law

RDL 20/2011 transposes Directive 2010/24/UE of 16 March 2010 on mutual assistance in the recovery of claims relating to taxes, duties and other measures into Spanish law through the modification of Law 58/2003 of 17 December on general tax. Given its codifying nature, Law 58/2003 incorporates all rules that are required for ensuring mutual assistance.

*****

UNITED KINGDOM

Report on UK developments in the period October 2011 to January 2012

Direct Tax

The government has established a new consultation framework under which it has been consulting during the latter part of 2011 on a number of potential changes to the UK tax system and it published draft clauses on 6 December 2011 for comment by 10 February 2012.

The Budget is then on 21 March 2012 and the draft Finance Bill will be published on 29 March 2012.

The main imminent changes to the UK tax system are:

Corporation Tax rate is to be progressively reduced from 26% in 2011-12 to 23% in April 2014.

Capital Allowances, relief for capital expenditure on plant and machinery, are reduced from 20 to18% from 2012 to counteract the loss of tax revenue caused by the reduction in the Corporation Tax rate.

An annual Bank Levy has been introduced which is estimated to raise £2.5 bn each year.

Controlled Foreign Companies

A new regime is to be introduced, which will begin later this year. It will continue to tax overseas entities, rather than bad income, but will only tax in the UK the part of the overseas entity income that falls within the new CFC regime. And the new regime will target income that would otherwise have been UK income but has been artificially diverted abroad.

Foreign Branches

A UK company can now make an irrevocable election so that all its foreign branches, wherever they are located, are exempt from UK tax on their profits. There is then no relief in the UK if the branches make a loss.

Patent Box
The Government will definitely be introducing a patent box regime from April 2013 under which the profits that can be attributed to the ownership of patents, over and above a normal commercial profit, will only be taxed at 10%.

General Anti-Avoidance Rule (GAAR)
An independent study group presented its report to Government in November and it recommended that a more targeted GAAR should be introduced in the UK. The government will announce what it intends to do at the time of the Budget on 21 March 2012 but our guess is that it will start a formal consultation process and that a GAAR may well be put on the UK statute book in FA 2013.

Indirect Tax

HMRC issue further note that the exempt VAT treatment of insolvency practitioners' services for IVA's could extend to company and partnership voluntary arrangements (20 Sept 2011)
Upper Tribunal rejects HMRC's appeal against the FTT's referral of compound interest questions to CJEU in respect of Grattan plc (decision 28 Sept 2011)

HMRC announce that salary sacrifice arrangements entered into before 28 July 2011 and extending beyond 31 Dec 2011 that would be taxable from 1 January 2012 under the new rules, can continue to be exempt until the date the agreement expires, the date of the employee's annual salary and benefits review, and the date any renegotiation of salary package results in a change of benefits under salary sacrifice (3 Oct 2011).

First Tier Tribunal conclude that consideration under HP agreements can be partially attributed to the sale value of the car the subject of the HP agreement (18 August 2011).

HMRC announce a bringing forward of the deadline for submitting monthly intrastate information for EU imports and exports from the last day of the month following the month covered by the report, to 21 days after the month end. This first takes effect from 1 April 2012 in respect of the 31 March month end (November 2011)

HMRC announce the removal of low value consignment stock relief from 1 April 2012 (November 2011)

Government announce that the HMRC in conjunction with FSA is tasked with clarifying the VAT treatment of transactions in connection with financial advice given on transactions subject to the retail distribution review (5 November 2011)

FTT refers questions on compound interest to CJEU in the case of Grattan plc (31 Oct 2011);
Draft legislation on VAT cost sharing published for consultation (6 December 2011);

HMRC clarify their view of the VAT treatment of extra care accommodation (residential accommodation where the occupants have the option of purchasing various levels of extra care) (January 2012)

Court of Appeal follows ECJ in treating the Axa Denplan payment handling service as taxable debt collection services (January 2012).

ICAEW Tax Faculty / CIOT / Institute of Indirect Tax
23 January 2012

*****