



Australia

Beware the taxman cometh!

Current Australian developments in offshore tax compliance

Current global trends for countries to cooperate in their fight against tax avoidance and evasion has seen a raft of cooperative measures being implemented to open up access to information in places where traditionally there has been strict confidentiality of financial data pertaining to individuals and their controlled entities located in foreign jurisdictions.

As a recent example, G-20 leaders have agreed "to take action against uncooperative jurisdictions, including tax havens" and announced that "the era of secrecy is over". Since this changed attitude, countries which had previously maintained a "code of silence" are succumbing to international pressure to agree to greater transparency and exchange of information with tax authorities. In this regard all Organisation for Economic Co-operation and Development (OECD) countries (including Australia) have adopted the OECD exchange of information standards.

Locally, as part of its ongoing tax compliance programme, the Australian Taxation Office ("the ATO") has recently announced a number of initiatives to ensure that taxpayers bring their offshore income into the Australian tax net.

As part of its law enforcement armoury the ATO has requested information from banks which it will use to identify Australian taxpayers who may have undisclosed offshore income or over-claimed deductions involving international transactions. This is part of the ATO's drive to combat tax evasion facilitated by the use of foreign tax havens. The announcement coincides with the gazettal of a data-matching notice which sets out some 57 financial institutions from which the ATO has requested information, including those financial institutions that operate abroad. The ATO will also approach subsidiaries and branches of some 37 international financial institutions operating in Australia.

The ATO will also request data from credit and debit card providers such as American Express, Mastercard, Visa International and Diners Card. Clearing houses such as Cashcard, First Data Resources and Cardlink will also be targeted.

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The ATO has warned that the list of banks that it has gazetted is not exhaustive so it can be expected that the ATO will extend its net further in its campaign to fight tax evasion. The ATO is seeking information from 1 July 2005 onwards and expects to obtain the records of more than 100,000 individuals and entities for data-matching purposes.

Once the data-matching exercise has been completed the ATO will use the information to identify Australian taxpayers who may have undisclosed offshore income (including capital gains) or over-claimed tax deductions involving international transactions. The ATO also expects to address non-compliance with tax laws through electronic bulk data-matching that identifies potential international activity that may need to be reported to it.

The ongoing data-matching programme will also assist the ATO in its strategic compliance approach to Australian taxpayers involved in so-called abusive arrangements utilising foreign jurisdictions that offer bank and entity secrecy. In line with this, Australia has recently signed Tax Information Exchange Agreements ("TIEAs") with a number of known tax haven countries.

The TIEAs allow for the bilateral exchange of tax and financial information between Australia and the other countries. Importantly, they also provide for exchange of information on request in both criminal and civil tax matters. Australia now has tax information treaties with 23 overseas jurisdictions and the number is expected to increase as time goes on.

Under the terms of the TIEAs, each country is to ensure its competent authority has the authority to obtain and provide upon request the following:

- Information held in banks, other financial institutions and any person acting in an agency or fiduciary capacity, including nominees and trustees; and
- Information regarding the ownership of companies, partnerships, trusts, foundations and other persons.

Interesting times lie ahead for those taxpayers that have enjoyed the benefits of anonymity as their financial affairs will soon come under close scrutiny by the tax authorities in both Australia and foreign jurisdictions.

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Proposed simplification of Australia's Global Goods & Services Tax rules for cross-border transactions

Since its introduction in the year 2000, the operation of Australia's Goods and Services Tax ("GST") on cross-border transactions has been fraught with complexity. Given a GST exposure may arise without the non-resident business establishing a "permanent establishment" (which is generally when income tax obligations arise), non-resident businesses regularly have difficulties in understanding whether and when they must be registered for GST.

There are also significant practical issues in registering non-residents for GST where they otherwise have no Australian tax or reporting obligations, not the least of which being that registration is a time consuming process with strenuous documentation and certification requirements that may take months to meet. In extreme cases, these difficulties have led to non-residents abandoning the registration process altogether and not dealing with their GST obligations.

In response to the concerns surrounding GST on international transactions, the Federal Government announced in the recent annual Budget that it would introduce measures to improve the application of GST to cross-border transactions. The new measures will be effective from 1 July 2012. These announcements are welcome improvements to Australia's GST system.

The changes proposed are as follows:

1. Exclusion from the definition of "connected with Australia" of supplies of goods, services and intangibles by a non-resident provided:
 - The non-resident has no business presence in Australia; and
 - The supply is made to a business that has a presence in Australia and is registered for GST.
- Where a supply is not "connected with Australia", it will fall outside of the GST system. This means that the non-resident will have no obligation to charge GST and remit it to the Australian Taxation Office.
2. The expansion of the compulsory reverse charge rules to include goods. These rules currently only apply to supplies of services or intangible assets. These rules effectively require that the Australian resident recipient of the supply remits the GST on the supply to the Australian Taxation Office rather than requiring the non-resident party to register for GST in specified circumstances.
 3. Making supplies of services or intangibles GST-free where the following are satisfied:
 - The supply is made to a non-resident;
 - The supply is provided to:
 - A registered business in Australia;
 - An employee or an officeholder of a registered business in Australia; or
 - An employee or officeholder of an unregistered non-resident business and the acquisition by that non-resident is for a fully creditable purpose.
 4. The expansion of the agency provisions to allow a non-resident without a business presence in Australia to appoint a resident commission agent and that such registration be effective without requiring the non-resident to also be registered.
 5. The removal of the requirement for non-residents to register for GST:
 - Where they are only making GST-free supplies. However, this does not amount to an exclusion of GST-free supplies when determining whether the GST registration threshold has been satisfied.
 - If the only taxable supplies made by the non-resident are made through a resident agent.

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6. A significant reduction of the documentation required to register a non-resident for GST.

The introduction of these rules should significantly improve the operation of the GST rules pertaining to non-residents and cross-border transactions. Those clients who are currently subject to the GST rules on their cross-border transactions will need to consider whether their GST obligations change, possibly even to the extent of no longer requiring registration, as a result of these proposed measures.

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Canada

Canada lowers barriers to foreign investment

A recent amendment to Canada's Income Tax Act designed to relieve the compliance burden non-residents face when disposing of "taxable Canadian property" should make Canada a more hospitable place for foreign investors.

Prior to the amendment, the definition of "taxable Canadian property" included real property situated in Canada, property used in a business carried on in Canada, shares of the capital stock of corporations resident in Canada and not listed on a designated stock exchange, and capital interests in trusts that are resident in Canada. Also included in that definition were interests in partnerships, corporations listed on a stock exchange in which the vendor holds at least 25% of any class of shares, and non-resident corporations or trusts if more than 50% of the value of such interests is attributable to the holding of taxable Canadian property or certain other resource properties at any time in the 60 months preceding their disposition.

When the non-resident disposed of taxable Canadian property, he was required to file a request with the Canada Revenue Agency (CRA) for what is commonly known as a "compliance certificate" not later than ten days following the disposition date. This procedure is still in effect today but applies in more limited circumstances. It reflects the fact that under Canadian domestic law a capital gain or other income of a non-resident person arising on a disposition of taxable Canadian property is subject to tax. The compliance certificate mechanism affords the CRA an opportunity to review relevant documentation in support of the proceeds of sale, the vendor's basis in the property, as well as the vendor's assertions, if any, that the income or capital gain is exempt from tax by virtue of an international tax treaty. When filing for a certificate, vendors must remit, or provide security for, 25% of the estimated capital gain, or 50% of the amount of recaptured depreciation, on account of their ultimate tax liability, should there be no treaty exemption. Vendors who fail to make a timely filing are subject to a penalty of C\$100 per day, up to a maximum of \$2,500.

A resident or non-resident purchaser of taxable Canadian property is required to withhold and remit 25% of the proceeds, or 50% of the proceeds in the case of depreciable property, if no CRA certificate is obtained. A lesser amount may be sanctioned in the case where a compliance certificate is obtained. Thus, where the CRA agrees that no further tax is due by the vendor, the certificate will indicate that no amount need be withheld. Purchasers who fail to withhold, when required, are liable for the tax. A due diligence defence is available if, after reasonable inquiry, the purchaser was unaware that the vendor was a non-resident of Canada.

It follows that the enforcement of payment of the non-resident vendor's tax liability fell into the hands of the purchaser, who occasionally may not be aware of this obligation. To make matters worse, experience shows that it would often take many months, or even years, before some certificates were issued. Purchasers who wished to disburse the full proceeds to vendors under the belief that no tax was due, had to either obtain a comfort letter from the CRA, or proceeded at their own risk lest the certificate not be issued as expected. It was therefore not surprising that many observers felt that the compliance certificate burden put Canada at odds with its international treaty obligations and was hindering the free flow of capital.

Moreover, the province of Quebec, which has a parallel income tax system, has its own compliance requirements in respect of dispositions of "taxable Quebec property". Non-resident vendors who dispose of property that is both taxable Canadian property and taxable Quebec property must comply with two sets of rules. Quebec requires an additional 12% withholding, or 30% in respect of dispositions of real property and certain other properties. Therefore, depending on the nature of the property, the parties to a transaction in Quebec could face combined withholding rates ranging from 37% to 80%.

The Department of Finance attempted to reconcile Canadian tax laws with the country's treaty obligations in its February 2008 budget. Effective for dispositions occurring after 2008, it became possible to avoid the cumbersome certification process in the case of dispositions of "treaty-protected property". Unfortunately, the new rules did not completely exonerate purchasers if they mistakenly relied on vendors' representations to the effect that the capital gain or other income resulting from the disposition of taxable Canadian property was indeed exempt by virtue of an international tax treaty. Purchasers could mitigate their potential liability by filing a notice in respect of the disposition with the CRA within 30 days after the sale. They would have to demonstrate that they had made reasonable inquiries as to whether the vendor was a resident of the country under which treaty rights were asserted, and that it was reasonable to conclude that the property would be treaty-protected property if the vendor were a resident of that country. Nevertheless, no apparent due diligence defence would protect the purchaser if, for example, the purchaser incorrectly assumed that the underlying value of the taxable Canadian property was not attributable primarily to real property situated in Canada. For this reason, many arm's-length purchasers were reluctant to forgo the certification process.

The Department of Finance took a giant stride forward in its 4 March 2010 budget by proposing to narrow the definition of taxable Canadian property. Effective for dispositions after that date, shares of corporations and interests in trusts, among other property, will generally not be

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canada

considered taxable Canadian property. This is the case unless more than 50% of their underlying value is attributable to real property in Canada, Canadian resource properties, timber resource properties, or options in respect of any of the foregoing, at any time within the 60 months preceding the disposition. Consequently, shares of most Canadian private corporations have been carved out of the definition and it should now be possible in most cases for the non-resident vendor and the purchaser to complete a share sale without the CRA's blessing. The result of this amendment is that Canada's administrative procedures are much more closely aligned with Canada's treaty obligations. Incidentally, Quebec announced that it will harmonize its rules with those of the federal government, as it did following the 2008 federal budget.

In other respects, the compliance certificate system remains in force, as does the post-2008 informal notification procedure described above. Given that much fewer transactions will be subject to these onerous compliance requirements, foreign investors can breathe a welcome sigh of relief.

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India

AAR Ruling: Capital gains tax exemption on transfer of shares of an Indian company

In a recent ruling the Authority for Advance Rulings (AAR) held that E*Trade Mauritius Ltd. is not liable to pay capital gains tax in India in respect of the transfer of shares held by it in IL&FS Investsmart Ltd to HSBC Violet Investment (Mauritius) Ltd., having regard to the provisions of the India-Mauritius Double Taxation Avoidance Agreement (DTAA).

Background

ET Mauritius is a tax resident of Mauritius, and is an indirect subsidiary of E*Trade Financial Corporation, USA ("ET USA"). ET Mauritius sold the equity shares held by it in IL&FS, a tax resident of India, to HSBC Violet Investment (Mauritius) Ltd. ("HSBC"), another Mauritian company.

ET Mauritius approached the tax authorities in India to obtain a "NIL" rate withholding tax certificate. Instead, HSBC received a certificate directing it to deduct tax on the amounts paid to ET Mauritius.

ET Mauritius challenged the said certificate before the Bombay High Court as well as approaching the Director of Income Tax (International Taxation) ("DIT"). Both departments confirmed that the transaction prima facie gave rise to capital gains chargeable to tax in India.

ET Mauritius thereafter approached the AAR to determine whether, by virtue of being a resident of Mauritius, it is eligible to the benefits of the India-Mauritius treaty and hence not subject to tax in India on the capital gains arising.

Contentions of tax authorities

Although the legal ownership of shares of IL&FS vests with ET Mauritius, the real and beneficial owner is ET USA and hence ET Mauritius was merely a façade to avoid capital gains in India. DIT had taken a view that the capital gains arising from the transaction is taxable in the hands of ET USA.

They argued that it should be considered whether the structure was a device to evade tax, despite the Supreme Court's ruling in the case of Azadi Bachao Andolan in which a Mauritian company was not subject to capital gains tax under the treaty.

Ruling of the AAR

A synopsis of the ruling is given below:

- As all the legal formalities for purchase of shares and their subsequent transfer had been completed by ET Mauritius and the consideration had been received by ET Mauritius, it is difficult to assume that capital gain had arisen to ET USA and not ET Mauritius.
- It further held that the fact that ET USA provided the funds and played a role in negotiating the sale transaction did not lead to legal inference that the shares were, in reality, owned by ET USA. The fact that a subsidiary has its own corporate personality and is a separate legal entity needs to be considered. Even though the holding company exercises acts of control over its subsidiary, that did not, in the absence of compelling reasons, dilute the separate legal identity of the subsidiary.
- The AAR upheld the benefits available under the India-Mauritius tax treaty.
- The AAR held that the attempted distinction between legal and beneficial owner cannot be sustained on any reasonable basis.
- Further, the AAR relying on the decision in the case of Azadi held that there is no legal prohibition against "treaty shopping".

Our analysis

The AAR ruling affirms that the Indian Tax Authorities are not in a position to levy capital gains tax on the transfer of shares in an Indian company by a Mauritian tax resident in view of the provisions of the India-Mauritius tax treaty.

A ruling by the AAR is binding only on that applicant and in respect of the specific transaction. However, it does have persuasive value and the Courts in India, the tax authorities and the appellate authorities recognise the principles laid down by the AAR in deciding similar cases. Other taxpayers who would like to achieve certainty on their specific transactions could consider approaching the AAR for a ruling.

As far as the case of ET Mauritius is concerned, the only option available for the tax authorities now is to file a special leave petition before the Supreme Court against the said AAR ruling.

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india



New innovative international tax provisions

The Maltese parliament has recently approved a series of amendments to the Maltese Income Tax Act. Such amendments have been enacted in order to further enhance Malta's attractive regime in the context of international tax planning.

Participation exemption

Existing rules

The existing conditions for a "participation holding" of a foreign entity are as follows:

- The owner holds at least 10% of the equity of the entity; or
- The owner holds options over the entire share capital/ownership of the foreign entity; or
- The owner is entitled to the right of first refusal in the disposal, redemption or cancellation of all shares in the foreign entity; or
- The owner is entitled to appoint a director to the board of the foreign entity; or
- The owner invests a minimum of €1.164 million, or equivalent in foreign currency, for an uninterrupted period of 183 days; or
- The owner owns the equity in the foreign entity for business continuity, but not as trading stock for the purposes of a trade.

If a holding meets one of the conditions above, it is eligible for the Participation Exemption. This is a tax exemption for any income from such a holding or gains on disposal of the holding.

The exemption applies only to holdings in entities:

- That are resident or incorporated in an EU country; or
- Subject to foreign tax of at least 15%; or
- That do not derive more than 50% of their income from passive income; or
- Subject to foreign tax of least 5% and do not derive more than 50% of their income from passive income.

Amendments

The first change is to the definition of "equity holding" for the above purposes. A holding will qualify if it meets at least two of the following three criteria:

- A right to vote;
- A right to profits available for distribution to shareholders;
- A right to assets available for distribution on a winding-up of that company.

The second change is that the participation exemption also applies to holdings of shares in Maltese companies.

Tax base cost of assets

From 1 January 2009, (i) any persons becoming tax resident and/or domiciled in Malta and (ii) companies resulting from qualifying mergers are able to claim an increase in the tax base cost of assets situated outside Malta without any adverse Malta tax consequences.

Assets may be revalued to fair market value at the date the individual becomes Malta tax resident/domicile or of the merger for companies. The Commissioner of Inland Revenue should be notified of this increase in tax base cost, and the new value should not exceed the market value of the asset.

Capital allowances and tax deductions are calculated on the revalued amount. This may be particularly beneficial for companies with intellectual property. Any individual or company making the election for its assets must not have been Malta tax resident/domicile prior to making the election.

Expatriates

Expatriates who are tax resident in Malta can opt for a flat income tax rate of 15% instead of the usual income tax regime on their employment income in Malta. This will be available from the year of assessment 2011.

The individual can also opt to include income from duties outside Malta or while on leave in this regime. However, the rules relating to minimum income levels, maximum period of the scheme and the ways and means of the legislation are yet to be prescribed.

Royalties

Royalties and similar income derived from patents may be exempt from Malta income tax subject to the new conditions. The new exemptions do not discriminate according to country of course. The exemption is not affected whether the income is derived in the course of trade or passive income. Any royalty income distributed to shareholders will also be exempt at the level of shareholders.

There is a clause in the legislation to opt out of this regime if desired.

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malta

Tonnage tax

The new rules are in force retrospectively from 1 January 2009, and apply to shipping organisations carrying out activities beyond the ownership or chartering of a tonnage tax ship from year of assessment 2010.

- The tonnage tax regime now extends to foreign-flagged vessels from EU/EEA states and that pay Maltese tonnage tax applicable thereto. There are also conditions where other ships may qualify as a tonnage tax ship.

Registration fees/tonnage taxes are applied on the same basis as Malta-flagged vessels with relief for foreign taxes subject to a minimum tax of 25% of the Malta tax before such relief.

- The regime now extends the definition of "ship management" activities to include technical management as well as crew management activities. Subject to certain conditions being met, the income derived from "ship manager" from "ship management" activities will be deemed to be from shipping activities and thus be exempt from tax.

This implies that distributions of profits from shipping activities are also tax-exempt.

The transfer of tonnage tax ships and disposal of rights to acquire such ships remain tax-exempt.

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The Netherlands

The Dutch 30% ruling – a tax benefit for international talent

The allowance in general

The Netherlands offer a very generous tax benefit for international talent: the 30% ruling. The 30% ruling allows an employer to grant an expatriate a tax-free allowance to defray the expatriate for the additional ("extra") costs incurred in connection with his or her temporary job outside the home country. These additional costs are defined as 'Extraterritorial Expenses' and can be reimbursed up to the amount of actual expenses incurred (which have to be substantiated) or as a fixed tax-free allowance of up to 30% of the agreed remuneration (without having to provide any evidence of the actual expenses). If an expat becomes subject to Dutch taxation either as a resident or as a non-resident he or she should qualify as an employee hired from abroad in order to benefit from the allowance. Once the ruling is granted by the Dutch tax authorities 30% of the agreed remuneration can be paid as a tax-free cost remuneration.

Extraterritorial Employee

The 30% ruling is available for expatriates from abroad who perform activities that are liable to Dutch Wage tax. The expatriate should either have been recruited from outside the Netherlands or seconded to the Netherlands from another foreign group company. The key condition for qualifying as an Extraterritorial Employee recruited from abroad is that the expatriate has special skills or knowledge scarce in the Dutch labour market.

The application

The application for the 30% ruling has to be done by way of a mutual request by the employer and the employee and must be filed within four months after the start of the employment activities in the Netherlands in order to benefit from the start of the employment. The 30% ruling will be granted for a maximum period of 120 months.

Please note that an expatriate can also file the 30% ruling after four months of the starting date. However, in such a case the ruling will not be granted prior to the first month after filing the application. Previous months of stay in the Netherlands will be deducted from the maximum period of 120 months.

An expatriate can apply the 30% facility in the payroll even before the tax inspector has granted the ruling.

If the 30% ruling is granted, the employment contract should specifically refer to the ruling. Also, qualifying employees should be aware that pension and employee insurance schemes are based on the taxable remunerations (gross salary, bonuses and all taxable benefits) exclusive of the 30% allowance. This means that such contributions are calculated based on a lower salary and will result in lower future benefits.

Tax planning

If the 30% ruling is granted an expatriate can apply to be taxed as a non-resident for certain types of Dutch income (savings, shares). Under the tax treaty between the Netherlands and the source country, it is possible that this income is attributable to the Netherlands. As a result certain types of income would not be taxed in any country.

netherlands

An overview of the Dutch tax plan 2011



The Dutch government announced for 2011 rules to encourage entrepreneurship and innovation and rules to combat fraud and tax avoidance. Moreover, very fuel-efficient cars will continue to be treated as tax-friendly. Some of the new measures are given below:

Entrepreneurs

The corporate income tax rate will be reduced in 2011 to 25% and the tax rate for profits up to €200,000 will be reduced to 20% on a permanent basis. For all companies in the Netherlands it will be possible to file quarterly VAT returns. The extended loss carry-back facilities (three years instead of one year) will continue in 2011.

Fraud and tax avoidance

Measures against fraud and tax avoidance will trigger people with unreported savings abroad. The Dutch tax authorities will exchange more information on savings accounts and other banking details with countries outside the EU. Moreover, the existing regulations for EU countries on automatic exchange of savings balances will be expanded.

Housing market

To stimulate the Dutch housing market some temporary tax measures have been announced. One of the measures is a temporary reduction of the VAT rate from 19% to 6% for labour costs in renovation projects. The period for double mortgage interest relief for two houses will temporarily be eligible for no less than three years. Furthermore, if a house is bought in 2011 and sold again within 12 months transfer tax for the second sale is due only on sales profits.

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Finance Act 2010

Pakistan has introduced the Finance Act 2010 effective from 1 July 2010.

Personal Income Tax

- The annual personal allowance (0% tax band) has been increased to Rupees 300,000.
- The income limit for senior citizens claiming the 50% reduction in tax liability has increased to Rupees 1 million from Rupees 750,000.
- There is a special capital gains tax rate for the Tax Year 2011 for disposals of shares in public companies, vouchers of Pakistan Telecommunication Corporation, Modabara certificates of 10% if the securities were held for less than six months, and 8% otherwise.
- Dividends in specie in the form of shares are exempt from income tax.

Business Tax

- The corporation tax rate for smaller companies is increased to 25% from 20%.
- The tax rate for an Association of Persons ("AOP") is now 25% flat rate. AOPs now have to pay tax in advanced instalments similar to companies, instead of the previous rules where the AOP was tax-transparent.
- A tax credit of 10% on expenditure for plant and machinery for the balancing, modernisation or replacement of existing plant and machinery is available for companies.

Sales Tax

The headline rate of Sales Tax has increased from 16% to 17%. The provision to replace Sales Tax by VAT had been delayed to October 2010.

Powers of the Commissioners

The Finance Act 2010 also amends the powers of the Commissioner of Income Tax. Broadly, the amendments have strengthened the Commissioner's powers to conduct tax audits and recover tax payments from individuals and business. For example, the amended rules now rank the tax liability of the estate of the deceased or of a person declared bankrupt before the claims of other creditors.

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pakistan



Romania

New Romanian tax measures - including raising VAT from 19% to 24%

In times of crisis, governments should be even more careful when balancing their current expenses with their current and future revenues.

The Romanian Government was late in applying economic reforms and restructuring public expenses. Therefore, the government has been forced to adopt unattractive fiscal and anti-abusive measures. These measures could create a barrier to an economic revival.

In the Spring of 2010 the Romanian Government announced new tax measures to maintain the budget deficit below 6.8% of GDP. Herewith they can ensure the credit facilities of the International Monetary Fund. One of the measures has been effective since 1 July 2010. The Romanian VAT rate has been increased from 19% up to 24%.

Romania's Minister of Finance has announced that the new fiscal policy has to be in harmonisation with the National Bank of Romania in order to keep the inflation and the exchange rate against the European currency unit under control. Another measure for 2010 is raising the inflation target from 3.5% up to 7.9%.

Emergency regulation 54/2010 describes fiscal anti-abusive measures of the Romanian Government. The employees of the public sector are the ones most seriously affected because their wages have been reduced by 25%.

As from 1 July 2010 the following measures are effective:

- Changes of the criteria for defining dependent and independent activities of individuals. If an independent activity is reconsidered as dependent - by the tax authorities - this will generate new taxes and contributions due to the state budget.

Cumulative elements based upon which the activity of an individual may be reconsidered as dependent:

1. Where the beneficiary uses exclusively the tools and materials made available by the payer of the income and the beneficiary of the income contributes only physical and intellectual capacity and not his or her own capital;
 2. Where the beneficiary is in a relationship of subordination to the payer of income and follows the work conditions imposed by the payer of income such as working hours, duties, etc.;
 3. Where the payer of the income pays for the travel allowances and other such expenses made by the beneficiary of the income in the interest of performing the activity;
 4. Where the payer of the income pays for vacation or temporary disability allowances for the benefit of the beneficiary of the income.
- The fixed allowance of income from intellectual property is reduced from 40% to 20%.

- A standard tax rate of 25% for all gambling income, eliminating the 20% preferential rate for income up to 10,000 Lei.
- The introduction of 16% tax on income derived from both bank deposit interest and on income from securities.
- Taxation of all vouchers used as supplementary salary payments (i.e. meal, holiday and gift vouchers) are subject to a tax rate of 16%.
- A registry of intra-community operators set up by the National Agency of Fiscal Administration which includes all taxable and non-taxable persons who perform intra-community transactions such as intra-community acquisitions/supplies of goods/services.
- All taxable and non-taxable persons who apply for a VAT registration in Romania and are intending to perform an intra-community transaction should request to be registered in the registry of intra-community operators.
- Persons who are not included in the registry of intra-community operators but are registered for VAT purposes in Romania are considered not having a valid VAT ID number for intra-community transactions.

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Slovakia

2010 changes to Slovakia's tax law

Notwithstanding the fact that a new government took office after the elections in June, no major changes to the Slovak tax system have been implemented so far. The new budget proposal for 2011 has been submitted to parliament and we will inform you in the later editions of the impact of these changes on the 2011 tax statement. Therefore, with 2010 coming to an end, we would like to give an overview of the ten most important aspects from an international perspective that will influence the 2010 tax statements.

0. Tax rate remains unchanged

We start with a non-change: the tax rate for both legal entities and physical persons remains at 19%.

1. Tax return in eurocents

As of 1 January 2009, the tax return now has to be submitted on two eurocents precisely! And the Slovak Government has been very generous: you can round it down to the nearest eurocent.

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romania

2. Prolonged period to deposit the tax statement

In an effort to ease the impact of the economic crisis, the Slovak government has further simplified the procedure to extend the deadline for the depositing of the tax statement. The standard deadline remains at three months from the year-end closing. But now it is possible to extend this deadline and to determine a new deadline yourself. A letter should be addressed to the tax office by the day when the tax statement is normally due at the latest. Such an extension cannot be more than three months (or six months for taxpayers with foreign income).

3. Goodwill at company combinations tax deductible

The entire system of company combinations (i.e. mergers, takeovers and split-up) has undergone several changes. Basically there are now two options whereby the successor has the possibility to choose either to continue with the book values, or to take over the real value of the assets. A major change is also that goodwill (or badwill) can be included in the tax base under certain circumstances.

4. Higher limits for activation of assets

As of 1 March 2009 the limit that determines the acquisition value of tangible and intangible fixed assets has been increased to €1,700 and €2,400 respectively. This means that any asset under this limit can be recorded directly into the expenses and should not be activated and depreciated over the economic lifetime of the asset.

In this respect we would also like to point out that the given tax depreciation period for certain fixed assets has been shortened as well.

Further, the tax law now allows for a so called 'component' depreciation, meaning that certain fixed assets can be allocated to smaller units that are then depreciated faster (this is especially interesting for investors in real estate).

5. Thin capitalisation rule abolished

In the last few years there have been attempts to again introduce a thin capitalisation rule that would limit the tax deductible of interest paid on loans obtained from related parties. Following several changes in the law (increasing the limits, ...) and postponing of the deadline (originally it should have taken effect as from 2009 but then it was postponed to 2010), the recent changes have deleted from the law all provisions relating to the thin capitalisation.

6. Tax losses from foreign branches deductible

Taxable persons that are taxable in Slovakia with their worldwide income and who have a branch or permanent establishment abroad are now entitled to deduct the losses from abroad from their local Slovak tax obligation, and without having to take into account whether the branch can use this loss or not.

7. Tax losses can be used for seven years

Until now tax losses could be used for a period of five years. The new amendment to the law has extended this deadline to seven years, for tax losses shown as from 2010 onwards. But, in that case it also means that the period during which the tax office can perform controls has been extended from the current five to seven years.

8. Allocation to charity under pressure

For several years the Ministry of Finance has already tried to abolish or limit the possibility to allocate part of the tax to be paid to charity. Following an introduction of a minimum amount, the new law will gradually be decreasing the percentage of the tax that can be allocated. From the current 2% this will be decreased to 0.5%. During the transition period legal entities will also be required to donate a gift of a certain amount, otherwise the percentage of the tax that can be transferred to charity will be reduced by another 0.5%. As from 2019 the lowest limit of 0.5% will be applicable, but then no additional gift will be required anymore.

9. Increased documentation around transfer pricing rules

Although this is a very specific topic that falls largely beyond the scope of this article, we would like to remind you that since the beginning of 2009 the law has introduced the obligation to keep specific transfer pricing documentation. A Guideline on this documentation was published at the beginning of 2009 by the Ministry of Finance (in line with the OECD requirements). For most companies it will be sufficient to keep a simplified transfer pricing documentation. But it should not be forgotten that the tax office now has the right to demand that the required transfer pricing documentation be submitted to them within 60 days of their request. Moreover, more detailed information on transactions between related parties is now an integral part of the tax return.

10. Taxation of employee stock options

In the past, the taxable point for employee stock options occurred on the vesting date, regardless of the fact whether the option was actually exercised or not. This could lead to situations whereby theoretical gains were taxed, but that in the end these gains were never realised. With the new change, the tax point for the taxation of these employee stock options has been delayed to the actual date of exercise. However, this is valid only for employee stock options that were granted as from 2010 onwards.

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United Kingdom

Emergency Budget 2010

On 22 June 2010, after the parliamentary elections held in May, the new government introduced an "emergency" Budget. The main changes are summarised below:

Businesses Taxes

The main rate of corporation tax is reduced from 28% to 27% on 1 April 2011. At the same time, the rate for small companies is reduced from 21% to 20%. The main rate of corporation tax will be reduced every year from 1 April 2012 until it reaches 24%, i.e. on 1 April 2014. No further reductions were proposed after that year.

From 1 April 2012 (for incorporated businesses) and 6 April 2012 (for unincorporated businesses), the capital allowances (i.e. tax depreciation) main rate is reduced from 20% to 18%. Additionally, the rate on the "special rate pool" for integral features such as lighting or heating systems is reduced from 10% to 8%.

Capital Gains Tax

From 23 June 2010, higher-rate taxpayers (i.e. individuals with total taxable income and gains of more than £37,400 in a tax year) will be subject to tax on their capital gains, or the part above that limit, at 28%.

Foreign-domiciled individuals

UK-resident foreign-domiciled individuals who make the remittance basis claim will be subject to capital gains tax at 28% on all UK gains and remitted foreign gains. They will not be able to claim any gain or part thereof to be in the 18% band.

There were no other changes announced to legislation specifically for foreign-domiciled individuals. However, the government announced that they were reviewing the situation and may introduce new laws in due course.

Value-added Tax (VAT)

The main rate of VAT of 17.5% is increased to 20% effective on 4 January 2011.

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USA

Schedule UTP update - IRS moves forward with uncertain tax position reporting

Background

Due to perceived inconsistencies in both accounting treatment and financial statement disclosures, the Financial Accounting Standards Board (FASB) adopted Interpretation 48 (FIN 48), Accounting for Uncertainty in Income Taxes, the standard by which entities that report their financial statements under US GAAP must account for uncertain tax positions. Since 2006, all public companies and some non-public companies have been accounting for their uncertain tax positions under FIN 48. Calendar-year-end, non-public companies, including S-corporations, partnerships and not-for-profit organizations, were required to adopt FIN 48 effective as of 1 January 2009 in their annual financial statements for the year ending 31 December 2009.

FIN 48 provides guidance on recognizing, "derecognizing," measuring, classifying and disclosing the tax effects of uncertain tax positions. A tax benefit may be reflected in an entity's financial statements only if it is "more-likely-than-not" that the entity will be able to sustain the tax return position based on its technical merits. Assuming that the respective tax authorities (Federal, state and foreign) have full knowledge of all known facts, the company must be able to conclude that the applicable tax law, case law and regulations provide enough supporting evidence that the tax position will be sustained at more than a 50% likelihood.

In January 2010, the Internal Revenue Service (IRS) issued Announcement 2010-9 that will require taxpayers to report uncertain tax position on their tax returns, for fiscal years beginning after 15 December 2009. Shortly thereafter, the IRS issued its initial draft Form Schedule UTP Uncertain Tax Position Statement with instructions. The Form and Announcement were open for public comment up to 1 June 2010.

The initial draft Schedule UTP and instruction provided that corporate taxpayers with both uncertain tax positions and assets equal to or exceeding \$10 million would be required to file Schedule UTP if they or a related party issued audited financial statements.

Form UTP as initially issued would have required a concise description (Part III of the new Form) that includes:

- Concise description of the tax position, including information that can reasonably be expected to apprise the IRS of the identity of the tax position and the nature of the uncertainty;
- The description must describe whether the position involves an item of income, gain, loss, deduction or credit;
- A statement whether the position involves a determination of the value of any property or right or a computation of basis;

(Continued on page 11)

- Rationale for the position and the reasons for the position being uncertain; and
- The maximum amount of tax liability expected if the position would be overturned.

Revised Schedule UTP

On 24 September 2010 the IRS issued Announcement 2010-75 and released the final version of the form and instructions for Schedule UTP, which will be effective for 2010 for large corporations. The Announcement made numerous changes as a direct result of the comments received by the public. The IRS listened carefully and the most significant changes are noted as follows:

Phase in

Originally Schedule UTP required all corporate taxpayers (except S corporations) who had at least \$10 million in assets and GAAP financial statements to report their uncertain tax positions. The IRS will now require 2010 reporting for only those C corporations with assets of \$100 million or more. The total assets threshold will be reduced to \$50 million starting in 2012 and \$10 million starting in 2014. In addition, the IRS is also considering expanding Schedule UTP reporting for pass through (S corporations and partnerships) and tax-exempt entities, for 2011 or later years (but currently no requirement exists for these entities).

Removal of maximum tax adjustment and reporting of rationale for uncertainty

The IRS eliminated the requirement that taxpayers provide a maximum tax adjustment. The final schedule will require taxpayers to rank their tax positions from highest to lowest based on the amount of federal income tax reserve, and to designate those tax positions for which the reserve exceeds 10% of the aggregate amount of all reserves. The taxpayer will no longer have to provide a rationale or reason why a position is uncertain, but merely a concise description of each item. The thought process for each assessment will no longer be required.

Administrative practice exception dropped

The IRS commissioner is dropping from the original proposal that a corporation report a tax position for which no reserve was recorded because the corporation based its decision on an administrative practice determined during an IRS exam.

Similar to its impact on financial reporting and footnote disclosures under ASC 740-10 (FIN 48), the IRS has issued Schedule UTP to achieve its goal of increased transparency. Many companies underestimated the time, effort and resources required when implementing ASC 740-10 for financial statement purposes. A thorough review of the Form and Instructions should be performed as soon as possible in order to start to accumulate the required information necessary to complete the form properly.

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Federal Tax Credits for hiring unemployed workers

On 18 March 2010, President Barack Obama signed into law the Hiring Incentives to Restore Employment Act (HIRE)

The law provides a payroll tax credit for employers who hire "qualified unemployed workers" between 3 February and 31 December 2010. These employees must certify that they were employed for no more than 40 hours in the 60-day period ending on the date the qualifying employment begins.

A qualified unemployed worker cannot displace a current employee, but he/she does not need to work a required number of hours and he/she can be a former employee of the employer claiming the credit.

The credit is equal to the social security tax (6.2% of the first \$106,800 of wages) paid to qualified employees beginning 19 March 2010 through to 31 December 2010. The maximum credit for 2010 would be \$6,621.60 for hiring a previously unemployed worker who earns at least \$106,800 between 19 March and 31 December 2010 for the new employer.

In addition, employers will receive an additional retained worker business credit equal to the lesser of \$1,000 or 6.2% of qualifying wages paid to a worker who qualifies under the payroll tax reduction above and who is retained as an employee for at least 52 weeks.

The payroll tax credit will be taken on the employer's quarterly payroll tax return (Form 941) beginning with the second quarter payroll tax return for the quarter ending 30 June 2010. The additional credit for retaining the employee for 52 weeks will be taken on the employer's 2011 tax returns.

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