Issue n. 36
November 2017

INPACT

E-Tax Bulletin

Summary

Note from the Editor

Hello fellow INPACT Members

It was good to see many of you at the recent conference in Athens and if you attended the tax training sessions, I hope you found them useful and informative.

I am pleased to enclose the latest issue of our INPACT E-Tax Bulletin, which contains tax updates from numerous member firms throughout the INPACT community.

Thank you to all those that contributed to this issue and continue to contribute on a regular basis.

I hope you find it useful and enjoy the content.

Regards

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BELGIUM

TRANSFER PRICING

On 4 July 2016, the Program Law of 1 July 2016 introducing legislation implementing Action 13 of OECD's « Base Erosion and Profit Shifting » project was published in the Belgian Official Journal. The reporting rules will apply to reporting periods of multinational groups or accounting years starting as from 1 January 2016.

On 2 December 2016, the Royal Decree detailing the implementation of the transfer pricing legislation in Belgium has been published.

Belgium follows OECD guidance on reporting and has chosen the three-tiered approach to transfer pricing reporting:

- a Master file
- a Local file
- a Country-by-Country reporting

The Belgian entity of a multinational group will need to compile a "Master file" and a "Local file" when it exceeds one of the following thresholds (on a non-consolidated basis) in the accounting year immediately preceding the last closed accounting year:

- summarized operating and financial income of EUR 50 million (excluding non-recurring income);
- balance sheet total of EUR 1 billion;
- annual average number of 100 FTE.

If the group's « ultimate parent entity » is located in Belgium, a Country-by-country must be filed in Belgium. This report is only due when the consolidated gross revenue exceeds EUR 750 million in the reporting period immediately preceding the last closed reporting period. Be careful because even if the "ultimate parent entity" is not located in Belgium, a Belgian group entity can be required to file a Country-by-country report under certain circumstances (Belgian Tax Code art. 321/2 §2).

Those are the filing dates for Belgium :

- **Master file** : should be filed before the end of 2017 for accounting periods starting on 1 January 2016
- **Local file** : the local file consists of 2 specific forms
    - *General information form*: for accounting years starting on 1 January 2016 or later, report needs to be filed with the tax return
    - *Detailed information per business unit*: implementation is delayed by 1 year. Enters into force for accounting years starting on or after 1 January 2017
- **Country-by-Country reporting** :
    - *Notification obligation*: implementation is delayed for first year, until 30 September 2017
    - *CBC report*: should be filed before the end of 2017 for accounting periods starting on 1 January 2016

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CYPRUS

CYPRUS AUTHORITIES' TAX CIRCULAR FOR INTRA-GROUP FINANCING TRANSACTIONS ISSUE N-13-2017, 3 JULY 2017

In brief :

On 30 June 2017 the Cyprus Tax Authorities (the CTA) issued a circular (the Circular) providing guidance for the tax treatment of intra-group financing transactions (IGFTs).

The Circular - effective as from 1 July 2017 - closely follows the application of the arm's length principle of the OECD Transfer Pricing (TP) Guidelines. It applies for all relevant existing and future IGFTs.

No grandfathering provisions have been provided for existing IGFTs.

The Circular requires the carrying out of a comparability analysis for the purpose of describing (delineating) the IGFT and determining the applicable arm's length remuneration.

Of particular note in the comparability analysis are the requirements for:

(i) sufficient equity level and
(ii) adequate substance in Cyprus, relating to the IGFTs.

Under certain conditions taxpayers carrying out a purely intermediary intra-group financing activity may opt for a Simplification Measure (resulting in a minimum 2% after-tax return on assets).

Understanding in detail the Circular's requirements and their impact on existing and new structures is important so as to facilitate adapting to these requirements as soon as possible, given their effective date of 1 July 2017.

1. **This Tax Insight covers the key elements of the Circular.**

In detail

The Circular tackles the tax treatment of Cyprus tax resident entities and permanent establishments situated in Cyprus that engage in IGFTs - that is the activity of granting loans or cash advances to related companies that are (or should be) remunerated by interest and are financed by financial means and instruments, such as debentures, private loans, cash advances and bank loans.

The Circular - effective as from 1 July 2017 - applies to all relevant existing and future IGFTs.

No grandfathering provisions have been provided for existing transactions, and therefore rulings previously issued on transactions within the scope of the Circular are no longer valid for tax periods as from 1 July 2017.

2. **Application of the arm's length principle to IGFTs**

The Circular clarifies that, in line with Section 33 of the Cyprus Income Tax Law, the remuneration arising from IGFTs should comply with the arm's length principle and correspond to the price that would have been accepted by independent parties in comparable transactions carried out in the open market in comparable circumstances.

The Circular requires a comparability analysis to be performed for the purpose of:
• Accurate description (delineation) of the transaction.
• Determination of the arm's length remuneration. Accurate delineation of the transaction.

The Circular states that in order to accurately delineate an IGFT it is necessary to determine its characteristics, such as its terms and functions, the assets used and the risks assumed by the related entities.

(i) **Substance over form**

Under the Circular, the economic reality of the transaction and the actual conduct of the parties prevail over any written contractual terms.

(ii) **Functional analysis**

The purpose of the functional analysis is to identify the economically substantial activities, responsibilities and functions, the assets used or provided in the context of the IGFT.

The Circular provides a no exhaustive list of functions that can be performed by companies conducting IGFTs covering the origination and management of the transaction. The identification of the functions performed and the assets used is essential to understand the risks related to the financing transaction.

(iii) **Risk analysis**

The capacity to assume and control the risks is economically significant characteristics, which must be identified to accurately delineate the IGFT:

(a) **Equity level**

The taxpayer is generally considered to assume the risks if it has sufficient equity level as this indicates its financial capacity to manage the risks and bear the financial consequences if they materialise. Where the taxpayer has a profile comparable to a regulated financing and treasury business (as defined in the Circular) and its equity level respects the applicable regulated solvency criteria, then the taxpayer is deemed to have sufficient equity to assume the risks. Otherwise, the minimum equity level required so as to assume the risks will be determined using other applicable credit risk analysis methods.

(b) **Substance requirements**

A taxpayer controls the risks when it has, and actually exercises, the decision-making capabilities to enter into such risk bearing transactions and to monitor the risks.
To justify such control of risks, the taxpayer must have an actual presence in Cyprus and the qualified personnel. In order to determine an actual presence in Cyprus the following criteria, inter alia, will be taken into account:

• the number of Cyprus tax resident directors

• the number of Board of Directors' meetings held in Cyprus

• the main management and commercial decisions taken in Cyprus

• the number of shareholders' meetings held in Cyprus

Functions that do not have a significant impact on risk control, as well as daily activities of risk mitigation, may be outsourced provided that the taxpayer maintains overall control of the risk as prescribed in the Circular.

iv) **Determination of the arm's length remuneration**

Once the transaction has been accurately delineated then the arm's length remuneration is determined by identifying comparable transactions observed in the open market at the time of undertaking the transactions and considering the remuneration that would have been agreed on the open market (with relevant comparability adjustments in line with internationally recognised standards, where required).

The Circular notes that in case the taxpayer performs similar functions to those performed by regulated financing and treasury businesses (as defined in the Circular) a return on equity of 10% after-tax is observed in the open market. This percentage will be regularly reviewed by the CTA.

v) **Transactions without commercial rationale**
Related party transactions that cannot be observed in the open market and are also devoid of any commercial rationale must be disregarded, along with their associated tax consequences, to ensure full compliance with the arm's length principle.

vi) **Simplification Measure for Pure Intermediary Entities**

The Simplification Measure may be followed, at the option of the taxpayer, where a taxpayer meets the substance requirements (as set out above) and pursues a purely intermediary activity of granting financing to related parties which is financed by related party loans/advances.

Under the Simplification Measure, transactions are deemed to comply with the arm's length principle if at least a 2% return after-tax on assets is received.

This percentage will be regularly reviewed by the CTA.

We understand that for the Simplification Measure, no TP analysis is required. However, a deviation from the minimum return of 2% is only accepted exceptionally and provided that it is justified by an appropriate TP analysis.

Taxpayers opting for the Simplification Measure are required to disclose this on their annual tax return.

vii) **Exchange of Information**

Use of the Simplification Measure, as well as tax rulings (or advance pricing arrangements), will be subject to the exchange of information rules set under the EU Directive on Administrative Cooperation.

viii) **TP Report Requirements**

The Circular prescribes the required content of a TP report and provides that such reports should be prepared by a TP expert.

It is expected that the TP report is submitted to the CTA by a licensed company auditor who is required to carry out an assurance control confirming its quality

Overview

It is important to perform an assessment of the impact of the Circular on the taxpayer's existing and future structures and consider what actions need to be taken:

- Identify whether the financing structures fall within the scope of the Circular.
- Analyse the impact of the requirements for substance and equity at risk (on the financing structures falling within the scope of the Circular) taking into account the functional and risk profile of the financing structure.

- Examine whether the remuneration from the financing structures satisfies the arm's length considerations.

- Ensure that an appropriate TP policy and relevant TP documentation are in place.

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FRANCE

INCOME TAX DEDUCTED AT SOURCE

The main characteristics of the deduction-at-source system have just been revealed. We now have more details concerning this system and this new reform will be included in the 2017 Finance Act.

The deduction at source of income tax will concern almost all French citizens (employees, retired, persons with income replacement benefits like unemployment benefits,….).

The income will be paid at source according to the tax rate calculated by the Tax Administration. This rate will be based on the last income tax return, however the employee can ask the tax authority not to give his employer his personal rate. In this case a neutral rate tax will be used and if there is an additional amount du, the taxpayer will be able to pay it directly to the Tax Authority. Thus tax confidentiality should be maintained.

For couples, spouses will have the possibility to choose two different rates according to their income. Self-employed individuals and landlords with income from property will have to pay monthly or quarterly installments calculated with the figures of the previous year. If there are important changes to income, they will have the possibility to ask for an update of the installments.

Concerning tax credits and deductions, they will be considered from the 1st January of the following year and not for the current year.

Finally, taxpayers will always have to complete an income tax return each year and the progressive tax bands remain.

This new system will be tested in some companies and should come into force on the 1st January 2018

Furnished Tourist Accommodation : Changes for Landlords

The French Digital Republic Act, which came into force on 7th October 2016, has brought changes for landlords who let furnished accommodation.

From now on, owners of furnished properties who rent them for short periods, even if they rent their main property will have to register with the local Mairie and/or ask for a prior authorization to change the use of their real estate. This authorization is already necessary for properties in Paris, its suburbs and towns over 200.000 inhabitants. However, smaller towns too have decided to apply this process.

If the landlord uses the services of a real estate agent or an online platform to rent the property, it must not be rented for more than 120 days per year. In the case of main residence the registration number must be indicated.

Concerning this new online cooperative economy (rental of movable or immovable property) which is the actual criteria to determine whether the rental activity can be considered professional or not. In the new Social Security Act for 2017, the following thresholds have been proposed:

- 23.000 € for the rental of real estate,
- 7.720 € for the rental of movable property.

Beyond these limits, the activity will be considered professional and will have to be affiliated to the French pension fund and social security; the owners will therefore have to pay social contributions.

Rental activity will be more controlled in the future, and sometimes, it may prove less profitable because of these new contributions.

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GERMANY

- CREATE TAX RESOURCES SECTION ON THE WEBSITE
- TAX EXPERTISE DIRECTORY
- TRANSFER PRICING
- COLLATION OF KNOWLEDGE RESOURCE
- CENTRAL DATABASE OF PRACTICE BY COUNTRY
- EXPLORE OTHER INTERNATIONAL TAX ARENA
- VAT
- DOING BUSINESS GUIDE

CURRENT IMPORTANT TAX NEWS

- Restriction of licence expenses paid to related partes in foreign countries with lower tax rates and no substantial business (so called licence barrier rule, § 4j German income tax act; applicable as from 2018/1/1)

- German tax evasion law is into force. The law includes further disclosure obligations, liabilities and offenses for bank institutes and their customers (keywords: letterbox entities, automatically access of bank account statements). The regulations are applicable as from 2018 resp. 2020.

- German investment tax law is applicable as from 2018/1/1. That means from 2018 on domestic and foreign investment funds with domestic income are subject to corporate income tax. Up to now the investor has been subject to tax.

- Published notice / official letter of the countries who participate in the exchange of information regarding finance accounts. The exchange will proceed at the date 2017/9/30.

- The German Federal Finance Court has shared the judgement of the European Finance Court towards the repudiation of final losses of foreign permanent establishments in the case of the application of the exemption method.

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INDONESIA

INDONESIAN TAX OVERVIEW

Corporate Income Tax

A company is subject to the tax obligations set by the Indonesian government if the company's domicile is in Indonesia. Similarly, a foreign company that has a (permanent) establishment in Indonesia - and carries out business activities through this local entity - falls under the Indonesian tax regime. If the foreign company does not have a permanent establishment in Indonesia but does generate income through business activities in Indonesia, then it needs to settle its tax liabilities through withholding of the tax by the Indonesian party paying the income.

In general, a corporate income tax rate of 25 percent applies in Indonesia. However, there are several exemptions:

- Companies listed on the Indonesia Stock Exchange (IDX) that offer at least 40 percent of their total share capital to the public obtain a 5 percent tax cut (hence a tax rate of 20 percent applies for these public companies).
- Small and medium-enterprises with an annual turnover below IDR 50 billion (approx. USD $3.8 million) obtain a 50 percent tax discount (imposed proportionally on taxable income of the part of gross turnover up to IDR 4.8 billion). In 2013, Indonesia's Finance Ministry issued a regulation that set a one percent income tax tariff on individual and institutional taxpayers with an annual gross turnover below IDR 4.8 billion (approx. USD $363,636).

Corporate Income Tax	Tax Rate
Normal Rate	25%
Public company with >40% of its shares traded on the IDX	20%
Companies with a gross turnover below IDR 50 billion	12.5%
Companies with a gross turnover below IDR 4.8 billion	1%

Individual Income Tax

If an individual fulfills any of the following conditions, then they are regarded a tax resident in Indonesia
(except if a tax treaty overrides these rules):

- the individual lives in Indonesia;
- the individual is in Indonesia for more than 183 days within a 12-month period;
- the individual is in Indonesia during a fiscal year and intends to reside in Indonesia.

Meanwhile, non-resident individuals are subject to a 20 percent withholding tax on Indonesia-sourced income.

Nearly all income earned by individual taxpayers in Indonesia is subject to income tax. The following progressive rates are charged to taxable annual income:

Individual Income Tax	Tax Rate
Up to IDR 50 million	5%
Over IDR 50 million to IDR 250 million	15%
Over IDR 250 million to IDR 500 million	25%
Over IDR 500 million	30%

A large part of individual income tax is collected through withholding by employers. Employers withhold income tax on a monthly basis from the salaries and other compensation paid to the employees. In case the employee is a resident taxpayer (living in Indonesia), the above-mentioned tax rates apply. If the individual is a non-resident taxpayer, the withholding tax is 20 percent of the gross amount (in case of a tax treaty the amount may vary).

Withholding Tax (for payments to residents)	Tax Rate
For interest, dividends & royalties	15%
For services	2%
For land and building rental (final tax)	10%
These withholding taxes are considered corporate tax prepayments	
Withholding tax calculated on sales/revenue is considered a final tax	

Withholding Tax (for payments to non-residents)	Tax Rate
Normal rate (can be reduced by using tax treaty provisions, or exempt services that qualify as business profits)	20%

Annual non-taxable income was originally set at IDR 36 million (approx. USD $2,727) in 2016. However, in April 2016 Finance Minister Bambang Brodjonegoro said the government plans to raise non-taxable income by 50 percent to IDR 54 million (approx. USD $4,090) in a bid to strengthen people's purchasing power and encourage household consumption.

Value-Added Tax (VAT)

Value Added Tax (VAT) involves the transfer of taxable goods or the provision of taxable services in Indonesia. Events/services that are considered taxable:

- Deliveries of taxable goods in by an enterprise;
- Import of taxable goods;
- Deliveries of taxable services by an enterprise;
- Use or consumption of taxable intangible goods/services originating from abroad;

- Export of taxable goods (tangible and intangible) or services by a taxable enterprise.

Value-Added Tax (VAT)	Tax Rate
Normal Rate	10%

Generally, the VAT rate is 10 percent in Indonesia. However, the exact rate may be increased or decreased to 15 percent or 5 percent according to government regulation. VAT on the export of taxable tangible and intangible goods as well as export of services is fixed at 0 percent. Certain limitations for the zero-rated VAT apply to exports of services.

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NETHERLANDS

SUPREME COURT REFERS PRELIMINARY QUESTIONS TO THE COURT OF JUSTICE OF THE EUROPEAN UNION ABOUT DIVIDEND WITHHOLDING TAX REFUNDS FOR FOREIGN INVESTMENT FUNDS

In its judgment of July 10, 2015, the Dutch Supreme Court denied a request for the refund of Dutch dividend withholding tax filed by a Luxembourg investment fund. However, on March 3, 2017 the Supreme Court referred questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling, following a request from the Dutch District Court in August 2016 for the Supreme Court to reconsider its negative judgement..

Although the taxpayers are different in each case, the judgments deal, in principle, with the same issue: a foreign – EU resident – investment fund received Dutch portfolio dividends on which Dutch dividend withholding tax was levied. The fund claimed a full refund of this Dutch dividend withholding tax. The fund considered itself to be comparable with a Dutch resident fiscal investment institution ("FBI"). At the time in question, FBIs were effectively exempt from Dutch corporate income tax and entitled to a credit/refund of the dividend withholding tax withheld on their investments. Dutch withholding tax was, however, due on dividends paid by the FBI to its participants. This means that the fund is able to effectively pass on the underlying withholding tax to its participants and consequently the participant is taxed in the same way as if the participant had invested directly in the underlying shares of the fund ('tax neutrality').

In the case before the Supreme Court in July 2015, as well as in the present case, the foreign fund claimed that the difference in tax treatment results in a restriction of the free movement of capital (Article 63 TFEU) and that it was therefore entitled to a refund.

In the judgment rendered on July 10, 2015 concerning a Luxembourg investment fund, the Supreme Court argued as follows. Dutch dividend withholding tax is a final tax for a non-resident individual investing in Dutch shares. If a Luxembourg investment fund would be entitled to a refund of the tax withheld on its Dutch dividend income, the participant in the Luxembourg fund would pay less tax than if they had invested directly in Dutch shares. In the latter case, 15% Dutch withholding tax is imposed, whereas no Dutch or Luxembourg withholding tax is imposed on dividends distributed by the

Luxembourg fund. Therefore, the Luxembourg fund was not objectively comparable to a Dutch FBI and there was, accordingly, no restriction on the free movement of capital. In this case Meijburg & Co also acted as legal counsel.

One of the main reasons for asking the Supreme Court to reconsider its decision of July 10, 2015 was the judgment of the CJEU in the Miljoen case (which had not been published at the time of the Supreme Court's judgment). The Supreme Court points out that the Miljoen case did not deal with the special regime that a FBI is subject to, but with the comparability of a foreign person or company with a Dutch person or company that is subject to the "normal" Dutch corporate or personal income tax regime. Furthermore, the Supreme Court argues that it cannot be concluded from the Miljoen case that the judgment of July 2015 is wrong. The Supreme Court finds support for this decision in the "Pensioenfonds Metaal en Techniek" case, rendered after the Miljoen case. However, the Supreme Court points out that a Danish court referred preliminary questions to the CJEU in a similar case - the Fidelity Funds case (C-480/16). Therefore, in the opinion of the Supreme Court, there are good grounds for questioning whether the judgment of July 2015 is right and it therefore decided to request the CJEU for a preliminary ruling. The CJEU has been asked to rule on whether refusing a refund of withholding tax on the ground that a foreign investment fund does not have a Dutch withholding tax obligation, is in accordance with the free movement of capital. By way of subsidiary questions, the CJEU was also asked to indicate how strictly the applicable shareholder and distribution requirements for an FBI should be interpreted when making the comparison with a non-resident fund. Finally, the Supreme Court also asked whether there is an infringement in a situation where the participants in a foreign investment fund are residents of the Netherlands.

Netherlands: Central register of shareholders proposed; access by tax authorities

A bill that would introduce a central register of shareholders has been presented to the Dutch Lower House. Under the proposal, the register would collect data on shareholders and their shares (and allow the tax authorities to have access to this data).

Share

The central register of shareholders would be a system for centralizing and gathering information about shares, shareholders, usufructuaries and pledgees of private limited liability companies and non-listed public limited companies. The register would be accessible by the Dutch tax authorities and other designated authorities to provide assistance in the performance of their statutory duties. By doing this, the register would be intended to help the authorities address certain forms of financial economic violations. However, the central register of shareholders would not replace a company's own register of shareholders that is maintained for a company's own internal purposes.

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NIGERIA

NIGERIAN GOVERNMENT RECENT PRONOUNCEMENT ON TAXATION

Revenue generated from taxation has overtime proven to be one of the major sources of income available to Government. The amount of revenue generated from taxation has kept dwindling down over the past years due to tax evasion by tax payers.

In 2014, Government generated 4.69 Trillion Naira from taxation while in the first half of 2015, 1.97 Trillion Naira was generated from taxation and the sum of 1.207 Trillion Naira was generated in 2016.

This drastic fall in revenue from taxation has made the Federal Government bring about several amendments that will increase revenue generated as well as the scope that tax covers.

In a bid to achieve the tax target of 3.3Trillion Naira for 2017, the following 'policies' has been put in place:

NIGERIA'S NEW NATIONAL TAX POLICY

TA new national tax policy was approved on 1st February 2017. The policy was endorsed by the National Economic Council to recognize the Federal System of Government which will be applied to all tiers of government.

The new national tax policy is out to guide and bring about an organized development of the Nigeria tax system and reinforce the tax laws and practices to ensue economic development. The objectives of the new national tax policy is to combat the following challenges of the Nigeria tax system:

- Low tax to GDP ratio
- Poor accountability for tax revenues.
- Multiplicity of taxes and revenue agencies.
- Failure by tax authorities to honor refund obligations to tax payers.
- Use of unorthodox and aggressive methods of tax collection.
- Fragmented databases of taxpayers and weak structure for exchange of information.
- Current economic realities.
- The non-regular review of tax legislations which has led to obsolete laws.

The methodology adopted to combat these challenges include but not limited to:

- Lower tax rate and VAT compliance threshold for SMEs.
- Ensuring that there is only one revenue agency per level of government.
- Establishments of a tax court as an independent body to adjudicate tax matters.
- Administrative framework for amnesty and whistle blowing as part of the strategies for curbing evasion and widening the tax net.

SIGNIFICANT CHANGES TO THE STAMP DUTY ACT UNDERWAY

Prior to the changes in the Stamp Duty Act, the CBN introduced what is termed Stamp duty of 50 naira. CBN directed all financial institutions and deposit banks to start placing 50 naira charge on all deposit made by anyone into any bank account as long as the deposit exceeds 1,000 Naira.

The stamp duties Act (Amendment) Bill 2017 was recently introduced to the House of Representatives and is currently undergoing legislative process.

The aim of the bill is to expand the scope of the stamp duties and address the current ambiguities in the law. It has been estimated that the Stamp Duty Act could generate over 2 Trillion Naira annually for the government.

- Significant changes the bill seeks to address includes:
- Stamp duty to be paid on electronic, internal and point of sale (POS) transactions.
- Compulsory use of postage stamp instead of adhesive stamp.
- Imposition of stamp duty on all forms of agreement.
- Increase in threshold for receipts.
- Substantial increase in applicable penalties under the bill.

Conclusively, we can say that the aim of this proposed change in the Act is to generate more revenue for Government to carry out more capital project, stabilize the economy, reduce national debt and still have enough money in the nation's treasury.

NATIONAL ASSEMBLY INVESTIGATES ABUSE OF PIONEER STATUS

Pioneer status is granted to specific companies in specific industry to exempt them from the payment of tax (tax holiday) for a specified period of time which is usually 3 years but can however be extended for additional 2years.

Pioneer status is given to new firms to help them grow or granted to existing firms so as to encourage investment in that sector or industry. This status has however been perceived to be abused by companies being granted this status as they tend to evade tax thereafter.

Statistically, Federal Government loses over 475.8 billion Naira due to granting of tax waivers.

The House of Representative set up a committee to investigate the perceived abuse of pioneer status tax incentives by companies in a bid to curtail this loss of revenue. This investigation is not relative to disincentive or discourage eligible companies from duly applying for pioneer status and obtaining their pioneer certificate. The National Assembly by setting up the committee is just carrying out its legislative duties as only the President has the power to revoke pioneer status granted to a company.

NIGERIA TO SIGN OECD'S MULTILATERAL INSTRUMENT THAT WILL AUTOMATICALLY AMEND ITS EXISTING TAX TREATIES

The Federal Executive Council (FEC) approved a memo seeking Nigeria's inclusion as a signatory to the OECD's Multi-Lateral Instrument (MLI) convention to implement tax treaty related measures to prevent Base Erosion and Profit Shifting (BEPS)

This approval by the FEC implies that Nigeria is now closer to joining 68 other countries that are signatory to the Multi-Lateral Instrument.

The MLI offers concrete solutions for government to close the gap in existing international tax rules by transposing results from OECD/G2O BEPS project into bilateral tax treaties worldwide. The MLI also modifies the application of thousands of bilateral tax treaties concluded to eliminate double taxation.

FIRS ISSUES REVISED INTEREST RATES ON UNPAID TAXES

The FIRS has issued a public notice announcing the approved penalty and interest rates to be applied as sanctions on all unpaid tax amount taking effect from 1st July 2017. The applicable rate of interest on unpaid taxes will now be 19% (i.e. CBN Monetary Policy Rate (MPR) of 14% plus a 5% spread) as opposed to the initial 15%.

The initial 5% spread on the CBN MPR by FIRS as directed by the Ministry of Finance has been revised to 19%. 10% remains the applicable rate of penalty on unpaid taxes.

It is worthy of note that the penalty and interest are additions to the principal amount of tax payable.

VOLUNTARY ASSETS AND INCOME DECLARATION SCHEME (VAIDS)

VAIDS is a scheme put in place to give tax defaulters the opportunity to regularize their tax affairs.

This scheme was launched on 29/6/2017 and is scheduled to run from 1/7/2017- 31/3/2018.

In a bid to revive the economy, tax evaders have been given the opportunity to voluntarily disclose previously undisclosed assets and income for the purpose of payment of all outstanding tax liabilities.

Within the slated period of time, tax payers have been given the grace to "declare your assets and income honestly, pay the taxes due correctly then go and sin no more or----"

The scheme is set to be implemented locally and through various international conventions and multilateral agreement for the prosecution of defaulting tax payers or those who made false declarations.

This scheme has posed an offer to help build the spirit of national reconciliation and rebuilding. This scheme will allow those owing to pay over the stipulated period of time (9 months).

At the end of the stated period, Government intends to proceed with aggressive investigation with a view to criminal prosecution and will also publish a tax defaulters list to name and shame those refusing to do the right thing.

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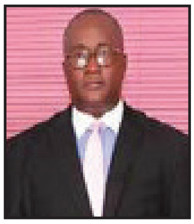

POLAND

TAX ALERT POLAND 2017

Significant changes were introduced to the Polish tax regulations starting from January 1, 2017. We discuss some of major changes in the area of CIT and VAT below.

1. Favourable 15% tax rate in CIT for new and small taxpayers

Since the beginning of the year 2017 qualifying corporate taxpayers can take advantage of the of a reduced 15% rate instead of the standard 19% corporate income tax rate. The taxpayer needs to be recognized as "small" in order to qualify for this privilege. This only applies if the taxpayer's revenues from sales (including VAT) generated during the previous tax year were not higher than the equivalent EUR 1.2 million. Additionally, new corporate taxpayers are entitled to benefit from the 15% tax rate in their first tax year. Please note that there are numerous exceptions from this privilege.

Qualification of revenues generated by non-residents in Poland (PIT and CIT)

The regulation, which became effective on January 1, 2017 provides an example catalogue of revenues received by non-Polish tax residents which shall qualify as generated on the territory of Poland. The catalogue was far extended as compared to the previous regulations. The amended catalogue includes, among others, paying debts (in different forms, i.e. setting off) by Polish entities or Polish natural persons for the benefit of their non-resident contractors, regardless where the contract is executed or where the services are performed. It is also worth mentioning that a new real estate clause was added in the regulation, under which gains on shares and interest in tax transparent partnerships if these entities qualify as real estate companies, are regarded as having their source in Poland. An entity is a real estate company if at least 50% of their assets' value comes from real estate located in the territory of Poland. The result of this amendment is that in more situations than before there will be withholding tax obligation in Poland, as well as WHT-related documentation obligations (e.g. IFT tax return).

2. Standard Audit File in VAT and Accounting

Starting from July 1, 2016 Poland introduced a new reporting obligation called Standard Audit File (in Polish: "JPK") which is applicable, depending on the factual situation of the taxpayer, for VAT and/or accounting data. Depending on the situation, SAF is to be filed without any request, each month to tax authorities, or only at the request of tax authorities. The implementation of the whole system shall last from July 1, 2016 until July 1, 2018 and is subject to transitionary periods, one of them starting January 1, 2017. In order to determine whether the taxpayer falls under SAF regime, as well as the exact scope of this obligation, the starting point is to analyse whether the taxpayer is a micro, small, medium or large entrepreneur, as defined under separate regulations on conducting economic activities. Polish Ministry of Finance announced that in order to determine size of a foreign entrepreneur, one should take into account not only the entrepreneur's Polish related figures (e.g. revenues from sales, number of employees) but the global figures. In practice, a foreign entrepreneur that has very limited activities in Poland (e.g. is only registered for VAT purposes in Poland without having a branch or permanent establishment here) may be still falling under SAF regime, at least to some extent. SAF must be prepared and filed electronically, according to definite xml structures published by the Polish Ministry of Finance.

3. Reverse charge mechanism in VAT for construction services

An important amendment for construction services industry came into force on January 1, 2017. The amendment introduced, as it is allowed under Article 199 of the European Union VAT Directive 112/2006/EC, reverse charge mechanism for number of construction services. Services affected by this amendment are referred to by using the statistics codes from Polish Classification of Goods and Services (in Polish: "PKWIU"). The catalogue of these services includes, among others, construction of buildings, roads, networks and pipelines, installation and finishing services. One more condition for the reverse charge mechanism to be applicable is that the services are performed by a subcontractor. Unfortunately, the legislator did not provide for any legal definition of "subcontractor" which already resulted in many practical doubts in interpretation when the reverse charge mechanism is applicable and when not, e.g. in case of consortium. The reverse charge mechanism, if applicable, in practice means that invoices to be issued by the service provider (a subcontractor) will not include VAT but only net amount and annotation "reverse charge". As a result, VAT will be settled by the recipient of the service. Services issued by main contractors to their clients will remain subject to general rules, i.e. will be issued with VAT. The new regulations may have impact also in case of some services from past periods, as the amendment provides very specific intertemporal regulations.

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ROMANIA

SPLIT VAT SYSTEM
TO BE IMPLEMENTED IN ROMANIA
AS OF 01.01.2018

The substance of this procedure is presented in the following example:

The company ABC is VAT payer.

The company sells goods to the company CLIENT, which is VAT payer, for the price of 1,000 RON + VAT 19% (190 RON), total invoice 1,190 RON.

The goods have been bought from the company SUPPLIER, which is VAT payer, for the price of 500 RON + VAT 19% (95 RON), total invoice 595 RON.

All the three companies will have to open a bank account to be used only for the VAT payments:

- CLIENT pays 1,000 RON to ABC in its old account;
- CLIENT pays 190 RON representing the VAT, in the VAT account of ABC;
- ABC pays 500 RON to SUPPLIER in its old account, from its old account;
- ABC pays 95 RON representing the VAT into the VAT account of SUPPLIER. This payment can be done either from its VAT account, or from its old account. In case the payment is done from the VAT account, the balance of the VAT account will be 190 RON – 95 RON = 95 RON, e.g. the VAT to be paid to the State Budget.

Which entities are obliged to apply the Split VAT system?
The entities obliged to apply this system are:

- any tax payer, registered as VAT payer
- the State Institutions,
- nonresident companies having Romanian VAT code

Very important: the companies not registered as VAT payer will apply this system when they will pay the invoices to the suppliers which are VAT payers.
Only the regular physical persons are not in this system.

Where the entities will open the VAT accounts?

The entities which will have amounts to be collected from the State Authorities will have to open the VAT account at the State Treasury.

The entities working only with private entities will be allowed to open one or more VAT accounts at the banks and/or at the State Treasury.

Which are the transactions falling under this system?

Split VAT is to be applied for all the VAT taxable operations whose place of the goods delivery or services providing is considered to be in Romania.

”Reverse charge” transactions are not under the split VAT system.

Important: the system is not to be applied by the special regimes for their specific activities: travel agencies, second hand stores, agriculture.

How the system is to be applied for partial payments?

In case of partial or advance payments, each paid amount is considered as having included VAT – in order to calculate the VAT will be used the „increased percentage” method.
In case of partial payment of an invoice including products or services with different VAT quota, the priority rule is given by the descending VAT quota.

Which will be amounts to be collected in the VAT account?

The VAT account will be used for collecting:

- the VAT related by the sell of goods or/and services;
- VAT deposit for the sales collected in cash or by card;
- transfers from other VAT acocunts;
- transfers from the current account opened at the same bank or at the State Treasury;
- amounts resulted from the correction of material errors, etc

Which will be payments to be done from the VAT account?

The VAT account will be used for paying:

- the VAT to be paid in the VAT account of the supplier;
- the VAT to be paid to the State Budget;
- transfers in another VAT account of the company;
- corections of VAT for which the reimbursement is done in other VAT account;
- reimbursement in the current account of the company, within the limit of the initial fededing;

Which is the procedure to be applied for the cash collection or card collection?

The entities applying the split VAT system collecting the invoices in cash or by card, must deposit the related VAT in its VAT account within 7 working days.

Which are the sanctions?

The law considers as contravention following facts:

- the payment of the VAT to the suppliers in other account than the VAT account of the supplier, in case the corection of this ayment is not done within 7 days. The penalty is 0.06%/day from the wrongly paid amount, starting the day of wrong payment;

- the payment of the VAT in other account of the suppliers than the VAT one, in case the error is not corrected within maximum 30 days. The penalty is 50% of the wrongly paid amount;
- in case the company does not communicate the VAT account to the suppliers and clients, the penalty is 2,000 RON to 4,000 RON;
- using the amounts from the VAT account in other way that the above described is sanctioned with a penalty of 50% of the wrongly used amount.

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SWITZERLAND

CORPORATE TAX REFORM (USR III) REJECTED

On February 12 2017 the Corporate Tax Reform draft (USR III) was rejected in a national referendum. As a result of that rejection, a new bill will have to be elaborated and agreed on within a short time frame by the Federal council. It's still expected that a new bill will in-troduce certain accompanying fiscal measures aimed at maintaining the international competitiveness of Switzerland but the bill also needs to be in a form that attracts majority support and counters res-ervations of expected losses in tax revenues.

In recent years Switzerland has been under increasing pressure from the EU and the OECD to abolish its preferential tax regimes like the cantonal tax privileges for holding, domiciliary and mixed companies as well as certain federal practises pertaining to finance branches and principal companies.

USR III

Opponents of the rejected USR III were primarily concerned with the potential resulting cantonal tax deficits and their criticism was broad-ly aimed at limiting the suggested accompanying measures.

The main aspects and elements of the rejected USR III included es-sentially the following elements. Some of them will likely be found in a new proposal:

- Abolition of preferential cantonal tax regimes and certain tax practise (to be retained in a new proposal)
- Higher allocation of share federal income tax revenue to cantons to create basis for reduction of cantonal corporate tax rate
- Introduction of a patent box at cantonal level
- Introduction of a super-deduction for R & D expenses at canton-al level (optional)
- Introduction of a notional interest deduction (NID) at federal and cantonal level (this measure was highly criticised and will likely not be part of the new proposal)
- Limitation of total benefit at cantonal level: patent box, super deduction of R&D expenses and NID together were not allowed to reduce the taxable profit by more than 80% at cantonal level

Next Steps

The opponents of the USR III strive for a more balanced bill which may still be implanted – in their view – by the beginning of 2019. The Federal Council takes the view that a new draft may take longer as the reform remains a complex undertaking. It can be expected any-how that the Federal Council and the legislator will react quickly to end the uncertainty and avoid tax repression from the EU or individ-ual countries.

The new proposal likely will be less far-reaching. In particular, the provided measures like the super-deduction for R&D expenses as well as the Notional Interest Deduction might not be part of the new proposal. In addition, potential counter measures like increasing the partial taxation quota for dividends at the level of the individual re-quire further discussion.

Affected companies should closely monitor further developments in Swiss fiscal legislation. Even in view of the prevailing ordinary profit tax rates ranging between 12% and around 24% (without considera-tion of intended future cantonal tax rate reductions) Switzerland cer-tainly remains an attractive place for business activity with highly qualified workforce and stable political environment.

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UNITED KINGDOM

REFORMS TO THE TAXATION OF NON-UK DOMICILES FROM APRIL 2017

On 8 September 2017, the Treasury published Finance Bill (No.2) 2017 which contains the legislation in respect of the taxation of non-UK domiciles which was withdrawn from Finance Bill 2017 due to the 2017 General Election. The legislation is largely the same as previously announced. The legislation is due to be enacted into law later this year but will be effective from 6 April 2017.

The new UK deemed domiciled

UK deemed domicile is currently only considered in relation to inheritance tax where a non-UK domiciled individual has been resident in the UK for at least 17 out of the last 20 tax years.

From 6 April 2017, a non-UK domiciled individual will also be UK deemed domiciled for income and capital gains tax if they have been resident in the UK for 15 out of the previous 20 tax years. Those that meet the new UK deemed domiciled test will, from 6 April 2017, be taxed on an arising basis and will not have access to the claim for the remittance basis of taxation unless the unremitted foreign income and capital gains are within the £2,000 de minimis rule, which will remain in place.

The determination of whether an individual was tax resident in the UK will be based on the legislation that applied in that particular tax year. The Statutory Residence Test (SRT) will therefore only apply from 6 April 2013. Any tax years resident in the UK during childhood will be included.

A non-UK domiciled individual can lose their deemed domiciled status if they cease UK residence for 6 complete tax years for income and capital gains tax purposes and 4 complete tax years for inheritance tax purposes.

Transfers of property by an individual whilst they are non-UK domiciled, who at the time of their death are deemed domiciled in the UK, will continue to be outside the scope for inheritance tax.

Born in the UK with a UK domicile of origin

Individuals born in the UK with a UK domicile of origin who have acquired a foreign domicile of choice will be UK deemed domiciled if they are resident in the UK. Individuals have in the past left the UK and acquired a domicile of choice overseas and stated that they have retained their foreign domicile of choice on returning to the UK.

Rebasing of foreign assets for capital gains tax purposes

HMRC have provided non-UK domiciled individuals with unrealised capital gains on foreign assets the opportunity to rebase their assets at 5 April 2017. This will remove any capital gain accrued to 5 April 2017 from a tax charge when it is sold after 5 April 2017. Without this rebasing election, many non-UK domiciles would have considered selling assets prior to the new rules coming in.

There is a sting in the tail! The rebasing election will only be available to a non-UK domiciled individual who becomes deemed domiciled from 6 April 2017. If a non-UK domicile becomes deemed domiciled after that date they will not be able to rebase their assets. There were many representations to the Government that this was unfair but the view of the Government was that the rebasing election was there to give taxpayers time to organise their affairs with the new regime.

The rebasing election will also not be available to a non-domiciled individual born in the UK with a UK domicile of origin who is treated as deemed domiciled in the UK.

An individual will need to remain UK deemed domiciled at the time of the disposal of the asset to benefit from the rebasing.

The rebasing election will apply on all assets but it is possible to elect for the rebasing not to apply on an asset by asset basis and there is no requirement for any part of the sale proceeds relating to the part of the gain accruing before April 2017 to be kept offshore. In theory, a non-UK domiciled individual could sell the asset on 6 April 2017 and have no tax to pay on the remitted proceeds provided clean capital was used to purchase the asset.

The rebasing election will only be available to a non-UK domiciled individual who has paid the remittance basis charge in any tax year before April 2017. Careful consideration has to be given to whether to pay the remittance basis charge in 2016/17 to benefit from the rebasing election where the remittance basis charge has not been paid in any previous tax year.

For the offshore asset to benefit from the rebasing election it will have to be held between 16 March 2016 and 5 April 2017.

On 26 January 2017, HMRC amended the draft legislation such that the rebasing election will now apply to assets which are interests in non-reporting offshore funds which are subject to income tax under the offshore income gain regime.

If you are therefore considering disposing of foreign assets on or before 5 April 2017, you should consider delaying the sale to benefit from the rebasing if the value of the asset has increased.

Mixed funds within an offshore bank account

From 6 April 2017, there is an opportunity for a non-UK domicile individual to segregate mixed funds within a bank account.

This is a most welcome change for both non-UK domiciles and their tax advisers who are tasked with using the incredibly complicated identification rules when remittances are made.
It will allow a non-UK domiciled individual to segregate income, capital and capital gains where they are able to identify each component. It is very important therefore that there are accurate records such that the identification of the source of funds is possible. HMRC have given no detail on the identification process at this stage.

The draft legislation sets out that the offshore transfer rules will be disapplied so the mixed funds can be transferred to a new nominated bank account and the segregation can be made from there. We need to see from HMRC more guidance on how practically this will happen. Once the account has been segregated, a non-UK domiciled individual can choose the order in which he wants to bring those funds into the UK. In most cases it will be from capital first, capital gains second and then finally income.

Unlike the rebasing election, this opportunity does not require a non-UK domiciled individual to have paid the remittance basis charge so it applies to all non-UK domiciled individuals except those that were born in the UK with a domicile of origin in the UK.

This window of opportunity has been increased from one year to two years to allow taxpayers to organise their affairs and to give the banks the time to determine the components and set up the new bank accounts for the transfers.
If you have offshore mixed funds then it is recommended to not make any remittances to the UK on or before 5 April, wait until after 5 April 2017 and start the identification process now so the segregation can be made.

Taxation of Offshore Trusts

Many non-UK domiciled individuals were advised to create an offshore trust before becoming UK deemed domiciled for inheritance tax to benefit from excluded property status. They have provided an effective tax shelter for a non-UK domiciled individual.

There are a number of changes happening to the taxation of offshore trusts, as a result of the changes to the taxation of a non-UK domiciled individual from 6 April 2017. The Government have had great difficulty in coming up with a coherent and fair tax system without seeming to deter foreign investors to the UK.

The original proposals were to tax beneficiaries on any distributions from a trust to simplify matters. It was soon realised that this could mean that the capital held by the trust could be subject to tax. The Government then gave reassurances that non-UK assets held within a non-UK trust by non-UK domiciles would continue having the preferential tax treatment.

So where are we now? We are now pretty much back to the rules as they were with changes which will only affect trusts where distributions are made to someone who is UK deemed domiciled under the new rules. If no distributions are required, it is possible to protect the trust from the new rules but care has to be taken to not taint the trust such that it loses it protection. The Government has changed the way in which distributions from offshore trusts to non-UK residents are treated as it used to be possible to wash out capital gains to a non-UK resident before making a distribution to a UK resident.

If you are the Settlor or beneficiary of an offshore trust, it would be prudent to seek tax advice before 5 April 2017 to assess your position.

How we can help you?

Each non-UK domiciled individual's position is going to have different issues to consider. Please contact our Private Client Tax Director Rakesh Dabasia at rakesh.dabasia@rayneressex.com if you would like to discuss how the rules impact on you and the steps you should take to mitigate their impact.

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Publication Dates

Publication	Articles Submission deadline	Intended Publication Date
Tax Bulletin Issue 37	16-Mar-18	15-May-18
Tax Bulletin Issue 38	24-Jul-18	25-Sep-18