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CFE Fiscal Committee

National Reports

September 2011

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CZECH REPUBLIC

Tax news from April to August 2011 – Czech Republic

VAT amendment from 1 January 2012 approved

The proposed amendment to the VAT Act will now be dealt with the Senate.
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 all of them were approved by the Chamber of Deputies in the beginning of September and no go to the Senate.
The great pension reform introduces the second pillar of pension savings in the form of capital-funded pillar, meaning that in the savings phase participants pay funds into their personal accounts with a pension provider, which then invests this capital in the financial markets. After reaching the retirement age, the savings participants will receive pension payments from their personal account. Further the third pillar in the form of supplementary pension insurance with state support will undergo a major change involving the separation of the assets of pension fund shareholders from the assets of savings scheme participants. The Government has proposed a change to the amount of state support so as to motivate participants to save more.

News in double taxation treaties and TIEAs

In May and June the Minister of Finance signed double taxation treaties with the governments of the Kingdom of Bahrain and Hong Kong, in September new treaty with Denmark (replacing one nearly thirty years old) and new treaty with Poland (replacing the treaty of 1993). These treaties will probably come into force in 2012 or 2013.

New treaty with China has become valid and will apply from January 2012.

The Ministry of Finance has concluded agreements with the governments of the British Virgin Islands, Jersey, the Isle of Man, Guernsey and Bermuda. The agreements expected to take effect no sooner than 2012. Under the agreements, the Czech Tax Administration is entitled to request from tax authorities in the member state all information needed to assess the tax liability of Czech tax residents. According to information from the Ministry of Finance, negotiations concerning the conclusion of agreements with San Marino and the Cayman Islands are in progress.

Establishment of Specialised Financial Authority

The Specialised Financial Authority, seated in Prague, will start to operate as of 1 January 2012. It will have 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.

M. Konecna, Chamber of Tax Advisors in the Czech Republic

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FRANCE

I. Report from Bruno Gouthière (IACF)

DIRECT TAX NEWS (March - September 2011)

1. Tax Treaties

A tax treaty between France and Saint Martin entered into force on May 1st, 2011. An Exchange Information Agreement between France and Saint Vincent and the Grenadines entered into force on March 21st, 2011.

2. Reintroduction of an exit tax for individuals

Individuals having transferred their tax residency abroad since March 3, 2011 are taxable on latent capital gains on shares representing at least 1% of the income of the company or a direct or indirect ownership which value exceeds €1.3m at the time of the transfer; an automatic stay in collection without conditions is granted for transfers of domicile within the EU (and Norway) and upon designation of a fiscal representative and constitution of guarantees for transfers of domicile outside the EU.

If the individual sells the shares later on, when he is non-resident, the tax has to be paid in France at the rate prevailing at the time of departure – currently 32.5% in total (an exemption of tax is granted if the shares are held for at least 8 years after departure, but social contributions will still be due upon sale – currently 13.5%). If the capital gain made upon the effective sale of the shares is higher than the latent gain as determined at the time of departure, only this last gain is taxable in France; if the capital gain is lower, then the "real" gain only is taxable.

3. New legislation on foreign trusts

A complete new legislation has been drafted with a view to apply death/donation duties and wealth tax to assets held in trusts. The general idea is to consider that the assets held in trust are subject to tax under a "transparency" principle, i.e. as if the settlor were still the owner of the assets and the income produced by the assets, irrespective of the terms and conditions of the trust (i.e. whether the trust is discretionary or not, etc.).

Accordingly, the settlor will now be subject to wealth tax and the transfer of assets held in trusts will be subject to tax upon his death. Territorial principles will be applicable, so that all assets will be taken into account where the settlor is a French resident and only

French assets where he is a non-resident. In order to apply the tax in case of subsequent transfers, the beneficiary will be deemed settlor after the transfer (similarly, he is treated as a settlor for trusts created before July 31, 2011 where the initial settlor is dead).

In addition, trustees will be subject, as of next year, to yearly reporting requirements; they will basically have to declare the existence of the trust, its main terms and conditions and the fair market value of its assets (subject to territoriality principles as above), provided that the settlor, or the beneficiaries are French resident or there is at least one French asset.
Finally, a specific 0.5% levy will be due by the trustee as of next year, except generally if the assets are declared by the settlor for wealth tax purposes.

4. Capital gains tax on real estate

So far, capital gains made by individuals were exempt after 15 years by application of a 10% rebate after the fifth year of holding. Regarding sales made as from February, 1st 2012, the rebate will be reduced to 2% for each year after the 5th year of holding, 4% for each year after the 17th year and 8% for each year after the 24th year, so that the exemption will be obtained after 30 years instead of 15. This legislation is also applicable to non-resident individuals.

5. Sale of shares in French real estate companies

The sale of French real estate shares is subject to a 5% registration duty, whether the company is French or foreign. Since the payment of this tax was not easy to control when the sale takes place abroad, the law provides that, as from November 1st, 2011, when the disposal of the shares is made abroad, such disposal will have to be recorded within one month through a notarial deed with a notary public exercising in France. The penalty for non compliance remains unclear.

6. Limitation in the availability of loss carry-forwards for companies

So far, companies that are subject to corporate income tax were able to carry forward prior tax losses for an indefinite period of time and to carry-back the losses over the last three years. The carry-back is now limited to the sole preceding year and with a limit of €1m; in addition, loss carry-forwards will only reduce the taxable income up to 60% of the profit of the year (this measure has been presented as a first step to converge with the German tax system).

7. Abolition of the world-wide tax consolidation system

So far, upon prior ruling, companies were able to apply a world-wide consolidation system including foreign subsidiaries at least 50% held. This mechanism, which in effect applied only to less than five groups, is abolished for tax years closed as from September 6th 2011.

8. Foreign partners in French partnerships

The Supreme Administrative tax court (*Conseil d'Etat*) reaffirmed on July 11th, 2011 in *Quality Invest* that non-resident partners are liable to tax in France on their pro-rata share of the partnership income and that tax treaties that follow the OECD model do not prevent France from taxing.

The decision stresses that a French partnership is considered as a French resident for the purposes of the application of double taxation treaties and that the provisions of such treaties do not prevent France from taxing, except possibly if they include specific provisions to that effect.

This decision does not mean that tax treaties may never apply but simply that the applicable treaty is, as the case may be, that concluded between France and the state in which the income arises and not the treaty between France and the state of residence of the foreign partner.

Bruno Gouthière, IACF

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II. Report from Stéphane Contargyris (UPSA)

DIRECT TAX NEWS (September 2011)

1. Treaties

The income tax treaty signed between France and Saint Martin came into force on 1 May 2011.

An amending protocol to the income and capital tax treaty between Austria and France was signed on May 23, 2011.

An amending protocol to the income tax treaty between France and Mauritius was signed on June 23, 2011.

Panama and France signed an exchange of information agreement relating to tax matters on 24 June 2011 and an income tax treaty on June 30, 2011.

Hong Kong ratified on 7 July 2011, the income and capital tax treaty signed with France on 21 October 2010. The treaty has not yet been ratified by France.

Costa Rica ratified, on 19 August 2011, the Exchange of information agreement signed with France.

2. Finance Amendment Law for 2011

2.1 Income tax

Exit tax on shares

An exit tax mechanism has been reintroduced in the French tax regulation with effect from March 3, 2011.

This mechanism is applicable to individuals who :

- hold directly and indirectly (i.e., together with other members of their household, shares representing at least 1% of the rights to dividends of a company or with a value exceeding € 1.3 million,
- have been French residents for at least 6 years during the 10 year period preceding their departure from France,
- cease to be liable for French income tax on their overall income.

The mechanism provides for the taxation of unrealised capital gains on the shares at the time of the transfer of the tax residence of the individual at an overall rate of 31.3 % (including 12.3% of social contributions).

When the individual transfers his tax residence within the EU, the EEA or in a State which has signed with France an agreement for administrative assistance against tax fraud and avoidance and for the collection of tax, an automatic deferral of

payment of the tax is granted until the disposal of the shares (if the shares are sold within 8 years following their acquisition).

A deferral of payment may also be granted upon request of the tax payer in other circumstance but is subject to :

- The designation of a tax representative in France,
- and the constitution of a guarantee for the payment of the tax (unless the transfer of residence is due to professional obligations).

2.2 Wealth tax

The threshold for the application of the net wealth tax is increased to € 1.3 million, with a retroactive effect as from January 1st, 2011.

As from January 1st, 2012 the rates of the tax will be :

- 0.25% for overall household's assets net values exceeding € 1.3 million but less than € 3 million,
- 0.5% for overall household's assets net values equal or exceeding € 3 million.

The tax is reduced to € 1,500 when the overall household's assets net value is equal to € 1.3 million and to € 7,500 when the overall household's assets net value is equal € 3 million.

A tax reduction applies for overall household's assets net values between € 1.3 and € 3.2 million.

The tax shield (providing that the total amount of direct taxes paid by a taxpayer cannot exceed 50% of his annual income) is abolished as from January 1st, 2012.

Some other adjustments have been introduced, concerning:

- Business assets likely to be exempt,
- filing obligations,
- late payment penalties (application of a 10% penalty),
- investments made by non resident individuals in real property companies.
- tax relief relating to Dutreil agreements (agreements on shares with commitments to hold shares in a company for a minimum period of time, signed between various parties including one individual with an executive role in that company).

A new set of rules have also been defined for assets held through foreign trusts.

2.3 Inheritance and gift tax

The highest tax rates on gift or inheritance made in direct line or between spouses or civil partners have been increased as from July 31st, 2011 to 40% for a taxable asset value between € 902,833 and € 1,805,677 and to 45% for a taxable asset value exceeding € 1,805,677.

Several adjustments have been also introduced concerning the rules applicable for the determination of the taxable basis of gift and inheritance taxes and their statute of limitation.

A new set of rules have also been defined for assets held through foreign trusts.

Stéphane Contargyris, UPSA

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GERMANY

Electronic transmission of financial statements to the tax authorities

Company taxpayers in Germany with book/tax differences that compute their taxable income using double-entry accounting will need to submit – for all fiscal years starting after 31 December 2011 – an E-Tax Balance Sheet (or a standardized electronic book/tax schedule) as an appendix to their electronic income tax returns. The tax authorities are planning to treat the first year (i.e. fiscal year 2012 or the deviating year 2012/2013) as a general grace period (i.e. the E-Tax Balance Sheet is optional, but not yet compulsive) and to extend this grace period to 31 December 2014 in the case of foreign establishments of domestic companies computing their taxable income by using double-entry accounting.

In a circular dated 19 January 2010, the Federal Ministry of Finance (MOF) defined eXtensible Business Reporting Language (XBRL) as the mandatory technical format for all standardized ("taxonomy") electronic data transmissions by companies to the German tax authorities related to E-Tax Balance Sheets.

On 31 August 2010, the MOF released a first discussion draft for the general taxonomy applicable to most companies (other than industries subject to special accounting rules and regulations). The XBRL taxonomy is a hierarchically structured tax data scheme, comparable to a model chart of accounts. The original draft would have required considerable additional compulsory tax information not available in standard charts of accounts used for financial accounting purposes.

From 1 February through 30 April 2011, the MOF held a voluntary E-Tax Balance Sheet trial period in which 84 companies participated. On 1 July 2011, the MOF released a revised draft of the general taxonomy that will apply for most companies. The MOF held a second hearing with interested parties on 16 August 2011. The outcome of the hearing is as follows: (i) the number of mandatory fields will be reduced, (ii) more summary fields ("for calculation purposes if available") and more flexibility to those fields will be available and (iii) more transition periods will be granted by the MOF. However, the MOF will not defer the starting date by another year (i.e. the first-time application for most taxpayers will still be for all fiscal years starting after 31 December 2011).

The final general taxonomy is announced to be published by 30 September 2011.

The MOF published first drafts of special taxonomies for banks and insurances and further first drafts of special and complementary taxonomies (applicable to certain other industries subject to special accounting rules and regulations) on 22 June 2011. The final special and complementary taxonomy is also announced to be published by 30 September 2011.

As from fiscal year 2011, all company income tax returns also will have to be submitted electronically, although XBRL will not have to be used for these purposes. No changes are planned for tax assessments (*Steuerbescheide*), which will still be issued only in hard copy.

Draft guidance issued on reorganizations under Reorganization Tax Act

The 2006 reform of the Reorganization Tax Act was aimed primarily at facilitating new possibilities for cross-border reorganizations (mergers, spin-offs, split-offs and hive-downs). In draft guidance issued on 2 May 2011, however, the German tax authorities comment on issues related to the taxation of cross-border reorganizations, as well as cases that were common practice even before the 2006 reform (*Umwandlungssteuer-Erlass*). Very few of the positions taken by the tax authorities in the draft guidance would benefit taxpayers. Federal ministries, economic associations, municipal umbrella organizations and experts stated their written opinions on the draft guidance until 15 June 2011.

The draft comprises a total of 177 pages and includes technical information on various topics. The authorities take a position on*, inter alia,* the following issues:

- Reorganizations at book value for tax purposes and at fair market value (FMV) for GAAP purposes
- Definition of branch of activity (as prerequisite for tax neutral reorganizations)
- Downstream merger with nonresident shareholders
- Holding periods for shares received in tax neutral contribution of branch of activity
- Tax groups and reorganizations

However, since the guidance is still in draft form and may be subject to change, no reliance should be placed on it. After agreeing on formal guidance with the highest financial authorities of the Federal states the Reorganization Tax Decree is anticipated to be released in the Federal Tax Gazette (*Bundessteuerblatt*) by October 2011.

Draft Bill for Tax Simplification Act 2011

On 20 December 2010 the Federal Ministry of Finance issued a draft tax act to simplify the German tax law (*Steuervereinfachungsgesetz 2011*). The draft act is aimed at

reducing the bureaucratic complexity of the German tax law by unburdening taxpayers (individual persons as well as companies) from certain tax declarations and relieving tax authorities from tax assessments and administration costs. The proposed amendments would reduce the tax burden by approximately €585 million annually.

The draft envisages a package of around 40 tax simplification measures that are not part of an overall tax reform but single modifications to German tax law. The main provisions include the following:

- Slight increase of the annual employee lump sum allowance for business expenses from €920 to €1,000
- Simplified deductibility of childcare expenses
- Elimination of income test for adult children
- Simplified computation of the commuting allowance
- Reduction of assessment methods for spouses from seven to four
- Option to a two-year income tax declaration for certain tax payers
- Relief for electronic invoicing requirements in the context of the value added tax (VAT)
- Levying a fee for binding rulings only in material cases (tax impact of EUR 10,000 and above)
- Paperless, IT-based communication with the tax office
- Extension of time referring to the notification of certain business activities abroad (e.g. establishment and the acquisition of businesses and permanent establishments)
- Contemporary tax audits

The amendments are due to enter into force on 1 January 2012, although certain measures will be introduced with retroactive effect. On 9 June 2011, the *Bundestag* (lower house of the German Parliament) adopted the 2011 Tax Simplification Act. However, in its session on 8 July 2011 the *Bundesrat* (upper house) did not ratify the 2011 Tax Simplification Act presumably due to amendments regarding the two-year income tax declaration. From a VAT perspective the rejection prevents the proposed relief for electronic invoicing requirements which should enter into force as from 1 July 2011. On 31 August 2011 the German Government referred the bill to the Conciliation Committee of *Bundestag* and *Bundesrat*.

EU Mutual Assistance Directive and Other Changes in Tax Law

Upon completion of its review the EU Commission released on 26 January 2011 its decision that the German reorganization clause of Article 8c (1a) of Corporate Income

Tax Act violates European state aid rules due to its distortion of competition within the European single market. The clause was introduced by the July 2009 Citizens Relief Act as a temporary measure and was made permanent under the Growth Acceleration Act. It allows companies to continue to offset losses and so reduce their tax burdens in future years even if there has been a change in ownership, provided the purpose of the change was to restore the company to economic health.

As a result of the Commission's decision, any tax benefit granted under the rule would need to be repaid by a recipient (approximately € 1.8 million according to information of the German Ministry of Finance). On 7 April 2011 the German Government litigated the issue before the European Court of Justice. However, the draft bill on the implementation of the Mutual Assistance Directive and Other Changes in Tax Law (*Gesetz zur Umsetzung der Beitreibungsrichtlinie sowie zur Änderung steuerlicher Vorschriften*) seeks to abolish the reorganization clause effective 1 January 2011.

Furthermore, the European Commission has formally requested Germany to change its anti-treaty and directive shopping provision provided for in Article 50d (3) of the Income Tax Code. The Commission emphasized that it is not challenging the objective of the anti-abuse measure, but merely the disproportionate requirements imposed on foreign companies to prove the existence of a "genuine economic activity" (gross receipts test). The European Commission stated that the contested measure is disproportionate in particular as regards the gross receipts test, where the ability to produce evidence to the contrary does not exist. Therefore, the Commission held that the German measure goes beyond what is necessary to attain the objective of preventing tax evasion. As a consequence the German Ministry of Finance plans to amend 50d (3) of Income Tax Code within the draft bill on the implementation of the Mutual Assistance Directive and Other Changes in Tax Law effective from 1 January 2012.

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ITALY

Direct taxation

The Italian Tax Regime was amended in the second Quarter 2011 by:

- Law Decree No. 138, dated 13 August, 2011;
- Law Decree No. 98, dated 6 July, 2011.

Law Decree No. 138 provides significant changes to the corporate income tax surcharge for the energy industry (so-called "*Robin Hood*" tax) and introduces a new regime for financial income. Law Decree No. 138 was converted into Law No. 148, dated 14 September 2011.

Law Decree No. 98, converted into Law No. 111, dated 15 July, 2011, introduces urgent measures for the financial stabilization. Revenue Office Guidance No. 40 and No. 41, dated, respectively, 4 and 5 August, 2011 provide some clarifications on the new rules.

Robin Hood tax

Introduced from fiscal year 2008, the "*Robin Hood*" tax is a corporate income tax surcharge which applies to companies operating in the energy sector. Pursuant to Law Decree No. 138, the "*Robin Hood*" tax applies if the following thresholds are exceeding: 10 million Euros of gross revenues and 1 million Euros of corporate income tax base.

The tax rate is increased by 4% (i.e., from 6.5% to 10.5%) for fiscal years 2011, 2012 and 2013.

The new rules are effective starting from fiscal year 2011.

Dividends and interest

Law Decree No. 138 reduces the general 27% withholding tax on dividends to 20%. A refund is available up to the limit of ¼ of the Italian withholding (i.e., up to 5% of the dividend). EU qualifying companies may still benefit from withholding tax exemption under the *parent-subsidiary* directive.

Pursuant to Law Decree No. 138, a 20% rate also replaces any withholding tax on interest previously levied at 12.50% and at 27%, with some exceptions. Interest

payments on loans are no longer subject to a 12.50% or 27% withholding tax. A 20% withholding tax applies irrespective of the recipient being white or black listed. Interest payments on bonds issued by the Government and other public bodies remain subject to a 12.50% substitute tax and may still qualify for exemption in case of white listed recipients.

The new rules on dividends and interest apply as from 1 January, 2012.

Law Decree No. 98 introduces a withholding tax levied at 5% on specific interest payments. The new withholding tax applies in case an Italian company pays interest in exchange for a loan received from a qualifying EU related company, with the latter using such interest income to pay interest related to bonds issued. Revenue Office Guidance No. 41 clarifies that the rule also applies to interest payments connected to transactions subject to audit procedure.

Tax losses

Law Decree No. 98 introduces a major change providing for tax loss carry-forward with no time limits (as opposed to the current five year limitation). Losses from a given year may, however, only be used to offset up to 80% of the taxable income of any following fiscal year. Start-up losses may still be used indefinitely to offset the total taxable amount of any following year.

Loss carry-backs are not allowed.

Tax step-up

Law Decree No. 98 provides for a new step-up opportunity in relation to the acquisition of qualifying participations either through reorganizations or directly. A 16% substitute tax can be paid in advance in order to benefit from standard 31.40% amortization on goodwill, trademarks or other intangibles belonging to the controlled entity. The step-up election may also be made with reference to acquisitions carried out in the past years. In this case, the 16% tax should be paid by 30 November, 2011.

VAT

Effective from 17 September 2011 the Italian VAT standard rate was raised from 20% to 21%.

As from 1 March, 2011, Italy has entered into the VIES system only for the identification numbers (ID) of taxpayers having asked to be authorized to sell or purchase goods or services within the EC. Existing VAT numbers have been included in case they have been actually used in 2009 or 2010; all other ID numbers have been 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 an old customer/supplier has been confirmed in the VIES. Only 500.000 VAT identification numbers (on a total number of 8 millions) are at present included in the Italian section of VIES. Concerning the implementation of regulation 904/2010 – in accordance with Article 18 of regulation 282/2011 – Italian tax authorities are prepared to disclose the name and address of taxpayers reported in the VIES data base.

A new listing has been introduced by Article 21 of Law No. 122/2010, 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 with customers or suppliers of these countries are to be listed twice, once in the INTRASTAT listings and a second time in the *black list* for any 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 Euro 5.000. Italy has no lower limit, but the instructions by tax administration have excluded this system in retail sales. This procedure is effective by 1 April, 2011.

20 September, 2011

Raffaele Rizzardi – Piergiorgio Valente

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LATVIA

Information about tax laws effective as of 1 January 2011

1. Amendments to the Personal Income Tax Law - the tax rate is reduced down to 25%, and the tax application is specified;
2. Amendments to the Enterprise Income Tax Law - a tax discount for intensive investments is introduced, and the tax application is specified;
3. Amendments to the Real Estate Tax Law - it is stipulated, retaining the progressivity already introduced by law, to raise the tax rate on households, and the tax application is specified;
4. Amendments to the Excise Tax Law - it is stipulated to apply the standard tax rate to 5% biofuel admixture and increase the tax rate for non-alcoholic beverages;
5. Amendments to the Value Added Tax Law - the standard tax rate is increased up to 22% and the minimum tax rate is increased up to 12%;
6. The Financial Stability Fee Law enters into force on - a financial stability fee 0.036% of total net liabilities is introduced for credit institutions;
7. The Vehicle Operation Tax and Enterprise Passenger Vehicle Tax Law enters into force - it replaces the current annual vehicle fee and the current taxes on the benefits from private use of the employer-owned vehicle;
8. Amendments to the Civil Procedure Law - the state fees payments are specified and related to the amendments to the Value Added Tax Law;
9. Amendments to the Law on Taxes and Fees - the annual vehicle fee is excluded from the list of fees, and a financial stability fee is introduced.

Ruta Teresko
The member of the Latvian Tax Consultants association

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POLAND

National Report on tax policy developments

Capital duty

On 16 June 2011 the Court of Justice of the European Union ('the ECJ') decided the case *Logstor ROR Polska* (C-212/10) concerning the capital duty levied in 2007-2008 on shareholder loans. The ECJ ruled that Article 4(2) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985, must be interpreted as precluding a Member State from reintroducing a capital duty on a loan taken up by a capital company, if the creditor is entitled to a share in the profits of the company, where that Member State has previously waived the levying of that tax.

Direct taxation

Double tax treaties

Poland ratified the Protocol of 6 April 2011 to the Double Tax Treaty signed with Malta. The Protocol eliminates the tax sparing clause, reduces the withholding tax on interest and royalties from 10 to 5%, modifies the definition of royalties (they are to cover unequivocally the payments for software licenses), extends the exchange of information clause, introduces the anti-avoidance clauses applicable to dividends, interest and royalties, as well as a number of other changes aimed at adapting the wording of the DTT to the OECD Model Convention in its current version. Subject to the completion of the ratification procedure in Malta, the Protocol is to come into force as of 1 January 2012.

The Protocol to the Double Tax Treaty with Cyprus is also in the pipeline, though it has not yet been formally signed and ratified. It is to eliminate the tax sparing clause and the favourable solutions applicable to the directors' fees (under the DTT currently in force they may be taxed only in Cyprus where, however, they may not trigger tax). It was envisaged that the new DTT would come into force at the beginning of 2012. However, at present it seems that the procedure will be delayed, preventing this from happening at the date initially expected.

On 13 September 2011 the new Double Tax Treaty between the Czech Republic and Poland was signed (at present awaiting ratification in both countries). The main changes include the modifications in the definition of royalties and the exchange of information clause.

According to the information provided by the Ministry of Finance, renegotiating process is in progress as regards other DTTs, including in particular those concluded with Luxembourg, Malaysia and Singapore. Other jurisdictions having strict bank secrecy rules are approached in order to secure the exchange of information with them.

Loss of permanent establishment

In the important ruling of 13 May 2011 (II FSK 2175/09) the Supreme Administrative Court ('the SAC') took the position on the issue of whether a company is entitled to claim cross-border relief for losses suffered by its permanent establishment where under the DTT between Poland and the country of the PE's location the exemption method is applied. The SAC unconditionally denied this entitlement, making no exception for the final losses. In its argumentation the Court made explicit reference in particular to the ECJ ruling of 15 May 2008 in the *Lidl Belgium* case (C-414/06).
This is the first SAC ruling on this subject. Regrettably, the Court did not take the opportunity to refer the case to the ECJ. It seems that its position might have been influenced partly by the procedural considerations (the case resulted from the tax ruling and not tax assessment).

Tax Code

Under the amended Tax Code (the changes are effective as of 1 January 2012) the Minister of Finance will be obliged to issue general tax rulings (i.e., guidelines of a general nature, applying to the entire category of taxpayers and situations described in an abstract manner) at the request of any entity which evidences the discrepancies in the tax decisions or tax rulings issued for individual taxpayers (on the same facts and law).

Until that date it is only at the discretion of the Minister of Finance, acting *ex officio*, to issue such general rulings, giving guidance as to the proper understanding of the unclear tax laws, which can be relied upon by taxpayers according to the *bona fide* principle. As a result, the guidelines of this nature are rather scarce. Taxpayers seeking legal certainty need to file individual requests for tax rulings.

The new measure is adopted in the interest of consistency of the tax law application and legal certainty. However, in practice it may prove that the conditions for issuing general tax rulings will be construed strictly, rendering the discussed measure ineffective.

Indirect taxation

There were lot of developments in VAT at the beginning of 2011.

VAT rates

As from the beginning of 2011 the VAT rates were increased, in principle by 1 percentage point. Therefore the standard rate was raised to 23% and the reduced rate with respect to most of the goods and services was increased to 8%. However the reduced rate on some goods and services was decreased to 5%. What is quite important is the fact that the legislator has introduced a mechanism based on which the rate is related to the level of public debt. In the next years the rates may be increased by 1 percentage point as from the beginning of the calendar year if the level of public debt in the preceding year exceeded specific threshold. As this is not the case in 2011 therefore the rates in 2012 will not be changed.

Electronic invoicing

The Minister of Finance regulation on e-invoicing introduced quite a lot of rules that has been set up by the amendments to the VAT Directive (which are to be introduced by Member States no later than by 31.12.2012). What is most important is the fact that secure electronic signature and use of the EDI system are no longer required if the authenticity of origin and integrity of an invoice can be assured by taxpayer differently.

Leasing and insurance treated as one supply

Polish Supreme Administrative Court issued a long awaited resolution on the treatment of supply of leasing and insurance services by the lessor. The Court has decided that the supply of insurance service in auxiliary to the supply of leasing service and therefore it is not possible to consider insurance service (re-charged by the lessor on the lessee) as a separate supply. However separately a request for the preliminary ruling has been place with the Court of Justice of EU (case *BGZ Leasing*).

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PORTUGAL

National Report on tax policy developments
Since April 2011

2011 in Portugal has so far been dominated by the public debt crisis, which has already motivated a general election, the formation of a new Government and a request for financial support from the EU, via the European Financial Stabilization Mechanism (EFSM) and the IMF.

The conditions upon which such financial support was granted last May are set out in a "Memorandum of understanding on specific economic policy conditionality" signed by the Portuguese Government and a technical committee known as "Troika" and composed of IMF, ECB and EC representatives.

The Troika's Memorandum requires that the Portuguese Government should accomplish the objective of reducing the Government deficit to 5.9% of GDP in 2011, 4.5% of GDP in 2012 and 3.0% of GDP in 2013.

For such effect, the Troika's Memorandum establishes a fiscal policy for the years 2011 to 2014 that implies the application of the following measures, among others:

Corporate income tax

i. abolishing all reduced corporate income tax rates;

ii. limiting the deduction of losses in previous years according to taxable matter and reducing the carry-forward period to three years;

iii. reducing tax allowances and revoking subjective tax exemptions;

iv. curbing tax benefits, namely those subject to the sunset clause of the Tax Benefit Code, and strengthening company car taxation rules;

v. proposing amendments to the regional finance law to limit the reduction of corporate income tax in autonomous regions to a maximum of 20% vis-à-vis the rates applicable in the mainland.

Personal income tax

i. capping the maximum deductible tax allowances according to the respective tax bracket, with lower caps applied to higher incomes and a zero cap for the highest income brackets;

ii. applying separate caps on individual categories by (a) introducing a cap on health expenses; (b) eliminating the deductibility of mortgage principal and phasing out the deductibility of rents and of mortgage interest payments for owner-occupied housing; eliminating interest income deductibility for new mortgages (c) reducing the items eligible for tax deductions and revising the taxation of income in kind;

iii. proposing amendments to the regional finance law to limit the reduction of personal income tax in autonomous regions to a maximum of 20% vis-à-vis the rates applicable in the mainland.

VAT

i. reducing VAT exemptions;

ii. moving categories of goods and services from the reduced and intermediate VAT tax rates to higher ones;

iii. proposing amendments to the regional finance law to limit the reduction of VAT in the autonomous regions to a maximum of 20% vis-à-vis the rates applicable in the mainland.

In this context, the following are the most relevant tax measures already adopted:

1. Personal Income Tax

The Portuguese government recently announced the creation of an extraordinary surtax to be introduced in the Personal Income Tax Code for 2011. The surtax legislation was adopted by Law n.º 49/2011, of September 7, 2011.

The extraordinary surtax will apply to aggregated personal income, encompassing most capital gains, gratuities, unjustified gains exceeding EUR 100,000, and to net Portuguese-source employment or business and professional income arising from high-added-value activities that are of a scientific, artistic, or technical nature, obtained by individuals who qualify as non-habitual residents. The surtax will be 3.5 percent and will affect only the portion of income exceeding the minimum wage. Furthermore, in the area of employment income and pensions, a new 50 percent withholding tax will apply to the portion of the 2011 Christmas allowance that — after the usual withholding tax and

compulsory social security contributions — exceeds the minimum wage. The amount withheld will be deducted from the value resulting from the application of the surtax. Other taxpayers such as those receiving self-employment income (or other sources subject to tax apart from employment income, pensions and income subject to final WHT rates) pay the extraordinary tax during the year of 2012, with reference to income obtained in 2011.

In addition, taxpayers declaring income above € 153,300 will be subject to a higher tax rate which will increase from 46.5% to 49%.

2. Corporate Income Tax

Companies with taxable income of more than 1.5 million euros will be subject to a state surcharge of 3% instead of the current 2.5%.

3. VAT

The Portuguese Minister of Finance announced, on August 12, that the VAT rate on gas and electricity is going to be increased from October 1st, 2011 onwards. As a consequence of this measure, gas and electricity, which are now taxed at the reduced rate of 6%, are going to be taxed at the maximum VAT rate of 23%.

This measure was already foreseen in the Troika's Memorandum to be applied in 2012, but the Portuguese Government decided to anticipate it in order to compensate for a budget deviation that occurred in the first trimester of 2011.

Therefore, the change to gas and electricity VAT rates is the first of many that are being studied by the Portuguese Government and it is expected that more VAT rate changes will enter into force on January 1st, 2012.

A change to the maximum VAT rate, from 23% to 25% in 2012 is also being studied.

4. Social security

On August 9, the Portuguese Government publicized a report on the impact of the reduction of the social security contribution rates.

This measure is foreseen in the Troika's Memorandum to be applied in 2012 with the purpose of increasing companies' competitiveness. According to the report, which assumes several different scenarios as a possibility, depending upon whether the above-mentioned reduction applies to all companies or only more restrictively to certain

economic sectors or to companies that meet certain requirements, the reduction of the social security contribution rates may correspond to 3.7%.

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ROMANIA

New conditions imposed for VAT registration

Companies that did not reach the VAT-payer threshold of EUR 35,000, but they opt for registration are to be evaluated by the tax authorities in terms of intention and ability to pursue economic activities which comprise operations that trigger the VAT registration. The evaluation takes up to 15 working days and is finalized with a decision of approval/rejection.

Postponement of the obligation to certify fiscal declarations with a fiscal consultant

The Romanian Fiscal Procedure Code impose taxpayers to have the fiscal declarations certified by a fiscal consultant. Though, the obligation has not been enforced yet as it suffered from several postponements from 2008 on from various reasons. The most recent delay state that the obligation is to be applicable from 1st of January 2013.

Incentives for payment of fiscal obligations

Reschedules for the payment of tax obligations have been introduced for companies that encounter financial difficulties. The incentive resides in lower rates for late payment interests and cancellation of penalties in certain conditions.

In order to benefit from such reschedules, the taxpayers need to cumulatively meet the following conditions:

- to have all the fiscal declarations submitted;
- to be in difficulty caused by the temporary lack of funds and to have the financial capacity of payment based on schedules;
- to have constituted a guarantee;
- not to be in the insolvency procedure or dissolution;
- not to have been attributed the liability in case of insolvency of another tax payer, neither the joint liability for a debtor declared insolvent.

In the case of fiscal obligations due at 31st of August 2011, the late payment penalties are:

- cancelled if the main obligations and the related late payment interests are paid before the 31st of December 2011
- reduced with 50% if the main obligations and the related late payment interests are paid before the 30th of June 2012.

1. General provisions

The definition of dependent activity at the main job is modified and additional amendments are brought regarding the employee's obligation to declare the place where the primary job is settled.

There are introduced specifications regarding the obligation of resident individuals and permanent establishments of foreign entities which benefit from construction, assembly, consultancy performed by non-resident entities or individuals in Romania, to register with the authorities the contracts signed for these services performed by non-residents in Romania.

2. Corporate tax

It is considered to be income obtained in Romania, the income derived from the transfer of patrimony from the fiduciary to the non-resident beneficiary within of fiduciary agreements.

Non-resident entities and non-resident individuals who carry out activities in Romania, in an association with or without legal status, are considered taxpayers for corporate income tax purposes, being taxed for their corresponding part of income from the association.

New categories of deductible expenses are introduced, asfollows:

- expenses incurred with the valuation/revaluation of fixed assets belonging to state's public sector or to local administrative units which have been received in administration/concession;
- expenses incurred by companies when registering state's (or other administrative units) ownerships right on the public goods received in administration/concesion.

A new article is introduced which stipulates the fiscal treatment applied to transactions carried out within fiduciary agreements.

The definition of exchange of shares is modified, it nowalso comprises the situation in which a company already owns most of the voting rights of a company and buys an additional participation.

A new article is added, which regulates the fiscal treatment applicable for associations with legal personality incorporated according to the legislation of another state.

Changes are brought regarding the compliance obligationsand payment of corporate income tax due by foreign entities which obtain revenues from real estate properties

located in Romania or from sale of shares held in a Romanian company. Thus, any foreign entity is allowed to empower a person to carry out these obligations on his behalf.

Starting with 1 January 2013, taxpayers can choose to declare and pay the corporate income tax quarterly, by performing advance payments. The decision to choose this system should be transmitted to the authorities by 31 January of the year for which this system will be applied and must be maintained for a period of 2 consecutive years.

There are mentioned some categories of taxpayers that are not allowed to choose this system, such as:

- new established taxpayers;
- taxpayers that are in a fiscal loss position at the end of the previous year;
- taxpayers that have been in a state of temporary inactivity;
- taxpayers that do not conduct activities at the registered/subsidiary office;
- taxpayers that were microenterprises in the previous period.
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In order to establish the amount to be paid via the advance payments system, the corporate income tax due for the previous period is actualized with the consumer price index, which is published by order of the ministry of public finance, no later than 15 April of the fiscal year for which the advanced payments are performed.

Taxpayers that have chosen the advance payments system and record fiscal loss in the first year of the 2 year mandatory period, perform the advance payments by applying the corporate income tax rate on the accounting result of the period for which the advance payment is performed.

There are added specifications regarding the use of advance payments system for taxpayers that are involved in reorganisation operations, both on local and cross-border level.

Taxpayers who do not choose the anticipated payments system are obliged to declare and to pay quarterly corporate income tax, until 25th of the first month following the quarters I-III. The annual corporate income tax should be declared and paid until 25th March of the following year.

The deadline for submitting the annual corporate income tax return is modified, the new deadline is until 25th March of the following year, except for certain category of taxpayers specifically mentioned.

3. Income tax

The worldwide income derived by foreign individuals who have become Romanian tax residents, will become subject to Romania income tax after a period of one year since the change of the residency status (previously, this period was of three years). This change will apply starting with the income obtained during the year 2012.

The foreign source income obtained by individuals who provide the proof of tax residency in another state which has a Double Tax Treaty concluded with Romania, will be exempt from taxation at local level.

The tax residency or non-residency status of an individual will be applied throughout an entire calendar year, without the possibility of changing the residency status during that year.

In case Romanian individuals establish their residency for tax purposes in a state which does not have a Double Tax Treaty concluded with Romania, they have the obligation to pay income tax for their global income for a period of three years following the change of tax residency.

For certain categories of employers, the obligation to declare and pay the income tax and the related social security contributions will be complied with on a quarterly basis, until the 25th of the month following the quarter for which the fiscal liabilities are due. This change can be made through a statement filed to the relevant tax office until the 31st January of the year for which the option is made. The quarterly tax obligation can be implemented starting with the month of October 2011, the filing of the option form for the last quarter of 2011 being due until the 25th of September 2011.

The fiscal treatment applicable to any income obtained from fiduciary operations is further clarified in case the parties involved are individuals.

The deadline for filing the annual tax return due by theindividuals who obtain either solely or in a form of association income from independent activities, rental income or income from agricultural activities on a real time basis, is extended from 15 to 25 May of the year following the one when the income was obtained. The same deadline will apply for the tax return regarding the income obtained from abroad.

The submission deadline for the statements regarding thecomputation and withholding of the income tax (“fiscal forms”) is set for the last day of February of the next year, for all the income payers having withholding liabilities.

Starting with 2012, the fiscal forms are issued to the employees only on a request basis and without a law-based pre-approved template.

4. Withholding Tax

The income obtained from the fiduciary patrimony transferred from the fiduciary to a non-resident individual represents taxable income for withholding tax purposes.

The income obtained by non-resident individuals from gambling in other countries is not taxable in Romania, provided that the funds are partially derived from Romania.

The deadline for submitting to the authorities the statement regarding withholding tax for each beneficiary of income is modified. Therefore, this statement must be filed until the last day of February for the previous period.

5. VAT

The 12 months deadline under which the services giving rise to successive settlements or successive payments should have been regarded as being supplied has been removed.

Starting with the reporting obligations for August 2011,the deadline for submitting the recapitulative statement (form 390) is 25th of the month following the one when the obligations arise.

Clarifications are brought regarding types of waste for the delivery of which the reverse-charge mechanism applies.

6. Excise duties

The most important changes in the excise duty field which entered into force on September 6, 2011, are related to the following aspects:

The excise duty level of the finished product obtained by authorized warehouse keepers cannot be lower than the weighted average of the raw materials' excise duty level. We recommend you to perform this computation for your flow of production as soon as possible.

Excisable products are considered as released for consumption when they are stored in a fiscal warehouse for which the authorization has expired and a new one has not been issued, except when a reauthorization request has been submitted.

The appeal of a suspension, revocation or cancellation decision of a fiscal warehouse authorization will no longer suspend the legal effects of this decision during the settlement of the appeal in administrative procedure.
A clear provision has been introduced according to which it is forbidden to sell in bulk quantities and to use as a raw material ethylic alcohol with an alcoholic concentration lower than 96% in volume, for the production of alcoholic beverages.

The reimbursement of already paid excise duties will now be possible in the case of alcoholic beverages and tobacco products withdrawn from the market due to the fact that they no longer fulfill marketing conditions(not only when these products are unfit for consumption).
Also, starting with January 1, 2012 the following amendments will enter into force:

Authorised warehousekeepers, registered consignees and registered consignors will have to lodge a minimum guarantee whose level will be set by the Fiscal Code Methodological Norms.

Authorising a fiscal warehouse will also depend upon theenvironment authorization/integrated environment authorisation as well as on the setting up of a minimum level of share capital which will be established in the Fiscal Code Methodological Norms.

The contraventions and fines related to the excisable products regime have been eliminated from the Fiscal Procedure Code and introduced in the Fiscal Code along with a few changes. For example, the following actions constitute a contravention:

- denaturation of ethylic alcohol and of other alcoholic products without complying with the legal conditions;
- holding for commercial purposes of excisable products already released for consumption in another member State, without complying with the legal provisions.

A very important aspect is that the authorised warehousekeepers who will have valid authorisations at January 1, 2012 willhave to comply with the new changes related to:

- the excise duty level of finished products;
- the minimum quantum of guarantee;
- holding an environment authorization/integrated environment authorization and
- setting up a minimum share capital,

no later than **January 31, 2012**. Non-compliance with these provisions leads to **the revocation of thefiscal warehouse authorizations**.

7. Local Taxes

The tax rate applicable to determine the building tax due for buildings owned by legal entitites, which were not revaluated, is modified as follows:

- between 10% and 20% for the buildings that have not been revaluated in the 3 years prior to the fiscal year for which the tax is determined;
- between 30% and 40% for the buildings that have not been revaluated in the 5 years prior to the fiscal year for which the tax is determined.

For the buildings with touristic destination that are not used during a calendar year, the tax rate is of minimum 5% applied to the inventory value of the building, established by a decision of the local council. Are excepted the structures that have construction authorization during the period of validity, if the work started within 3 months from date when the authorization was issued.

Declaration of real estate properties for local tax purposes is no longer conditioned by registration of these properties with the cadastre services or real-estate agencies.

The interdiction to sell any building, land or vehicle if there are unpaid taxes to the local budgets at the date of sale is repealed.

New specifications are introduced, for determining the acquisition date of a building. Also, it is mentioned the obligation of thetaxpayer to declare the buildings with the authorities, even if no construction authorizations are available.

The value of the hotel tax is adjusted to 1% per day foreach day of accommodation. This percentage is applied to the total value of the accommodation paid for a period.

Taxes due at the local budget for properties located on the Black Sea shore and owned by legal persons are decreased by 50% if the respective properties are used for tourism services for minimum 6 months in a calendar year.

New specifications are introduced regarding the person obliged to pay the taxes due at local budget for transferred properties within fiduciary contracts.

Individuals who invested in rehabilitation of their homes could benefit of a reduction or exemption from the building tax due for therespective properties. This reduction/exemption is granted on the basis of the energetic report issued by an energetic auditor.

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RUSSIA

Russia – tax policy developments in 2011

The major trends in development of tax policy in 2011 appear to be the strengthening of anti-avoidance measures, simultaneously with creating incentives for investing in Russia.

1. Skolkovo Innovation Centre incentives

Federal Law 243-FZ has amended the Russian Tax Code with the aim of promoting and supporting investment in the Skolkovo Innovation Centre. The centre, near Moscow, is a specially designated area for research and development in various scientific fields, including energy efficiency and nuclear, information technology, telecommunications and medical technology.

The amendments provide for benefits on an unprecedented scale for participants in the Skolkovo project. Participants will benefit from:

- value-added tax (VAT) exemption;
- profit tax exemption;
- property tax exemption;
- exemption from compulsory insurance contributions to social and medical funds; and
- a reduced rate of contributions to the state pension fund.

Application of benefits

Until its annual revenues exceed RUR 1 billion, an entity is not liable for profit tax and therefore need not keep accounting records for tax purposes. From the year in which that threshold is exceeded, the entity must keep such records in order to calculate its taxable profit. Such profit is subject to a 0% rate until profits equalling RUR300 million have been accrued and accounted for under the 0% rate, at which point the organisation must pay tax at the generally applicable rate. The RUR300 million limit is cumulative and is not reset at the start of each tax year. The property tax benefit will terminate at the same point and VAT also becomes payable.

Once an entity becomes a project participant, it may apply the VAT and profit tax exemption for a maximum of 10 years. However, this time limit does not apply to the property tax benefit.

From 2011, the rate for insurance contributions on payments to a project participant's employees is 14%. Such contributions are allocated to the state pension fund - no contributions to social or medical funds are levied. This benefit also has a 10-year time span and is subject to the same conditions as the VAT exemption.

Other features

As long as a participant has a revenue of under RUR1 billion, it is not required to maintain full accounting records. Moreover, Federal Law 244-FZ of 28 September 2010 provides that in certain cases VAT and customs duty paid on goods (except for excisable goods) imported into Skolkovo will be reimbursed under the procedure laid down in budgetary legislation. This legislation provides for the establishment within the centre of special sub-divisions of the tax authorities and the authorities with responsibility for extra-budgetary funds. These sub-divisions will be responsible for record keeping and supervision in relation to project participants.

Additional benefits

Before deciding whether to participate in research within the Skolkovo framework, interested parties should carry out a comprehensive evaluation of the financial regime and the benefits that it offers. They should also consider the rules on project implementation and the advantages available in general tax legislation. In particular, the following considerations may be relevant:

- General benefits are available to entities undertaking research and development in Russia, allowing them to:
  - deduct expenses in full;
  - deduct one-and-a-half times the value of expenses connected with certain types of research and development; This benefit may be deducted from taxable profit in an amount 50% greater than the sum actually spent. Although this benefit applies only to expenses for certain types of work, the list is relatively broad.
  - amortise tangible fixed assets, multiplied by a factor of three;
  - enjoy VAT exemption when foreign contractors perform research and development in Russia or when rights to research and development are transferred to foreign licensors; and
  - enjoy VAT benefits granted to scientific organisations and granted in respect of specific types of research and development.

  These benefits may be used both before gaining Skolkovo project participant status and once such status expires.
- The State *Duma* has approved the third reading of a draft law which would introduce a beneficial rate of 14% for contributions by IT companies to extra-budgetary funds, with retrospective effect from January 1 2010.
- Companies can pay dividends to foreign members that participate in investment projects with a withholding tax rate of 5%, which is permissible under many Russian double taxation treaties. Where the dividends received are exempt from tax in the recipient's country, these benefits are an attractive incentive for foreign investors.

2. New Participation Exemption Regime

As of 2011 the Russian participation exemption regime was significantly improved. First of all, it became easier to qualify for the exemption. The amendment excludes the requirement of a Russian company's minimum value participation in the capital of its subsidiary distributing dividends for the purpose of exempting such dividends from taxation. Consequently, more companies will be able to benefit from the Russian participation exemption soon.

The Federal Law No. 368-FZ of 27 December 2009 will be enacted from 2011. The Law abolishes the requirement of minimum RUR 500 mln. participation of a Russian parent company in its subsidiary distributing dividends for the purpose of participation exemption.

At present dividends, received by a Russian parent company from its subsidiary, are subject to Russian CIT 0% rate only if the following requirements are simultaneously met:

- at the date of taking the decision on distribution of dividends the parent Russian company receiving the dividends has to permanently own not less than 50% of the subsidiary's capital on the ownership basis during at least of 365 calendar days, and
- the minimum value of acquisition or reception of this participation in the subsidiary's capital distributing dividends has to exceed RUR 500 mln., as well as
- the subsidiary distributing dividends does not have to be a resident of any country from the "black list" of offshore zones, approved by the Order of the Russian Ministry of Finance No. 108n of 13 November 2007, which includes in particular Cyprus, Malta and British Virgin Islands.

The Federal Law No. 368-FZ of 27 December 2009 has abolished the second requirement concerning the minimum RUR 500 mln. value of participation in the subsidiary's capital distributing dividends. This provision is applicable from the 1 January 2011 only, however from that date its application will be extended to taxation dividends, distributed as a result of the subsidiary's business activity during 2010 and subsequent fiscal years.

Therefore for the Russian outbound tax structuring it will be crucial whether Cyprus is excluded from the Russian "black list" of offshore zones in 2010 or not. If Cyprus stays in this list, this amendment can intensify the companies' migration from Cyprus to countries with lower withholding tax rates on dividends, but not on the Russian "black list", such as Luxembourg, Belgium and the Netherlands.

As a consequence, as of 2011 a considerable number of Russian companies and multinational groups are able to apply the Russian participation exemption rule.

In addition to this, for the first time Russia introduced participation exemption for capital gains. Gains on alienation of shares in non-listed Russian companies acquired after 1 January 2011 and held for more than 5 years are exempt from tax. The same exemption applies to shares in Russian listed companies qualifying as hi-tech companies in accordance with the list of such companies issued by state authorities.
Interesting enough, there is no particular limitation in respect of percentage of shares or their value.

3. Limitation on interest deduction

For many years, debt financing has remained one of the most common forms of the financing of Russian companies by foreign group financing companies. Therefore limitation on interest deduction as of 2011 is of significant importance.
For a long time, the allowable interest rate on loans in foreign currency, such as USD or EUR remained relatively high – 15% per annum, or even higher (up to 22%) in certain fiscal periods (1 September 2008 to 31 December 2009).
Many Russian companies made use of this possibility and chose the rate of 15% for loans in foreign currency granted by affiliated non-resident financing companies.
In accordance with law No. 229-FZ dated 27 July 2010, in 2011 and 2012 the permitted deduction rate for loans in foreign currency will be substantially reduced and will amount to 80% of the Central Bank refinancing rate.

Table of interest deduction

Fiscal period	Loans in Roubles		Loans in foreign currencies
	Loans granted November 2009	Loans granted as 1 November 2009	
01 Jan 2010 – 30 2010 (inclusive)	Refinancing rate of sian Central Bank tiplied by 2	Refinancing rate of sian Central Bank tiplied by 1,8	15%
01 July 2010 – 31 cember 2010 (inclusive)	Refinancing rate of Russian Central Bank multiplied by 1,8		
01 Jan 2011 – 31 December 2012 (inclusive)			Refinancing rate of sian Central Bank tiplied by 0,8

On the basis of the current Central Bank rate, the permitted deduction rate on foreign currency loans would be at present 6.4%.

This is almost 2.5 times less than the currently permissible rate of 15%. For loans with fixed interest rate where rate never changed during existence of loan, the basis for calculating 80% Central Bank rate limitation would be the Central Bank rate at the time of the issuing of the loan. Hence for calculating the allowable level of interest deduction for fixed interest rate loan agreements it will be required to analyze the Central Bank rate in the period of issuing of the loan.
Obviously, in many cases existing debt financing arrangements will need to be restructured and rulings for many non-Russian financing companies, such as domiciled in the Netherlands or Luxembourg, should be revised. The issue is also relevant for SPVs established in securitizations, syndicated loans and other similar structures.
Re-issuing loans with replacement of foreign currency with Russian currency appears to be one of the most obvious remedies. In fact, it was claimed that the underlying idea behind the amendment was to encourage the use of Russian currency.

4. Russia Cyprus tax treaty

7 October 2010 saw the signing of a Protocol on Amendments to the 1998 Double Taxation Treaty (DTT) between the Russian Federation and the Republic of Cyprus. The new Protocol has received much publicity in recent months and this is not surprising since it promises to bring about changes in the current taxation regime between the two countries. Although the 1998 DTT created a reciprocal trading and investment relationship between the two Countries, Cyprus was included in 2008 in the Russian Tax Authorities "List of Offshore States" amongst 42 countries. The Russian black list essentially barred Cypriot subsidiaries of Russian Companies to obtain a tax exemption on their dividends. In particular one of the most important and widely discussed amendments was the new Article 26 on exchange of information.
The Treaty was significantly amended by the Protocol. Many of the Protocol's provisions clearly aim to combat aggressive tax planning. At the same time, the Protocol should create a better playing field and Russian businesses incorporated in Cyprus will not be seen with a suspicious eye. It was reported that as soon as the Protocol is brought into effect, Cyprus will be removed from the blacklist. The ratification of the Protocol will probably occur within the next year and it is expected to be put into force on 1 January 2012.

Article 26 (Exchange of Information)

It is noteworthy to state that the new Article 26 utilises an identical wording with the Organisation for Economic Cooperation and Development's (OECD) Model Tax Convention on Income and Capital.
The new Article 26 will allow the Competent Authorities of the Contracting States to exchange information which is deemed relevant for the administration or enforcement of domestic laws concerning all types of Taxes, insofar as these taxation laws are not contrary to the DTT. Any information received by a Contracting State shall be treated as

confidential and may be disclosed by the Competent Authorities in court proceedings. The latter change has led to widespread criticism since it is feared that it might be used by Russian Tax Authorities to obtain unscrupulous information about the Russian beneficial owners of many Cypriot Companies.
The new Article 26 provides certain safeguards to the application of the general rule of exchange of information. The Contracting States shall need to follow procedures of collecting and supplying information which are in accordance with their domestic laws (or the laws of the other contracting state). In the case of Cyprus Authorities, Cypriot Law 72(I)/2008 on the Collection of Taxes, provides that the Director of the Inland Revenue shall only supply foreign tax authorities (signatories of a DTT) with information if he has received substantial details about the concerned person and the reason for the requesting of information. This provision seems to have been put in place to ensure that the foreign Tax authorities do not engage in "fishing expeditions" without having any real evidence against the person under investigation. As a further control mechanism, the Cypriot Law provides that the Director of the Inland Revenue shall only supply information if he has obtained the written consent of the Attorney General of Cyprus.
The Protocol makes further provisions that a contracting state authority cannot refuse to supply information merely on the grounds that it has no domestic interest in that information. A further ground of non-refusal is for information held by a bank, nominee, agency or fiduciary capacity. In addition, according to the Protocol, information which could qualify as trade, business or industrial secrets will not be caught with the ambit of the Protocol. That is, this information will not be exchanged.
The business community fears that there will be an abuse of power by the Tax Authorities, in the sense that they will proceed to obtain more information than authorised by the Article. Therefore it is expected that the Attorney General of Cyprus will exercise his powers with great care before giving his consent.
The table below shows the other principal amendments for Russian investors and comments thereon:

	Type of income / subject matter of the Treaty	**Current version of the Treaty**	**Amended version of the Treaty**	**Comments**
1	Dividend	5% withholding tax applies to direct investment of at least USD 100,000, subject to all necessary requirements	5% tax rate applies to direct investment into share capital of at least EUR 100,000 Distributions from mutual funds regarded as dividends and taxed at source	Where direct investment is less than EUR 100,000, the 5% tax rate may be kept if investment is brought up to that level. As there is no share capital in mutual funds, it may be that distributions therefrom will be always taxed at

				source at 10%.
2	Interest treated as dividends under Article 269 of the Russian Tax Code	Treated as interest	Treated as dividends for the purposes of the Treaty.	For the purposes of this provision of the Treaty, interest in excess of allowable limits under Article 269 of the Russian Tax Code (thin capitalisation) will be treated as dividends, and such interest being subject to Russian withholding tax will not be in conflict with the Treaty.
3	Rendering services with respect to one or several related projects through one or several authorised persons who is present in the contracting state over 183 days during a 12-month period	No special provisions	Such activities give rise to a permanent establishment	Granting powers of attorney for conducting activities on behalf of a Cyprus company leads to increased permanent establishment exposure, especially in the case of management or advisory activities where the authorised person is a beneficiary and works actively in Russia on behalf of such company. It must be noted that the 183 days test refers only to presence and not provision of service, i.e. much shorter timing of provision of service may suffice to create a PE.
4	Income from a mutual fund established primarily for property	No special provisions	Such income is treated as property income and may be subject to with-	Tax structuring has often involved using mutual funds for property investments.

	investments		holding tax in Russia.	Once the amendments come into force, income received by corporate and individual non-residents from mutual funds will be taxed in Russia at 20% and 30%, respectively. In many cases, such structures will have to be modified.
5	Income on sale of participations in Russian companies which have over 50% of their assets in real estate	Exempt from Russian tax	Will be taxed at 20% in Russia. Alienation of shares in the context of reorganisation as well as shares in companies listed in a recognised stock exchange are excluded from this provision.	This provision is designed to combat the widespread way of selling property under the appearance of selling equity interests. The provision will become effective in 4 years after the Protocol itself comes into force.
6	Assistance in collection of taxes	The article existed but did not specify any rights or obligations	The article sets forth a more detailed procedure for tax collection assistance and applies to all types of tax. It also defines what can amount to a revenue claim and provides that "an amount owed in respect of taxes of every kind" but also any "penalties and costs of collection" related to such amount.	This article will allow the Russian tax authorities to send tax collection requests to the Cyprus tax authorities, who, subject to the applicable requirements, will have to comply with such requests without going through any further administrative or judicial procedures. The article will come into effect once Cyprus adopts the relevant legislation.
7	Limitation of Benefits	The article is not included in the current	Under the article, benefits available under the Treaty	The provision does not apply to companies registered in Cyprus or

		version of the Treaty	may not be granted if obtaining benefits under the Treaty is the primary purpose or one of the primary purposes for which the company was established.	in Russia. However, the provisions do apply, inter alia, to UK or BVI companies that have chosen to be tax residents of Cyprus. Income received by such companies may be taxed in Russia at rates specified by the domestic tax law, regardless of any benefits that were made available under the Treaty.

The signing of the Protocol is expected to make Cyprus more transparent for the Russian tax authorities. As a result, not all of the solutions currently used owing to the non-transparent nature of Cyprus will work going forward. Russian companies having Cyprus structures need to assess the implications of the amended Treaty for their existing structures and, where necessary, take steps to bring them up to date.

5. **Disclosure of Russian beneficiaries of Cyprus companies – new jurisprudence**

A remarkable decision was rendered recently by the Federal Court of Cassation of the Urals Circuit (the second-highest judicial level in Russia) on the deductibility of licensing fees paid to a British Virgin Islands company via a Cypriot intermediary.
On 23 June 2011, the Federal Arbitration Court of the Urals Circuit issued a Ruling (opredelenie) in case No.A60-32327/2010-C8 in respect of the tax consequences of royalty payments made for the use of a trademark to offshore companies. The court quashed the judgments of lower courts, which had been favorable for the taxpayer remanded the case for consideration de novo by the court of first instance and called for more a comprehensive and detailed analysis.
In particular, the Cassation Court requested that an analysis be made of whether or not there is a business purpose and justification for the tax benefits. In Russia, the judicial concept of an “unjustified tax benefit” is similar to a General Anti-Avoidance Rule and is primarily used to challenge purely artificial structures where the only aim is to obtain a tax benefit. Under the unjustified-tax-benefit concept, such benefits are not granted where they are not justified by a sound business purpose. One remarkable aspect of this case is that the Russian tax authorities have used data, obtained via Interpol, to identify the real beneficiaries of a Cyprus company in the structure.

Facts of the case

During a tax audit of the years 2006-2008, the Russian tax authorities concluded that the Russian corporate taxpayer incorrectly had deducted in excess of RUB 470 million from its tax base for a trademark (roughly equivalent to USD 15 million). The payments had been made to a BVI IPco through a Cypriot sublicense company. The BVICo had purchased the trademark from a Russian individual, who was a director in a number of Russian group companies, in particular: director of the parent company of the taxpayer. Prior to transferring the trademark, the Russian companies had not paid royalties for using the trademark. The BVIco had granted a non-exclusive right to use a trademark, which is the brand of a chain of retail stores, to a Cypriot company which then granted the nonexclusive right to use the trademark to the Russian taxpayer. It should be noted that even the initial royalties significantly exceeded the purchase price of the trademark by the BVICo. The Russian tax authorities argued that the entire chain of transactions was aimed at obtaining an unjustified tax benefit, as the Russian companies could easily have obtained permission to use the trademark directly from the director of their Russian parent company and from a number of other companies of the same group. The tax authorities also contended that the Cypriot company was an “affiliated entity”.

In response, the taxpayer had submitted to the court a statement of the secretary of the Cypriot company. Therein it was stated that the person who, according to the Russian tax authorities, allegedly had established the Cypriot company was never mentioned in the register of shareholders of the Cypriot company. Hence, the taxpayer concluded that the claim of the Russian tax authorities on the affiliation of the Russian and Cypriot companies of the group was not substantiated by the evidence.

Questions before the Court

The Urals Circuit Court had to decide whether or not the transactions were aimed at obtaining an unjustified tax benefit and whether or not they had a valid business purpose. It was also relevant to identify whether or not the intermediary Cypriot company was an affiliated entity.

Judgment of the Court

The Court stated that when a Russian trademark is transferred to an offshore entity for a modest remuneration, and subsequently Russian companies start paying substantial royalties for using the trademark, a thorough investigation must be conducted as to whether or not such a series of transactions has a purpose other than merely tax savings. The conclusions of the lower-level courts on the existence of a valid business purpose according to the Court ”were not substantiated by the evidence” in this case. In respect of the alleged affiliation of the Cypriot company with the Russian group of companies, the Urals Court took into account information, obtained through Interpol, that the founder of the Cypriot company was a woman cohabiting with the former owner of the trademark with whom she had common children. This woman had received payments from the group of companies at least on several occasions. Hence, the Cypriot company could be deemed to be affiliated to the Russian group of companies.

As a result, the Urals Court quashed the decisions of the lower courts which had been rendered in favor of the taxpayer and remanded the case to the trial-court level for consideration de novo of the issues involved in this dispute.

Conclusions

Although the Urals Court did not render a final judgment, some of the conclusions are of great importance. It is obvious to us that the tax authorities have achieved a significant degree of success in challenging a fairly widespread tax-planning solution where a trademark has been transferred offshore to generate significant deductions from the Russian tax base. The Russian tax authorities thoroughly prepared the case and managed to collect valuable evidence including materials obtained through Interpol to which we already have made reference in this summary. The apparently contradictory statements from the secretary of the Cypriot company, on the one hand, that the woman claiming to be the founder of the Cypriot company had never been listed among its shareholders, and data from Interpol stating that this woman indeed was a founder on the other, can be explained as follows. According to existing Cypriot regulations and practices, the actual founders/shareholders may remain undisclosed while other persons, so called “nominal shareholders”, are mentioned in the publically available registers of shareholders. The actual shareholders remain undisclosed to the general public but are known to trust service providers, banks, auditors etc. Most likely, the information via Interpol had been obtained from one or more of these sources. The involvement of Interpol has not been common in such cases; but as this particular case confirms, it henceforth not be excluded. Other sources of information which are publically available in Cyprus include the financial reports of the company.

It is interesting to note that the Russian tax authorities only raised the question of deductibility of the royalty payments. Following the line of reasoning as to the artificiality of transactions, hypothetically the tax authorities could have argued that the tax treaty between Russia and Cyprus should not apply and that the domestic Russian withholding tax of 20% should apply instead.

Although the current Russia-Cyprus tax treaty does not contain an explicit Limitation of Benefits Clause denying tax treaty benefits for artificial transactions, the Commentary to OECD Model Convention appears to deny applicability of tax treaty benefits to purely artificial arrangements. In addition, such an LOB clause is present in the Protocol to Russia-Cyprus tax treaty. This Protocol was submitted for ratification to the Russian Parliament on 22 July 2011 and may enter into force as of 2012.

The tax authorities also failed to raise an issue of a permanent establishment (PE) in Russia, although a number of the agreements under investigation had been signed by Russian individuals, possibly in Russia. The non-application of tax treaty benefits and the creation of a PE, if proven, might significantly increase tax liabilities although these adjustments would relate to tax liabilities of a Cypriot company. Although the final tax ruling only will be issued several months from now, it is already clear that the use of royalty-related solutions in tax planning will attract the attention of the Russian tax authorities and possibly may be successfully challenged. Therefore, we believe that it is advisable to undertake an evaluation of relevant tax risks in the light of the recent

jurisprudence. It is also clear that the Russian tax authorities and courts are applying anti-avoidance concepts more often and more successfully than in the past. A taxpayer should be prepared to justify its eligibility for tax deductions and tax treaty benefits also as regards the business purpose of the structure. Ratification of the Protocol between Russia and Cyprus, submitted to the Russian Parliament on 22 July 2011, will empower the Russian tax authorities to use more anti-avoidance measures.

The report is prepared by Roustam Vakhitov, Head of International Tax Section at the Scientific and Expert Council of the Russian Chamber of Tax Consultants.

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SLOVAKIA

Amendment to Slovak Income Tax Act

We summarize some of the changes that took effect as of 1 May 2011 and as of 1 August 2011 based on the amendments to Slovak Income Tax Act ("ITA"):

- The amendment adjusts the definition of consumed and transferred emission trading rights which influences the calculation of the tax base relating to the income from emission trading rights. From transferred emission trading rights were excluded those trading rights transferred as a collateral due to the security transfer of rights in relation to the received or provided loans and thus, such emission trading rights are not included into the tax base.

- The entitlement for tax relief for investment aid beneficiaries as defined by under the Article 30a of the Slovak Income Tax Act is prolonged from 5 to 10 years. The taxpayer may choose the way how the coefficient reducing the tax base and the tax liability for the purposes of the tax relief is calculated. It can choose from the coefficient determined at 80% or an original calculation formula. The news rules for the tax relief can be applied for the tax payers who obtained approval on state aid from 1st August 2011. Such taxpayers cannot utilise tax relief according to the other provisions of the Income Tax Act or under the former rules of the aforementioned article.

- The amendment adjusts rules for determination of a tax base for the institutions of obligatory health insurance in relation to the changes on possibility to distribute profits from the obligatory health insurance. In general, if revenues (profits) achieved by insurance companies from the obligatory health insurance activities are not used for payments on health insurance in accordance with the specific legislation during the next calendar year, such profits shall be included into the tax base of the health insurance companies in the next taxation period. Simultaneously, the amendment adjusted the conditions for deductions of provisions and adjustments to receivables related to the activities of health insurance companies.

Amendment to Slovak Act on Excise Duty on Alcohol

As of 1 September 2011 a new amendment to Slovak Act on Excise Duty on Alcohol ("SAEDA") has entered into force. The main changes are as follows:

- The amendment allows the customs office to approve the request of the taxpayer to put the security stamp on the plastic packaging wrap instead of beneath it.

- The obligation to keep daily evidence of the consumer packages of alcohol products to the monthly evidence.

- The minimum penalty for the sale of unmarked consumer package of alcohol product is decreased to EUR 50 per breach of the law.

Fees for Emergency Stock

From 1 September 2011 is effective an Amendment of the Act no. 170/2011 on Emergency Stocks of Oil and Oil Products. This amendment adjusts the obligation of payment of fees for handling, storing, managing of the emergency stocks of oil and oil products produced, imported, exported or transported on the territory of the Slovak Republic which was introduced from 1st January 2011. Originally the fee was collected by the State Material Reserves of the Slovak Republic on production and importation and transportation of the crude oil and oil selected products.

From the 1st September 2011 an entrepreneur who releases selected oil products into the so called “tax free circulation regime” as defined by the Act on Excise Duty from the Mineral Oil in the territory of the Slovak Republic is obliged to pay a fee for the creation, variation, protection, maintenance and financing of emergency stock (hereinafter the “**fee for emergency stocks**”) to the relevant customs office. In fact this obligation has only the person who handles with specific untaxed oil products in the suspension tax regime and who is obliged to register for the excise duty on mineral oil purposes.
All data needed for the fee for emergency stocks calculation shall be stated in the tax return on excise duty on mineral oil. The fees for emergency stocks shall be paid to the customs office who administers the collection of this fee and are due on the date when is the deadline for tax return submitting.
The beneficial recipient of this fee is State Material Reserves of the Slovak Republic.

Amendment to Slovak Health Insurance Act

As of 1 May 2011 a new amendment to Slovak Health Insurance Act (“SHIA”) have entered into force and adjusted former reform effective from 1 January 2011. The main changes are as follows:

- the obligation for the preparation of the annual health insurance contribution settlement is transferred from the employee or an employer to health insurance institutions (for the first time for the year 2011)

- Rental income of individuals was excluded from the health insurance and is not included into the annual assessment base and subject to health insurance at the rate of 14%. This change has an retroactive effect from 1st January 2011

- The amendment extended the age of students attending the university (daily form of study) excluded from the obligation to pay health insurance from 26 years to 30 years

Prepared by:

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Slovak Tax Chamber of Advisors

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SPAIN

1. Tax Treaties and Exchange Information Agreements

Spain recently entered into multiple tax treaties, including with the following countries: Oriental Republic of Uruguay, 12 April 2011; Islamic Republic of Pakistan, 16 May 2011; Georgia, 1 June 2011; Republic of Kazakhstan, 3 June 2011, Republic of Panama, 4 July 2011. The tax treaty between Spain and The Barbados will enter into force on 14 October 2011.

Spain also signed an Exchange of Information Agreement with Republic of San Marino (in force since 2 August 2011) and the Commonwealth of the Bahamas (in force since 17 August 2011).

2. Reintroduction of the Wealth Tax

After being suspended in 2008, the Spanish Council of Ministers approved Royal Decree-Law 13/2011 of 17 September, reinstating the Wealth Tax (*Impuesto Sobre el Patrimonio*) for tax years 2011 and 2012. The temporary character of the measure is justified as a tool to battle the deficit.

The reintroduction of the Wealth Tax will affect both residents and non-residents. While residents are subject to Wealth Tax on their worldwide assets, non-residents are subject to the Spanish Wealth Tax only on assets located or exercisable in Spain. The tax base is determined by net assets held as of 31 December of each year and the tax rate ranges from 0.2% to 2.5%.

Two new thresholds for applying the Wealth Tax in tax years 2011 and 2012 have been introduced by Royal Decree-Law 13/2011:

- the tax exemption for a taxpayer's residence is increased to EUR 300,000 (the previous limit was EUR 150,253.03).
- up to EUR 700,000 of the tax base will be exempt (the previous general exemption was EUR 108,182).

Finally, it is important to take into consideration that the tax is collected by the tax authorities of the Autonomous Regions, who are authorized both to approve tax benefits and to modify tax rates. As such, the effective taxation on assets depends on the decision of each Autonomous Region.

3. European Commission's Final Decision on Provisions Regarding the Amortization of Financial Goodwill by Spanish Companies

On 21 May 2011, the Official Journal of the European Union ("**EU**") published the Decision of the European Commission holding article 12.5 of the Spanish Corporate Income Tax ("**CIT**"), which allows companies resident in Spain for tax purposes to amortize financial goodwill resulting from the acquisition of shares of companies resident in a country outside the EU, as unlawful and prohibited state aid under EU treaties.

According to the European Commission's decision, non-EU acquisitions carried out before 21 December 2007 (i.e., the publication date of the decision to initiate an EU investigation of the Spanish provisions) are grandfathered. Therefore, the tax benefit can be received over the entire amortization period pursuant to article 12.5 of the CIT Law. On the contrary, non-EU acquisitions carried out after 21 December 2007 are not grandfathered and, therefore, any tax benefit deriving from inappropriately obtained state aid must be reimbursed.

The European Commission's decision created an exception for acquisitions in China, India and other specific countries. Acquisitions carried out before 21 May 2011 (the date the decision was published in the Official Journal of the EU) will be grandfathered and therefore, the tax benefit will survive over the entire amortization period pursuant to article 12.5 of the CIT Law. In contrast, acquisitions carried out after 21 May 2011 will not be grandfathered and, therefore, tax benefits derived from state aid received improperly must be reimbursed.

4. Tax development to reduce the budget deficit

Royal Decree-Law 9/2011 of 19 August introduced specific measures to reduce the budget deficit through a rationalization of sanitary spending, contribution to fiscal consolidation and provisions to increase the maximum amount of state guarantees in 2011.

The changes affect both direct and indirect taxation:

4.1. CIT

Article 9 of Royal Decree-Law 9/2011 introduces specific changes to the Spanish Corporate Income Tax Law (approved by Royal Decree 4/2004 of 5 March) in relation to:

(i) Payments on account
Royal Decree-Law 9/2011 amends provisions on tax years 2011, 2012 and 2013 and creates specific rules to determine the percentage applicable to payments on account by

large entities (i.e., those with turnover exceeding EUR 6,010,121.04 during the twelve months prior to the tax period).

(ii) Carry-forward losses
For tax periods after 1 January 2012, the period for offsetting prior tax losses is extended from 15 years to 18. The modification is applicable regardless of whether or not the tax losses were generated in 2011-2013, prior to 2011 (provided that they are pending offset by 1 January 2012) or after 2013.

For tax year 2011 and following, large companies must satisfy the following rules to offset previous tax losses:

- For companies with turnover of between EUR 20 million and EUR 60 million during the 12 months preceding the beginning of the tax year: carry-forward losses are limited to 75% of the tax base.
- For companies with turnover of at least EUR 60 million during the 12 months preceding the beginning of the tax year: carry-forward losses are limited to 50% of the tax base.

4.2. Value Added Tax

Royal Decree-Law 9/2011 also reduced the 8% VAT rate on new-home purchased to 4%. This reduction 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 dwelling and transferred simultaneously in the same deed.

5. Personal Income Tax deduction for improvements made to housing

The Spanish Council of Ministers approved Royal Decree-Law 5/2011 of 29 April on measures to regularize and combat undeclared employment, and promote improvements to residences. The most important provision under Royal Decree-Law 5/2011 is the creation of an amnesty period from 7 May to 31 July 2011, during which time employers were allowed to register workers with the Social Security. Social security contributions for such workers may also be postponed.

Royal Decree-Law 5/2011 also amends the current Personal Income Tax deduction for works carried out to improve housing. As modified, the deduction will apply to both primary residences and secondary residences. Nevertheless, the deduction does not apply to works carried out in housing affected to economic activity, parking lots, gardens, parks, swimming pools, sports or other facilities.

Under the new deduction, a taxpayer with a tax base lower than EUR 71,007.20 are eligible to receive a deduction of 20% on the amount paid up to a maximum annual deduction of EUR 6,750 (the previous rate was 10%).

The new deduction only applies to works carried out between the entry into force of Royal Decree-Law and 31 December 2012.

6. Simplification of formal obligations for non-resident investors in debt instruments

Issuers of preferred shares and debt instruments under Law 13/1985 must inform the tax authorities of the identity and country of residence of the investor. Following the entrance into effect of Royal Decree 1145/2011 on 31 July, issuers of such debt instruments are not obliged to disclose any information on non-resident investors.

No withholding tax will be applied on income derived from securities that are originally registered with a clearing house located in Spanish territory, provided that the holders of the securities are (i) not resident in Spain or (ii) resident in Spain and subject to CIT. However, investors resident in Spain subject to Personal Income Tax will receive the corresponding income, less the corresponding withholding tax.

Income received by all investors, whether or not resident in Spain, generated from securities originally registered with entities managing clearing systems located outside Spain that are recognised by Spanish law or that of another OECD country (e.g., DTC, Euroclear or Clearstream), will not be subject to Spanish withholding tax.

7. Accounting Audit Law

In order to enhance comparison in the international economic environment, Royal Legislative Decree 1/2011 of 1 July, incorporated Directive 2006/43/EC into Spanish law and consolidated all amendments to the former Accounting Audit Law (introduced according to changes in the Spanish commercial legislation). Royal Legislative Decree 1/2011 aims to provide a systematic, unified and comprehensive approach to auditing activities.

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THE NETHERLANDS

Organisation: Register Tax Adviser (Register Belastingadviseurs)
Date: September 24, 2011

On 15 September 2011 the Dutch Government has published the 2012 Tax Package. The plans reflect the Dutch government's policy to provide for a solid and simple tax environment. The most important changes, for the purpose of this national report, are:

- Restriction on the deduction of interest on acquisition debt in a fiscal unity
- Dividend tax for some co-ops
- Amendment of the regulation regarding foreign
- entities with a substantial interest
- Object exemption for foreign permanent establishments
- Extension of dividend tax refund scheme
- Amendment of the expat arrangement ('30%-facility')

To summarize the scope of the Dutch Budget Memorandum 2012 and the above mentioned measures in the Dutch Tax Package 2012, we refer to the Newsrelease form the Dutch Ministry of Finance and the Summary of the Dutch Tax Package 2012 form PWC.

The Dutch organisations for tax advisers (Order of Dutch Tax Advisers and Register Tax Advisers) have been invited by the Ministry of Finance to take part in a technical briefing of the Tax Package on September 29, 2011. Both organisations will sent a comment on the Tax Package to the House of Representatives and the Ministry of Finance.

Newsrelease Dutch Ministery of Finance, September 20, 2011

Budget Memorandum 2012: steady course in uncertain times
The unrest in the euro zone, the declining growth of world trade and the lack of confidence on the financial markets result in disappointing economic prospects. That is why the first Budget Memorandum of the Rutte-Verhagen Government focuses on - in line with the coalition agreement - restoring financial stability, improving public finances, strengthening the ability of the economy to grow and the ambition of a more compact government.
The continuing unrest in the world economy and the uncertainties it brings are an extra incentive for Minister of Finance Jan Kees de Jager to continue with the Government´s roadmap. "The international debt crisis emphasises the importance of healthy public finances. Countries with a high deficit and a large debt are hit the hardest. The Netherlands is not part of that group, but the negative developments of the last few years have also left deep marks here. Intervention is necessary in order to stay financially healthy and to be prepared for setbacks. Budgetary discipline is therefore an

absolute priority for this Government. The first positive results of this policy are now noticeable, but the reality is that the 2012 budget has a deficit of about 50 million euro per day. And although that is substantially less than in previous years, this amount shows that a lot of work remains to be done."

Decreasing budget deficit
Public finances in the Netherlands are slowly recovering from the crisis, but have not stabilised yet. In 2012 the budget deficit (EMU balance) is expected to be 18 billion euro. Expressed in a percentage of the economy that results in a deficit of 2.9 per cent of Gross Domestic Product (GDP). This means that in 2012 for the first time since the crisis broke out the Netherlands would - only just - meet the important 3 per cent requirement of the Stability and Growth Pact, the European standard for healthy public finances. At the same time there are major uncertainties and because of the lower economic prognoses the budget deficit will shrink less than intended at the end of 2010 on the basis of the coalition agreement. The budget policy of the government aims at keeping a steady course even if the economy faces a headwind. Extra measures are only needed when the budget deficit gets below the allowed margin by more than 1% per cent (warning margin). However, that is not the case. Therefore no extra cost cutting, on top of the 18 billion cost-cutting package, is included in this Budget Memorandum.

Debt and interest
Public debt (EMU debt) is expected to amount in 2012 to 407 billion euro, or 65.3 per cent GDP. That is an increase of 0.6 percentage point compared to the most recent estimate for 2011. In order to finance the debt the 2012 budget has a budget item of 10.4 billion euro for interest expenses.

Steady-course policy
In the 2012 Budget Memorandum the Government strongly emphasises healthy public finances, strengthening of the economy, a compact and more efficient government and more leeway for a strong private sector. Problems are tackled, not passed on to future generations. Not even if the approach results in painful, but necessary measures. The Budget Memorandum also pays attention to population ageing and control of health-care costs, two challenges which in the years to come will play an increasing role. There are opportunities too; the open and internationally oriented Dutch economy will profit from the growth of emerging economies such as China, India and Brazil.

18 billion
The '18 billion cost cutting monitor' shows that the Government is on course with the 18 billion euro cost-cutting package. A start was made with these measures in 2011. In the first year there was a cut back of 2.8 billion euro and in 2012 the cost cutting is expected to increase to 6.5 billion euro. Budgets that face cuts next year include the budgets for development cooperation, defence and childcare allowance. Cost cutting will further increase after 2012 and the 18 billion euro mark will be reached in 2015. Furthermore in 2012 the Government will take additional measures to prepare for financial setbacks in

health care and social security. These concern extra measures which ensure that the predefined expenditure ceiling is not exceeded. In 2012 this entails extra measures totaling 2.6 billion euro.

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UNITED KINGDOM

Report on UK developments in the period April to September 2011
Direct Tax

Following the Budget in March 2011 the Finance Act 2011 became law in July 2011. The main 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.

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

Controlled Foreign Companies
The Government published a consultation document in July for comment by September. The new regime is anticipated to be introduced some time in 2012. 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 CFC regime. In the past all the foreign entities profit was taxed if it came within the CFC regime.

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 is about to present its report to Government, before the end of October, and is likely to recommend a more targeted GAAR than exists in other countries such as Australia, Canada, South Africa etc.

New consultation framework
The new framework is in place and during the summer there have been about 30 separate consultations on potential changes to the UK tax regime. Based on the results of these consultations draft legislation will be published at the beginning of December with a view to being turned into law next year in Finance Act 2012.

A complete overhaul of the UK tax regime
The independent Institute for Fiscal Studies (IFS) presented the final version of its Mirrlees Review *Tax by Design* in September setting out its analysis of what a 'neutral and progressive tax system' should look like, not only in the UK but in any country in the world.

The main recommendations of the Mirrlees Review are reproduced after this report and the full report can be accessed on the internet at
http://www.ifs.org.uk/mirrleesReview/design

Indirect Tax

HMRC announced on 6 April a change of approach to the way they have assessed penalties for delayed payment of VAT where the error reverses on a subsequent VAT return. Where HMRC are satisfied that, but for their intervention, the inaccuracy would have been automatically corrected in a subsequent return, the penalty will only be assessed on an amount assuming the correction on the subsequent return.

Compound interest claims (John Wilkins (Motor Engineers) Ltd and others) – the Court of Appeal has agreed a stay of appeal pending the outcome of the CJ of EU decision in Littlewoods (C-591/10) and directed that work take place on referring a further question regarding VAT paid between 1973 and 1978.

Informal consultation announced on 10 May 2011 for comment by 30 August 2011 on legislating an extra-statutory Concession – Group supplies using an overseas member.

Consultation on implementation of EU VAT cost sharing arrangement provisions, issued 28 June for comment by 30 September

A change in the VAT treatment where a business uses a UK VAT registration number (other than for triangulation purposes - see below) to secure zero-rating of goods sent from one EU Member State to another, without arriving in the UK is made, effective 1 June 2011.

Finance Act 2011 became law in July. VAT measures included:

- Business samples: amendment of the UK rules to comply with an EU decision that VAT should not apply to business samples given for no consideration
- Splitting of supplies: anti-avoidance measure to avoid abuse of VAT zero rating for supplies made on or after 19 July 2011
- Academies: for supplies made on or after 1 April 2011 a measure formalising the VAT refund process available to academy schools for non-business activities
- Relief from VAT on imported goods of low value: minimum level reduced from £18 to £15 with effect from 1 November 2011

Upper Tribunal overturns the first tier Tribunal decision on VAT on corporate finance costs in the acquisition of BAA plc, concluding there was no direct and immediate link between the costs incurred (on which VAT was paid) and any taxable supply made by the acquisition vehicle of the claimant. BAA have appealed the decision.

HMRC announces that output VAT must be accounted for on taxable supplies made as part of a salary sacrifice scheme, with effect from 1 January 2012.

HMRC announces that certain VAT services of insolvency practitioners in respect of individual voluntary arrangements are to be regarded as VAT exempt (September 2011).

Questions referred to the ECJ on the VAT treatment of property services when supplied with a property lease (Field Fisher Waterhouse LLP case – July 2011).

Questions referred to the ECJ concerning the VAT treatment of pension fund management fees (Wheels Common Investment Fund Trustees Ltd and others – August 2011).

Interest income to be excluded from turnover calculations for all users of the flat rate scheme (September 2011).

ICAEW Tax Faculty / CIOT / Institute of Indirect Tax
22 September 2011

Mirrlees Review – 'Creating a neutral, progressive tax system'

The Mirrlees Review examined the UK tax system before reaching more wide ranging conclusions on what would constitute a good tax system in any country.

Its conclusions about the current UK tax system are that:

> 'In the UK poor tax design contributes to an inefficient housing market, distortionary taxation of financial services, excessive reliance on debt finance,

employment levels lower than they need be and distorted and inefficient savings and investment decisions. The review sets out a long term strategy for reform, and in doing so speaks to immediate policy priorities.'

What it recommends, which have implications for countries other than the UK, are:

Taxation of housing. The current UK arrangements should be replaced by a Housing Services Tax which would be the equivalent of VAT on housing. The current tax on sales of houses, stamp duty land tax, should be scrapped.

The benefit system is unnecessarily complex, is not integrated, and reduces incentives to work and earn much more than is necessary. The government's proposals for a Universal Credit are a welcome step in the right direction as a way of replacing most of the current multiplicity of benefits and rationalising support.

More could be done to improve work incentives particularly for individuals around pension age – between 55 and 70 – and parents of school age children. The Review illustrates changes affecting these groups which could increase total employment by over 200,000 and total earnings by nearly £3 billion.

Income tax and National Insurance should be properly integrated. National Insurance no longer serves any purpose as a separate social insurance contribution linked to benefit receipt. Maintaining it as a separate tax serves only to create confusion and complexity.

VAT is needlessly complex and inefficient because it treats different types of spending inconsistently. It both favours, and creates immense complexity for, financial services. An equivalent to the VAT could, and should, be imposed on financial services. VAT should also be extended to nearly all spending. This would reduce complexity and costly distortions to consumption choices. The money raised could be spent on cutting income taxes and raising benefits in a way which is broadly distributionally neutral, and which protects work incentives.

Environmental taxes impose arbitrary and inconsistent prices on carbon emissions from different sources. Some emissions are effectively subsidised by the tax system. There should be a consistent price on carbon emissions, through a combination of extended coverage of the EU Emissions Trading Scheme and a consistent tax on other emission sources. This would include a tax on domestic gas consumption.

Taxation of petrol and diesel is ineffective for tackling congestion – the main cost of driving. In addition, and as the Office for Budget Responsibility has pointed out, as cars become more efficient this significant source of government revenue will decline rapidly. We should work towards a comprehensive system of congestion charging on the roads, replacing most of fuel duty. The potential economic and welfare gains are very big.

The taxation of savings needs a radical overhaul. Hugely different effective tax rates are imposed on returns to different forms of savings, resulting in extensive tax planning, disincentives to some forms of savings and poorly designed incentives for other savings, including pension savings. The risk-free or 'normal' return to saving should not be taxed, so that saving is not discouraged. Standard bank and building society accounts should be entirely free of tax, equity Individual Savings Accounts should be maintained and the main features of the current tax treatment of pensions should be retained. For other substantial holdings of risky assets only returns above the 'normal' rate should be subject to tax. These returns (income and capital gains) above the normal return should be taxed in full at the same rate schedule as earned income (including NICs), with reduced rates for dividends and capital gains on shares to reflect corporation tax already paid. Equalising the marginal tax rates on earnings and different forms of capital income in this way would reduce distortions between different economic activities and opportunities for avoidance.

The corporate tax system favours debt finance over equity finance, increasing the tendency towards an excessive reliance on debt. The review proposes that an Allowance for Corporate Equity (ACE) should be introduced into the corporation tax. This would ensure equal treatment of equity- and debt-financed investments and that only profits above the normal return to capital invested are taxed. This reform could increase national income by as much as 1.4% (more than £20 billion at current prices).

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