CONFEDERATION
FISCALE
EUROPEENNE

CFE Fiscal Committee

National Reports

January 2011

121th Meeting

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AUSTRIA

Changes in Austrian Tax Law Effective January 1, 2011

A few days before year-end the Austrian Parliament passed a comprehensive budget and tax bill, the “Budgetbegleitgesetz 2011 - 2014” (BBG 2011 - 2014). It includes numerous amendments having significant impact on Austrian tax law.

Deductibility of Interest for Corporations

Up to 2010, interest expense resulting from the debt-financed acquisition of shares was generally tax deductible for corporation income tax, even if the Austrian participation exemption regime applies. That regime would exempt dividend income and capital gains generated from the shares acquired.

Effective January 1, 2011, interest expense relating to the acquisition of shares from a related party or from a controlling (direct and indirect) shareholder will generally be non-deductible. This applies retroactively also to interest expense resulting from intra-group share acquisitions conducted prior to 1 January 2011!

Interest expense incurred in connection with the acquisition of shares from a third party is not affected and will remain deductible.

Withholding Tax on Domestic Dividend Distributions

Up to 2010, withholding tax of 25% had to be deducted for domestic intercompany dividend payments, i.e. dividends paid to another Austrian company if the shareholding is less than 25% The minimum holding threshold required to qualify for relief from dividend withholding tax at source is reduced to 10%, with effect from 1 October 2011. This is only a cash-flow issue as the withholding tax is anyway fully creditable or refundable for a corporate shareholder.

Hybrid Instruments

Another important change in the Corporate Tax Act relates to hybrid instruments used for cross-border financing activities. Income derived from hybrid financing instruments qualifying as equity-type investments for Austrian corporate tax purposes, will no longer be tax exempt under the Austrian participation exemption if the corresponding payments are tax deductible in the source country. The proposed amendment aims to eliminate

double-dip structures which provide for a deduction of payments in the source country and a corporate tax exemption for the related income in Austria.

Stamp Duties for Credit or Loan Agreements

Up to 2010 loan agreements were subject to Austrian stamp duty at a rate of 0.8% - 1.5% of the loan amount. From 2011 the stamp duty on loan agreements is abolished.

Research and development incentives

Up to 2010, an R&D premium of 8% or alternatively an allowance of 25% to 35% of qualifying R&D expenses could be claimed for R&D activities.

The R&D premium is now increased to 10% while the R&D allowance is abolished. In addition, the R&D premium is limited to R&D activities performed in Austria.

Taxation of Capital Gains of individuals

Up to last year capital gains resulting from the sale, by individuals, of privately held capital investments were exempt from income tax if the investments (e.g. shares) were held for at least one year. Under the new law capital gains are taxable for private investors irrespective of the holding period. Gains will be taxed at a flat rate of 25% based on the gross capital gain, without deduction of related expenses such as transaction or administrative costs. If the investment is held at an Austrian deposit account, the tax on capital gains is to be withheld by the Austrian depository bank.

In general terms, these rules come into effect on 1 October 2011. However, special rules apply to certain types of investments (*e.g.* capital gain upon sale of shares, derivatives, etc.). Capital losses from the sale of investments can – apart from some restrictions – be offset against capital gains and current income (*e.g.* interest, dividends, capital gains, etc.) from such investments. Capital losses cannot be offset against business or other private income (*e.g.* employment income, lease/rental income, etc.) and cannot be carried forward

Taxation of Austrian Private Foundations ("Stiftungen")

Up to 2010, private foundations were subject to a beneficial tax treatment for certain passive investment income. The tax rate was 12.5% for *e.g.* sale of shareholdings,

interest on bank deposits, bonds etc). This tax ("interim tax") is creditable toward withholding tax due on payments of the private foundation to the beneficiaries.

From 2011 onwards, the interim tax is increased from 12.5% to 25%. The interim tax remains creditable against withholding tax on future distributions to beneficiaries.

In addition, profits from the sale of real estate were exempt from tax, if the real estate was held for more than ten years. From 1 January 2011, these gains will be subject to 25 % tax if at least one of the founders or co-founders of the foundation is a legal entity or a business entity of an individual..

Bank Levy

Beginning with 2011, banks in Austria are subject to a bank levy, which is determined based on a modified balance sheet total as well as the amount of derivatives held by the bank.

Austrian branches of foreign banks (EU as well as non-EU) are also subject to the bank levy. Insurance companies, financial services institutions, like leasing companies and investment companies are not subject to the bank levy.

No bank levy falls due for banks with a modified balance sheet total up to EUR 1 billion. For those between EUR 1 billion and EUR 20 billion the rate is 0.055%. Banks with a balance sheet total exceeding EUR 20 billion are subject to a rate of 0.085%.

The tax rate for the additional levy on derivatives held for trading amounts to 0.013%.

Other Changes

Other major changes relate to

- Taxation of investment funds (the taxation of realized capital gains will be changed substantially);
- A special excise duty will be levied for passenger flight tickets. The duty is in the range of EUR 8 to EUR 35 per passenger and shall apply for all flights from 1 April 2011 onwards
- The existing excise duties on gas, tobacco and the acquisition of new cars shall be increased.

Prepared by Friedrich Roedler

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CONFEDERATION FISCALE EUROPEENNE

CZECH REPUBLIC

Legislation changes from September to December 2010 in the Czech Republic

Changes brought by the Tax Procedure Rules

Starting from 1 January 2011 the new Tax Procedure Rules enter into effect. The new Tax Procedure Rules primarily regulate the tax procedure in much more detail, and hopefully more exactly

The most important changes include:

- The Tax Procedure Rules introduce a penalty for late filing of a tax return and stipulate the exact way it should be calculated: in the event of a delay of more 5 business days a penalty will accrue automatically, amounting to 0.05% of the tax or excessive deduction assessed, or, as the case may be, 0.01% of a tax loss (the maximum limit being 5% of the tax, excessive deduction or loss).
- The Tax Procedure Rules formulate the conditions for filing additional tax returns stating a lower tax amount, or, as the case may be, a higher tax loss. Under these conditions, it is necessary that new circumstances or evidence have come to light, indicating that the tax amount had been determined incorrectly.
- Under the Tax Procedure Rules, the "preclusive period" (now the "period for assessing tax") shall be calculated starting from the expiry of the deadline for filing the ordinary tax return, not starting from the end of the taxation period in which the tax liability originated.
- Under the new Tax Procedures Rules, when initiating a tax inspection, the tax administrator has to specify, in detail, the scope in which the inspection will be carried out; such a specification can be changed in the course of the tax inspection, as needed.
- The tax payment date shall be the date when the amount is credited to the tax administrator's account, as has been the case since November 2009. Under the Tax Administration Rules, however, the interest on late payment shall accrue only starting from the fifth business days after the tax is due. The Tax Procedure Rules thus aim to leave sufficient space (4 business days) to effect tax payments.
- Remitting interest on tax on the grounds of excessive harshness of the law shall no longer be possible

Tax exemption of royalties

Starting from 1 January 2011, companies may benefit from tax exemption when paying royalties. The exemption applies to fees paid from the Czech Republic to group companies resident in an EU member state, Switzerland, Norway or Iceland. Certain conditions have to be met to claim the exemption, namely a ruling has to be obtained from the tax administrator.

Changes relating to solar power plants

Effective from 1 March 2011 state support will not be provided to the photovoltaic power plants that are situated in open areas but will only be provided to those that are located on buildings and do not exceed the maximum output of 30 kilowatts. Support will also not be provided to the so-called insular operations of photovoltaic plants – in other words, to producers generating electricity for their own consumption. In addition, tax holidays applicable to renewable sources have been cancelled and mandatory straight-line tax depreciation of equipment for producing electricity from solar energy has been introduced.

From the beginning of 2011 to the end of 2013, only part of expenses connected with the support of renewable sources will be reflected in the electricity prices set by transmission and distribution network operators. Expenses that will not be covered in the electricity price will be financed from the state budget. Operators will apply for their reimbursement at the Ministry of Industry and Trade. The state budget will acquire the funds for reimbursement of these expenses from three sources introduction of mandatory payments for producing electricity at solar power plants, increased mandatory payments for the removal of land from the agricultural land fund and introduction of a gift tax on emission rights.

Amendment to the Accounting Act

Starting from 1 January 2011 the amended Accounting Act entered into effect. The following is the summary of major changes introduced by the amendment:

- exempting from the duty to prepare consolidated financial statements entities who control only immaterial entities; the financial statements of the consolidating entity

will be sufficient to provide a true and fair view of the subject of accounting of the consolidation group,

- extending the possibility to apply International Accounting Standards as Adopted by the European Union to entities of a consolidation group where the consolidating entity applies the Standards in the preparation of the consolidated financial statements, provided that the General Meeting approves such an application,
- extending the penalties for unlawful conduct in keeping accounting records so as to reach also entities whose assets (from which such penalties are calculated) are substantially understated,
- allowing foreign residents – individuals/unincorporated businesses to keep accounting records under the same conditions as Czech individuals/ unincorporated businesses; for instance allowing them not to keep any accounting up to a turnover of MCZK 25, just records for taxation purposes,
- limiting the duty to compile a survey of changes in equity and cash flow statement; in the future, these should only be prepared by selected entities (in particular state administration bodies, organisations financed by the state budget, municipalities and regions), provided that they exceed two criteria: MCZK 40 of gross assets and MCZK 80 of turnover.

VAT amendment only from 1 April 2011

The Chamber of Deputies passed the amendment to the VAT Act in the third reading. The deputies have postponed its effective date until 1 April 2011.

The amendment contains some provisions that the Czech Republic was obliged to implement by 1 January 2011 under the EU VAT Directive. In these areas, it will be possible to claim direct effect of the Directive and to apply the relevant provisions of the Directive even where there is no specific regulation (or a contrary regulation) in the VAT Act. It is expected that the Ministry of Finance will issue information or a notice on how to proceed in this respect.

The following is a brief summary of major changes:

- VAT payers may claim a VAT deduction at the earliest when they have the relevant tax document

- VAT payers will have the option to make a VAT correction and reduce their tax liability for receivables that are uncollectible.

- To prevent tax evasion, the amendment introduces a “reverse-charge” mechanism for some local supplies (supplies of construction and assembly work, supplies of scrap metal and waste, and trading in emission allowances).

- The amendment contains an entirely new concept of customer liability (VAT payer) for a tax payment to be made by a supplier. The liability should apply where the supplier deliberately did not pay the VAT or got into a situation where it could not pay the tax, and the customer knew or should have known about that

- The amendment extends the time limit for adjusting a tax deduction when the use of the property has changed, from 5 to 10 years. The amendment also changes the point in time for claiming the reduced deduction entitlement as regards assets subject to depreciation that are used by the payer for economic activity, as well as for unrelated activity, for instance for private purposes.

- The change in the rules for determining the place of taxable supply for these services follows the amendment to the relevant EU Directive.

M. Konecna – Czech Chamber of the Tax Advisors

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GERMANY

Electronic transmission of financial statements to the tax authorities

All German companies soon will be required to file an electronic tax balance sheet and an electronic profit-and-loss-account ("E-Tax Balance Sheet") as an appendix to their annual company tax returns. These new requirements for companies with book/tax differences, which are likely to apply for all fiscal years starting after 31 December 2011, may necessitate fundamental changes to software, accounting systems, charts of accounts and internal processes. Originally, the introduction of the electronic transmission of financial statements was scheduled for fiscal year starting after 31 December 2010, but had to be delayed due to technical and organizational difficulties.

Instead, the federal ministry of finance plans a pilot phase for the first half of 2011 for the electronic submission of such data. Companies may participate on a voluntary basis and will be selected by the federal ministry of finance. Results will be evaluated and used to optimize the final procedure.

It is advisable that all companies use 2011 to review their readiness for the E-Tax Balance Sheet and should plan to address changes to software, accounting systems, charts of accounts, and internal processes.

As from fiscal year 2011, all company income tax returns also will have to be submitted electronically. No changes are planned for tax assessments, which will still be issued only in hard copy.

Annual Tax Act 2010 in effect

The Annual Tax Act 2010 was published on 13 October 2010 and is now in effect. It contains several tax law changes that may affect foreign investors in Germany. The most important tax measures in the Act can be summarized as followed:

- Calculation of built-in gains under the change-in-ownership-rule: A new exception to the change-in-ownership rule was introduced on 1 January 2010, according to which a loss carry forward can survive a change in ownership to the extent there are built-in gains in the loss company's assets (i.e. to the extent the fair market value of the shares exceeds the tax equity of the entity transferred). The Annual Tax Act 2010 stipulates that the built-in gains must derive from assets that are

taxable in Germany (rather than assets that are located in Germany, as worded previously). Accordingly, built-in gains in non-tax-exempt foreign branches (e.g. in the absence of a treaty) will be able to qualify for the exception. Furthermore, where the loss company has negative equity, the amount of built-in gains that protect loss carry forwards from forfeiture will be determined as the difference between the (negative) equity and the fair market value of the business assets of the entity, rather than the fair market value of the shares in the entity. Both changes apply retroactively as from 1 January 2010.

- Exit tax rules: Under the amended rules, a transfer of assets held by a German corporation or partnership to a foreign permanent establishment (PE), a transfer of a business abroad and a cross-border migration of a corporation will trigger exit taxation on the entire built-in gain. This amendment is a reaction to several Federal Tax Court (BFH) decisions on the right to tax built-in gains upon a transfer of assets and businesses abroad. By stating that neither the transfer of a single asset nor the transfer of a business as such results in a loss of Germany's taxing right, the BFH held that there is no legal basis to tax built-in gains on assets transferred at the time of the transfer. The law change aims at preventing the situation in which the German tax authorities have to track assets transferred abroad and tax the built-in gains upon realization. The amendment provides that a transfer of assets or a business will trigger exit taxation, regardless of whether the transfer affects Germany's right to tax the built-in gain. As is already the case in a transfer of assets, gains on the transfer of a business triggered by the application of the rule may be spread over a five-year period upon application of the taxpayer, provided the business is transferred to an EU/EEA-Member State to which the EU Mutual Assistance Directive applies. The amended rules apply to all open assessments, regardless of when the transfer took place.

- Transfer of electronic bookkeeping abroad: The Annual Tax Act eliminates the restriction that permits the transfer of electronic bookkeeping only to an EU/EEA country, so that bookkeeping will be able to be transferred to any country provided certain requirements are met. The requirement that the foreign country to which the bookkeeping is transferred must consent to electronic access for the German tax authorities also will be abolished. However, taxpayers will still need to meet the cooperation obligations and disclose the physical location of the IT system, and the German tax authorities will need to be able to access the system electronically. Last, but not least, the collection of tax must not be put at risk by transferring the bookkeeping abroad. The relaxation of the rule applies from the day after the official publication of the Annual Tax Act 2010 (14 December 2010).

- Restriction of CFC rules: The definition of what constitutes "low taxation" for German CFC purposes have been broadened to take into account tax credits and refunds at the shareholder level when determining whether the effective tax rate abroad falls below the 25 % threshold. According to the official explanations to the draft of the Annual Tax Act 2010, this change specifically targets taxpayers that earn passive income via corporate entities in Malta, because these entities currently fall outside the scope of the German CFC rules as a result of certain features of the Maltese tax system. Accordingly, the rules on the computation of the income to be allocated were amended. Tax refunds and credits to which the shareholder is entitled will reduce the amount of local tax incurred on the foreign company's profits. Since local tax payable generally reduces the profit to be included under the CFC rules, a reduction of local tax payable for tax refunds ultimately should lead to higher profits to be included in the German shareholder's tax base under the CFC rules. Both amendments apply to profits earned by foreign CFCs in fiscal years starting after 31 December 2010.

The Annual Tax Act 2010 also includes other changes, the most significant of which relate to the extension of partial tax refund to nonresident corporations, tax treatment of interest on tax refunds, taxation of investment funds, the rules on the flat tax on investment income for individuals, VAT and the Inheritance Tax Act.

Act for an accompanying budget law 2011

On 28 October 2010, the Lower House adopted the act accompanying the 2011 budget, which amends the air traffic tax, the insolvency act, the energy tax and the parental leave allowance.

Draft Tax Act to simplify the German tax law

On 20 December 2010 the federal ministry of finance issued a draft tax act to simplify the German tax law. The draft act is aimed at reducing the bureaucratic complexity of the German tax law by unburden taxpayers from certain tax declarations and relieving tax authorities from tax assessments and administration costs. The most important amendments are:

- The liability to charge for binding advice on the part of the tax authorities would be limited to comprise only material and complex cases whereas in minor cases no fee would be imposed. Whether or not fee will be imposed would be determined by the fiscal impact of the underlying case. The amendment would only have effect for future binding advice after this tax act has become effective.
- Under the current tax law certain foreign activities such as the establishment and the acquisition of businesses and permanent establishments have to be reported to the tax authorities within one month after the transaction. The draft allows for a report-period of six month after the end of the calendar year in which the transaction occurred.
- The employee lump sum allowance for business expenses would be raised from currently € 920 to € 1000 per year.
- For certain tax payers with income not derived from business / professional income would be a new possibility of turning in tax returns for a period which comprises two calendar years. Eligible tax payers are those with a relatively steady income which is subject to a tax deduction at source, e.g. employees and taxpayers with capital income. Besides that, other profit income may be earned if it is of minor relevance and the sum of the yearly earnings does not exceed € 13 000.

In addition to the proposed amendments further measures will be conducted by the tax authorities to gradually introduce the IT-based process for all stages of the tax assessment process. Further, tax audits by the fiscal authorities would be conducted more contemporary and relief regarding the burden of proof for VAT-exempt intra-Community supplies is intended.

According to the draft the amendments in general would take effect as from 1 January 2012. The next step in the legislative process is currently scheduled for February 2011.

Real Estate Transfer Tax (RETT) rates increased in several federal states

A uniform Real Estate Transfer Tax (RETT) rate of 3.5% applied throughout Germany until 2006 when an amendment to the constitution gave the federal states the right to set the RETT rate themselves. As a result, the RETT rate can vary from one federal state to another. The first state to increase its rate (to 4.5%) was Berlin in 2007, followed by Hamburg and Sachsen-Anhalt (both also to 4.5%). The following States have increased

their RETT rates with effect as from 1 January 2011: Brandenburg (5%), Bremen (4.5%), Lower Saxony (4.5%) and Saarland (4%). Schleswig-Holstein will follow in 2012 (5%). All other States remain at a RETT rate of 3.5%. The rate increases will affect real property transferred in a sale or reorganization and share acquisitions (unification of shares, transfer of partnership interests).

Real Estate Transfer Tax exemption for intra-group restructurings

On 1 December 2010, the German tax authorities issued a long-awaited decree on the Real Estate Transfer Tax (“RETT”) that clarifies the exemption from RETT for certain restructurings.

Restructurings leading to a direct or indirect transfer of shares or capital interest in an entity holding German real estate may trigger RETT. According to the relief granted as from 2010 (section 6a RETT Act), a direct transfer of real estate, a change in partners in a partnership or a unification of shares are exempt from RETT if they are part of restructurings specified in the Reorganization Act. Such restructurings include mergers, demergers, spinoffs and hive-downs. By contrast, intra-group restructurings involving mere transfers (e.g. sales), exchanges of shares or contributions in kind do not qualify for the exemption. Restructurings under comparable rules in other EU/EEA member states will qualify for the RETT exemption, but relief is not available for intra-group restructurings in non-EU/EEA member states (e.g. Switzerland and the U.S.).

Further, to qualify for the relief, the intra-group restructurings must involve a “controlling enterprise” and one or several “controlled companies”. A controlled company for these purposes means an entity that was consolidated with at least 95% of the share capital held directly and/or indirectly by the controlling enterprise for five years before the restructuring (holding period) and that will remain consolidated with at least 95% of the share capital held directly and/or indirectly by the same entity for five years following the restructuring (retention period).

The new decree on section 6a RETT Act clarifies which entities qualify as “controlling enterprises” and “controlled companies” and how the holding and retention period should be determined. In most of the cases mentioned in the decree, the tax authorities have taken a rather strict view, and the authorities implicitly state that only the top entity in the 95% ownership chain should qualify as the controlling enterprise. A mere holding company cannot be a controlling enterprise because the authorities have deduced from the word “enterprise” in the law that only entrepreneurs within the meaning of the German VAT Act should be accepted.

On a positive note, however, partnerships will qualify as controlled companies. Moreover, the tax authorities are willing to accept certain cases in which either the holding or the retention period cannot be met, either because the controlled company is newly formed (e.g. by way of hiving down the real estate) or – more importantly – because it is dissolved by way of a merger.

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GREECE

HELLAS NATIONAL REPORT 01/2011 by P.O.F.E.E

The main amendments on the Tax Law for individual taxation system and VAT introduced by Greek Laws are the following:

1) Taxation of Individuals*

The scales for the taxation of individuals for 2011 are the followings as the table shows below:

Income-based tax rates for the Taxation of Individuals

Income	Tax Rate
0€ - 12,000€	0%
12,001€ - 16,000€	18%
16,001€ - 22,000€	24%
22,001€ - 26,000€	26%
26,001€ - 32,000€	32%
32,001€ - 40,000€	36%
40,001€ - 60,000€	38%
60,001€ - 100,000€	40%
Incomes over 100,000€	45%

2) Corporate Taxation*

No changes

3) Other legislative amendments (Indirect Tax and others)*

The new increases in V.A.T. rates are taking place as of January 1st, 2011. The new rates are as follows:

i) The standard rate of 23% remains the same,

ii) The reduced rate for goods and services (eg food, non-alcoholic beverages, electricity, hotel services etc) which was 11%, increased to 13%,

iii) The reduced rate for certain goods and services (ex newspapers, magazines, books, theatres, medicines and hotel stay-over etc) rises from 5.5% to 6.5%.

Moreover, the 30% reduced rates applied to Aegean Islands shaped to 16%, 9% and 5% respectively.

*A revision of Tax Law is expected in late January/early February to come in the Parliament, more likely to bring changes rather in the direct and corporate taxation side.

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ITALY

121st Meeting January 2011 (Brussels)

Update of the Report on Italian Developments since September 2010

Direct taxation

The Italian Tax Regime was amended in the last 2010 Quarter by:

- Circular No. 51/E of 6 October, 2010 (guidelines on the Italian CFC legislation);
- the 29 September, 2010 Regulations of the Italian Tax Authorities' Director and Circular No. 58/E of 15 December, 2010 (guidelines on transfer pricing documentation).

CFC guidelines

Key changes in the Italian CFC legislation are (Law Decree No. 78/2009):

- the narrowing of the safe harbour provided for a foreign subsidiary that carries on a genuine industrial or commercial activity ("*Active Business Test*");
- the broadening of the scope of the CFC legislation, which applies to foreign subsidiaries established in white-listed jurisdictions when (i) the subsidiary's proceeds derive mainly from passive income, (ii) the subsidiary is subject to an effective tax rate lower than 50% of the equivalent Italian rate ("*Effective Tax Rate Test*"), and (iii) the Italian parent does not demonstrate that the subsidiary does not constitute a "*wholly artificial arrangement*".

According to Circular No. 51/E of 6 October, 2010:

- the foreign subsidiary may pass the "*Active Business Test*" if its Italian parent shows that it actually participates to the economy of its host State or territory;
- for the purposes of the "*Effective Tax Rate Test*", the foreign level of taxation should be measured in terms of effective rate applied in any given year, taking into account also any losses to be carried forward;
- a foreign subsidiary earning passive income is to be deemed a CFC only if it constitutes a "*wholly artificial arrangement*" (within the meaning set forth in the Cadbury Schweppes decision);
- a foreign subsidiary constitutes "*artificial arrangement*" if:
    - it does not carry on genuine economic activities;
    - there is no proportionate correlation between the activities (apparently) carried on by the CFC and the extent to which it physically exists in terms of premises, staff and equipment;

- the foreign company has significantly more capital than it needs to carry on its activities;
- the taxpayer has entered into arrangements which are devoid of economic reality, serve little or no business purpose or might be contrary to general business interests.

Transfer pricing guidelines

The Regulations dated 29 September, 2010 implement Article 26 of Law Decree n. 78/2010 and establish type and content of the documentation on transfer pricing to be made available to Tax Authorities to benefit from the penalty protection regime introduced by Law Decree n. 78/2010. Taxpayers may avoid the application of administrative penalties in case of transfer pricing adjustments, provided that "*proper*" documentation has been prepared and promptly handed over. The documentation requirements broadly replicate the recommendations of the EU Code of Conduct on transfer pricing documentation, by providing for the following two sets: the Masterfile and the Country File ("*Documentazione Nazionale*").

The documentation must outline, among others, the economic and legal reasons behind the inter-company transactions scheme adopted by the group, map any inter-company transactions not pertaining to the taxpayer's ordinary business, and describe any APA concluded. To benefit from the penalty protection offered by the Law Decree, taxpayers must file electronically an annual "*communication*" to the Revenue Agency ("*Agenzia delle Entrate*"), stating the availability of the documentation for transactions carried out in the year for which the "*communication*" is filed, starting from the fiscal year in course on 31 May, 2010. For previous fiscal years, the deadline for submission of the "*communication*" is (was) 28 December, 2010.

Circular No. 58/E of 15 December, 2010 provides further explanation as to the new transfer pricing documentation regime set by the Regulations. The transfer pricing documentation will be deemed compliant if it provides the Tax Authorities with all data and elements necessary to perform a complete and comprehensive analysis of the transfer pricing policies adopted by the taxpayer. During a tax audit, tax officers may ask for further information other than that included in the documentation delivered by the taxpayer.

Taxpayers already subject to tax audits may benefit from penalty protection if no formal notice of assessment has been issued before filing the "*communication*" of transfer pricing compliance. Even if the tax assessment has already been formalized, the Revenue Agency may discretionarily grant penalty protection to taxpayers that have proven cooperative behaviour during the tax audit.

As far as 2006-2009 fiscal years are concerned, taxpayers may submit the "*communication*" regarding the availability of documentation within 28 December, 2010 even if the method selection process and economic (benchmarking) analysis are not completed.

VAT

As per 1 March 2011, Italy will enter into the VIES system only the identification numbers of taxpayers having asked to be authorized to sell or purchase goods or services within the EC. Existing VAT numbers will be included in case they have been actually used in 2009 or 2010; all other ID numbers will be removed. Persons not included in the VIES system, in order to carry out an intra-community transaction, should allow to tax administration a delay of 30 days, for the check of taxpayer's request.

This new system has been adopted in order to increase tax audits on these subjects, and requires – so it has already happened in other countries, like Spain – that EC counterparties should check that even and old customer/supplier has been confirmed in the VIES.

A new listing has been introduced by article 21 of Law No. 122 of 2010, concerning tax-relevant transactions amounting to sums not lower than Euro 3.000. Considering that another listing has already been introduced for relationship with *black list* countries (for this purpose also Luxembourg, Monaco and the Isle of Man have been included), the intra-community transactions are to be listed twice, once in the INTRASTAT forms and a second time in one of the two lists (*black list* for any amount, the other list for consideration of the relevant amount). In case of omitted, incomplete or fraudulent communication, a pecuniary penalty shall be applied.

Italy has been authorized to introduce the reverse charge system for internal sales of mobile phones and integrated circuit devices. Austria and Germany have also been authorized by the same council act (decision 2010/710 of 22 November 2010), but for amounts in excess of 5.000 euros. Italy has no lower limit, but the instructions by tax administration have excluded this system in retail sales. This procedure will be effective by 1 April 2011.

10 January, 2011

Raffaele Rizzardi – Piergiorgio Valente

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SWITZERLAND

Tax developments Switzerland

Freedom of movement of capital and the Administrative Assistance Clause

Lately, Switzerland signed several new Double Taxation Agreements (DTAs) all containing an administrative assistance clause in accordance with the OECD standard. Those DTAs are for an example the ones with Canada, Germany, Greece, Hong Kong, India, Japan, the Netherlands, Poland and the Republic of Korea.

In addition to that, the ordinance on executing administrative assistance in accordance with DTAs was implemented by the Federal Council on 1 October 2010. Among others, the ordinance shall regulate the preliminary examination of administrative requests, the procedural rights of the persons concerned and their right of appeal, the procurement of information in administrative assistance procedures, as well as the ban on administrative assistance in cases of stolen bank data.

These new regulations have an impact on the freedom of movement of capital. The freedom of movement of capital is the only one of the four fundamental freedoms of the internal market of the EU relevant for third countries. According to Art. 65 of the EC, all restrictions on the movement of capital between Member States as well as between Member States and third countries shall be prohibited. It was also supported by the European Court of Justice (ECJ) legislation. However, the freedom of movement of capital was not highly relevant to Switzerland until now, as states could use the lack of information exchange as a justification of not applying the freedom of movement of capital on countries without the administrative assistance. As this administrative assistance is now guaranteed in many new DTAs, this justification is no longer possible and the freedom of movement of capital will be granted. As of that, Swiss citizens will now be able to rely on the freedom of movement of capital in cases of double taxation.

Implementation of the unpunished corrected return

Nowadays, corrected returns remain unpunished as long as the taxpayer declares the tax evasion himself. Once in a lifetime, taxpayers are now able to declare their tax evasion and will only have to pay the supplementary tax and the late interest. This privileged corrected return is only possible under the condition that the tax authorities have not yet any knowledge of the tax evasion and that the taxpayer is completely

cooperating with the tax authorities. In addition to that, the mechanism of the unpunished corrected return will be applicable to all participants of a tax evasions. This new regulation is relevant for the direct federal tax as well as for the income and wealth tax.

About 4550 taxpayers declared their corrected returns until now, according to a recent survey. The tax authorities thereby earned some billion Swiss Francs. In the canton of Zurich, for an example, 1400 taxpayers declared their tax evasion. This way, CHF 666 million were legalized.

Referendum on minimum cantonal tax on the very rich

In a referendum voted upon on November 28 2010, 58.5 percent of voters rejected a proposal that would have imposed a minimum cantonal tax on the very rich. There would have been approximately 32'000 persons affected by the planned regulations. According to the proposal, people with an income of more than CHF 250'000 would have had to tax parts of their income with 22 percent at a minimum. Right now, the minimum tax for people with a wealth of CHF 2 million is 0.5 percent and the cantons have varying taxes on the very rich.

Lump-sum taxation

A proposal to legally formulate lump-sum taxation on a federal level with an assessment base of at least CHF 400'000 was sent into consultation. Lump-sum taxation is used when the assessment of worldwide income and wealth of a taxpayer would involve substantial practical difficulties. The basic prerequisite is that the person concerned must not pursue an occupation in Switzerland which is e.g. the case if someone is making Switzerland his tax home for the first time or after at least ten years outside the country. Foreigners enjoy this right indefinitely, while it is limited to the first year of residence for Swiss citizens after returning from abroad.

Initiative on inheritance tax

Currently, there is no inheritance or gift tax on a federal level. Most cantons don't impose an inheritance tax on descendants or spouses. Because of that, the Social Party and other parties have recently started collecting signatures for an initiative on inheritance tax. The initiative is calling for a federal inheritance tax, but the threshold of taxation is

still unclear. The conservative parties reject this proposal while the Greens are about to start initiatives in various cantons about an inheritance tax.

Walo Staehlin, Berne

January 2011

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THE NETHERLANDS

NATIONAL REPORT - The Netherlands -

1. European Commission requested the Netherlands to amend discriminatory tax regulations

On Thursday September 30, 2010, the European Commission announced that it has officially requested the Netherlands to amend a number of tax regulations which it considers to be discriminatory. These include the following provisions:

Taxation of foreign entities with a substantial interest in companies in the Netherlands
If foreign entities have a substantial interest (in short an equity interest of at least 5%), the Netherlands can levy tax if the substantial interest is not part of an enterprise of the foreign entity. For domestic companies, the income from such equity in Dutch companies, in principle, exempt under the participation exemption. Accordingly, the European Commission argues that this provision is contrary to the freedom of establishment, freedom of capital movement and the EU Parent-Subsidiary Directive.

Taxation of foreign charities with a substantial interest in the Netherlands or with income from immovable property situated in the Netherlands
Similar discrimination occurs on foreign charities with a substantial interest in the Netherlands or income from immovable property situated in the Netherlands. Domestic charities are only taxable if they carry on a business, while comparable foreign charities with Dutch income are fully subject to Dutch income tax for that income.

Inheritance and gift taxes on immovable property

With respect to Inheritance and gift taxes on immovable property, the Commission objected that immovable property situated in the Netherlands are partially or fully exempt from inheritance tax and gift tax, while no exemption or reduction is granted to the inheritance or donation of immovable property located in other Member States or EEA countries. The Commission argued that this distinction is contrary to the free movement of capital.

The Netherlands had two months to reply satisfactorily to the said regulations.

2. Netherlands sued by the European Commission for its exit taxes

The European Commission has decided to submit the exit tax for Dutch companies to the European Court of Justice. In the Netherlands corporate income tax contains immediate exit taxes. The European Commission argues that such exit taxes can interfere companies from their right to establish their company freely within the EU. For this reason, according to the European Commission, these exit taxes are conflicting with European law because they do not postpone taxation until actual realization.

3. Tax effect constitutional changes in the Dutch Kingdom

On October 10, 2010 the islands of Curacao and St. Maarten became autonomous countries within the Dutch Kingdom (the country The Netherlands Antilles has been lifted). Bonaire, Saba and St. Eustatius (the BES islands) will continue as special municipalities of the Netherlands. After this political reform in the Kingdom, the Netherlands contains four countries and five tax regimes.

Below, we made a brief outline of the tax implications of the constitutional reform for the various jurisdictions in the Kingdom.

Tax consequences Curacao and St. Maarten

The countries Curacao and St. Maarten have autonomy regarding their regulations. However, all current laws and regulations will be adopted by the new countries. In the future, the parliaments of Curacao and St. Maarten can independently, change laws and regulations. Consequently, the former tax regime for the Netherlands Antilles continue to apply for Curacao and St. Maarten. In addition, decisions such as rulings issued by the Netherlands Antilles continue to remain valid for Curacao. For St. Maarten a similar transition will be imposed.

Tax consequences BES islands

While Bonaire, St. Eustatius and Saba as a special municipality (public entity) will become part of the Netherlands, the Dutch tax system does not fully apply to these islands. For the BES islands, a new tax system in the Kingdom is designed with simplicity as a starting point. This tax system has come into force as from January 1, 2011.

Main features of the tax system for the BES islands are:
- no direct taxation on income tax for active corporations;
- fictitious application of Dutch dividend tax on passive companies;
- a property tax on commercial property, with a fixed charge on the value of the property;
- an income tax, a levy of 5% on distribution of profit in any form whatsoever;
- flat tax for wage and income tax;

In addition, the islands could impose various local taxes.

Tax consequences Aruba

With respect to Aruba no political change takes place. The current tax system of Aruba remains fully applicable.

4. New Dutch corporate income tax rate as from 2011

As from 2011, the overall rate of the Dutch corporate income tax is decreased from 25,5% to 25%. The rate of the first tranche of tax remains 20%.

	2010	2011
€ 0 - € 200,000	20%	20%
€ 200,000 and more	25%	25.5%

5. New work-related costs regulations for wage tax

As from 1 January 2011 the wage tax for a new system for reimbursement of business expenses (employment costs) applies. Based on this system, the exemptions for allowances and benefits will be calculated for each employer instead of each employee. An employer can spend (fixed) up to 1.4% of its wage on untaxed allowances and benefits. Everything above is taxed at a rate of 80%. So-called intermediate costs and specific exemptions are not covered by the package. Furthermore, there is a transitional arrangement under which employers can still choose the current regime of fees and allowances in 2011, 2012 and 2013.

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UNITED KINGDOM

Report on UK developments in the period September 2010 to January 2011

Direct Tax

Finance Acts

The UK had 3 Finance Acts in 2010 which is a record.

There was one in April 2010 before the Labour Government dissolved Parliament. About a third of the measures that would have been enacted were held over and appeared in the third Finance Act at the end of the year.

As a result of the General Election in May 2010 there was a new Government formed by a Coalition of the Conservative and Liberal Democrat parties.

There was then a short Finance Act in June/July to bring in the increase in VAT to 20% from January 2011, the reduction in the main Corporation Rate from 28 to 24% over the life of the new Parliament and an increase in the Capital Gains Tax rate to 28 from 18%.

The third Finance Act came in December 2010 and picked up on the measures that had been held over from the April Finance Act.

Policies of the new Government

The new, Coalition, Government has 'hit the ground running'.

The changes that are likely to have the greatest international impact are:

- Controlled Foreign Companies
- Overseas branches
- Intellectual Property and patents
- The Consultation process – the new approach
- A General Anti-Avoidance Rule

Controlled Foreign Companies

There are going to be some minor amendments to the CFC regime in 2011 so that it won't apply to overseas companies that have little connection with the UK or have very little finance or IP income.

A major new regime is to be put in place in 2012 and the problem areas are going to be Intellectual Property and Finance income. Whatever else changes the Government has announced that it will not alter the current favourable regime for interest relief.

There will be consultation with outside bodies throughout 2011 before the new regime is finalised.

Overseas branches

In 2009 the UK put in place a participation exemption regime so dividends from overseas subsidiaries are now exempt from tax in the UK.

In 2011 there is to be an elective regime under which companies can elect that their overseas branches will no longer be taxed in the UK. There are to be transitional rules to defer exemption for overseas branches that have generated more losses than profits in the past six years.

Intellectual Property and patents

The UK is to introduce a patent box regime from 2013 under which royalties will only be taxable at 10%. There are consultations about the detail of the proposed new regime.

The consultation process

There is to be a five stage consultation process which will begin by considering the broad outline of any potential changes before the options are decided upon and the precise details of the new policy are determined.

General Anti-Avoidance Rule (GAAR)

A working group has been set up with outside, non governmental, experts to consider the possible introduction of a GAAR. A report is to be presented to Government in October 2011. A GAAR was last investigated by Government in 1998 and rejected at that time.

Indirect Tax

- The standard rate of VAT increased from 17.5% to 20% on 4 January 2011;
- Time limit for submitting EC 8th Directive claims to HMRC for the year ended 31 December 2009 extended to 31 March 2011.
- Amendment to UK legislation proposed for Finance Bill 2011 (publication scheduled for 23 March 2011) so that provision of samples of goods is not treated as a supply of goods (thus attracting no output VAT). This was in response to the ECJ decision in EMI (C-581/08).
- With effect from 1 November 2010 the transfer of an allowance, a certified emission reduction unit and a certified emission reduction capable of meeting compliance with EU emission reduction legislation – added to the list of items for which reverse charge accounting applies so that a business recipient is required to account for and pay any VAT, not the supplier.
- With effect for supplies made on or after 1 January 2011, the definition of an aircraft qualifying for zero rating changed to comply with EU law, so that it applies to aircraft used by airlines operating for reward chiefly on international routes unless used by a State Institution. If use by a State institution, the aircraft must equal or exceed 8,000kg and not be designed or adapted for recreational or pleasure use, in order to attract zero rating.
- VAT toolkit published on 1 October 2010 to assist taxpayers, tax agents and advisers in completing VAT returns.
- Following the ECJ decision in Nordania Finans (C98/07) HMRC announce they require all VAT reclaims from car dealers under the Italian Republic case (C-45/95) to take account of partial exemption (brief 43/10 issued 12 October).
- HMRC announces (November 2010) the intention to change legislation to permit input VAT recovery on expenses for the entertainment of overseas business customers, following the ECJ judgment in the joined case of Danfoss and AstraZeneca (Case-371/07).
- With effect from 1 January 2011 the scope of the capital goods scheme (adjustment of input VAT recovery) has been widened to encompass ships and aircraft costing more than £50,000, and to include adjustments for the proportion of business and

private use of ‘relevant assets’ (interests in land, building or part of a building, civil engineering works, goods incorporated into a building, ships and aircraft).

- The standard rate and higher rate of insurance premium tax increased on 4 January 2011 from 5% to 6% and 17.5% to 20% respectively.
- Proposals put forward to amend the rules for opting to tax land where a development financier is involved (planned introduction date early in 2011).
- Refinements to the place of supply rule definitions for gas and electricity become effective 1 January 2011.
- HMRC issues limited guidance on how they will apply the ECJ decision in Axa/Denplan (Case C-175/09) on when payment handling services will be regarded as debt collection services subject to the standard rate of VAT rather than financial services exempt from VAT.
- Legislation will be introduced in Finance Bill 2011 to withdraw zero rating from printed matter where the printed matter is ancillary to a differently VAT rated service, and where, if the two supplies had been made by a single company, the supplies would have been treated as a single standard rated, reduced rated or exempt supply.

A major study into good tax policy

After four years of work, involving experts from all over the world, the Institute of Fiscal Studies (IFS) published a report into good tax policy design *Tax by Design.*

It covers both direct and indirect taxes and the 20 chapters are currently available on the IFS website at http://www.ifs.org.uk/mirrleesReview/design A hard copy version will be available in April 2011.

Chapter 20 contains the main conclusions and recommendations.

ICAEW Tax Faculty / CIOT / Institute of Indirect Tax

19 January 2011

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