

❖ Taxand Quarterly

No. 9 January 2008

INDEX

LEGAL DEVELOPMENTS	1
LEGISLATION	1
1. CANADA	1
2. CHILE	2
3. CHINA	2
4. DENMARK	2
5. FINLAND	3
6. FRANCE	3
7. GERMANY	4
8. GREECE	4
9. LUXEMBOURG	4
10. MALAYSIA	5
11. MALTA	6
12. MEXICO	7
13. PERU	8
14. POLAND	9
15. PORTUGAL	9
16. THE NETHERLANDS	11
17. VENEZUELA	11
COURT CASES AND RULINGS	13
1. EUROPEAN UNION	13
2. COUNTRIES	14
OTHER NEWS	18
1. EUROPEAN UNION	18
2. COUNTRIES	20
SPECIAL FEATURES	21
INTERNATIONAL TAX - THE ADVENTURES OF BOB AND RALPH	21
THE DUTCH COOPERATIVE IN INTERNATIONAL TAX PLANNING	23
CHINA: REGULATIONS FOR NEW CORPORATE INCOME TAX LAW	25
MAURITIUS TAX TREATY NETWORK	26
TAXAND NEWS	28
NEW FIRMS JOIN TAXAND	28
TAXAND CONFERENCE IN NEW DELHI	28
TAXAND MEMBERS NAMED TOP-TIER FIRMS BY WORLD TAX 2007	28
UPCOMING TAXAND SEMINARS FOR "YOUNG" MANAGERS IN MARBELLA, SPAIN	29
CONTACT INFORMATION	30



The First Global Network of
Independent Tax Advisors

LEGAL DEVELOPMENTS

LEGISLATION

1. CANADA

New Protocol to the Canada–United States tax treaty signed

On 21 September 2007, the Canadian Minister of Finance and the US Secretary of the Treasury signed a new protocol (the “Protocol”) to the Canada–US tax treaty (the “Treaty”). The Protocol comes into effect on 1 January 2008, or on the date that Canada and the US exchange notifications that their respective federal legislative bodies have ratified the Protocol. To date, such ratification has not occurred.

Among the most significant amendments to the Treaty are the elimination of withholding tax on cross-border interest payments to both arm’s-length and non-arm’s-length lenders and the extension of treaty benefits to US limited liability companies (“LLCs”). On the other hand, the Protocol will introduce a bilateral limitation of benefits (“LOB”) article (currently the Treaty contains an LOB provision that only the IRS can invoke) and the denial of treaty benefits for certain “hybrid” entities.

a) Elimination of withholding tax on cross-border interest payments

Interest paid between residents of Canada and the US is subject to withholding tax at a rate of 10%. The Protocol will eliminate this tax on payments of interest to both arm’s-length and non-arm’s-length lenders resident in the other Contracting State.

The elimination of withholding tax on cross-border interest is available two months after the Protocol comes into force for payments between unrelated or arm’s-length parties, and is phased in for interest paid between related parties. The phasing-in of reduced withholding tax on interest payments between related parties will begin with a reduction to 7% in the first year after the Protocol comes into force, with a further reduction to 4% as of the second year, and a complete elimination of the tax as from the third year.

The changes to the Treaty seem to have precipitated a similar change to Canada’s domestic law that will eliminate withholding tax on interest paid to nonresidents of Canada, although it should be noted that the change to Canada’s domestic law will apply only to interest paid to a recipient dealing at arm’s length with the payor.

b) LLCs

Certain entities may be treated as corporations in one country but be disregarded for tax purposes in the other (“hybrid” entities). While such entities can often be useful in cross-border tax structuring, there

are times when the opposite may be true. For example, the Canada Revenue Agency (“CRA”) has traditionally taken the position that because a US LLC is a disregarded entity for US tax purposes and is therefore not subject to tax in the US, it is not a resident of the US for Treaty purposes. Consequently, in the CRA’s view, neither such an LLC nor members of such LLCs may take advantage of the Treaty under its current terms.

Under the Protocol, income earned by a resident of one country (“country of residence”) through a hybrid entity may in some cases be treated by the other country (“source country”) as having been earned directly by the resident of the country of residence. Thus, if US-resident investors invest in Canada through a hybrid entity, such as certain US LLCs, that is viewed as a corporation in Canada but as a disregarded entity in the United States, and if the investors are taxed in the US as though they had earned the income directly, Canada will treat the income as having been paid directly to the US residents. Consequently, Treaty benefits (for example, reduced withholding tax) would be applicable to the payment across the border. However, this will not be the case for a resident of a country other than the US (a “third-country resident”) in which case, to the extent that such payments accrue to the benefit of the third-country resident, the payments will not qualify for the benefits of the Treaty or for the benefits of a treaty between Canada and the country of residence of the third-country resident.

c) Hybrid entities

Canadian unlimited liability companies (“ULCs”) have become a popular acquisition vehicle for US-resident investors in many circumstances as they generally can elect to be treated as fiscally transparent in the US, notwithstanding the fact that they are considered to be taxable in their own right in Canada. However, in addition to what might be considered to be relatively “benign” tax structures, Canadian ULCs, as well as certain “reverse hybrid” entities (such as US limited partnerships that are treated as fiscally transparent in Canada but which can elect to be treated as fiscally opaque in the US), have spawned a number of somewhat aggressive tax structures that apparently have not found favor with the tax policy makers in Canada and the US. Accordingly, the Protocol will introduce new provisions to the Treaty that will deny Treaty benefits to such entities. This change will impact both the more benign structures as well as the aggressive ones.

As a result of these changes, all structures into Canada from the US, or into the US from Canada, that include a ULC or a reverse hybrid entity will have to be reviewed and, in many cases, restructured, possibly through a third country. The portion of the Protocol applying to hybrid entities will be applicable as from the beginning of the third

calendar year that ends after the Protocol generally enters into force or, in other words, most likely from the beginning of 2010.

2. CHILE

Relevant amendments to tax legislation introduced by Law No. 20,190

Law No. 20,190 has introduced several amendments to the Chilean Income Tax Law and other regulations that benefit potential investors in Chile. Most notably, the Law creates a new type of company known as a "Joint Stock Company", which enjoys the same tax treatment as an Open Stock Corporation, but has a less rigid structure, since only one stockholder is needed for such a company to exist.

The amendment to Article 18 quater of the Chilean Income Tax Law is also of great importance. This Article allows the proceeds from the redemption of shares in certain mutual funds to be reinvested in another mutual fund (provided that at least 90% of the reinvestment is in listed shares and the managing company distributes to the shareholders the total dividends obtained in the period between the acquisition and the redemption of the shares), in order to avoid triggering the corresponding tax on such proceeds. In summary, provided that certain requirements are met, the taxation on the redemption of shares in a mutual fund can be deferred while the gain is reinvested in another mutual fund. However, it is worth mentioning that in order to qualify for this tax deferral relief, the Chilean Internal Revenue Service ("SII") requires, pursuant to Circular No. 58 and Decision No. 136, a specific form of power of attorney that must be granted by the shareholders to the managing company before they can elect to claim the relief. Such power of attorney imposes the condition that noncompliance with its stipulations will render the relief inapplicable.

3. CHINA

Circular on individual income tax ("IIT") on income from stock options in unlisted companies

In October 2007, the State Administration of Taxation (SAT) issued a circular (Guoshuihan [2007] No. 1030) on individual income tax ("IIT") on income from stock options in an unlisted company.

The IIT treatment of income from stock options in an unlisted company differs from that for income from stock options in a listed company.

Income from stock options in an unlisted company is also defined as employment income. However, it could be treated as an annual bonus, and the calculation method for annual bonuses could be used to determine the IIT.

The income from a stock option in an unlisted company is the difference between the purchase price and fair market value ("FMV") on the purchase date. In the circular, the

SAT considers that net asset value can be used as the basis for FMV where it is difficult to find a comparable listed company.

Since capital gains tax may be charged at a much lower rate (20%) than IIT on employment income, (capped at 45%), the circular opens the door to significant planning opportunities.

4. DENMARK

4.1 Dividends from the US to Danish companies

When President Bush signs the amendment to the Denmark-US tax treaty, US subsidiaries will be able to distribute dividends to certain Danish parent companies without having to withhold 5% US tax, as they have to do at present. In order to qualify for the exemption, the Danish parent company must hold at least 80% of the voting rights in its US subsidiary for at least 12 months before the distribution of the dividend.

With regard to dividends distributed by a Danish subsidiary to its US parent company, the amendment to the tax treaty will not change the situation, as the Danish subsidiary does not withhold tax on such distributions in accordance with Danish law.

4.2 Danish tax treaties with France and Spain

As a consequence of the general election in Denmark, Bill L 26 of 11 October 2007 regarding the authority for the Minister for Taxation to terminate the Danish tax treaties with France and Spain was annulled. However, on 28 November 2007, the Minister presented a new version of the Bill in the form of Bill L 13.

The transitional rules on individuals resident in France or Spain and who already receive pension payments from Danish private pension schemes, and the rules on real estate in France have changed somewhat since Bill L 26.

a) *The main features of the transitional rules on pensions:*

Individuals who were resident in France/Spain on 28 November 2007 and who receive early retirement benefit or pensions on or before 31 January 2008, will still be able to claim tax exemptions in Denmark on their benefit or pensions. The spouses of such individuals may qualify for the transitional rules even if they do not receive early retirement benefit or a pension on or before 31 January 2008, when they actually start receiving such benefit or pension.

b) *The main features of the transitional rules on French real estate:*

The transitional rules are applicable to real estate acquired on or before 28 November 2007.

5. FINLAND

5.1 Transfer pricing documentation

The Finnish National Board of Taxes has recently published new instructions on transfer pricing documentation.

Since the beginning of 2007, the arm's-length principle has been applicable to all Finnish companies, including companies and groups that do not engage in cross-border business.

According to transfer pricing legislation and the new instructions, Finnish companies doing business with related companies abroad (excluding small- and medium-sized enterprises) should be prepared to produce the appropriate transfer pricing documentation evidencing the application of the arm's-length principle in their transactions with related companies. Basically, the documentation has to be prepared in accordance with OECD guidelines, and the companies should be ready to produce the documentation by no later than the summer of 2008. According to the instructions, the regular OECD methods (such as the CUP, Resale Price, Cost Plus, Profit Split and TNM methods) for determining arm's-length terms should also be acceptable in Finland. The obligation is relaxed where the total value of transactions between the related parties does not exceed EUR 500,000.

5.2 Other issues

A more far-reaching reform of corporate income tax is expected in the near future. Some minor amendments have already taken place or are about to in the Finnish tax system. For example, 1.6% transfer tax is no longer payable on transactions in shares listed on alternative multilateral markets outside the regulated markets, such as First North, as a measure to promote trading in such shares.

6. FRANCE

6.1 Major features of the Finance Bill are being debated

- Research tax credit: this incentive for assisting corporate research has been completely overhauled. Compared with the initial draft (cf. Taxand Quarterly issue 8), the debate in Parliament has led to improvements: for companies taking advantage of the incentive for the first time, the credit (50% in year one) will now be 40% in year two and will drop to 30% only from year three onwards.
- Taxation of dividends, interest and capital gains on the sale of investment securities for individuals: the tax rules on dividends paid to individuals were already significantly reformed back in 2005: to bring it into line with European law, the tax credit on dividends (equal to 50% of the dividend) was

replaced by a rebate (50% in 2005; 40% since 2006). Accordingly, only 60% of the dividend is assessed for taxation. This system will remain in force, but as from 2008 taxpayers will be able to elect to make an all-inclusive deduction equal to 18% of the total value of the dividend, withheld at source by the distributing company or the financial institution. As the maximum personal income tax rate is 40%, this 18% rate can be equated to a maximum effective rate of 24% (40% of 60%) and, therefore, corresponds to a tax reduction. At the same time, the withholding tax rate applicable to interest and the all-inclusive rate of tax on capital gains on the disposal of investment securities, has been raised from 16% to 18%, also effective 2008.

- Stock exchange tax: this tax, which was payable on the value of stock exchange transactions, has been eliminated as from 2008.
- Open-end predominantly real estate investment companies ("SPICAVs"): these companies did not formerly qualify for the tax regime applicable to gains on disposals of equity interests (tax on only 5% of the capital gain, i.e., an effective tax rate of 1.7%), but did enjoy a 15% rate. Since 26 September 2007, gains on disposals of shares in open-end predominantly real estate investment companies will be taxed at the standard rate (33.3%), except for those that are listed, which will enjoy a rate of 16.5%.
- In-depth recasting of the tax treatment of capital gains on real estate obtained by nonresidents (as from 1 January 2008): capital gains on the sale of not only unlisted companies, but also of REITs, open-end real estate investment companies ("SPICAVs") and SPICAVs would be taxable at 33.1/3% as from 1 January 2008 where, in the two last-mentioned situations, the seller owns a stake of 10% (whether directly or indirectly).
- Simplification of the annual 3% tax on real estate: the annual 3% tax is simplified following a judgment by the ECJ, which held that the tax was partly incompatible with the free movement of capital. As from 1 January 2008, amongst other technical changes, all EU entities and trusts are exempt, subject to certain filing requirements.

6.2 New Social Security Law for 2008

The Social Security Bill provides for new employer and employee contributions on qualifying French stock options and gains on bonus shares (10% for employers and 2.5% for employees). Such contributions apply to stock options and bonus shares granted by foreign issuers to French beneficiaries as well. The new contributions clearly increase the social security burden on qualifying French equity incentive plans, since until now no social security contributions were payable, subject to fulfillment of several conditions.

7. GERMANY

Changes introduced by 2008 Tax Act

Following the business tax reform, which reduced German tax rates and introduced new rules on the nondeductibility of interest expenses, the 2008 Tax Act makes a number of changes to tax law, among which the following are especially important for foreign investors in Germany:

a) *Nondeductibility of write-downs on shareholder loans*

The participation exemption on capital gains from shares in corporations also applies to losses. Beginning 2008, losses from the write-down or sale of loans granted by a shareholder with a stake of more than 25%, by a related party, or by third parties with recourse to such shareholder or related party, will no longer be deductible. The same goes for other financial claims, such as accounts receivable and receivables under lease agreements.

The new Law provides for an exception to the nondeductibility rule where it can be proved that a third party would have granted the same loan and would not have demanded repayment of the loan. In applying this arm's-length test, the terms of the loan (especially the interest rate and the collateral agreed for it) will be taken into consideration.

b) *Amendment of the general anti-avoidance rule*

The amended general anti-abuse rule for the first time defines what "abuse" means. Under the new wording an inappropriate legal structure resulting in a tax benefit not foreseen by law is abusive. If the tax authorities successfully prove that these two requirements are met, the burden of proof is moved to the taxpayer and he can avoid the application of the new rule by adducing and presenting evidence for significant non tax related reasons to support the structure chosen.

If the anti-abuse rule is deemed to apply, the taxes will be assessed on the basis of an appropriate structure.

8. GREECE

New Law requires recovery of significant amounts of income tax from large enterprises, following repeal of Tax Incentive Law 3220/2004, which infringed EU state aid rules

The Greek Parliament has recently enacted Law 3614/2007, pursuant to which the Greek Government is seeking to claw back corporate income tax from large enterprises (mostly listed on the Athens Stock Exchange), which had recorded tax-free reserves during the 2003 and 2004 fiscal years, in reliance on Tax Incentive Law 3220/2004. Under the now-repealed Law, enterprises

were eligible for an income tax exemption of 35 percent of their taxable profits. The relief was applicable on condition that the eligible enterprises had to deposit the tax-free amounts in special reserves for the purpose of making specific types of investment.

On 21 October 2005, the European Commission issued an injunction immediately suspending Law 3220/2004, on the ground that its provisions contravened EU state aid rules. Following an in-depth investigation and negotiations with the Greek Government, the Commission concluded that the tax breaks afforded to Greek enterprises were incompatible with EU state aid rules. Accordingly, the Commission decided that beneficiary enterprises should return to the Greek authorities the tax corresponding to the tax-free reserves recorded during the 2003 and 2004 fiscal years under Law 3220/2004. With respect to small- and medium-sized enterprises, the Commission accepted that the tax relief that they enjoyed may fall within the scope of the *de minimis* regulations. Accordingly, SMEs would not be under the obligation to return the tax they should have paid. Certain large enterprises that made specific types of investment, would not be required, either, to return the tax corresponding to the tax-free reserves recorded in the 2003 and 2004 fiscal years.

Apart from the income tax to be returned, large enterprises must also pay interest accrued thereon during the period between the date of recording the tax-free reserves and the date of repayment of the tax. In this context, the amount of income tax to be clawed back may be approximately 100% higher than the tax relief originally enjoyed back in 2003 and 2004.

In view of the above, Greek enterprises are expected to explore possible legal grounds for defending against anticipated losses.

9. LUXEMBOURG

Tax changes to be introduced in 2008

Two Laws dated 27 December 2007 introduce a number of changes in the tax area effective 2008. We summarize below the measures that are relevant to international businesses.

a) *Capital duty reduced to 0.5% as from 2008*

Capital duty is reduced from 1% to 0.5% as from 1 January 2008. This tax is payable by companies upon incorporation and on capital increases.

The intention is to phase out capital duty by the beginning of 2010, thereby bringing Luxembourg legislation into line with a proposal from the European Commission.

b) *Investment tax credit increased by 2%*

The investment tax credit (*bonification pour investissement complémentaire*) is raised from 10% to 12% as from 2008. This tax credit is available for

investments in specific depreciable tangible fixed assets (excluding buildings). Together with the tax credit on new investment, Luxembourg enterprises will be able to take a total tax credit of up to 14%-20% on the value of their investments.

c) *New tax legislation introduced for intellectual property*

A new Article 50 bis in the LIR (Luxembourg Income Tax Law) envisages an 80% exemption on certain types of intellectual property ("IP") income as well as an 80% exemption on capital gains realized on the sale of such intellectual property.

The exemption applies to the net income paid to Luxembourg taxpayers (individuals or legal entities) for the use of any software copyright, any patent, trademark, design or model. Patents developed and used in-house may also generate a deemed income deduction under certain conditions. Net income is defined in the law as gross royalty income received by the taxpayer less the amount of expenses incurred in direct economic connection with this income, including annual depreciation charges and write-downs.

Capital gains realized on the disposal of IP also benefit from an 80% exemption. The gain remains taxable to the extent of the expenses incurred in direct connection with the income as well as depreciation charges and write-downs that have reduced the tax base of the taxpayer in the tax year of the disposal or in any previous tax year.

The exemption regime applies to registered patents, but only to the extent the IP is acquired (or created as the case may be) after 31 December 2007. Expenses incurred in direct economic connection with the IP must be recorded as an asset during the first year for which the exemption is claimed. Finally, the IP cannot be acquired from a person that is treated as an "affiliated company," and company A is treated as "affiliated" to company B within the meaning of the law if:

- A directly holds at least 10% of the share capital of B;
- B holds at least 10% of the share capital of A;
- at least 10% of the share capital of A and of B is directly held by a third company.

d) *Taxation of individuals reduced*

The tax brackets have been adjusted for inflation by up to a maximum of 6%.

e) *Taxation of nonresidents: rental losses in connection with real estate located in a foreign country to be taken into account*

In the wake of a judgment by the European Court of Justice on 18 July 2007, according to which the Luxembourg Income Tax Law was not compatible with the principle of free movement of workers, the scope of Article 157 ter of the LIR has been amended so that all foreign income will now be

taken into account when calculating the applicable Luxembourg tax rate for certain nonresident taxpayers.

Indeed, the ECJ held that the former Luxembourg income tax rules were discriminatory as they allowed only resident taxpayers who owned real estate situated in another EU Member State to claim that related losses (for example interest charges on financing) be taken into account when calculating their Luxembourg average tax rate.

Nonresident taxpayers can now elect to be treated as resident taxpayers as soon as they derive at least 90% of their professional income from a Luxembourg source.

10. MALAYSIA

10.1 Tax treaties

A new tax treaty with Bosnia and Herzegovina was gazetted on 4 October 2007.

The most interesting features of the treaty are as follows:

- A building site, construction, installation or assembly project will only constitute a PE if it lasts for more than 12 months, whereas supervisory activities undertaken in connection with such projects will be a PE if the activities last for more than 6 months.
- The rates of withholding tax on interest payments and royalties are 10% and 8%, respectively (which are lower than the Malaysian domestic rates of 15% and 10%).
- There is an Article on Technical Fees, but the withholding tax rate of 10% on such fees is the same as the Malaysian domestic rate.

10.2 Tax incentives for biotech firms

Biotechnology is an area which the Government is actively promoting, and, to this end, it has introduced various incentives. The initiatives outlined below are available to companies which obtain "BioNexus" status. Companies qualify for "BioNexus" status where:

- they are providers of a product or service based on life sciences, or substantially utilize biotechnology processes;
- they possess research capabilities in **focus areas**;
- they employ a significant percentage of skilled workers as part of their total workforce;
- there is a separate legal entity for the 'BioNexus-qualifying' business;
- they comply with applicable related laws, regulations, guidelines, etc.

Companies granted "BioNexus" status (by the Malaysian Biotechnology Corporation Sdn Bhd ("MBC")) are eligible for certain incentives, including the following:

- 100% tax exemption on statutory income (after deduction of capital allowances/tax depreciation) for a period of 10 consecutive years where the

company engages in a new business. A project to expand an existing approved business will qualify for the same exemption, but for a period of 5 consecutive years.

- 100% investment tax allowance for qualifying capital expenditure incurred within a period of 5 years from the date of commencement. This allowance is available to offset 100% of the statutory income in each year of assessment.
- Tax deduction for investors of a BioNexus company in respect of the amount invested.
- An industrial building allowance claimable at a rate of 10% in respect of qualifying building expenditure.

10.3 Indirect tax – removal of service tax threshold for professional services

Currently, service tax is charged on various service fees, including professional service fees, where the turnover from such fees in a 12-month period exceeds MYR 150,000. The latter threshold has been removed, and with effect from 1 January 2008 service tax (5%) must be charged on all professional service fees for the following services, regardless of the turnover threshold:

- Legal services of an advocate and solicitor
- Accounting services
- Engineering services
- Architectural services
- Services of surveyors, valuers, appraisers and estate agents
- Consultancy services
- Management services

11. MALTA

11.1 Investment Services Rules streamlined

MALTA is the first EU Member State to apply the new UCITS eligible assets regime, paving the way for asset managers to be first to benefit from the greater clarity offered by the new regime in the market. Following two years of work by the European Commission and the Committee of European Securities Regulators (“CESR”) on the clarification of definitions for eligible assets in which UCITS funds can be invested, the new definitions were finally adopted by Directive 2007/16/EC. The new Investment Services Rules for Retail Collective Investment Schemes, which have fully transposed the Directive, provide a better understanding of the nature of “permissible investment instruments” in which UCITS may invest.

The new Rules now also allow the use of investment instruments linked to hedge fund indices, provided these qualify as “financial indices” under the Directive and that the index methodology provides for the selection and the rebalancing of components on the basis of predetermined

rules and objective criteria. In this regard, the new Rules issued by the Maltese Financial Services Authority (“MFSA”) also take into account the guidelines published by the CESR to assist regulators and market participants in the interpretation of the Directive. Under the new Rules, the assessment of the global/total exposure of financial derivative instruments within a UCITS scheme, and its leverage may be assessed on the basis of an advanced risk measurement approach such as VaR, as proposed by Commission Recommendation 27/4/04. Non-sophisticated UCITS may alternatively make use of the commitment approach.

The relevant provisions came into force on November 1, 2007, following a complete overhaul of legislation that has also ushered in MiFID and the Capital Requirements Directive. The relevant amendments to the Investment Services Act and related secondary legislation have led to a root-and-branch review of the investment services guidelines, which have been replaced by a more user-friendly set of Investment Services Rules. The new Rules relate to investment services providers, professional investor funds, retail collective investment schemes, and recognized persons and retail CISs.

Member States have until 23 March 2008 to publish the relevant regulations and a further four months to bring them into force.

11.2 Budget 2008

The Prime Minister and Minister of Finance presented the Budget for the 2008 calendar year, which is the last budget for this legislature. This Budget has three main economic objectives:

- to reduce the deficit by MTL 20 (EUR 46.59) million to 1.2% of GDP;
- to allocate MTL 140 (EUR 326.11) million in infrastructural capital projects; and
- to increase disposable income by MTL 21 (EUR 48.92) million.

Together with a number of fiscal measures (some of which are included in this Newsletter), the above objectives should continue to stimulate Malta’s economic growth.

a) Revision of income tax bands

The income tax bands for individuals and married couples electing joint income tax computation have been revised as follows:

Rates for married couples electing joint tax computation:

Present		Revised	
Chargeable Income	Rate	Chargeable Income	Rate
MTL	%	MTL	%
0 -4,500	0	0 -4,894	0
4,501 - 8,000	15	4,895 -8,800	15
8,001 - 10,000	25	8,801 -12,020	25
over 10,000	35	over 12,020	35

Rates for single or married persons electing separate computation:

Present		Revised	
Chargeable Income	Rate	Chargeable Income	Rate
MTL	%	MTL	%
0 -3,250	0	0 -3,498	0
3,251 - 5,500	15	3,499 -6,010	15
5,501 - 6,750	25	6,011 -8,156	25
over 6,750	35	over 8,156	35

The revised income tax bands for year of assessment 2009 will reduce the tax burden for single and married persons electing separate income tax computation by up to MTL 230 (EUR 537.76) per annum, while married couples electing joint income tax computation will see their burden reduced by up to MTL 341 (EUR 794.32) per annum.

b) Tax deductions available to companies

A number of tax deductions which were highlighted in the pre-budget document have now been confirmed.

- a tax deduction for sponsoring athletes or clubs in national and international sporting events;
- a tax deduction for donations to nonprofit organizations or to a proposed Art Fund;
- a tax deduction of up to MTL 8,000 (EUR 18,635) for companies providing grants, awards or scholarships to Maltese artists.

c) Value added tax and ECO contribution relief

VAT on expenses related to sports facilities and incurred by recognized nonprofit organizations will be refunded in full.

The VAT rate on the rental of space used for artistic and cultural activities as well as entrance fees to museums, artistic exhibitions, concerts and theaters (excluding cinema) will be reduced (from 18% to 5%).

A VAT exemption is granted for training programs in artistic activities as long as these are provided by approved organizations.

Refunds will also be available in respect of any ECO contribution paid when collecting or recycling packaging material.

d) Other incentives

- Business promotion
New fiscal incentives under the Business Promotion Act and Business Promotion Regulations are to be announced next year.

- Subsidy for hybrid cars

The Government is increasing the refund which is currently given on the purchase of a hybrid car. The refund will now be equal to 20% of the value of the car, up to a maximum of MTL 1,000 (EUR 2,329).

- Filmmaking and Arts Funds

The Government is allocating funds for the creation of a *Film Fund* so as to encourage local filmmaking. An *Arts Fund* is also being set up to help cultural and artistic development on the Maltese Islands.

12. MEXICO

IETU and other important news of the Mexican tax system

As you may know, Mexican tax legislation has undergone many important amendments which will enter into force in 2008. The most important tax reform is the introduction of a new flat business tax (“IETU”) and the abolition of the Mexican asset tax.

IETU will be an alternative minimum tax when credited against income tax and will be determined on a cash-flow basis, unlike income tax, which is determined on an accrued basis. Mexican residents and nonresidents with a permanent establishment located in Mexico will be liable for IETU on income derived from the following activities: (i) sale of goods; (ii) provision of independent services; and (iii) granting of temporary use or enjoyment of goods.

IETU will be determined by applying the relevant tax rate to the income obtained (16.5% for 2008 and 17% for 2009). As mentioned, IETU is considered an alternative minimum tax, since taxpayers can credit the income tax paid by them each year against their annual IETU.

Below are examples of the types of income not subject to IETU: (i) sale of stock or shares, accounts receivable and certain securities; (ii) sale of real estate certificates; (iii) passive income (interest, capital gains or rent) obtained from investments made in Mexico directly by pension funds located abroad, or indirectly through a Mexican entity, provided that certain requirements are met; (iv) gains derived from the pursuit of activities subject to IETU on an incidental basis: e.g. sale of permanent home.

The IETU Law allows deductions for the acquisition of goods, services or rental of goods used for the pursuit of the above-mentioned taxable activities, for the management of such activities, or for the production, marketing or distribution of goods and services that give rise to income subject to IETU (in principle, the same deductions allowed for income tax purposes).

However, the main limitations on IETU relief are that taxpayers will not be able to deduct 100% of their inventory and investments (fixed assets) pending

depreciation as of 31 December 2007, or amortize 100% of the balance of net operating losses. We consider that such limitations may result in a successful challenge against IETU being mounted at a tax court or higher tribunal.

It is worth mentioning that a problem of double taxation could arise for nonresidents liable for IETU in Mexico, or for Mexican subsidiaries of non-Mexican investors that consolidate Mexican tax results in their countries, if such nonresidents are not able to credit the IETU against the income tax payable by them in their country of residence, since their country of residence may conclude that IETU is not a tax on net income. However, the Mexican Government has already secured agreement with Germany, Australia, Austria, Barbados, Belgium, Canada, Denmark, Ecuador, Finland, France, India, Ireland, Iceland, Italy, Japan, Luxembourg, Norway, New Zealand, the Netherlands, Poland, the UK, the Czech Republic, South Africa, and most recently the US., that IETU is a tax included in the tax treaties signed by Mexico with these countries.

The Mexican Government is continuing in its efforts to negotiate with the other countries with which it has signed a tax treaty, in order to not affect foreign investment.

Other important changes made to the Mexican tax system include the introduction of a Law imposing a 2% tax on cash deposits, which is set to enter into force on 1 July 2008 and the imposition of limitations on the tax exemption on capital gains derived from the sale of shares by Mexican individuals and foreign residents through authorized markets, which have been in force since 2 October 2007.

13. PERU

13.1 Peru-US Free Trade Agreement

The process for approving the Free Trade Agreement (the "FTA") between the US and Peru (a "Party" or the "Parties"), signed on 12 April 2006, has recently been completed in the US Congress after 19 months of reviews and adjustments, particularly as regards the labor and environmental sections. The main objectives of the FTA are to remove trade barriers, consolidate access for goods and services, and foster reciprocal private investment. Furthermore, the FTA includes economic, institutional, intellectual property, labor and environmental policies.

To bring the FTA into force, the next step will be for both Parties to upgrade their legislation. The Peruvian Government has said that the implementation process will be completed by approximately the end of June 2008. Therefore, the FTA is expected to come into effect on 1 January 2009.

The following are the key highlights of the FTA:

a) *Access to markets and customs duties*

The Parties cannot introduce new customs duties or increase existing ones for goods originating from each other's territories, except for antidumping and countervailing duties. On the contrary, each Party

will progressively eliminate customs duties on goods originating from the territory of the other Party, according to the FTA Schedule on Tariff Elimination, which establishes time periods ranging from 5 to 17 years, depending on the type of goods. Note that duties applicable to goods in category "A" must be completely eliminated on the date the FTA comes into force.

Furthermore, the Parties agree to guarantee duty-free commerce by not adopting or maintaining any prohibition or restriction on imports, into, or any duty, tax or other charges on exports to, each other's territories.

In order to apply preferential treatment, the FTA establishes rules of origin, such as those that consider regional value content or technical requirements. The FTA also specifies that the Statement of Origin has to be by written or electronic certification from the importer, exporter or producer of the goods.

b) *Customs administration and trade facilitation*

The Parties agree to simplify their custom procedures for the efficient release of goods. Accordingly, each Party must adopt or maintain procedures that:

- provide for the release of goods, to the extent that is possible, within 48 hours of arrival by implementing risk management systems that enable the customs authority to focus its inspection activities on high-risk goods;
- allow goods to be released at the point of arrival, without temporary transfers to warehouses or other facilities; and
- allow importers to withdraw goods from customs before and without prejudice to final determination by its customs authority of the applicable customs duties, taxes, and fees.

Furthermore, each Party should implement an advance ruling system by which, at the written request of an importer, exporter or producer, a Party will issue a written official statement before a good is imported into its territory regarding the tariff classification, the application of customs valuation criteria, the application of duty drawback, deferral, or other relief from customs duties, whether a good is originating, etc.

c) *Technical barriers to trade*

With a view to increasing and facilitating trade and obtaining effective market access, the parties agree to improve the implementation of standards and technical regulations, the elimination of unnecessary technical barriers to trade, and the enhancement of bilateral cooperation on regulatory issues, such as convergence, alignment with international standards, etc.

d) *Trade remedies*

In order to avoid damage to domestic industries, the FTA provides for the imposition of safeguard measures. A safeguard measure is applicable, only during the transition period¹, and if an originating good is being imported into the Party's territory in such increased quantities and under such conditions as to constitute a substantial cause (or threat) of serious injury to a domestic industry. The safeguard measure will (a) suspend the further reduction of any rate of duty provided for under the FTA on the good; or (b) increase the rate of duty on the good not to exceed certain limits.

Note that the application of antidumping or countervailing duties continues to be regulated under the World Trade Organization ("WTO") Agreement.

e) *Competition policy, designated monopolies, and state enterprises*

Each Party must adopt or maintain national competition laws that proscribe anticompetitive business conduct and promote economic efficiency and consumer welfare, and must take appropriate action with respect to such conduct.

f) *Labor*

The Parties reaffirm their obligations as members of the International Labor Organization ("ILO"). Also, each Party agrees to adopt and maintain in its statutes and regulations, and practices under them, the following labor rights: freedom of association; the effective recognition of the right to collective bargaining; the elimination of all forms of compulsory or forced labor; the effective abolition of child labor; and the elimination of discrimination with regard to employment and occupation.

Lastly, the FTA deals with other matters as Intellectual Property Rights, Financial Services, Cross-Border Trade in Services, Telecommunications, Electronic Commerce, and the Environment.

13.2 Other free trade agreements

The Peruvian Government is currently negotiating FTAs with Thailand and Singapore. The negotiation process is also commencing with the European Union, Canada and China.

¹ "Transition Period" means the 10-year period beginning on the date of entry into force of the FTA, except that for any good for which the Schedule on Tariff Elimination of the Party applying the measure provides for the Party to eliminate its tariffs on a particular good over a period of more than 10 years, "Transition Period" means the tariff elimination period for the good set out in that Schedule.

14. POLAND

Relevant changes to the law in force from 1 January 2008

a) *VAT not actually due is not recoverable*

Until 31 December 2007 when an invoiced transaction was not, in fact, taxable or was VAT exempt, but the invoice amount was paid, the VAT charged was still deductible. As a result, where there were doubts as to whether a given transaction was subject to VAT, the parties could treat it as a taxable transaction regardless, thereby avoiding any tax exposure. This was particularly helpful where there were difficulties with the proper characterization of the subject matter of the transaction as a venture (not subject to VAT) or as a collection of assets (subject to VAT).

However, effective 1 January 2008, the VAT charged on a transaction not subject to, or exempt from, VAT will no longer be recoverable. This change will clearly have an adverse effect on the level of tax exposure of traders and, in particular, those engaging in significant asset deals.

b) *Reduction in life pension insurance*

Effective 1 January 2008, life pension insurance contributions are reduced by 4%. As a result, from that date employers and employees will pay contributions equal to 4.5% and 1.5% of the gross compensation, respectively.

It is envisaged that this change will cut labor costs, and thus encourage investment in Poland.

15. PORTUGAL

Recent developments for 2008

The 2008 Budget Law awaiting official publication includes several amendments having an international impact. In the interim, the Portuguese Parliament has also approved the new regime applicable to companies licensed to operate during the 2007-2013 period in the International Business Center of Madeira ("IBCM").

a) *Outbound dividends*

Following the European Commission's request for Portugal to end its discriminatory taxation of outbound dividends, no withholding tax will be levied on dividends paid by a resident company to its EU parent company (or made available to an EU-based permanent establishment of an EU company), if the parent company has directly held at least 10% of the payor's capital, or any percentage of capital with a value of at least EUR 20 million for an uninterrupted period of at least one year prior to the dividend payout.

As a result of this amendment, the tax treatment of dividends paid to both resident and EU qualified shareholders will be identical as from 1 January 2008. Following the ECJ Judgment in *Denkavit International* (C-170/05), we believe that companies in the above circumstances should start to consider filing appeals with the tax authorities claiming the unlawfulness of dividend withholding tax assessments made over the past 4 years.

b) *Taxation of swaps*

Gains derived from exchange rate swaps, interest rate swaps, combined interest and exchange rate swaps, and forward exchange agreements will be treated as interest income. This amendment has a potential impact on cross-border swap payments that requires careful analysis.

Formal requirements to qualify for reduced rates or exemption under tax treaties and EU Directives

The formal requirements relating to certification of the tax residence of the recipient of Portuguese-source income are relaxed as follows:

- the deadline for filing the related forms is extended to the 20th day of the month following the one in which the liability for withholding tax arises;
- the validity of the forms is extended to two years (application of the EU Interest and Royalties Directive) or one year (in all other cases); and
- the payor can prove, at any time, that the conditions for the reduced rate or exemption to apply have been met.

c) *Advance Pricing Agreements (“APAs”)*

As from 2008, taxpayers can conclude unilateral APAs for domestic transactions and bilateral or multilateral APAs if they wish to include transactions involving countries that have signed a tax treaty with Portugal. The term of an APA will be defined, as will the circumstances for its renewal, although it should not be longer than three years. The APA will be binding on the taxpayer. If there are material changes in the transfer pricing rules or in the critical assumptions used, the tax authorities will no longer be bound by the APA. The procedures and information necessary for an APA to formally apply will be defined by a future Ministerial Order.

d) *The new regime applicable to Madeira companies licensed to operate between 2007 and 2013*

In the wake of the European Commission’s approval, the Portuguese Parliament also recently approved the new regime applicable to companies licensed to operate during the 2007-2013 period. Under the new regime, new companies that obtain a license to conduct business in the IBCM between 1 January 2007 and 31 December 2013 will benefit

from a reduced corporate income tax rate of 3% in the tax years running from 2007 through 2009, 4% from 2010 through 2012, and 5% from 2013 through 2020.

In order to be eligible for the new regime, companies must commence the business for which they are licensed within 6 months (international services) or one year (industrial free trade zone and international shipping register) and must:

- create between 1 and 5 jobs in the first 6 months and invest EUR 75,000 during the first two years of business on the acquisition of immovable or movable fixed assets; or
- create 6 or more jobs in the first 6 months of business.

In addition to the job creation requirements mentioned above, the tax relief is limited by a ceiling imposed on the tax base qualifying for the reduced rates as follows:

- EUR 2 million if 1 to 2 jobs are created;
- EUR 2.6 million if 3 to 5 jobs are created;
- EUR 16 million if 6 to 30 jobs are created;
- EUR 26 million if 31 to 50 jobs are created;
- EUR 40 million if 51 to 100 jobs are created; and
- EUR 150 million if more than 100 jobs are created.

Licensed companies engaging in industrial activities may benefit from a 50% reduction in their tax base, if the investment meets at least two of the following conditions:

- it must contribute to modernizing the local economy, namely through technological innovation in products and processes;
- it must contribute to diversifying the local economy, mainly through the pursuit of high value-added activities;
- it must contribute to attracting highly qualified personnel;
- it must contribute to protecting the environment; or
- it must create at least 15 jobs, which should be maintained for at least five years.

Companies licensed to operate in the IBCM may engage in a wide range of listed activities, although financial and insurance intermediation/auxiliary activities, and “intragroup services” (coordination, accounting and distribution centers) are expressly excluded.

The new regime provides that pure holding companies (“SGPSS”) are subject to tax at the applicable low tax rate, regardless of whether the

job creation requirements are fulfilled, on profits or capital gains derived from shareholdings, from non-EU shareholdings or from IBCM shareholdings. Profits or capital gains derived from shareholdings in other Portuguese territories or in other EU Member States benefit from the general participation exemption regime.

Lastly, companies incorporated in the IBCM and holding licenses issued before 1 January 2001 (under the first regime) will continue to benefit from corporate tax exemptions until 31 December 2011 and may benefit from the new regime as from 1 January 2012.

16. THE NETHERLANDS

Amendment to interest deductibility rules in 2008

On 18 December 2007, the Dutch Parliament approved the additional amendments to the tax proposals for 2008 that were announced on 18 September 2007. One of the amendments regards the proposal to tighten the rules on the deductibility of interest payments (including related costs and foreign exchange losses) on related-party debts which concern certain transactions specified in the law.

a) Background

Pursuant to Article 10a of the Corporate Income Tax Act ("CITA"), interest (including related costs and foreign exchange losses) on related-party debt is not deductible if the loan is obtained for one of the following purposes:

- a profit distribution or repayment of capital by the taxpayer or a company related to the taxpayer subject to CITA, made to a "related party" as defined by law;
- a capital contribution to a related company by the taxpayer, a company related to the taxpayer subject to CITA, or a related individual residing in the Netherlands;
- the acquisition of a new or the increase of an interest in an entity by the taxpayer, a company related to the taxpayer subject to CITA, or a related individual residing in the Netherlands who becomes related to the taxpayer after the acquisition of the new or increased interest.

An exception to the above rule applies if the taxpayer can show that the debt and the related transaction are predominantly based on sound business reasons. Furthermore, the interest will be deductible if the taxpayer can show that the interest is subject to "reasonable" taxation computed in accordance with Dutch tax rules at the level of the creditor.

On 1 January 2007, Article 10a of the CITA was amended as part of the tax proposals for 2007. The amendment clarified that "reasonable" taxation was considered to exist if the effective rate of tax paid on the creditor's profits was 10% (computed in accordance with Dutch tax rules).

b) Amendment in 2008

The currently proposed amendment allows the tax authorities to disallow the deduction of interest payments, even where the taxpayer shows that the interest is subject to taxation at an effective tax rate of at least 10%. Notwithstanding such "reasonable" taxation, if the tax authorities can show that the debt, or the transaction related to the debt, was not incurred or entered into for predominantly sound business reasons, they can still disallow the deduction of the interest. In other words, a double test now operates.

The scope of the amendment is potentially very wide as the deduction of interest can be disallowed in all cases where the taxpayer relies only on the exception of "reasonable" taxation at the level of the (related) creditor, i.e., even if the creditor is located in a high tax jurisdiction.

The amendment will be effective 1 January 2008.

Since no grandfathering regime is established for existing related-party debt, this amendment also affects existing related-party debt. Irrespective of the proposed amendment, the deductibility of interest is not restricted to cases where the taxpayer substantiates that the debt and the related transaction are predominantly based on sound business reasons in the first place (e.g. the financing of a capital reduction relating to a major restructuring process).

17. VENEZUELA

17.1 Partial reform of the Alcohol and Alcoholic Beverages Tax Law

Decree No. 5,618 having the Status, Value and Force of a Law Partially Reforming the Alcohol and Alcoholic Beverages Tax Law, was published in Special Official Gazette No. 5,852, on 5 October 2007. The Decree establishes the taxes levied on domestically produced or imported ethyl alcohol and alcoholic beverages for domestic consumption. According to the reform, the National Assembly may, by means of the Annual Budget Law, increase or reduce up to 50% of the tax rates applicable to ethyl alcohol and alcoholic beverages. In addition, the reform provides that the tax rate applicable to wines and beers will be increased from 8.5% to 15%, while the tax rate applicable to other alcoholic beverages of up to 50° Gay-Lussac will rise from 10% to 20%. The Decree entered into force on 15 October 2007.

17.2 Partial reform of the Cigarettes and Tobacco Products Tax Law

Decree No. 5,619 having the Status, Value and Force of a Law Partially Reforming the Cigarettes and Tobacco Product Tax Law, was published in Special Official Gazette No. 5,852, on 5, October 2007. The Decree establishes the taxes levied on domestically produced or imported cigarettes, tobacco and loose pipe tobacco for domestic consumption. According to the reform, the tax rate applicable to cigarettes will be increased from 45% to 70%, while the tax rate applicable to tobacco and loose pipe tobacco will rise from 30% to 70%. Manufacturers must pay the tax before product dispatches. Cigarettes, tobacco and loose pipe tobacco to be exported are exempt from this tax. The Decree entered into force on 15 October 2007.

17.3 Published Financial Transactions Tax Law

The Tax on Financial Transactions Law was published in Special Official Gazette No. 5,852 dated 5 October 2007, and entered in force on 1 November 2007. This tax is applicable to financial transactions by legal entities and unincorporated associations. The applicable rate is 1.5% of the transaction value and should be reported and paid on a monthly basis, except for transactions made through banks or financial institutions, which must withhold this tax and reimburse it daily to the National Treasury Office.

This tax is levied on debits in bank or other financial institution accounts, on the second endorsement of checks, on transfers of deposits and securities, on interbank transactions that take longer than two days, as well as on debt cancellations by entities or unincorporated associations considered as to be "special taxpayers" by the tax authorities or as related parties of special taxpayers, other than through the intermediation of banks or other institutions, such as payment in cash or in kind. Individuals and public entities are exempt from this tax. Lastly, this tax is not deductible for income tax purposes.

COURT CASES AND RULINGS

1. EUROPEAN UNION

1.1 SE and SCE: ECJ declares Belgium to have failed to fulfill its obligations under the Directive

In a recent judgment (in case C-392/07) the European Court of Justice ruled that Belgium has failed to fulfill its obligations under the Merger Directive as amended by Council Directive 2005/19/EC of 17 February 2005. Indeed, Belgium has failed to include the European Company (SE) and the European Cooperative Society (SCE) in the list of companies covered by the Directive. As a consequence, the tax-exempt transfer of a registered office of an SE or an SCE to Belgium is still not possible under Belgian law.

1.2 *Amurta*-case²

On 8 November 2007, the ECJ held in its judgment on the *Amurta* case (C-379/05) that the Dutch dividend withholding tax on outbound dividends paid to EU-resident parent companies was incompatible with the free movement of capital under EU law (Article 56 of the EC Treaty). The Court rejected the arguments of the Dutch Government which relied on the discrepancy between the Dutch and Portuguese national laws and the fiscal coherence of the Dutch tax system.

Under the Dutch legislation (then applicable), inter-company dividend payments were exempt from 25% withholding tax (2007 rate: 15%) where such dividends were distributed by a resident subsidiary to a parent company also resident in the Netherlands, on condition that the parent had a minimum shareholding of 5%. Under the Parent-Subsidiary Directive, inter-company dividends were, in the year concerned, exempt from the Dutch withholding tax if profit distributions were paid to a parent company that was resident in the EU, provided that it had a minimum shareholding of 25%

Amurta SGPS ('Amurta'), a Portuguese-resident company, held 14% of the shares in the capital of Retailbox BV ('Retailbox'), a Dutch-resident company. In 2002 Retailbox distributed dividends to its shareholders and had to withhold dividend tax on the distributions to Amurta. The EU Parent-Subsidiary Directive did not apply because Amurta held less than 25% of the shares in the capital of Retailbox. Amurta objected to the refusal to allow the withholding exemption to which other Dutch-resident shareholders were entitled, since it would have been entitled to the exemption had it been a resident of the Netherlands.

A second question for preliminary ruling was submitted: was the fact that Portugal granted a full credit for the Dutch dividend tax on the basis of its national laws of any

² Please note that Prof. Dr. Harrie van Mens, founding partner of Van Mens & Wisselink ("VMW") was one of the three judges that referred this case to the ECJ. Derk Prinsen, argued the case, prior to joining VMW as partner.

relevance in determining whether there was any incompatibility with the free movement of capital. The ECJ ruled that even if a full credit was available to Amurta on the basis of Portuguese law, the incompatibility of the Dutch legislation with EU law could not be neutralized by an advantage that existed in the legislation of another Member State.

Conclusion

The ECJ held that the freedom of movement of capital under EU law meant that Member States could not, as Dutch law then did, exempt resident companies from withholding tax on dividends from subsidiaries in the same Member State, but require tax to be withheld on payments to companies which were not resident in the same Member State. Prior to the ruling of the ECJ, the Netherlands had already changed its legislation: the exemption from withholding tax in the case of a qualifying corporate shareholder within the EU owning at least 5% now applies to both inbound and outbound dividends.

1.3 ECJ ruling: Failure of Greece to fulfill its obligations under EU legislation regarding the imposition of capital duty

The ECJ has ruled in Case C-178/05, that Greece has failed to fulfill its obligations under Council Directive 69/335/EEC in relation to the imposition of capital duty on the raising of capital. Such failure arises from the relevant provisions of Law 1676/1986, which implemented the Council Directive into Greek law.

Pursuant to Greek Law 1676/1986, capital duty is imposed on transactions including the transfer to Greece from another Member State of the effective center of management or registered office of a legal entity, which has not been subject to capital duty in that other Member State. Moreover, pursuant to the Directive, capital duty is chargeable when the transfer is made to a Member State in which the legal entity making the transfer is considered to be a capital company, but is not so considered in the Member State from which the transfer was made (i.e. the State of origin). Accordingly, a transfer is not subject to capital duty, if the legal entity making the transfer is considered in *both* Member States to be a capital company.

The ECJ ruled that the criterion used by the Greek Law in the transfer rules at issue (i.e., that capital duty is charged to the extent that the legal entity is not subject to capital duty in the State of origin) could result in capital duty being charged in Greece, even if the company concerned was also considered a capital company in the State of origin. That could be the case in particular, where the State of origin exempted such companies from the duty or applied a nil rate.

Furthermore, the ECJ took the view that, the exemption from capital duty enjoyed by shipping companies according to national law, was incompatible with Directive 69/335/EEC, since the conditions required by the Directive in order for an exemption from capital duty to be granted were not satisfied.

2. COUNTRIES

2.1 BELGIUM

Interest costs related to profit participating loan are tax deductible

The Belgian Ruling Committee has issued a ruling which confirms that interest costs connected to a profit participating loan or “PPL” are, in principle, tax deductible. In the same ruling, the Ruling Committee considered that the PPL is to be treated as a loan and not as (formal or informal) equity.

The fact that a PPL may be regarded as equity or any other form of capital in another country (such as the country where the lender of the PPL is established) was irrelevant as far as the Ruling Committee was concerned.

The request for a ruling was submitted by a Belgian company which was involved in the financing of other group companies. The funds required for this financing activity, were granted to the Belgian company by a foreign group company in the form of a PPL, the characteristics of which were that: (a) the term of the PPL was limited, (b) the borrower had to repay the principal in any case to the lender, or the principal had to be converted into shares of the borrower, (c) the repayment or conversion of the PPL principal and the payment of the interest had to be made on the basis of agreed and well-defined data.

In the case at hand, the total remuneration (principal and interest) to be paid on the PPL to the lender, was entirely dependent on the profits obtained by the borrower from the activity of financing the other group companies, minus a margin granted to the borrower.

A PPL as described above may be an interesting alternative in cases where the parties decide not to use or implement a notional interest arrangement.

2.2 INDIA

a) *Decision of the Delhi Tax Tribunal on existence of a permanent establishment where contracts are independent and do not complement each other*

In a landmark decision, the Delhi Tax Tribunal has laid down important principles for determining the existence of a permanent establishment (PE) in a situation where an entity executes multiple projects in another country. The Tribunal held that in the absence of a force-of-attraction rule in the tax treaty, the existence of PE for a particular project would depend on the time spent only on executing that particular project. Time spent on other projects would not be a decisive factor.

In the Ruling in question, the taxpayer, a Japanese company (Sumitomo Corporation), had established a liaison office (LO) in India to facilitate certain import-export activities. It had also established three project offices for the execution of other contracts. The taxpayer signed a contract for supervision of an installation activity. In relation to this contract, the LO of the taxpayer provided coordination

assistance. The income from supervisory services was taxed as a fee for technical services (“FTS”). The Indian Revenue held that since the taxpayer had a PE in India for other projects, income from supervisory activities would be attributable to the PE, and therefore, would be taxable as business profits. Furthermore, it was held that the LO of the taxpayer was also a PE.

The Tribunal held that for determining the existence of a PE, the minimum period test should be applied to each individual site or project unless such projects constituted a coherent whole, either commercially or geographically. Since the supervisory activities performed were distinct from other projects undertaken in India, no nexus could be established between these activities. Also, the India-Japan tax treaty did not provide for a force-of-attraction rule to attribute income earned from supervisory activities to the PE in India. Also, the LO did not constitute a PE for this project, since its activities were preparatory and auxiliary in nature. Therefore, the income from supervisory activities was held to be taxable as FTS under Article 12 of the tax treaty.

b) *First major decision on transfer pricing*

A comprehensive Transfer Pricing Law was introduced in India in 2001. Several high-profile transfer pricing audits have been performed since then, resulting in large adjustments and tax demands. However, it is only now that the Tax Tribunal has issued its first ruling (in the *Mentor Graphics* case) that fully addresses transfer pricing issues.

In the case in question, the taxpayer provided software development and marketing services to its parent company in the US. As a captive service provider, the taxpayer performed and assumed limited functions and risks. The Transactional Net Margin Method (“TNMM”) was used to demonstrate the arm’s-length nature of the services. The primary dispute before the Tribunal was the choice of comparables used for determining the arm’s-length price.

The Tribunal dealt with the comparability issues in detail and drew several distinctions in its analysis. It encouraged the use of diagnostic ratios such as ratio of fixed to operating assets while performing functional analysis. One of the important observations made by the Tribunal was that high profit- or loss-making companies should be excluded when benchmarking a captive service provider and this is in line with the OECD Draft Comparability Issues Notes. The Tribunal also observed that there was a tendency on the part of the taxpayer and the Revenue authorities to apply TNMM in a flexible manner without regard to the tenets of comparability analysis. The Tribunal emphasized that even where TNMM was applied, comparability principles should be paid due attention.

The Tribunal also underscored the importance of comparability adjustments and, particularly, adjustments for differences in working capital, risk and R&D. The importance of the OECD Guidelines was once again reiterated and it was stressed that reference to the Guidelines should be made where the domestic legislation is silent.

The Tribunal upheld the margin of 6.99% as an arm's length margin for provision of software services. Although subject to further appeal, this Ruling has come as welcome relief to many companies in the midst of complex transfer pricing audits in India.

c) *Tax Tribunal upholds existence of fixed place of business/PE in India of a UK-based company using the office premises of its subsidiary on a regular basis*

The Income Tax Tribunal has laid down certain principles for existence of a fixed place of business/PE where an entity uses office space belonging to its subsidiary for the purpose of its business. The taxpayer in question (Rolls Royce) sold aircraft engines and spare parts to customers in India. The taxpayer engaged its UK subsidiary to provide certain support services for its business in India. The UK subsidiary had set up offices in India to provide these support services. The office space of the UK subsidiary was frequently used by the taxpayer's employees during their visits to India for sales and marketing activities.

The Tax Tribunal held that that the taxpayer had at its disposal a fixed place of business in India which was frequently used by its employees for marketing and selling aircraft. The fact that the taxpayer did not have any legal rights over such premises was not relevant in determining the existence of a PE. The basic requirement for the existence of a PE is that the premises must be identifiable as separate and distinct and the taxpayer must be able to exercise control over such place.

Accordingly, the Tribunal ruled that the taxpayer did have a fixed place of business or PE in India. Since the PE was engaged in marketing and sale (but not the manufacture) of aircraft, 35 percent of the taxpayer's profits from sale of such aircraft engines were attributed to the PE.

2.3 PHILIPPINES

Recent developments affecting the tax treatment of the sale, barter or exchange of shares of stock listed on the Philippines Stock Exchange ("PSE")

Under Section 127 of the Tax Code of 1997 ("1997 Tax Code"), the sale, barter or exchange of shares of stock listed and traded on the local stock exchange, other than the sale by a securities dealer, is subject to stock transfer tax ("STT") equal to one half of one percent ($\frac{1}{2}$ of 1%) of the gross sale price or gross cash value of the shares of stock sold. On the other hand, the sale, barter or

exchange of shares of stock *not* listed or traded on the local stock exchange is subject to capital gains tax equal to 5%-10% on the net gain.

The STT was originally classed as a tax on income as it was regulated under Title II (Tax on Income) of the then Tax Code. In 1994, Republic Act No. 7717 moved the section on STT to Title V (Other Percentage Taxes). Under the 1997 Tax Code, the STT is still imposed under Title V.

The issue relating to STT stems from its application in light of the bilateral tax treaties signed by the Philippines with other countries. Under most Philippines tax treaties with other countries such as the United Kingdom or Singapore for example, residents of treaty countries are generally granted a tax exemption on capital gains from the sale of shares of stock in a domestic corporation where its assets do not consist principally of immovable property.

Prior to 2007, the International Tax Affairs Division ("ITAD") of the Bureau of Internal Revenue ("BIR") had ruled on several occasions that "notwithstanding the reclassification of the STT from Title II (Tax on Income) to Title V of the 1997 Tax Code, income from the sale, barter or exchange of shares of stock listed and traded on the local stock exchange, other than the sale by a securities dealer, is still covered by the provisions of tax treaties, which grant to residents of treaty countries a tax exemption on capital gains from the sale of shares of stock in a domestic corporation."

However, in ITAD Ruling No. 22-07 dated 9 February 2007, the ITAD reversed its earlier rulings. Applying Article 13 (Gains from the Alienation of Property) in relation to Article 2 (Taxes Covered) of the Philippines-Singapore tax treaty, the ITAD ruled that the intention of the Contracting States (that is, the Philippines and Singapore) in entering into the treaty was that the additional tax or the tax intended to replace existing taxes on gains from the alienation of property should only be a tax "on income." By moving the STT from the Title in the Tax Code regulating income taxes to the Title regulating percentage taxes, Congress had manifested its intention to class the STT as a percentage tax. The STT is not a tax on the earnings derived from the sale of stock, but rather an excise tax imposed on the privilege to sell shares of stock. Therefore, the STT cannot be considered an identical or substantially similar tax *on income* as capital gains tax. Accordingly, the ITAD ruled that a resident of Singapore could not avail itself of the benefit of exemption from capital gains tax under Article 13 of the Philippines-Singapore tax treaty on its sale of shares of stock in a Philippines domestic corporation that are listed and traded through the facilities of the PSE. Residents of other countries with which the Philippines has a tax treaty with similar provisions to those of the Philippines-Singapore tax treaty will likely be treated the same way as Singapore residents with respect to their sales of shares of stock listed and traded on the local stock exchange.

On 12 November 2007, the BIR issued RMC No. 73-2007 setting forth the guidelines on the proper treatment of block sales of shares of stock listed on the stock exchange. Under the RMC, where the sale of shares of stock listed on the local stock exchange is prearranged or there is a predetermined buyer, the applicable tax is capital gains tax and not STT. The PSE is contesting the RMC, which would subject the sale of shares of stock listed on the local stock exchange to either STT or capital gains tax. Pending resolution of the dispute, the implementation of RMC No. 73-2007 is currently stayed.

2.4 SPAIN

a) *Concept of “payments for technical assistance” under the Spain-Sweden tax treaty*

Spain has traditionally been an importer of intangible assets and this has led to the existence of not only a broadly-defined concept of “royalties” in Spanish tax legislation, with the consequent taxation in Spain (the tax rate is currently 24%), but also copious case law on the concepts of payments for technology transfers and, most particularly, for technical assistance (especially in cases where the payee was not resident in a State with which there was a tax treaty, or was resident but in a State the tax treaty with which expressly treated payments for technical assistance as royalties).

It is precisely the concept of “payments for technical assistance” that has been revisited by the Spanish Supreme Court in a recent (and controversial) judgment dated 21 June 2007, on payments for technical assistance under the Spain-Sweden tax treaty (which are treated by Article 12 as royalties).

The transaction examined by the Court was as follows:

- Company “A,” a resident of Sweden, had an indirect minimal holding in Company “B,” a resident of Spain.
- “B” entered into an agreement with “A” to provide services such as market research, viability studies, graphic design, the search for and recruitment of Spanish partners, and the recruitment and training of a General Manager.

This transaction was treated by “B” as a mere provision of services by independent professionals and therefore not taxable in Spain pursuant to Articles 7 and 14 of the tax treaty, which reserved the taxation of the income from such services exclusively for the payee’s State of residence.

However, Spain’s tax inspectors chose to recharacterize the income as royalties in reliance on the provisions of a 1973 Decree (now repealed) on technology transfers, which has been used traditionally (and questionably in our view) to define the concept of “technological” royalties, and which included within the concept of “technical assistance” the performance of studies, preparation of documentation and provision of personnel training.

Therefore, pursuant to Article 12 of the tax treaty, Spain’s tax inspectors argued that 10% tax should have been withheld on the payments.

The taxpayer appealed against the relevant tax assessments, and the case reached the Spanish Supreme Court, which, as a result of the above, held that:

- “technology” can be defined as a combination of types of knowledge that permit the modernization of production systems, and that may be introduced into such systems by various means, including technical assistance;
- as it entails specialist help, “technical assistance” constitutes a form of technology transfer *per se*; and
- since Article 12(3) of the Spain-Sweden tax treaty treats payments for technical assistance as “royalties,” such payments should be taxed in Spain at a maximum rate of 10%.

However, by mixing the concepts of payments for technical assistance, royalties and payments for technology transfers, in our view the Court has adopted the wrong approach in its judgment as they cannot be used interchangeably or synonymously.

b) *Exemption for double taxation of dividends from a Luxembourg securitization company*

Article 21 of the Spanish Corporate Income Tax Law provides for an exemption to avoid the double taxation of dividends received from foreign companies, subject to fulfillment of certain requirements including the requirement that the income distributed be from business activities carried on abroad.

The interpretation of this requirement is particularly difficult in certain cases. In principle, the Corporate Income Tax Law treats it as having been fulfilled if at least 85% of the revenues of the subsidiary in question meet three conditions at the same time:

- the revenues must not be “flow-throughable” income for the purposes of the international fiscal transparency rules,
- the subsidiary must have a human and material resources structure through which it generates the revenues, and
- the subsidiary’s transactions must not have been performed in Spain.

However, in practice, the above rules do not clearly cover all possible activities by subsidiaries such as, for instance, securitization activities.

In this connection, on 12 September 2007, the Directorate-General of Taxes published a binding ruling on a question raised by a Spanish company that planned to acquire a holding in a company which was tax resident in Luxembourg and engaged in asset securitization activities, regarding the applicability of the exemption for international double taxation.

In the case in question, the Luxembourg company had its own human and material resources structure and bore the risks of loans and other kinds of commitments to third parties, issuing securities the value or yield on which depended on such risks.

The DGT ruled that, all other conditions being met, the dividends of a Luxembourg securitization company could, in principle, fulfill the requirement that business activities be carried on abroad, since its securitized assets did not relate to loans granted to or by persons or entities resident in Spain, nor was there any relatedness between the parties, or with the Luxembourg securitization company itself.

c) *Licensing of sportspersons' image rights for the purposes of the Spain-Netherlands tax treaty*

Income from the licensing of image rights has always raised contentious issues from a Spanish tax standpoint, particularly in relation to the remuneration paid to entities formed abroad by artistes or sportspersons who rendered services to Spanish entities. Indeed, it was only in 2003 that a provision expressly characterizing such income as royalties (which is still the case) was included in the Nonresident Income Tax Law.

In this regard, a recently-published judgment from the National Appellate Court dated 18 July 2007 examines how income of this kind paid in 1999 to various entities that were tax resident in the Netherlands should have been characterized.

In that case, the Court heard an appeal against a decision of the Central Economic-Administrative Tribunal (the "TEAC"), an executive Tribunal within the Spanish Ministry of Finance, which had ruled that income obtained by the Dutch companies for licensing the image rights of certain soccer players should have been treated necessarily as royalties and, therefore, pursuant to domestic legislation, as income subject to withholding tax. The tax therefore ought to have been levied at 6% under the Spain-Netherlands tax treaty (the "Treaty") in force.

The Court dismissed the TEAC's arguments and found for the appellant taxpayer, because:

- the very definition of the Article on Royalties in the Treaty was silent on the licensing of image rights;
- the Treaty definition could not be expanded, since neither an inclusive interpretation of the provision nor a flexible definition were applicable, given that tax experts regarded these terms as tantamount to an analogy, something expressly prohibited in Spanish law for the purpose of widening the scope of the taxable event to the extent intended by the tax inspectors.

The judgment also contains some very interesting *dicta* on the relationship between tax treaties and the Commentaries on the OECD Model Tax Convention, since in the Court's opinion the Commentaries could not prevail over the letter of the Treaty that was signed, something which seems to support a static interpretation of tax treaties.

2.5 VENEZUELA

a) *The Tax Administration establishes new rules on invoices*

The Tax Administration has issued two new Administrative Rulings, No. 0591 and No. 0592, concerning the general provisions regulating invoices and other documents, and tax machines. The two Administrative Rulings were published in Official Gazette No. 38,759 dated 31 August 2007, and republished in Official Gazette No. 38,776 dated 25 September 2007, and are set to enter into force in February 2008. According to these Rulings, value added taxpayers are not the only parties required to issue invoices; income taxpayers may also be obliged to issue invoices for services that are not subject to VAT. In addition, the new Rulings stipulate that invoices issued abroad by nonresident or nondomiciled entities must at least include the name and domicile of the foreign entity, a description and the quantity of the good or service sold or provided, the date of issue, the total amount payable, and the name, domicile, and tax identification number of the Venezuelan entity receiving the services or acquiring the goods.

b) *The Political and Administrative Chamber of the Supreme Court considers the Science, Technology and Innovation Contribution to be a tax*

On 19 September 2007, the Political and Administrative Chamber of the Venezuelan Supreme Court rendered a decision, in which it held that the 1% contribution payable on the gross income of large enterprises (regarded as companies recording annual income in excess of VEB 3,763,200,000) was a tax regulated and provided for in the Science, Technology and Innovation Master Law and, therefore, was subject to the Master Tax Code. The contribution may be supplemented by investment in science, technical and innovation projects to promote the development of new technologies and sciences in Venezuela. The decision clarifies the treatment of this contribution, which had been the subject of major debate in the past year. In exercising of its legally vested powers, the Science and Technology National Observatory has initiated verification procedures at entities subject to this contribution.

OTHER NEWS

1. EUROPEAN UNION

1.1 The European Commission proposes changes to the VAT regime for financial and insurance services

The European Commission has recently proposed to amend Directive 2006/112/EC in order to modernize the VAT legislation on financial services and insurance. The three measures contained in the proposal are:

- the redefinition of the scope of exempt services;
- the possibility for banks and insurance companies to elect to tax their services if they wish.; and
- the introduction of an industry-specific VAT exemption on cost-sharing arrangements, including cross-border arrangements. The proposal for a Council Directive needs to be agreed unanimously by the Member States after consultation of the European Parliament. Once approved by the Council of Ministers, the Directive (with a proposed effective date of 1 January 2012) still needs to be transposed into national law. As a consequence of the proposed changes, banks and insurance companies—when electing to tax their services—will also be entitled to a VAT refund.

1.2 Modification of transitional measures applicable to Belgian coordination centers

The European Commission announced on 13 November 2007 that the Belgian Law of 27 December 2006 was incompatible with the common market. The Law is the product of a long-running legal dispute between Belgium and the European Commission resulting in the ECJ judgment of 22 June 2006. The ECJ confirmed that the Belgian coordination center system constituted a state aid scheme that was incompatible with the common market, although at the same time it annulled part of the Commission Decision of 17 February 2003 as it did not provide transitional measures for “those coordination centers whose request for re-authorization was pending on the date the contested decision was notified or whose authorization expired at the same time the aforementioned decision was notified or shortly thereafter.”

In response to the annulment of the Commission Decision, Belgium enacted the Law of 27 December 2006, which stipulates that coordination centers would all have the possibility of renewing their authorization until the end of 2010. The Law did not make a distinction between coordination centers whose authorization expired shortly after the Commission Decision in 2003, and other coordination centers whose authorization was valid for a longer period of time when the Commission adopted its Decision.

The new Decision adopted by the European Commission on 13 November 2007 rejects the Belgian point of view. The Commission considers that the Court explicitly limited the scope of the transitional measures “to cover the situation of certain centers whose authorization expired shortly after the decision of 17 February 2003”³. In its new Decision, the European Commission has set 31 December 2005 as the deadline for the coordination centers to modify their tax status.

This Decision affects approximately 30 Belgian coordination centers.

The deadline date of 31 December 2005 was chosen on the basis of “(1) the positions expressed by Belgium and the coordination centers after the decision of 17 February 2003 to the Commission, the Council of the European Union or the Court, (2) estimates by the recipients of the period necessary to adapt to the end of the system, (3) the entry into force of new tax measures providing the centers with an attractive alternative and, especially, (4) the limit fixed by Belgium at 31 December 2005 for authorizations renewed since 17 February 2003”⁴.

The EU Competition Commissioner Neelie Kroes said that “the Commission has granted Belgium the period of transition that it desired in 2003 and from which the companies concerned have in fact benefited. It would not, however, have been reasonable to authorize all centers to benefit until the end of 2010 from a system that ceased to be compatible in 2003.”

For Belgian coordination centers whose authorization would only have expired after 2005, the transitional period still remains valid until the expiry of the initial authorization, but in any case no later than 2010.

1.3 European Commission refers Greece to the ECJ due to discriminatory taxation of inbound dividends

The European Commission has decided to refer Greece to the ECJ, because Greece exempts from income tax dividends paid by Greek companies to individuals, while taxing dividends paid by companies established in other Member States. As far as this different treatment is applied to dividends from companies established in EU Member States, the Commission considers it to be discriminatory and contrary to EU legislation on the free movement of capital.

According to the Commission, the ECJ has ruled that a different treatment of dividends according to their origin constitutes a restriction of the free movement of capital, guaranteed by the EC Treaty. In cases where the individual shareholder has control over the foreign company, the same difference in treatment has been held to constitute a restriction of the freedom of establishment also guaranteed by EU legislation.

³ See EU Press release, IP 07/1682, 13/11/2007.

⁴ See footnote 1.

Note that the Commission had previously sent a Reasoned Opinion to Greece, on the issue. In its answer, Greece argued that the individual recipients of inbound dividends are entitled to an ordinary tax credit (i.e., in respect of tax paid abroad which can be credited against the tax payable on foreign-source income) for any withholding tax actually paid abroad. However, the Commission considers that due to the progressive individual income tax scales applied, the credit method may nevertheless lead to higher taxation.

1.4 Poland: Extended application of reduced rates

On 4 December 2007 the Council of the European Union agreed on the extension of the application of the temporary reduced VAT rates until 31 December 2010. This derogation, included as a transitional rule in the Accession Treaty, would otherwise have expired at the end of 2007.

For the next three years Poland may continue to apply a zero VAT rate to the supply of certain books and specialist periodicals and a reduced rate of 7% to restaurant services, construction, renovation and alteration of homes and to the supply of new residential buildings, as well as a reduced 3% rate to the supply of most foodstuffs.

This means, in particular, that a 7% rate will apply to all supplies of new homes, and not just those falling within the "social housing" category (an issue already commented on in Taxand Quarterly issue 8).

2. COUNTRIES

2.1 INDONESIA

a) *Tax incentives granted to 58 companies in Indonesia*

The Government has granted tax incentives to 58 companies. This is in line with its bid to attract new investment and expand business in the country. The approvals for tax incentive applications under Government Regulation 1/2007 have already been sent out by the Ministry of Finance's Directorate General of Taxes to the Capital Investment Coordinating Board and to each of the 58 companies. Under the Government Regulation, a company can write off 30% of the total cost of its investment against tax, at the rate of 5% per year over a six-year period. Aside from the tax allowance, new investments in certain industries and regions qualify for accelerated depreciation and amortization over a maximum of ten years, a reduced income tax rate of 10% will be charged on dividends paid to nonresident taxpayers (Article 26), and losses incurred more than 5, but less than 10, years ago can be offset against income, subject to certain conditions being met.

The Government appears to prefer the granting of tax allowances under the Government Regulation to foreign investors to the granting of tax holidays.

b) *Negative list of investments*

Under Presidential Regulation No. 77 dated 3 July 2007, the Government has clarified which industries are closed/open to investments. A "negative list of investments" was issued by the Government to strike a balance between its initiatives to attract more foreign investment and the need to protect certain national interests, including SMEs.

The negative list of investments can be broadly categorized as follows:

- Lines of business completely closed to any investment.
- Lines of business open to foreign investment, but subject to certain conditions (i.e., lines of business reserved for cooperatives, micro, small- and medium-sized enterprises; and lines of business subject to partnership conditions, investment conditions, requirements to operate in certain locations, or special permits).

The schedules to the Presidential Regulation contain a detailed list of industries in each of the above categories.

A maximum limit on foreign capital in certain industries and types of business has also been set. For example, foreign investors can acquire the following maximum stakes in companies operating in the industries and businesses listed below: 95% in energy and mineral resources; 50% in culture and tourism; 49% in nursing services, 65% in healthcare support services, 75% in pharmaceuticals; 80% in insurance, 85% in leasing, nonleasing, venture capital and 99% in banking and financial services; 49% in telecommunications networks and other multimedia services, 65% in close-fixed networks, mobile networks, satellite, ISPs, and 95% in data communication system services and in communications and IT; 55% in public works; 49% in national education; 49% in business management and consultation services and 60% in direct selling through retail marketing networks; 49% in transportation and 95% in agriculture.

Existing investments are not affected by the new Presidential Regulation.

SPECIAL FEATURES

INTERNATIONAL TAX - THE ADVENTURES OF BOB AND RALPH

Picture this: Loosey Goosey Inc.'s tax management in Paraguay is the responsibility of the local controller, Bob, because operations there are relatively small. Bob has been in the country for many years and has decided to settle there permanently.

Several years ago, Bob found a reputable local accounting firm (it was just a coincidence that the managing partner was his brother-in-law) to handle all of the company's local statutory reporting and tax compliance matters. The firm also makes practical tax planning and savings suggestions on occasion.

During their regularly scheduled monthly lunch meeting in August, Bob mentioned that Loosey Goosey was having a banner year in Paraguay, especially with the weak dollar. Yet Bob was worried about the large tax bill that would be due on these big profits. The managing partner/brother-in-law mulled over it for a little while. He then suggested a tax planning strategy using a sale/leaseback arrangement in conjunction with a bank (it was just a coincidence that the managing partner/brother-in-law has close connections there). Loosey Goosey could use the arrangement to reduce its local tax liability in 2007.

The managing partner/brother-in-law assured Bob that this kind of tax planning was done all the time in Paraguay. On top of that, he also told Bob the tax authorities were familiar with the arrangement and had accepted it upon audit with the firm's other clients. So there was little risk that anything could go wrong.

Bob contemplated the recommendation for a couple of days. He figured it sounded good: the arrangement could help his subsidiary's profits (of course, Bob's annual bonus had no bearing here) increase even more.

After all, Bob had full responsibility for taxes in Paraguay (translation: he had only minimal contact with the holding company's tax department in the US). He had always been a conservative kind of guy who knew how to manage risk appropriately. He was confident there would be no US tax impact from the transaction (other than to reduce the amount of any future dividends back to the US). Finally, because of the small size of the subsidiary, he didn't need approvals from the US, especially since none had ever been needed in the past. Being a take-charge kind of guy, Bob concluded that he should execute the arrangement since it seemed to carry very little risk with it.

The following Monday, Bob called the managing partner/brother-in-law and gave him the green light to implement the tax planning strategy. The managing

partner/brother-in-law agreed to move quickly on setting up the plan since the tax savings would not start until the plan was in place and running.

However, he also said that he needed Bob to sign a new, but standard, engagement letter to cover the tax planning in order to comply with local professional accounting policies before he could start work. The standard terms in the letter prohibited disclosure of any information to any third party, including the disclosure of regular tax return data. Although there was some question about the legal validity of the disclosure clause, the managing partner/brother-in-law continued to include them all of his letters just in case.

Bob received the letter on Wednesday, looked over it and signed it. The letter indicated that the fee would be about USD 50,000 for a feasibility study to see if the transaction would be a fit. Then there would be an additional USD 225,000 of fees to implement it.

By the following Monday, the tax team was in Bob's office and starting work. The strategy worked very well and the hoped-for tax savings were realized. Bob would look like a hero and could anticipate a substantial bonus for his efforts.

Meanwhile, thousands of miles away at Loosey Goosey's corporate headquarters in the US, Ralph, who had been in the tax group there for more than 10 years and was in charge of international tax reporting, was taking a breather after having just been through a tough, but successful, season in implementing FIN 48 at the company. The tax return for 2006 had also been finished, and in a few weeks Ralph's thoughts would turn to year-end stuff.

Unfortunately, Loosey Goosey's tax group is understaffed. They are forced to concentrate their limited time on high-risk, troublesome areas since it is physically impossible to look at everything. So at the tax group's annual fall planning meeting, the Paraguay office was not reviewed or discussed because it's such a small operation. Then early in 2008, Ralph sent Bob the usual tax reporting and compliance package - essentially the same one he'd been sending for years. Out of the 60 or so questions in the package, there was only one that was relevant to the new tax strategy Bob had just implemented: "Were there any reportable transactions during the year?"

When Bob completed the package, his answer to this particular question was "no," just as it had been in past years. And since the headquarters office never followed up, Bob had no expectation of being asked anything else on the matter.

Back in the US, Ralph didn't probe any of Bob's answers because Paraguay wasn't even on the tax group's radar screen. Even during the final preparation of the US corporate tax return, when Ralph ensured that all required tax shelter filings and disclosures had been made, nothing unusual was detected.

Here you have a tax disaster in the making. Loosey Goosey is a fictional company, but there are other stories out there that are all too real. Many corporations with

subsidiaries in countries other than the US need to emphasize compliance with the final regulations on reportable transactions.

1. What Do the Final Regulations Say About Foreign Reportable Transactions?

On 3 August 2007, the Internal Revenue Service released Treasury Decision 9350. It finalized the proposed Treasury regulations under Section 6011 dealing with reportable transaction disclosures.

Although the final regulations contain no material changes from the proposed regulations, other than removing the need to report transactions involving a brief asset holding period and adding transactions of interest as a category of reportable transactions, they continue to require detailed reporting for transactions occurring outside the US in essentially the same manner as those prepared for US units.

Specifically, the final regulations require every taxpayer that has participated in a reportable transaction to file a disclosure statement to report the transaction. The disclosure is made by filing form 8886.

In determining whether transactions entered into by a foreign subsidiary must be reported, the subsidiary must analyze its activities as if it were a US company. While reporting is not mandatory for all foreign operations, it is necessary in two situations: when the US company is a US shareholder in a controlled foreign corporation (i.e., the US parent company owns 10 percent or more of the voting stock of the foreign subsidiary); or where the US company owns 10 percent or more of the shares of a passive foreign investment company that has made a qualified electing fund election. In reality, this covers most foreign operations of US companies.

Transactions that are considered reportable and require disclosure under the final regulations include listed transactions, confidential transactions, contractually protected transactions, loss transactions and the newly-added category of transactions of interest. Transactions that are substantially similar to either a listed transaction or a transaction of interest must also be disclosed.

1.1 Listed transactions

A listed transaction is the same as or substantially similar to transactions the IRS has publicly determined to be a tax avoidance transaction. The IRS keeps an updated inventory of listed transactions on its website under the Abusive Tax Shelters and Transactions section. It also periodically publishes compilations of all listed transactions at the time of publication.

1.2 Confidential transactions

A transaction is confidential if the taxpayer is restricted from disclosing the transaction to others. When the total fees paid to a tax adviser for an idea or its implementation exceed USD 250,000, a taxpayer should take steps to ensure the transaction is not confidential — because only transactions that are both confidential and

incur advisory fees of USD 250,000 or more must be reported. Many professional advisers outside the US routinely include confidentiality clauses within the general business terms of their engagement letters. Signing an engagement letter with such terms could trigger the disclosure requirement if the fees reach USD 250,000.

1.3 Transactions of interest

The new category of reportable transaction, transactions of interest, is an attempt by the IRS to create a "watch list" of transactions. The IRS may consider anything on the watch list reportable at some later point, but if a transaction is on that list, it signifies that the IRS hasn't decided its status. Transactions of interest can be announced in any published form of IRS guidance at any point in time. Additionally, the rules associated with disclosing substantially similar transactions apply to transactions of interest, not only to listed transactions.

1.4 Substantially similar transactions

A substantially similar transaction is like either a listed transaction or a transaction of interest *if* it is expected to obtain similar tax consequences *and* is either factually similar to or is based on a similar tax strategy. This definition is very loose, and the regulations themselves indicate that the term "substantially similar" is intended for broad application.

1.5 Penalties

The penalty for failure to file the required form 8886 is generally USD 50,000 for each failure to disclose a reportable transaction. However, this amount quadruples to USD 200,000 for the failure to report a listed transaction. These are pretty steep penalties, and the law provides only a limited ability to rescind a penalty once it has been imposed. The worst part is that if a penalty is imposed for the failure to report a listed transaction, the penalty may be required to be disclosed in the company's publicly available Securities and Exchange Commission (SEC) filings. This is not where a taxpayer wants to be.

2. So what about Bob and Ralph?

Bob is a good company man and has just been doing what he has always done. Ralph is also a good company man, but he is struggling to keep up with his workload — especially with all the "new" detailed reporting that has been added to his plate in the last couple of years. There are five things these two should have taken into account in dealing with Loosey Goosey's tax affairs.

- First, Bob's transaction in Paraguay should have been reported on a form 8886 attached to Loosey Goosey's 2007 US tax return. And Bob should have categorized the transaction as a confidential transaction.
- Second, it just so happens that the sale/leaseback transaction that Bob implemented in Paraguay is strikingly similar to the type of sale/leaseback transaction that was identified in Notice 2005-13 as a listed transaction. So even though Bob's sole motive in signing up for the transaction was to

reduce his subsidiary's tax in Paraguay (increasing net profits, by the way), the transaction is still substantially similar to a listed transaction. It must be reported as such.

- Third, the combination of Bob's attempt at tax planning without the involvement of the US tax group and Ralph's practice of not to look closely at Paraguay for 2007 subjected Loosey Goosey to a potential penalty in the US of USD 200,000 for the failure to report a listed transaction. Loosey Goosey could also be required to report any penalty in its SEC filings. This failure would probably qualify as a CLM (career limiting move) for Ralph and worse for Bob.
- Fourth, the transaction is a confidential transaction since the managing partner/brother-in-law regularly includes disclosure limitation language in the terms and conditions section of his standard engagement letters. Plus, the total fees for the project exceeded USD 250,000. Remember: there was the USD 50,000 that Bob paid his brother-in-law for the idea besides the implementation fee of USD 225,000.
- Finally, in a strange twist, the fact that Bob reduced taxes in Paraguay could end up increasing Loosey Goosey's US taxes when the subsidiary's earnings are repatriated to the U.S. However, in spite of this anomaly, the transaction must be reported.

3. Alvarez & Marsal Taxand says

The situation confronting Bob and Ralph is a tough one. Unfortunately, it's not necessarily uncommon. The story illustrates that a cookie-cutter approach to foreign reporting packages is not enough with the new regulations.

The finalization of the Section 6011 regulations means that having an early and full understanding of all relevant transactions entered into by all foreign entities in which an equity interest is owned is now more important than ever. Someone trying to be a hero by saving on taxes half a world away can create big problems for an unknowing US tax group, including maybe reporting the listed transaction penalties assessed to the SEC. If that were not enough, the imposition of one of these penalties could lead to a "material weakness" designation by Loosey Goosey's internal and financial auditors.

That's why you have to review subsidiary activity thoroughly, ask questions and make sure you get answers to every question. The consequences are just too great to let something like this slip by.

If you haven't yet reviewed your foreign engagement letters for all relationships in which the total fees could exceed USD 250,000, do it now. This small exercise could save a lot of angst and time later.

One parting anecdote before we leave this edition of the adventures of Bob and Ralph. Because of the staffing issues at Loosey Goosey's headquarters, the annual US tax reporting on form 5471 for its international activities was co-sourced to a local CPA firm. If Loosey Goosey

were an Alvarez & Marsal Taxand client, we would need to advise the company its 2008 international tax positions must either meet the new "more likely than not" standard or be disclosed on its tax return for the year. That's because of the increased tax return preparer penalties under the Small Business Work Opportunity Tax Act of 2007 and the absence of other disclosures in the tax return. Even though there was no impact on US tax this year, Loosey Goosey would want to monitor that position, especially when Paraguay pays a dividend to the US holding company.

Our final word to the wise: stay close to your subsidiaries and make sure your tax team can maintain a long reach. And think twice before hiring your brother-in-law.

THE DUTCH COOPERATIVE IN INTERNATIONAL TAX PLANNING

The most oft-used legal form for a Netherlands holding company is that of a BV or private limited company. To an increasing extent, however, Netherlands holding companies are taking the legal form of cooperatives. This article addresses why this is the case, with reference to the Dutch tax position of cooperatives and their members.

A cooperative is an entity which has legal personality under Dutch company law. Cooperatives are associations (in Dutch: "*verenigingen*") and have to be formed under a notarial deed. This deed contains the cooperative's articles of association. The objects clause in the articles must state that the aim of the cooperative is to provide for certain material needs of its members under agreements. Unlike an ordinary association, however, a cooperative is allowed to make profits for distribution to its members.

Cooperatives have to be formed by at least two members. It is believed, however, that a cooperative can continue to validly exist with a single member. Capital for a cooperative can be raised in various ways. Members can contribute capital to the cooperative, for example. As opposed to BVs, cooperatives do not have a minimum capital. Members of a cooperative can elect to limit their liability for the cooperative's debts to, for instance, the amounts they have contributed on becoming members. In that event, the name of the cooperative has to include the "U.A." suffix, which stands for limited liability in Dutch.

Unless the articles of association provide for this, membership of a cooperative cannot be transferred. Normally, there is no restriction on members surrendering their membership or on third parties becoming member of the cooperative. The articles can restrict the departure of members and the admission of new members, however. Members must each have at least one vote at general meetings.

Cooperatives are taxable persons for corporate tax purposes. The calculation of the basis of assessment for corporate tax purposes for cooperatives does not differ from that for BVs except where profits are distributed to individuals: subject to certain requirements and limits, such distributions are deductible for corporate tax purposes. Cooperatives qualify for the participation

exemption regime on the same conditions as other corporate taxpayers. Cooperatives can also form a fiscal unit (consolidated group) with other taxable entities.

The tax position of the members of a cooperative is comparable with the tax position of the shareholders of a Dutch BV or NV, subject to a limited number of exceptions. One of the principal exceptions is that profit distributions by cooperatives are not subject to dividend tax. Dividend tax is a withholding tax on distributions of profits (dividends) by a company with a share capital. The statutory rate is 15% and the basis of assessment or tax base is the gross amount of the profit distribution. Distributions of profits by cooperatives fall outside the scope of dividend tax because cooperatives are not classed as companies the capital of which is divided into shares.

Nonresident members are liable for income tax or corporate tax on profits obtained by reason of membership in the event that their membership constitutes a substantial interest and cannot be allocated to the assets of a business. This occurs where a member is entitled to at least 5% of the annual profits of the cooperative, or to at least 5% of the proceeds from the liquidation of the cooperative. Members residing in a country which has signed a tax treaty with the Netherlands will not usually be taxed on gains by reason of their membership of the cooperative, as the tax treaty will usually grant the right to tax the gain to the member's country of residence.

Although distributions by a cooperative are not subject to dividend tax, distributions of profits may still fall within the scope of the Article on dividends in a tax treaty. Consequently, profit distributions by a Dutch cooperative to a member residing in a country with which the Netherlands has a tax treaty may be taxed in the Netherlands at a reduced rate on the gross amount of such distributions. The proceeds from the liquidation of a cooperative will generally fall within the scope of the Article on capital gains in tax treaties. Consequently, such proceeds will generally not be subject to any Dutch taxation.

Pursuant to the Kingdom Tax Arrangement between the member countries of the Kingdom of the Netherlands, including the Netherlands and the Netherlands Antilles ("KTA"), the Netherlands can tax a profit distribution by a Dutch company to a Netherlands Antilles company at a certain rate. The tax has to be a withholding tax. As mentioned, Dutch dividend tax is classed as a withholding tax, unlike income tax and corporate tax. Profit distributions by a cooperative cannot be subject to dividend tax. There is no other withholding tax in the Netherlands on profit distributions. As a consequence, distributions of profits by a cooperative to a member resident in the Netherlands Antilles are not taxable in the Netherlands.

The following conclusions can be drawn from the above: if a nonresident member does not have a substantial interest in a cooperative, in other words, the member is entitled to less than 5% of the annual profits of the cooperative or less than 5% of the proceeds from the liquidation of the cooperative, the member will normally

not be subject to Dutch taxation on profits obtained by reason of its membership. The same holds true where a nonresident member has a substantial interest in a cooperative, operates an enterprise (in another country) and allocates the membership of the cooperative to the assets of that enterprise. In both cases it is interesting for a nonresident to be a direct member of a Dutch cooperative and to use it, for example, as a holding entity.

If a nonresident member has a substantial interest, but does not operate an enterprise, or operates an enterprise but cannot allocate its membership to the assets of that enterprise, a distinction must be made between the situation where the member is resident in a country which has signed a tax treaty with the Netherlands and the situation where the country has not. In the former situation, normally, only profit distributions will be taxable in the Netherlands and the tax treaty limits the income tax or corporate tax rate to the rate at which dividends are taxed in the source country under the treaty. Normally, capital gains and liquidation proceeds by reason of membership will not be taxed in the Netherlands. In the latter situation, profits obtained by reason of membership, including profit distributions, capital gains and liquidation proceeds, will be fully subject to Dutch income or corporate tax. In either situation, it is advisable to consider structuring the membership of the cooperative via a Netherlands Antilles holding company.

It may also be advantageous to structure the membership of the cooperative through a holding company in the EU. In that case, profit distributions may qualify for exemption from taxation in the Netherlands under the EU Parent-Subsidiary Directive. Note that cooperatives are listed in the Annex to that Directive. However, also note that the exemption of profit distributions from source-country taxation under the Directive has only been implemented in the Dutch Dividend Tax Act, and not in the Dutch Corporate Tax Act. The Ministry of Finance has stated that profit distributions to nonresident taxpayers that are exempt from dividend tax pursuant to the rules in the Dividend Tax Act implementing the Parent-Subsidiary Directive are also exempt from corporate tax if the relevant conditions are met, provided that there is no fraud or abuse of law. Profit distributions by a cooperative do not fall within the scope of the Dividend Tax Act and, consequently, there is some doubt as to whether what the Ministry of Finance has said also applies to profit distributions by cooperatives.

Another aspect to bear in mind is that if a cooperative operates a business, the place of management of which is located in the Netherlands, membership of the cooperative gives the right to a share in the profits of the business and that such share in profits is not a "security". The Corporate Tax Act contains a fiction on the basis of which such share in profits is treated as a Dutch PE. The problem in this case is that it does not seem possible to rule out that membership of a cooperative is not represented by a security. Members of a cooperative that are resident in a country which has signed a tax treaty with the Netherlands would appear not to be confronted by the PE fiction, given that tax treaties contain their own definition of "permanent establishment" and, arguably, a share in the profits of a business in the Netherlands by

reason of membership of a cooperative falls outside of the scope of this definition. In non-treaty situations, however, it may be advisable to ask the Dutch Tax Authority to confirm beforehand that the fiction of a PE does not apply.

Lastly, the exception to the participation exemption eligibility requirement that the shareholding in the subsidiary account for at least 5% of the nominal issued share capital has ceased to exist since the beginning of 2007. Before 2007, smaller shareholders were also eligible for the participation exemption in the event that the shareholding satisfied certain additional requirements. An interesting aspect of cooperatives is that a member is eligible for the participation exemption even if it has contributed less than 5% of the capital of the cooperative.

CHINA: REGULATIONS FOR NEW CORPORATE INCOME TAX LAW

In December 2007, China issued the Detailed Implementation Regulations ("DIR") for the new Corporate Income Tax Law ("new Law") which will become effective 1 January 2008. The following are some highlights of the DIR.

1. Place of effective management

Taxpayers are now classed as Resident Enterprises and Nonresident Enterprises. Resident Enterprises are enterprises that are formed in the territory of the PRC under PRC law, or enterprises formed under the laws of a foreign country (district) but having their effective management organization in the PRC.

The DIR define "place of effective management" as establishments that exercise substantial and overall management and control over the production and business operations, personnel, accounting, properties, etc. of an enterprise.

Hendersen says:

This detailed definition of "places of effective management" is still broadly worded, and leaves considerable room for interpretation by the State Administration of Taxation (SAT) and local tax authorities.

If the parent company or head office formed outside China is a "paper" company which does not have business substance, there may be a risk that the parent company or head office could be deemed a Chinese tax resident. This is consistent with the spirit of several recent PE cases assessed by the SAT.

2. Withholding tax rate

The applicable tax rate for Nonresident Enterprises on Chinese-source income is reduced to 10%. The rate under the new Law is 20%. It is also clarified that the dividend withholding tax rate is also 10% (dividends were previously exempt).

Hendersen says:

The holding structure should be revisited to take advantage of lower treaty rates. The tax treaties with Mauritius, Barbados, Luxembourg, and Singapore, as well as the tax agreement with Hong Kong, etc., may provide for a lower WHT rate on dividends, and on other items such as interest, royalties, etc.

In the case of holding companies based in the BVI (which is a common investment vehicle for China subs), it is possible to use a migration process to change the place of incorporation to Mauritius without triggering any taxable event. Hendersen Taxand is working closely with Multiconsult (the Taxand member firm in Mauritius) in this regard.

3. Grandfathering rules

The grandfathering rules for current incentives available to existing FIEs in the next five years are not indicated in the DIR. Based on information provided by the relevant officials, the rules will be clarified in subsequent circulars.

Enterprises qualifying for grandfathering treatment must have been "approved to be established" prior to the date of enactment of the new Law, 16 March 2007. The DIR make it clear that "approval" means that the business registration must have been issued before this date.

4. State-encouraged high/new technology enterprises can enjoy EIT rate of 15%

To qualify for the reduced EIT rate, high/new technology enterprises ("HNTEs") must meet the following criteria: 1) they must own intellectual property ("IP") rights; 2) their annual R&D expenditure must account for a prescribed percentage of total income; 3) income from the sale of qualified products and technical fee income must meet a prescribed percentage; 4) the number of R&D staff must account for a prescribed percentage of the total workforce.

Apart from the reduced EIT rate, an HNTE may qualify for other tax reliefs such like the additional 50% deduction bonus.

The relevant rules for assessing "HNTE" status will be jointly issued by the Department of Science, Ministry of Finance and SAT.

5. General anti-avoidance rule

If an enterprise engages in a business arrangement without *bona fide* commercial purposes that results in a reduction of its taxable revenue or taxable income, the tax bureau has the right to make adjustments based on reasonable methods. A "business arrangement without *bona fide* commercial purposes" is an arrangement the major purpose of which is to gain a tax advantage by for instance reducing, exempting, or delaying the payment of taxes.

6. CFC rules

The DIR definition of “controlled foreign corporation” is similar to the US definition. A foreign enterprise will be a CFC when Chinese-resident enterprises and individuals each directly or indirectly hold 10% or more of total voting shares, and jointly hold more than 50% of total shares. There is also a “substantial control” provision when these percentage tests are not met.

The DIR also provide that the effective tax rate of the foreign enterprise must be less than 12.5% (less than 50% of China’s tax rate) to trigger the CFC provisions.

It is expected that considerable additional guidance will be provided later.

7. Thin capitalization

Where the debt-equity ratio of an enterprise (derived from the borrowing from related parties) exceeds a prescribed ratio and results in an interest expense, the portion of the interest expense relating to the debt exceeding that ratio will not be deductible when computing taxable income. “Debt” refers to all the “interest-bearing debt” from related parties, including back-to-back loans, loans guaranteed, or with assets pledged, by related parties, or where related parties are jointly liable. The prescribed ratio will be specified in upcoming regulations.

8. Cost Sharing Arrangements (“CSAs”)

CSAs cover both intangible assets and services, based on the arm’s-length principle, and the costs and expected benefits should be matched. This represents a significant shift in the position under previous income tax laws and regulations.

Having said this, the indirect tax treatment of CSAs (e.g. for business tax purposes) remains unclear.

9. Major changes to deductible expenses in the DIR

Employee training expenses incurred by an enterprise are deductible up to the limit of 2.5% of total wages and salaries. Any undeducted expenses above this limit can be carried forward.

Entertainment expenses are deductible to the extent of 60% of the expenses incurred, although total entertainment expenses must not exceed 5‰ of sales (operating) revenues for the current period.

In the case of advertising expenses and marketing expenses, the deductible amount must not exceed 15% of sales (operating) revenues for the current period; any undeducted portion above this limit can be carried forward.

Expenditure on public interest donations may be deducted when computing taxable income if it does not exceed 12% of the year’s total profits. In the past, FIEs were not subject to any limit on public interest donations.

“Purchased” goodwill is no longer amortizable. “Purchased” goodwill is only tax deductible at the time of disposal or liquidation of the entire enterprise (hence the importance in any asset acquisition of identifying the specific intangibles acquired to minimize the amount of goodwill).

MAURITIUS TAX TREATY NETWORK

Mauritius has negotiated an extensive network of tax treaties with a number of developed and emerging economies in Europe, Africa and Asia. Some treaties are still awaiting ratification. The Mauritius tax treaty network is summarized below. The table also lists the countries with which Mauritius has signed an Investment Promotion and Protection Agreement (“IPPA”).

Year		Country	Dividends (a) %	Interest %	Royalties (b) %	PE if building site lasts more than (months)
Signed	Ratified					
1978	1981	Germany #	5/15(d)	(f)	15	6
1980	1982	France #	5/15(c)	(f)	15	6
1981	1987	United Kingdom #	10/15(c)	(f)	15	6
1982	1985	India #	5/15(c)	(f)	15	9
1992	1992	Zimbabwe \$	10/20(d)	10/0 (h) (o)	15	6
1992	1992	Sweden #	5/15(c)	15/0 (h)	15	6
1992	1993	Malaysia	5/15(c)	15	15	6
1994	1994	Swaziland \$	7.5	5	7.5	6
1990	1995	Italy	5/15(d)	(f)	15	6
1994	1995	China #	5	10	10	12
1994	1995	Pakistan #	10	10	12.5	6 in any 12
1994	1995	Madagascar #	5/10(d)	10	5	6
1995	1996	Singapore #	0	0	0	9
1995	1996	Botswana	5/10(d)	12	12.5	6
1995	1996	Luxembourg\$	5/10(c)	0	0	6
1996	1997	South Africa #	5/15(c)	0	0	9
1996	1997	Sri Lanka	10/15(c)	10	10	6
1995	1996	Namibia	5/10(d)	10/0 (h) (o)	5	6
1995	1999	Belgium\$	5/10(c)	10/0 (h)	0	6
1997	1998	Kuwait	0	0 (p)	10	9
1997	1999	Mozambique #	8/10/15 (n)	8/0 (h)	5	6
1997	1998	Thailand	10	10 (k) / 15 / 0 (l)	5/ 15 (m)	6
1997	2004	Lesotho	10	10	10	6
1998	1998	Oman	0	0	0	6
1999	1999	Nepal \$	5/10/15(i)	10/15 (k) (j)	15	6
2000	2000	Cyprus	0	0	0	12
2001	2003	Rwanda \$	0	0	0	12
2002	2003	Senegal \$	0	0	0	9
2002	2003	Croatia	0	0	0	12
2003	2004	Uganda	10	10 (j)	10	6
2004	2005	Barbados \$	5	5/0 (j)	5	6
2005	2005	Seychelles	0	0	0	12
2006	2007	United Arab Emirates	0	0	0	12
1995	*	Russia	5/10(e)	0	0	12

- Dividends derived from Mauritius by nonresident companies are tax free.
- Royalties paid by Category 1 Global Business License (“GBL1”) Companies to nonresidents are tax free.

- c) Lower rate applies to companies holding at least 10% of capital.
- d) Lower rate applies to companies holding at least 25% of capital.
- e) Lower rate applies in the case of an investment of at least USD 500,000 in the capital of the payor of dividends.
- f) Interest taxed in source country according to local law. 0% if paid to any bank carrying on a *bona fide* banking business. However, there is no withholding tax in Mauritius on interest paid by a GBL1 company.
- g) Lower rate applies to companies holding at least 20% of capital.
- h) Lower rate applies if paid to any bank carrying on a *bona fide* banking business. In the case of Zimbabwe, subject to certain conditions.
- i) 5% applies to companies holding at least 15% of capital, 10% applies to companies holding at least 10% but less than 15% of capital, and 15% applies in all other cases.
- j) Exempt if derived and beneficially owned by the Government or the Central Bank. In the case of Nepal, it also applies to local authority or a government-controlled financial institution. In the case of Uganda, it applies only to the Government, a local authority or a political subdivision, or to an institution, board or a body wholly owned by the Government, a local authority or a political subdivision.
- k) 10% applies if received by any financial institution including an insurance company. In the case of Nepal, it also applies to an investment company receiving income from financial investments.
- l) Exempt if derived and beneficially owned directly by the Government, a local authority or a political subdivision, or indirectly through an institution, body or board.
- m) Lower rates apply to royalties received for the use of or right to use any copyright of literary, artistic or scientific work, excluding cinematograph films and films, tapes or discs for radio or television broadcasting.
- n) 8% applies to companies holding at least 25% of capital, 10% applies to companies holding less than 25% of capital, and 15% applies in all other cases.
- o) Lower rate applies if derived and beneficially owned by the Government, a local authority and any other government agency agreed to by the Contracting States.
- p) Not more than 5% if interest arises from a business carried on through a PE or is connected to a fixed base from where independent personal services are performed.

* Not yet ratified

IPPAs are in force with these countries. In addition, the following non-treaty countries have enforceable IPPAs: *Portugal, Switzerland, Czech Republic and Romania.*

\$ IPPAs with these treaty countries are awaiting ratification. In addition, IPPAs with the following non-treaty countries are awaiting ratification: *Benin, Burundi, Ghana, Mauritania, Chad, Comoros, Guinea, Cameroon, Korea and Finland.*

IPPAs awaiting signature: Malawi, Uganda, Chile, Turkey, Lesotho and Qatar.

Treaties awaiting ratification: Russia, Bangladesh, Tunisia, Nigeria, Zambia, Vietnam, Malawi and Qatar.

Treaties being negotiated: Canada, Greece, Portugal, Iran, Czech Republic and Egypt.

TAXAND NEWS

NEW FIRMS JOIN TAXAND

In New Delhi on 5 December 2007, the Taxand coordination team formally admitted four new firms to the Taxand global network: **Luther** in Germany, **Zepos & Yannopoulos** in Greece, **Huzaima Ikram** in Pakistan and **Alvarez & Marsal Taxand UK** in the United Kingdom.

Our former UK Taxand member, Chiltern Plc, was acquired in the UK by BDO, an audit firm. As a result of this acquisition, the Taxand Board moved swiftly and unanimously, voting to put an end to Chiltern's membership since an audit platform rendered them ineligible to be part of the Taxand network. Immediately upon learning of this unexpected news, the Taxand Board needed to find a suitable replacement in the UK. Alvarez & Marsal (A&M) Taxand proposed, and the Board immediately accepted, its plan to set up a new entity, Alvarez & Marsal Taxand UK LLC, led by former Chiltern CEO, David Pert.

We want to congratulate Bob Lowe, CEO of A&M Taxand, and David Pert, the head of this newly-formed independent tax practice, for launching A&M Taxand UK, thereby demonstrating our entrepreneurial spirit and the importance of independence. These are the hallmarks of our network's core values. A&M Taxand is a founding member of the global Taxand network which comprises independent tax firms around the world that do not offer audit services. A&M Taxand UK will now be the official UK member of Taxand.

Taxand just has celebrated its second anniversary, and has the distinction of being the first independent global tax network to serve multinational clients around the world. It is also a textbook example of how to create a truly global tax network, and provide clients with a peerless service. The response from the market has been, and remains, the prime driver of the network's exponential growth in talent and reach. Today, Taxand spans 41 countries and boasts nearly 2,000 top tax professionals, including 300 international partners.

TAXAND CONFERENCE IN NEW DELHI

On 5, 6, 7 December 2007, the Taxand firms met in New Delhi, India, for the Seventh Taxand Conference.

In addition to participating in numerous technical sessions on current developments of interest to our clients in different jurisdictions, participants had the opportunity to meet members of different service lines (Real Estate, VAT, Transfer Pricing, Indirect Taxes, Transaction Advisory and Private Equity and Knowledge Management) during the Conference.

We had also the opportunity to attend very interesting sessions with guest speakers, as the Minister of State for Finance, a Chairperson of the National Human Rights Commission, the Managing Director of IMA, the former Chief Justice of India, or the Additional Solicitor General of the India Government.

Our wholehearted thanks go to BMR for hosting and organizing this extremely successful and exciting event.

The next Taxand Conference will take place in Maastricht in June 2008.

TAXAND MEMBERS NAMED TOP-TIER FIRMS BY WORLD TAX 2007

In its annual World Tax 2007 survey, the comprehensive guide to the world's leading tax firms and tax advisers, *International Tax Review*, yet again named various Taxand member firms among the world's leading tax firms in the 41 most important economies.

This year, the survey covered 35 Taxand locations around the world. Four Taxand member firms were ranked **Tier 1** (the highest level) in their corresponding markets surveyed, namely, *Bech-Bruun* from Denmark, *Zepos & Yannopoulos* from Greece, *Garrigues Portugal* and *Garrigues Spain*.

In addition, numerous other Taxand member firms were also ranked **Tier 2, 3, 4** and **5** in 20 locations, such as the following: **Tier 2** – *Shaddick & Spence* from Australia, *Gómez-Pinzón Abogados* from Colombia, *BMR & Associates* from India, *Fantozzi & Associati* from Italy, *Atoz* from Luxembourg, *Pepeliaev, Goitsblat & Partners* from Russia, and *Tax Partner* from Switzerland; **Tier 3** – *Bruchou, Fernandez Madero & Lombardi* from Argentina, *Hendersen Taxand* from China, *Borenus & Kemppinen* from Finland, *Arsene Taxand* from France, *Avanzia Tax Advisors* from Malta, *Selmer* from Norway, *Skeppsbron Skatt* from Sweden, and *Candal Taxand* from Venezuela; **Tier 4** – *Barbosa, Müslich & Aragão* from Brazil, *Mijares, Angoitia, Cortés y Fuentes* from Mexico, and *Alvarez & Marsal Taxand* from the United States; **Tier 5** – *Gowling Lafleur Henderson* from Canada and *Accreo Taxand* from Poland.

World Tax 2007 is an authoritative publication for all companies or professionals needing expert advice from tax advisers and lawyers. In this year's survey, World Tax 2007 analyzed nearly 3,000 interviews with corporate tax directors and tax advisers. *International Tax Review's* declared objective of interviewing both advisers and tax executives was to get an opinion of tax advisers, not just from their clients but also from their peers, and this is what makes Taxand's achievements in 2007 all the more remarkable.

UPCOMING TAXAND SEMINARS FOR “YOUNG” MANAGERS IN MARBELLA, SPAIN

The first Seminars for junior managers will be taking place in March 2008. The venue will be Marbella, Spain, and apart from enjoying from the Andalusian sun and the odd plate of “*pescaito*,” we will have the opportunity to look at the latest tax planning issues.

More than 45 tax managers from 14 Taxand firms will spend two days together on an intensive course on international tax planning matters and on US taxation.

In the same week in March, our VAT group will also meet in Marbella with 50 young tax managers on an intensive course dealing with indirect tax matters.

CONTACT INFORMATION

□ Argentina

Bruchou, Fernández Madero & Lombardi

Ing. Enrique Butty, 275
C1001AFA-Buenos Aires
www.bfmlym.com

Matías Olivero

E. matias.olivero.vila@bfmlym.com

Analia Miqueri

E. analia.miqueri@bfmlym.com

T. +54 11 5 288 2300

F. +54 11 5 288 2301

□ Australia

Shaddick & Spence

Level 32
101 Collins Street
Melbourne Vic 3000, Australia
www.shaddickspence.com/

Ken Spence

E. kspence@shaddickspence.com.au

T. +61 3 9650 4451

F. +61 3 9650 4467

□ Belgium

AB Taxand

Avenue d'Anderghem 22-28 Bte 14
1040 Brussels
www.taxand.com

Geert De Neef

E. g.deneef@abtaxand.be

Marjorie Voltas

E. m.voltas@abtaxand.be

T. +32 2 761 11 30

F. +32 2 230 46 60

□ Brazil

Barbosa, Müssnich & Aragão Advogados

Avenida Almirante Barroso
52 – 29º e 32º andares
20031-000 Rio de Janeiro
www.bmalaw.com.br

Silvania Conceição Tognetti

E. sct@bmalaw.com.br

T. +55 (21) 3824 5800

F. +55 (21) 2262 5536

□ Canada

Gowling Lafleur Henderson

1 First Canadian Place
Suite 1600
100 King Street W.
Toronto, Ontario
Canada M5X 1G5
www.gowlings.com

Timothy S. Wach

E. timothy.wach@gowlings.com

T. +416 369 4645

F. +416 369 7250

□ Chile

Barros & Errázuriz

Isidora Goyenechea, 2939 piso 11
Las Condes
Santiago – Chile
www.bye.cl

Fernando Barros

E. fbarros@bye.cl

Carola Trucco

E. ctrucco@bye.cl

T. +56 2 378 8900

F. +56 2 362 0387

□ China

Hendersen Taxand

Room 2308
1 Grand Gateway
N0. 1 Hongqiao Road
Shanghai, 200030, PRC
www.hendersen.com

Dennis Xu

E. dennis.xu@hendersen.com

Kevin Wang

E. kevin.wang@hendersen.com

T. +86 21 6447 7878

F. +86 21 6447 3722

□ Colombia

Gómez-Pinzón

Carrera 9 No. 73-24
Bogotá
www.gomezpinzon.com

Mauricio Piñeros

E. mpineros@gomezpinzon.com

T. +571 310 2900

F. +571 310 6646

□ Cyprus

Eurofast Taxand

5 Chytron Str.
P.O. Box 24707
1075 Nicosia
www.eurofastglobal.eu

Marios Lenas

E. marios.lenas@eurofastglobal.eu
T. +357 2269 9222
F. +357 2269 9004

□ Denmark

Bech-Bruun

Langelinie Alle 35,
2100 Copenhagen, Denmark
www.bechbruun.com

Anders Oreby Hansen

E. aoh@bechbruun.com
T. +45 7227000
F. +45 72270027

□ Finland

Borenus & Kempinen

Yrjönkatu 13 A
FI-00120 Helsinki, Finland
www.borenus.com

Janne Juusela

E. janne.juusela@borenus.com
T. +358 9 615 333
F. +358 9 6153 3499

□ France

Arsene Taxand

5, rue Soyer
92523 Neuilly-sur-Seine Cedex
www.arsene.fr

Frederic Donnedieu

E. frederic.donnedieu@arsene-avocats.com

Roland Schneider

E. roland.schneider@arsene-avocats.com
T. +33 (0)1 70 38 88 00
F. +33 (0)1 70 38 88 10

□ Germany

Luther

Mergenthalerallee 10-12
65760 Eschborn
Frankfurt/M
www.luther-lawfirm.com

Eberhard Kalbfleisch

E. eberhard.kalbfleisch@luther-lawfirm.com
T. +49 6196 592 27003
F. +49 6196 592 27021

□ Greece

Zepos & Yannopoulos

75, Katehaki & Kifissias Ave.
Athens 115 25
www.zeya.com

Yerassimos Yannopoulos

E. y.yannopoulos@zeya.com
T. +30 210 6967 000
F. +30 210 6994 640

□ India

BMR & Associates

The Great Eastern Centre, 1st floor
70, Nehru Place
New Delhi 110 019
www.bmrtax.com

Mukesh Butani

E. mukesh.butani@bmr advisors.com

Abhishek Goenka

E. abhishek.goenka@bmr advisors.com
T. +91 11 3081 5000
F. +91 11 3081 5001

□ Indonesia

PB & CO

Menara Imperium, 27th Floor
Jl. H.R. Rasuna Said Kav. 1
Jakarta 12980
www.pb-co.com

Prijohandojo Kristanto

E. prijohandojo@pb-co.com
T. +62 21 8399 9919
F. +62 21 8379 3939

□ Italy

Fantozzi & Associati

Via Privata Maria Teresa n. 11
20123 Milan
www.fantozzieassociati.it

Alfredo Fossati

E. afossati@fantozzieassociati.it

Guido Arie Petraroli

E. gpetraroli@fantozzieassociati.it

T. +39 02 7260591

F. +39 02 72605950

□ Mauritius

Multiconsult Limited

10, Frère Félix de Valois Street,
Port Louis
www.multiconsult.mu

Uday Kumar Gujadhur

E. uday.gujadhur@multiconsult.mu

Pamela Balasoupramanien

E. pamela.bala@multiconsult.mu

T. +230 202 3000

F. +230 212 5265

□ Luxembourg

Atoz

Aerogolf Centre
1B, rue Heienhaff
L-1736 Senningerberg
www.atoz.lu

Alex Sulkowski

E. alex.sulkowski@atoz.lu

Olivier Remacle

E. olivier.remacle@atoz.lu

T. +352 26 940 1

F. +352 26 940 300

□ Mexico

Mijares, Angoitia, Cortés y Fuentes

Montes Urales, 505, 3er Piso
Lomas de Chapultepec, 11000
Mexico DF
www.macf.com.mx

Manuel Tamez Zendejas

E. mtamez@macf.com.mx

Marcela Fonseca

E. mfonseca@macf.com.mx

T. +52 55 5201 7400

F. +52 55 5520 1065

□ Malaysia

Taxand Malaysia Sdn Bhd

Suite 13A.05, Level 13A
Wisma Goldhill
67 Jalan Raja Chulan
50200 Kuala Lumpur
www.taxand.com.my

Dr. Veerinderjeet Singh

E. vs@taxand.com.my

Renuka Bhupalan

E. rb@taxand.com.my

T. +603 20322799

F. +603 20322893

□ New Zealand

Simon Rutherford Limited

PO Box 2298
Shortland Street
Auckland 1140
www.taxand.com

Simon Rutherford

E. simon@simonrutherford.co.nz

Louis McLennan

E. louis@simonrutherford.co.nz

T. +64 9 921-6881

F. +64 9 921-6889

□ Malta

Avanzia Tax Advisors Limited

Cobalt House – 2nd Floor
Notabile Road, Mriehel BKR3000
www.avanzia.com.mt

Walter Cutajar

E. walter.cutajar@avanzia.com.mt

Mary Anne Cachia

E. maryanne.cachia@avanzia.com.mt

T. +356 2278 7700

F. +356 2149 3318

□ Norway

Selmer

P.O. Box 1324 Vika
N-0112 Oslo
www.selmer.no

Einar Bakko

E. e.bakko@selmer.no

T. +47 2311 6500

F. +47 2311 6501

□ Pakistan

Huzaima Ikram

167-G/I, Johar Town
Lahore, Punjab 54770
www.huzaimaikram.com

Dr. Ikram-ul-Haq

E. ikram@huzaimaikram.com
T. +9242 530 0721
F. +92 42 5310721

□ Peru

Miranda & Amado Abogados

Av. Larco 1301 Piso 20,
Torre Parque Mar
Miraflores – Lima 18
www.mafirma.com.pe

Rocio Liu

E. rliu@mafirma.com.pe

Alfredo Vidal

E. avidal@mafirma.com.pe
T. +511 610 4747
F. +511 610 4748

□ Philippines

Salvador Guevara & Associates

815-816, Tower One and Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City
www.salvadorguevaralaw.com

Edmundo P. Guevara

E. edmundo.p.guevara@salvadorguevaralaw.com
T. +63 2 811 25 00
F. +63 2 893 69 87

□ Poland

ACCRESO Taxand

Al. Jana Pawła II 29
00-867 Warszawa
www.taxand.pl

Andrzej Punczewicz

E. andrzej.punczewicz@taxand.pl

Radosław Czarnecki

E. radoslaw.czarnecki@taxand.pl
T. +48 22 653 72 50
F. +48 22 653 72 52

□ Portugal

Garrigues Portugal

Av. Engº Duarte Pacheco
Amoreiras, Torre 1
1070-101 Lisbon
www.garrigues.com

Fernando Castro Silva

E. fernando.castro.silva@garrigues.com

Miguel C. Reis

E. miguel.c.reis@garrigues.com
T. +35 121 382 1200
F. +35 121 382 1290

□ Puerto Rico

Zaragoza & Alvarado LLP

104 Acuarela Marginal Street
Martínez Nadal Expressway
Guaynabo. PR 00969
www.zatax.com

Juan Zaragoza

E. jzaragoza@zatax.com

T. +787 999 4400

F. +787 999 4646

□ Republic of Korea

Sojong Partners

9th Floor, Star Tower
737 Yeoksam 1-dong
Kangnam-gu, Seoul
135-984, Republic of Korea
www.sojong.com

Young-Lae Son

E. ylson@sojong.com

Kyung Won Kim

E. kimkw@sojong.com

T. +82 2 2112 1114

F. +82 2 2112 1115

□ Romania

Taxhouse Taxand

21 Popa Tatu Street
010801, Sector 1
Bucarest
www.taxand.com

Angela Rosca

E. angela.rosca@taxhouse.ro

T. +40 21 316 04 93

F. +40 21 312 15 29

□ **Russia**
Pepeliaev, Goltsblat & Partners (PG&P)

Krasnopresnenskaya nab. 12,
Entrance 7, World Trade Center-II
Moscow 123610
www.pgplaw.ru

Andrey Tereschenko
E. a.tereschenko@pgplaw.ru
Maria Andreeva
E. m.andreeva@pgplaw.ru
T. +7 495 967 0007
F. +7 495 967 0008

□ **Spain**
Garrigues

Hermosilla, 3
28001 Madrid
www.garrigues.com

Ricardo Gómez
E. ricardo.gomez@garrigues.com
Vicente Bootello
E. vicente.bootello@garrigues.com
T. +34 91 514 52 00
F. +34 91 399 24 08

□ **Sweden**
Skeppsbron Skatt

Skeppsbron 20
SE-111 30 Stockholm
www.skeppsbronskatt.se

Niklas Bang
E. niklas.bang@skeppsbronskatt.se
Martin Larsson
E. martin.larsson@skeppsbronskatt.se
T. +46 40 10 71 90
F. +46 40 23 98 28

□ **Switzerland**
Tax Partner

Talstrasse, 80
8001 Zürich
www.taxpartner.ch

David Ryser
E. david.ryser@taxpartner.ch
T. +41 44 215 77 77
F. +41 44 215 77 70

□ **The Netherlands**
Van Mens & Wisselink

Piet Heinkade 55
1019 GM Amsterdam
www.vmw.nl

Derk Prinsen
E. prinsen@vmw.nl
Jan Kooi
E. kooi@vmw.nl
T. +31 (0) 20 301 66 33
F. +31 (0) 20 301 66 22

□ **Turkey**
ERDIKLER Taxand

Dr. Orhan Birman Is Merkezi, Barbaros Bulvari
No: 121 kat:12
34349 Balmuncu, Istanbul
www.erdikler.com

Saban Erdikler
E. saban.erdikler@erdikler.com
Meral Ucar
E. meral.ucar@erdikler.com
T. +90 212 337 0000
F. +90 212 347 5789

□ **United Kingdom**
Alvarez & Marsal Taxand UK

10th Floor,
One Canada Square
Canary Wharf
London E14 5AA
www.alvarezandmarsal.com

David Pert
E. dpert@alvarezandmarsal.com
T. +44 207 715 5200
F. +44 207 715 5201

□ **United States**
Alvarez & Marsal Taxand

875 Third Avenue, Suite 1550
New York, NY 10022
www.alvarezandmarsal.com

Robert N. Lowe, Jr.
E. blowe@alvarezandmarsal.com
T. +1 212.328.8721
F. +1 212 759 5532

□ Venezuela

Candal Taxand

Final Av. Libertador c/c Av. Ávila
Edificio Xerox, Bello Campo, Piso 1 – Ofic. 1-B
Caracas
www.taxand.com.ve

Manuel Candal

E. mcandal@taxand.com.ve
T. +58 212 750 0095
F. +58 212 750 0099

DISCLAIMER

The information contained in this document is intended only to be a guide. It must not be relied on in, or applied to, specific situations without previously seeking proper professional advice. Even if all reasonable care has been taken in its preparation, Taxand and all the members of this Alliance do not accept any liability for any errors that it may contain or lack of update before going to press, whether caused by negligence or otherwise, or for any losses, however caused, or sustained by any person. Descriptions of, or references or access to, other publications within this publication do not imply endorsement of them.

As provided in the US Treasury Department Circular 230, this Tax Newsletter is not intended or written by any Taxand Firm or to be used, and cannot be used, by a client or any other person or entity for the purpose of avoiding tax penalties that may be imposed on any taxpayer. The Taxand Firms have produced this Tax Newsletter in connection with the marketing of our tax services relating to matters discussed therein. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.