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 YOUR GLOBAL NETWORK OF LEADING TAX ADVISORS



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LEGAL DEVELOPMENTS

LEGISLATION

1. ARGENTINA

Equity Tax. The Most Favored Nation rule provided for the Montevideo Treaty.

Argentina imposes an assets tax (the Personal Assets Tax "PAT") on, among others, stock and other equity interests issued by Argentine legal entities owned by individuals domiciled in Argentina, and legal entities and individuals domiciled abroad. The applicable rate is 0.5% upon the net worth of the local company base on the last fiscal year closed as of 31 December of the relevant year.

PAT is not applicable on equity issued by Argentine companies held by foreign holders residing in countries that have entered into double tax treaties ("DTT") with Argentina which provide that the assets of an enterprise are only taxable by the State of residence or domicile of the person. (e.g. treaties signed by Argentina with Chile, Spain and Switzerland).

It has been construed that fiscal residents of Uruguay, Brazil, Venezuela, Colombia, Ecuador, Mexico, Paraguay and Peru could claim a PAT exemption under the most favored nation rule of the Tratado de Montevideo (1980) (the "Treaty"). Article 48 of the Treaty states that the most favorable nation rule states that capitals emerging from Treaty countries cannot receive a less favorable treatment than capital emerging from non Treaty countries (i.e. Spain and Switzerland based on the DDT).

Ruling No. 1000/2002 (6 November 2002) issued by the legal department of the Ministry of Finance ("Dirección General de Asuntos Jurídicos") sustained that nationals from Treaty countries shall not be subject to PAT on the grounds of the most favored nation rule of the Treaty

However, a year later, in 2003, the Ministry of Foreign Affairs interpreted the opposite (Ruling No. 253/2003), sustaining that nationals of Treaty countries cannot claim a PAT exemption under the most favored nation rule of the Treaty.

On 30 June 2006, the Federal Government's attorney ("Procurador del Tesoro") issued Ruling No. 170/2006 confirming denial of PAT exemption under the Treaty, which was subsequently confirmed by the Federal Tax Authority by Note ("Nota Externa") No. 5/2008 (Official Gazette, 4 August 2008) making clear the it will reject and challenge the said exemption should it be applied with respect to nationals of the above-referred countries.

It is worth noting that to date there is a judicial precedent regarding this issue in which the Federal Tax Court would agree with the position of the Federal Tax Authority.

2. AUSTRALIA

Tax consolidation amendments

In late April 2009, the Assistant Treasurer released in exposure draft form proposed legislative amendments dealing with 18 issues in Australia's tax consolidation system which had been foreshadowed in announcements going back as far as 1 December 2005. A further 6 issues remain under review.

These proposed amendments have an impact on the calculations required on forming a consolidated group and on acquisitions and disposals made by consolidated groups. It is currently proposed that many of the announced measures will be enacted with retrospective effect from 1 July 2002, with consequential amendments being proposed to extend the normal 4-year tax limitation period.

It is not possible to provide a succinct summary of a single thrust to this package as the measures deal with a wide range of specific issues. However, it is clear that the previous calculations for resetting the tax value of assets on initially electing to consolidate will be affected – in many cases with the result that additional capital losses will become available, or prior assessments will have to be amended when, ultimately, these provisions are enacted. Unfortunately, in some other cases a retrospective capital gain may now arise in relation to those formation calculations, but the Government has foreshadowed that it will consider submissions that have been made to alleviate the retrospective impact where adverse consequences arise.

Importantly, the package of proposed amendments will also have a retrospective impact on the tax implications of subsequent corporate acquisitions and disposals made by consolidated groups and, in limited cases, the ongoing operation of the consolidated group.

Carbon Pollution Reduction Scheme

On Tuesday 10 March, the Government released exposure draft legislation for its proposed Carbon Pollution Reduction Scheme ('CPRS') which is based around a system of tradable emission permits, called "emissions units."

The proposed income tax treatment for emissions units resembles a modified version of inventory accounting. The cost of acquiring an emissions unit or a foreign unit either at auction or on the secondary market will be deductible. The receipt of units issued free to some firms in export-exposed industries will have no tax consequences – they are not to be treated as a taxable bounty or subsidy – unless they remain on hand at the end of a year, in which case they will be treated as acquired at their market value at the time of issue. The value of units remaining on hand at the end of a year will be added back to assessable income. A special rule mandates that emissions units are sold or surrendered on a first-in-first-out basis.

Under this mechanism, the surrender of a unit will have the effect of triggering the deduction for the cost of the unit.

The sale of unused units into the secondary market will generate assessable income. The same treatment will apply if a firm surrenders a unit outside the ordinary course of its operations. Income from the sale of units is treated as sourced in Australia which will be relevant for nonresidents. Transactions between associates involving units will generally be deemed to occur at market value.

More interesting tax questions will arise where firms try to hedge their cost for future years. It is expected that there will be a lively market in derivatives written over emissions units – for example, affected firms may wish to buy options to acquire emissions units they expect to need in future years; banks may offer to forward sell emissions units for future years. These transactions may be designed to result either in the delivery of units in the future or in cash payments to allow units to be purchased. While the proposed rules are intended to deal exhaustively with the tax obligations arising from transactions involving emissions units, they do not currently address the tax impacts of transactions with derivatives over emissions units.

3. CANADA

Corporate Income Tax Rate Reductions in Canada: 2009 Provincial Budgets

In recent years there has been a trend of aggressive corporate tax cuts across the globe as countries compete for foreign direct investment to stimulate economic growth. Since 2000, the average corporate income tax rate among OECD countries has dropped from 34.1% to 26.7% in 2008.

In response to these global pressures, the Canadian Federal government, beginning in 2006, has introduced significant reductions in corporate tax rates. The reductions have included a change to the general corporate income tax rate from 22.12% in 2007 (including the 1.12% corporate surtax, which was eliminated 1 January 2008) to the current rate of 19%, but which is to be reduced to 15% by 2012.

In the fall of 2007, the Federal Minister of Finance publicly challenged the provinces to lower their general corporate income tax rates to 10% by 2012 to achieve a combined rate of 25%, which would be the lowest corporate income tax rate among the G7 nations. In December 2008, the Advisory Panel on Canada's System of International Taxation released its final report, "Enhancing Canada's International Tax Advantage." The report agreed that Canada must lower its domestic corporate tax rates in order to stimulate foreign direct investment and for Canadian companies to remain competitive in the international markets.

Despite the global financial crisis and decreasing fiscal revenues, in the 2009 Federal Budget the Federal government stated that it is committed to moving ahead with its corporate income tax rate reductions. The general corporate income tax rate will be decreased as follows: 18% for 2010, 16.5% for 2011 and 15% for 2012. Once again, the Federal Minister of Finance called on the provinces and territories to join Alberta and British Columbia to reduce their corporate income tax rates to 10%.

In the recently announced provincial budgets, some of the provinces have committed to reducing corporate income tax rates despite the current fiscal challenges, while others have demonstrated reluctance to sign on.

Maritime Provinces

In March 2009, the New Brunswick Department of Finance released "The Plan to Lower Taxes in New Brunswick." According to the Plan, the 2008 corporate income tax rate of 13% will be reduced to 12% in 2009, 11% in 2010, 10% in 2011 and 8% in 2012 (effective 1 July of the particular year). The Plan provides the largest one-time tax reduction package ever introduced in the Province of New Brunswick. The measures will reduce New Brunswick's general corporate income tax rate from one of the highest rates in 2001 (16%), to the lowest by 2012.

The general corporate income tax rate for the Province of Nova Scotia will remain unchanged from 2008 at 16% in 2009 and 2010. However, the Nova Scotia Department of Finance is currently conducting a review of its tax system to determine how it can best be used to achieve its long-term fiscal and economic objectives.

The Province of Prince Edward Island forecasts a provincial deficit for the 2008/09 and 2009/10 fiscal years. Prince Edward Island's general corporate income tax rate is 16% for 2009 and no corporate income tax rate reductions have been announced for the future. Instead, the 2009 Prince Edward Island Budget focused on infrastructure and capital spending.

Newfoundland & Labrador's corporate income tax rate remains unchanged at 14% for 2009. There is no mention in the 2009 Budget of rate reductions going forward.

Central Canada

The Province of Québec expects deficits in the 2009/10 and 2010/11 fiscal years. The corporate income tax rate in Québec was increased from 11.4% in 2008 to 11.9% in 2009. This is an increase from 8.9% in 2005. Québec has not announced any plans to further increase corporate tax rates in the province.

The corporate income tax rate in the Province of Ontario remains unchanged at 14% for 2009. The corporate income tax rate will be reduced to 12% in 2010, 11.5% in 2011, 11% in 2012 and 10% in 2013 (effective 1 July of the particular year). Ontario has no plans to cancel the proposed corporate income tax rate reductions because of any increase in the provincial deficit as a result of the current economic crisis.

Prairies

In the 2008 Budget, the Province of Manitoba reduced its corporate income tax rate from 14% to 13%, effective 1 July 2008. In its 2009 Budget, Manitoba confirmed a further rate reduction from 13% to 12%, effective 1 July 2009. Subject to having a balanced budget, Manitoba plans to reduce its general corporate income tax rate to 11% in the future; however, no date has been released for the proposed reduction.

The Province of Saskatchewan has already implemented a number of reductions to its general corporate income tax rate. The rate was reduced from 17% to 14% in 2006, 13% in 2007 and 12% in 2008 (effective 1 July of the particular year). In its 2009 Budget, Saskatchewan stated that its economy remains strong and that growth is forecasted for the 2009/10 fiscal year. However, no further corporate income tax rate reductions have been announced.

Western Canada

The Province of Alberta has had the lowest corporate income tax rate since 2006 at 10%. The rate was gradually reduced over several years from 15.5% in 2000. In its 2009 Budget, Alberta announced that its corporate income tax rate will remain at 10% for 2009 and was silent on any future rate reductions, but did state that a changing revenue outlook requires the government to be cautious before making any additional tax reductions.

The corporate income tax rate in the Province of British Columbia was decreased from 12% to 11%, effective 1 July 2008. The rate will remain at 11% for 2009, but will be further reduced to 10.5% in 2010 and 10% in 2011 (effective 1 January of the particular year). This follows a gradual reduction over several years from 16.5% in 2001. In its 2009 Budget, British Columbia announced that, rather than reducing spending or increasing taxes, it will run its first deficit in five years.

Territories

With respect to the Territories, the Yukon's corporate income tax rate of 15% for 2008 remains unchanged for 2009. The Yukon's 2009 Budget is silent on any future changes. The Northwest Territories' corporate income tax rate of 11.5% for 2008 remains unchanged for 2009. This is a reduction from 14% in 2005. Nunavut's corporate income tax rate is 12% for 2009. The Nunavut Budget is silent on any future changes.

Conclusion

Based on the proposed changes as they stand today, the combined federal-provincial general corporate income tax rates in 2012 will be as follows: 23% New Brunswick; 31% Nova Scotia; 31% Prince Edward Island; 29% Newfoundland & Labrador; 26.9% Québec; 26% Ontario; 27% Manitoba; 27% Saskatchewan; 25% Alberta; 25% British Columbia; 30% Yukon; 26.5% Northwest Territories; 27% Nunavut. With only three provinces meeting the Federal government's challenge by 2012 (Ontario will meet it by 2013), it will be interesting to see which provinces emerge from the current recession stronger and more prosperous.

4. CHILE

New measures in force to deal with the financial crisis

Amendment introduced to the Chilean Income Tax Law introducing a tax exemption applicable to capital gains obtained in the sale of certain fixed income instruments, provided that all the requirements set forth in new article 104 of the Income Tax Law are fulfilled. These instruments must be duly registered before the Chilean Securities and Exchange Commission listed in the stock market.

Amendment introduced to the Chilean Income Tax Law extending the 4% reduced WHT rate applicable to interest payment related to loans granted by foreign banks and financial institutions to other institutional investors, such as insurance companies, pension funds and endowments.

Other relevant issues discussed currently

Municipal License

The Municipal License is an annual fee which has to be paid by individuals or entities that develop commercial or industrial activities or render services in a certain municipality. It is collected by the municipalities. The fee is calculated on the taxpayer's tax equity at a rate set by each municipality, with a minimum of 0.25% and a maximum of 0.5%.

As from this year, the Chilean IRS ("SII") will annually provide information to the corresponding municipality about the declared equity and the economic activity of each company.

The aforementioned legislative amendment represents a major contingency for several investment companies which have never paid Municipal License based on the fact that they do not develop commercial or industrial activities nor do they render any service. However, municipalities consider that these companies are subject to Municipal License as the Office of the State Controller has also determined.

Tax Treaties

Since 1997, the Chilean government has given increased importance to avoid international double taxation. Currently there are 20 double taxation agreements in force. As from 1 January 2009 the treaties with Ireland, Malaysia, Paraguay and Portugal are in force. There are five other treaties that have been signed and are pending of ratification by Congress.

5. CYPRUS

Changes in VAT Law in Cyprus

Effective from 1 May 2009 to 30 April 2010 the Fifth Annex of the VAT Law in Cyprus is amended.

The below mentioned services shall be subject to the reduced VAT rates (5%). The following new paragraph was added to Table B.

Services offered such as accommodation in hotels, tourist accommodation and similar establishments, including holiday resorts as well as any services that include similar accommodation, such as breakfast, and / or half board or full board meals and / or which combine accommodation and food, including alcoholic beverages, beer and wine are subject to reduced rates for the period of 30 April 2009 to 30 April 2010.

This is another measure toward the credit crunch that aims to stimulate the market. The rates shall return to the normal rates after 1 May 2010.

International trusts and double tax treaty provisions

International trusts are instruments that if wisely used, may provide the ultimate tax planning tool to investors. Various jurisdictions are known for the beneficial tax treatment they have to offer to trusts registered therein, including Cyprus.

Cyprus throughout the years has progressed to become a successful international business center. Its up-to-date legislation, tax system and excellent professional services are only a few of the benefits it has to offer to foreign investors.

The establishment of international trusts in Cyprus depends upon the fulfillment of the following criteria:

- the settler must not be a permanent resident of Cyprus;
- the beneficiaries (with the exception of charities) are not permanent residents of Cyprus;
- the trust property does not include any real property situated within Cyprus;
- there must be at least one Cyprus-resident trustee at all times.

Cyprus international trusts are becoming widely known as international tax planning instruments. According to the Cyprus international trusts legislation, income and gains of international trusts that derive or are deemed to derive from sources outside the Republic of Cyprus are exempt from any taxes levied in the country. Additionally, assets and property belonging to the international trust are not subject to estate duty. The instrument creating an international trust is subject to stamp duty amounting to CYP 250 (approximately USD 582). Moreover, interest received on foreign capital, deposited into a Cypriot bank account but deriving from non-Cypriot sources is tax exempt. Consequently, where trust money is deposited to a Cyprus bank, any interest earned is exempt from WHT. The same also applies to interest earned on income deposited to any other banking unit on a worldwide basis due to the fact that such income is not accruing in, derived from or received in the Republic.

Cyprus international trusts may also, in certain cases, benefit from the application of the provisions of the double tax treaties. Cyprus has to date concluded a wide network of double tax treaties, providing favorable tax benefits to persons classified as tax residents of the contracting states.

Cyprus trusts are common law trusts, compatible to the English trusts. To this extent, it should be noted that while trusts are not expressly included in the definition of a resident as per the provisions of the double tax treaties, and to that extent do not qualify as persons or bodies of persons, trustees may certainly claim the said benefits. Trustees both qualify as persons as well as residents for tax purposes. More specifically, from a residency perspective, corporate trustees are treated as tax residents of Cyprus if their management and control is exercised in Cyprus, whilst individual trustees are treated as tax residents of Cyprus if they reside in the country for a period exceeding 183 day per year. To that extent, even though Cyprus international trusts are not subject to tax in Cyprus, the trustees are taxed on the trustee fee that they derive, in exchange of their services. As such, the favorable tax benefits under certain tax treaties may be available regarding any income and gains deriving from the trust.

Further to the above, it should be noted that a recent UK court case has come to confirm the application of the treaty benefits to trustees and effectively to the trust income and gains. In *Smallwood v. HMRC*, residency issues were raised and the place of effective managements of the trust was considered, in determining the jurisdiction competent to tax a gain made subsequent to a disposal of shares, taking into consideration the relevant double tax treaty provisions. Accordingly, it is crucial to ensure that at all times central management and control is maintained outside the jurisdiction where the beneficiaries are based and to that extent sufficient substance is awarded to the trustees as to enhance their positioning within the trust.

Further to the above, international trusts can offer confidentiality, privacy, estate planning and asset protection, family wealth preservation, and tax planning. With a suitable structure in place they may also offer financial protection from possible potential claims.

The wide benefits available with the use of Cyprus international trusts make them a valuable instrument in international tax planning. With the use of professional tax advice, organization and structuring of investments can lead to tax mitigations for investors.

Spanish structuring and back to back financing developments

Within the framework of royal decree 1080/91 dated July 1991, as amended by royal decree 116/2003 of 31 January 2003, Spain listed a number of jurisdictions which may be regarded as tax havens, among them Cyprus. These countries are subject to the Spanish anti-avoidance rules, and are thus not entitled to the tax benefits they would have otherwise been entitled to. Participation exemption benefits do not apply to subsidiaries established in a tax haven jurisdictions.

A country is excluded from the so-called blacklist if it has signed an exchange of information agreement or an income tax treaty for the avoidance of double taxation with Spain.

While the anticipated accession of Cyprus to the EU should have automatically and immediately resulted in the removal of Cyprus from the blacklist, the Spanish tax authorities did not share the same view. Thus, despite the accession of Cyprus into the EU and its respective EEA membership, its removal from the blacklist was not effected until December 2008.

The passing of law 4/2008 by the Spanish parliament was deemed necessary due to Spain's obligation to comply with the EU principles. As such, the Spanish participation regime was further enhanced, and as a result, legal entities classified as tax residents of Cyprus may benefit from the application of the Spanish participation exemption, given that sufficient substance is in place, thus confirming that the Cyprus resident subsidiary has been registered in order to conduct sound business and economic activities.

Back to back financing: minimum acceptable interest margins

Cyprus financing companies are commonly used in international tax structures mainly due to the wide range of tax-related benefits they have to offer. In line with the above, such financing structures involve back-to-back financing arrangements. Until recently, the level of applicable margin for taxable interest per transaction was not defined by the Department of Inland Revenue.

According to the recent clarifications provided by the Cyprus commissioner for income tax the minimum interest margin to be accepted by the Department of Inland Revenue would be determined based on the loan amount as follows:

Loan amount	Minimum interest margin
Up to EUR 50 million (USD 66.1 million)	0.35%
From EUR 50 million – EUR 200 million	0.25%
Over EUR 200 million	0.125%

It should also be noted that interest free loan agreements would in turn be subject to a deemed interest margin of 0.35%. This margin is used in identifying the basis of the interest subject to tax. The above-mentioned deemed interest margin provisions shall apply irrespective of the loan amount.

These views were recently expressed by the Cyprus commissioner of income tax and as such it is anticipated that a respective circular will be issued by the Department of Inland Revenue, officially confirming the acceptable interest margins. The interest margins represent the existing policy of the department and are applicable in practice.

Czech Republic- Cyprus: Signature of a new tax treaty

A new tax treaty has been signed between Cyprus and the Czech Republic on 28 April 2009. The treaty means to replace the previous agreement between Cyprus and the former Czechoslovakia. The treaty still needs to be ratified by the Czech and the Cypriot Parliament to enter into force.

Amendments drawn up in this new treaty mainly concern the tax treatment of the dividends, interests, royalties and capital gains.

According to the amended Article 10 of the new treaty, the revised provision on the tax treatment of dividends provides that whereby the beneficial owner of the said dividends is a resident of the recipient state, a 0% WHT at source may be imposed given that the beneficial owner is a legal entity (partnerships are excluded) being a direct holder of 10% of the share capital of the paying company for an uninterrupted period of at least one year. A 5% WHT at source is provided for in all other cases.

Currently, the WHT at source is set at 10%.

As far as the interest is concerned, it should be noted that the revised treaty eliminates the WHT at source and grants the sole taxation rights to the recipient being the beneficial owner of the said interest.

According to the revised royalties' provision, an increased WHT at source of 10% is provided for, given that the beneficial owner is a resident of the recipient state. Currently, the WHT at source is set at 5%.

Capital gains provisions were subject to significant changes whereby the new Article 13 sets out that gains deriving by a resident of a Contracting State from the alienation of shares in a company deriving more than 50% of their value from immovable property situated in the other Contracting State may be taxed in that other State.

It should be noted that further to the revision of the legislation of Cyprus if the prescribed requirements of the law are fulfilled, the exchange of information may be achieved.

As a result of these changes, the Czech Republic - Cyprus cross-border tax structures currently in place may be affected. Accordingly, they may need to be carefully revised. Equally, real estate companies should be seeking advice on future restructuring.

6. DENMARK

Danish tax reform year 2009

The Danish Parliament has passed the Danish 2009 tax reform (the "Tax Reform") which includes a number of important amendments to the current Danish tax system applicable to both individuals and companies. Generally, the Tax Reform will enter into force on 1 January 2010.

Overall, Danish companies with shareholdings which meet a certain ownership threshold of 10% will benefit from the Tax Reform as the current holding period conditions for tax exempt treatment of dividends and capital gains will be abolished. Not only will these companies be tax exempt on capital gains and dividends, the restructuring possibilities will also be improved significantly.

On the other hand, there is a downside to the Tax Reform as Danish companies with shareholdings which do not meet the ownership threshold of 10% will face higher and more rigorous taxation. For those companies, the Tax Reform is a definite step backward, practically as well as

economically. The Tax Reform will also adversely affect many individuals with private holding companies and virtually all private equity fund structures. The highlights of the Tax Reform are:

Improvement of the Participation Exemption

Currently, different requirements exist for the tax exempt treatment of capital gains realized on the transfer of shares and dividends. The requirements are - under the new rules - harmonized to provide for equal (and improved) tax treatment.

Shareholdings are now divided into two groups depending on the ownership percentage. Tax exemption is granted for dividends received and capital gains realized on the transfer of shares in companies where the shareholding constitutes at least 10% or more of the share capital ("Subsidiary Investments").

On the contrary, where the shareholding constitutes less than 10% of the share capital ("Portfolio Investments"), dividends received and capital gains realized on the transfer of shares are subject to tax at the ordinary corporate tax rate of 25%. Certain anti-avoidance rules are introduced to prevent investors from pooling their shareholdings together in holding companies.

Losses on Financial Instruments

The Tax Reform will provide for more tax efficient hedging of Portfolio Investments in that the ring-fencing restrictions applicable to losses incurred on financial instruments which contain a certain right or obligation to sell shares and will now only apply to financial instruments relating to subsidiaries or group related companies. Additionally, losses incurred on Portfolio Investments subject to the mark-to-market principle will be deductible for other income.

Impact for P/E, Venture Funds

The Tax Reform introduces a carried interest regime, which adversely affects Danish fund managers and Danish corporate investors. Thus, fund managers may be subject to a carried interest regime resulting in tax treatment of carried interest as ordinary income subject to ordinary tax (up to 56.5%) as opposed to today where carried interest is taxed as share income (up to 45%).

As of 1 January 2010, management fees will no longer be deductible.

Expenses Relating to Establishment of New Business

Currently expenses relating to auditors and lawyers incurred in connection with the establishment of new businesses are deductible. This will be abolished as of 2010.

Restructuring

Restructuring of Danish companies is generally made easier after the Tax Reform. Tax exempt treatment of capital gains realized on the transfer of shares is no longer subject to a three year holding period requirement. Furthermore, a number of specific requirements applicable to tax-exempt restructurings carried out without notification of the Danish tax authorities are abolished.

Mark-to-market Taxation of Trade Receivables

As of 1 January 2010, a company's receivables will generally be taxed according to the mark-to-market principle

Taxation of individuals

The Tax Reform introduces a number of changes to the current regime:

- the marginal individual income tax rate is reduced from 63% to 56%;
- the threshold for the top tier individual income tax bracket is increased;
- the tax value of a number of deductions / allowances, including interest expenses, will be reduced from 33% to 25%, phased in over the period 2012 – 2019;
- the tax rates on share income will be reduced from 28% to 27% as of 2012 and from 45 / 43% to 42% as of 1 January 2010, respectively;
- the individual income tax deduction for payments to certain pension schemes will be capped at EUR 13,500 (DKK 100,000) annually effective as of 1 January 2010.

7. FINLAND

Limitations to interest deductions under discussion in Finland

The Finnish Ministry of Finance is contemplating the possibility of limiting the right to deduct interest expenses in corporate taxation. The Ministry has prepared a survey on the matter, which currently is circulated for comments. In case the Finnish Government decides - on the basis of the survey - to propose limitations to the companies' right to deduct interest expenses in taxation, Finnish companies may have to restructure their financing structures.

At present, the Finnish companies' right to interest deductions is not limited. Therefore, interest expenses of debt financing are widely deductible in the debtor's taxation. The underlying reason for the survey is the Ministry's concern on the loss of tax revenues especially in situations where the company is financed with debt from an associated nonresident company. Since Finnish-source interest income received by a nonresident creditor is exempted from withholding taxation in Finland, cross-border debt-financing currently offers a possibility to tax planning.

Internationally the deductibility of interest expenses has been mainly limited to two methods. The maximum amount of deductible interest expenses has been bound either to a percentage of the company's business profit or to a debt/equity -ratio. However, according to public information the Ministry of Finance is considering the possibility to limit the deductibility of interest expenses only in targeted situations. In which case the limitations would probably be targeted primarily to such group structures in which the business transactions and debt arrangements are performed solely for the purpose of achieving tax savings.

In case the Ministry of Finance decides to propose limitations to deductibility of interest expenses, it is likely that the provisions would not enter into force prior to the government's next term beginning in year 2011.

Finland has concluded several treaties with tax havens on exchange of information

In order to prevent international evasion of taxes and harmful tax competition, Finland has, in conjunction with the other Nordic Countries, prepared and concluded treaties with certain offshore financial centers concerning the exchange of information on tax related matters. The treaties are part of the tax haven project, set up by The Nordic Council of Ministers, which follows the work of the OECD against harmful tax competition.

The negotiations with the tax havens have been engaged collectively with the Nordic Countries. However, every treaty is bilateral meaning that the parties of every separate treaty ultimately sign the treaty and supervise independently the entry into force of the treaty. At first stage, negotiations for agreements were opened with the following tax havens: the Dutch Caribbean, Aruba, the Bahamas Islands, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Guernsey, Jersey and the Isle of Man.

The accomplishment of the treaties on information exchange with the tax havens required compensational economical benefits for the tax havens allowing them to develop open economical sectors and to diversify their national economy. For this reason the parties have - in the context of signing the treaties on information exchange - signed minor tax agreements for the avoidance of double taxation. These treaties concern the taxation of individuals, taxation of air transport and shipping as well as the profit adjustment of associated enterprises. The type and scope of the benefits that are admitted to tax havens depends on each individual case, on what kind and how broad information exchange the contracting jurisdiction is willing to and is capable of undertaking.

Bilateral treaties on information exchange and on taxation were signed with the Isle of Man in autumn 2007. Treaties with Jersey and Guernsey were signed in autumn 2008. Finland has also signed treaties with the Cayman Islands, Bermuda and the British Virgin Islands during the spring of 2009. The negotiations with the other regions have proceeded far with Aruba and the Dutch Caribbean.

The treaties on information exchange on tax matters that are carried out are, with a few exceptions, based on the OECD Model Tax Agreement and OECD Model Agreement on Exchange of Information on Tax Matters. Through the treaties the parties are obligated to grant administrative assistance to each other by means of information exchange. The obligation concerns primarily information that is relevant in a foreseeable way to the administration and enforcement of domestic laws concerning direct taxes.

8. FRANCE

Recent major developments of the French network with regards to double tax treaties

Further to the publication by the G20 of a grey list of tax havens including about 30 countries, several double tax treaties have been recently renegotiated. The purpose of these negotiations is to enable the concerned countries to be removed from the list. Among these evolutions, two major amendments have been concluded in the last weeks between France and Luxembourg and France and Switzerland. Both amendments are aimed at strengthening the exchange of information clause included in the treaties currently in force. In particular, the signed amendments will enable the French administration to request detailed information to the concerned foreign authorities, who will no longer be able to refuse to answer on the grounds of banking secrecy.

The entry into force of these amendments remains subject to the approval of the national parliaments. Further to the last G20 meeting, negotiations have also been launched with Singapore, Belgium and Austria to amend the existing tax treaties with these countries.

Two agreements for the exchange of information relating to tax matters have also been signed recently with the Isle of Man, with Jersey and Guernsey. These agreements have not yet come into force either.

In order to be removed from the grey list, the concerned countries should conclude at least 12 tax treaties in line with the OECD model.

9. GERMANY

Temporary relief from interest barrier and change-of-ownership rules to be approved

It is becoming more and more likely that two temporary reliefs from recently introduced tightening of German tax legislation will be enacted. Approval by the German Bundestag took place on June 19, 2009, and the necessary approval by the Bundesrat - the second chamber of the German legislator - may be given in July.

Interest barrier

The interest barrier comprehensively limits tax deduction of interest expense to 30% of the earnings before tax, interest, depreciation and amortization (EBITDA). However, the limitation only applies to businesses with an annual net interest expense - i.e. interest expense less interest income - exceeding a threshold of EUR 1 million.

It has been proposed to increase this annual threshold to EUR 3 million for tax years 2008 to 2010, whereas the stand-alone exemption and the escape clause are apparently not subject to an amendment. The proposal could mean a significant relief for businesses with a net interest expense of between EUR 1 million and EUR 3 million in a year. Existing leverage could be increased for 2009 and 2010, and it could be considered to anticipate interest costs for future years.

Loss carry-forwards and change-of-ownership rules

It has also been proposed to introduce a temporary relief from recently tightened change-of-ownership rules.

Pursuant to the rules in place since 2008 loss carry-forwards are forfeited proportionately or fully if more than 25% of the shares in a loss company are transferred to a new shareholder. Currently no relief exists either for intragroup restructurings or for measures taken to preserve the existence of a company. Even indirect shareholder changes can be harmful.

It has now been proposed to provide as an exception for financial restructuring measures. Under this exception a shareholder change would not result in a forfeiture of existing loss carry-forwards if the transfer of shares is part of a plan to preserve the company from insolvency or over indebtedness. According to the reasons provided, it is imperative that the share transfer occurs at a point in time when the company already entered, or will likely enter, into insolvency or over indebtedness.

In addition, this plan must keep the essential business structure of the company. For this purpose, at least one of the following conditions must be met:

- the loss company complies with an existing works council agreement on the preservation of employment;
- the relevant annual salary within a five-year period after the share transfer does not fall below 80% of the initial total salary. The initial total salary is the average annual total salary of the five years prior to the share transfer;
- the shareholders make substantial contributions of business assets to the loss company. A contribution of business assets is substantial if within 12 months after the share transfer assets in a value of 25% of the assets shown in the tax balance sheet are injected. In the case of a share transfer inferior to 100% the injection of the respective portion of 25% is sufficient. It is the gross value of assets that is supposed to be relevant rather than the net value after deduction of liabilities. The waiver of shareholder loans qualifies as an asset injection.

The restructuring relief would in turn not apply if either the business has been shut down prior to the transfer of shares or the loss company terminates its business and restarts it in a new business sector.

According to the official reasons available, the restructuring relief also applies to losses of a company if there is a harmful indirect shareholder change as a consequence of an insolvency restructuring elsewhere in the group. Precondition is still, however, that the German company is subject to financial restructuring measures.

Both the amendment to the interest barrier and to the change-of-ownership rules may apply retroactively to tax year 2008 to 2010.

It is important to underline that the above is still a draft that is not yet in effect.

10. GREECE

Tax deductibility of intercompany charges: abolition of pre-approval procedure

During the past few months, there has been some uncertainty as to whether the "pre-approval procedure" concerning the tax deductibility of royalties and management fees charged to Greek enterprises ("intercompany charges"), initially introduced back in 2004, by virtue of Law 3296/2004, has again come into force, following its suspension up to 31 December 2008 (for further details on the matter, please refer to our January 2009 Tax Newsletter).

The matter has been resolved by virtue of Law 3756/2009, which provides that the tax deductibility of intercompany charges is no longer subject to pre-approval by the Greek Ministry of Finance. The said provision comes as a clarification of the conditions that should be met in order for intercompany charges incurred after 31 December 2008 to be tax deductible. It is to be noted that the new provision of Law 3756/2009 does not affect other formal and substantial conditions that should in any case be met in order for intercompany charges to be tax deductible (e.g. execution of written agreements, payment of WHT etc.).

Ratification of Tax Treaty with Tunisia

A new Convention for the Avoidance of Double Taxation of Income and Capital with Tunisia has been ratified by the Greek Parliament by means of Law 3742/2009. The said Convention was signed back in 1992 and further amended during 2007, by virtue of a relevant additional protocol. The new Convention has not yet entered into force, as the ratification documents have not been exchanged so far. The provisions of the new Convention, as amended in 2007, shall come into effect as of 1 January of the calendar year, following the one within which the ratification documents shall be exchanged (i.e. should the ratification documents be exchanged within 2009, the Convention shall have effect as of 1 January 2010).

Amendments in VAT legislation: implementation of Directives 2008/8/EC and 2008/9/EC

According to a draft bill that has been recently submitted to Parliament, Council Directive 2008/8/EC regarding the place of supply of services and Council Directive 2008/9/EC regarding the VAT refund to taxable persons established in another Member State (which replaces the 8th VAT Directive), will be incorporated into Greek VAT law, with effect as of January 1, 2010.

Implementation of the provisions of Directive 2008/8/EC shall result in a change of the general rule as regards the place of supply of services. More specifically, the place of supply of services to taxable persons will be the place of establishment of the service recipient (application of the reverse charge mechanism). On the other hand, the place of supply of services to non taxable persons will be the place of establishment of the supplier of the service.

Exceptions to the above rules are introduced as regards the place of supply of certain services, in line with the Directive. Such exceptions involve, among others, services connected with immovable property, services rendered by intermediaries, transport services, supply of restaurant and catering services, hiring of means of transport and supply of electronic services.

Furthermore, the bill incorporates the "effective use and enjoyment" rule set out in the Directive, which is not currently provided for under domestic VAT legislation. According to the said rule, if the place of supply of a service is outside the EU, it will nevertheless be deemed as being in Greece, provided that the effective use and enjoyment of the service takes place in Greece.

The above changes will result in the limitation of instances, whereby foreign enterprises will be required to register in Greece for VAT purposes.

Additionally, taxpayers providing or receiving intra-Community services, which under the new rules will be subject to the reverse charge mechanism, will in principle be required to file respective recapitulative statements for the declaration of such services.

The provisions of the draft bill implementing Directive 2008/9/EC introduce significant changes to the procedure for the refund of VAT incurred in Greece by taxable persons established in other EU Member States. The most significant change is that the refund claim will be filed electronically in the Member State of establishment of the claimant. Subsequently, that Member State will electronically forward the claim to Greek tax authorities (whereas until now the refund claim was required to be sent in hard copy form directly to Greek tax authorities). Furthermore, in addition to the requirements and limitations that have been effective until now under the 8th Directive, according to the new provisions, if VAT has been incorrectly invoiced, the EU taxable person will no longer be entitled to claim refund thereof.

Capital Accumulation Tax legislation amendments in conformity with ECJ ruling

According to a draft bill that has been recently submitted to Parliament, Capital Accumulation Tax legislation will be amended in line with the ECJ decision in case C-178/05, whereby the Court ruled that certain provisions of domestic legislation are in violation of Council Directive 69/335/EEC (which concerns indirect taxes on the raising of capital). Specifically, the following rules are abolished:

- imposition of Capital Accumulation Tax on transfers to Greece from another Member State of the effective centre of management or registered office of a company, in so far as the company concerned is not subject to such tax in the Member State of origin (for more details on the case and the reasoning of the Court please refer our Tax Newsletter of July 2007);
- exemption from Capital Accumulation Tax of co-ownership of vessels, shipping consortia and any form of shipping company.

Proposed implementation of Directive 2005/56/EC on cross-border mergers

A draft bill was submitted to Parliament a few days ago, for the purpose of transposing Directive 2005/56/EC on cross-border mergers into domestic legislation. Ratification of the draft bill shall have impact on corporate restructurings, given that, until now, domestic corporate legislation does not accommodate the special features of mergers performed on a cross-border basis. Note that Greece has also implemented Merger Directive 90/434/EEC, along with the amending Merger Directive 2005/19/EC (please refer to our April 2007 Tax Newsletter, for further details), both governing tax aspects of cross-border mergers.

11. INDIA

Certain provisions of the Competition Act, 2002 notified

The Competition Act, 2002 was enacted for establishment of a Competition Commission to prevent practices which have adverse effect on competition and to promote and sustain competition in markets. Some of the provisions of this law including those dealing with anticompetitive agreements, abuse of dominant position and related / miscellaneous provisions have come into force with effect as from 20 May 2009. The law also contains provisions that mandate permission from the Competition Commission for acquisitions or amalgamations in excess of certain limits, but these provisions are yet to come into force. A Competition Law Appellate Tribunal ('CAT') with its headquarters in New Delhi has been constituted to decide on disputes arising under this Act.

12. INDONESIA

Article 26 Income Tax on the disposal of assets in Indonesia

On 22 April 2009, the Minister of Finance issued Regulation no. 82/PMK.03/2009 regarding the withholding of Article 26 Income Tax on the disposal or transfer of assets owned by nonresident taxpayers in Indonesia.

Under the regulation, the disposal of assets in Indonesia by nonresident taxpayers who are domiciled in tax haven countries and non-treaty partner countries, amounting to more than IDR 10 million will be subject to Article 26 Income Tax, i.e. 5% on the selling price of the asset, except for those assets that have already been subject to final tax. If the nonresident taxpayer is domiciled in a tax treaty partner country of Indonesia, the disposal of assets will be only be taxed if based on the relevant tax treaty Indonesia has the right to tax.

The assets include precious jewellery, diamonds, gold, high-end watches, antiques, paintings, cars, motorcycles, yachts, and light aircrafts.

Amendment to Indonesia-Switzerland tax treaty

Through Presidential Decree Number 8/2009 issued on 5 March 2009, Indonesia has confirmed the Protocol amending the tax treaty between the Republic of Indonesia and the Swiss Confederation, which was signed by the Indonesian government on 8 February 2007. The Indonesia-Switzerland tax treaty was signed by both countries on 29 August 1988.

The main amendments to the Indonesia-Switzerland tax treaty, which will take effect starting from 1 January 2010, are as follows:

Withholding tax on royalties

The WHT rate on royalty income is reduced from 12.5% to 10%, which is taxable at source.

Definition of royalties

The definition of "royalties" is revised to exclude payments related to the use or right to use of machinery in industries, trade or information science. Under the amended tax treaty, "royalties" is defined as "payments of any kind received as a consideration for the use of, or the right to use any copyright of literary, artistic or scientific work including cinematographic film or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial commercial or scientific experience."

Branch profit tax

All production sharing contracts and contracts of work, or other similar contracts, relating to the oil and gas sector or other mining sectors are now exempted from branch profit tax. Previously, the exemption from branch profit tax only applied to production sharing contracts and contracts of work in the oil and gas or mining sectors that were signed on or before 31 December 1983.

13. IRELAND

Tax Treaties

A tax treaty was signed between Ireland and the Republic of Moldova on 28 May 2009.

Finance Act 2009 Highlights

New Scheme of Capital Allowances for Specified Intangible Assets

Capital allowances (tax depreciation) have been introduced for capital expenditure incurred (on or after 7 May 2009) on the provision of specified intangible assets. Previously, Ireland's tax rules discriminated between tangible assets (for example, plant and machinery) where tax relief was widely available and intangible assets (for example, intellectual property), where tax relief was only available in very limited circumstances.

These measures are intended to develop and sustain Ireland's knowledge-based economy and to encourage companies to develop, own and exploit their IP from an Irish base.

The new rules apply to a wide range of specified intangible assets, such as:

- a. any patent, registered design, design right or invention;
- b. any trade mark, trade name, trade dress, brand, brand name, domain name, service mark or publishing title;
- c. any copyright or related right within the meaning of the Copyright and Related Rights Act 2000;
- d. any supplementary protection certificate provided under Council Regulation (EEC) No. 1768/92 of 18 June 1992;
- e. any supplementary protection certificate provided for under Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996;
- f. any plant breeders' rights within the meaning of section 4 of the Plant Varieties (Proprietary Rights) Act 1980, as amended by the Plant Varieties (Proprietary Rights) (Amendment) Act 1998;
- g. know-how within the meaning of section 768 of the Taxes Consolidation Act 1997;
- h. any authorization without which it would not be permissible for -
 - a medicine; or
 - a product of any design, formula, process or inventionto be sold for any purpose for which it was intended;
- i. any rights derived from research, undertaken prior to any authorization referred to in paragraph (h), into the effects of -
 - a medicine; or
 - a product of any design, formula, process or invention
- j. any license in respect of an intangible asset mentioned in paragraph (a) – (i);
- k. any rights granted under the law of any country, territory, state or area, other than Ireland, or under any international treaty, convention or agreement to which Ireland is a party, that correspond to or are similar to those within any of the paragraphs (a) – (j); and
- l. goodwill to the extent that it is directly attributable to anything within any of the paragraphs (a) – (k).

The new legislation provides for "wear and tear" allowances against the taxable income of a company on capital expenditure incurred by it on the provision of specified intangible assets for the purposes of their trade. The company can write off the expenditure in one of two ways:

- based on the amount charged to its profit and loss account for the depreciation of the asset; or
- over a 15-year period.

There are certain restrictions on the availability of capital allowances where the intangible assets are acquired intra group. Generally, a transfer of any asset intra group can benefit from group relief and no capital gains tax is payable on the transfer. It is only where both companies opt out of group relief that the acquiring company will be entitled to claim capital allowances on the intangible asset.

In addition, there may be restrictions on the amount of relief available on interest paid on loans where that loan is used either to:

- subscribe for shares in another company; or
- lend money to another company

where that other company uses those funds to acquire or create intangible assets on which capital allowances are claimed.

The aggregate amount of capital allowances and related interest expense that may be claimed for any accounting period may not exceed 80% of the trading income of the relevant trade for that period excluding such allowances and interest.

Stamp Duty Exemption for Intellectual Property Transfers Broadened

The exemption from payment of stamp duty on transfers of intellectual property now applies to a transfer of a trade name, a trade dress, a brand, a brand name, a service mark, a publishing title, an authorization for a medical product, rights derived from research prior to the granting of authorization for a medical product and other similar rights.

Payroll Tax Changes

Income Levy

From 1 May 2009, the income levy rates have been doubled to 2%, 4% and 6% and the new entry-level thresholds have been reduced to EUR 15,028, EUR 75,036 and EUR 174,980 per annum. The income levy is payable on gross income with no deductions available for capital allowances, losses or pension contributions. These new measures combined with the doubling of health levy rates (to 4% and 5%) significantly increase the tax burden for individuals.

Employers must operate the levy at the old rates (1%, 2% and 3%) up to 30 April 2009 and at the new rates (2%, 4% and 6%) on or after 1 May 2009.

A composite rate (a combination of the lower and higher rates) will apply over the whole of 2009, which has the effect of catching any exceptional payments made before 1 May 2009 and making the legislation retrospective to the beginning of the tax year.

Capital Gains Tax Rate Change

From 8 April 2009, the capital gains tax rate increased from 22% to 25%.

Capital Acquisitions Tax

From 8 April 2009, the capital acquisitions tax (a tax on gifts and inheritances) rate increased from 22% to 25% and the tax-free thresholds (which apply to gifts and inheritances depending on the relationship between the parties) decreased by 20%. The thresholds, however, will continue to increase annually in line with the consumer price index. The Minister for Finance rather dubiously justified the decrease in the tax-free thresholds on the basis of low inflation and falling asset values.

Taxes on Life Assurance Policies and Investment Funds

From 8 April 2009 the tax rates applying to life assurance policies and investment funds (including personal portfolio life policies and investments held in a personal portfolio investment undertaking) increased by 2%. The rate increase affects gross roll up schemes and profits and gains on life assurance policies and investment funds in OECD countries with which Ireland has a double taxation treaty, EU member states (other than Ireland) and EEA states.

Levy on Life Assurance Policies

From 1 August 2009 a levy of 1% applies in respect of life assurance policies entered into by an insurer where the risk is located in Ireland.

Increased Levy on Non-Life Insurance Policies

The current non-life insurance levy is increased from 1% to 3% in respect of premiums received on or after 1 June 2009 in respect of offers of insurance or notices of renewal of insurance (where the risk is located in Ireland) issued by an insurer on or after 8 April 2009.

Property Related Capital Allowance Schemes

Capital allowance schemes covering private hospitals, registered nursing homes, convalescent homes and mental health centers are to be terminated on 31 December 2009. However, the Finance Act 2009 provides for certain transitional arrangements for projects already at an advanced stage of development. These arrangements can be summarized as follows:

- if planning permission for construction/refurbishment is not required then, provided at least 30% of the construction or refurbishment costs have been incurred on or before 31 December 2009, capital expenditure incurred up to 30 June 2010 will qualify for allowances; and
- if planning permission for construction/refurbishment is required and has been validly applied for on or before 31 December 2009 and the Planning Authority has acknowledged receipt of such application, then (i) in the case of nursing homes, convalescent homes and mental health centers, capital expenditure incurred up to 30 June 2011 will qualify for allowances; and (ii) in the case of qualifying hospitals, capital expenditure incurred up to 31 December 2013 will qualify for allowances.

The schemes for specialist palliative care units and childcare facilities are not affected.

14. LUXEMBOURG

New protocols in Luxembourg tax treaties

Following unprecedented political pressure by the G 20, Luxembourg has been forced to amend its banking secrecy rules. Indeed, on 20 May 2009, Luxembourg and the US agreed on a Protocol amending the exchange of information provisions of the double tax treaty dated 3 April 1996. On 29 May, 3 June, and 4 June, the same happened to the treaties concluded by Luxembourg with respectively the Netherlands (treaty dated 8 May 1968), France (treaty dated 1 April 1958) and Denmark (treaty dated 17 November 1980). This follows the announcement made by the Luxembourg Government on 13 March of the present year regarding its commitment to comply with OECD standards on international tax cooperation.

The amendment of the US-Luxembourg treaty covers mainly Article 28 which deals with the exchange of information. The following paragraph in particular was added:

"In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person". Paragraph 3 makes it clear that the present exchange of information agreement does not oblige a contracting state to carry out measures at variance with its own laws and regulations.

The same provision which is drawn from Article 26-5 of the OECD Model Tax Convention was added to Articles 22 of the France-Luxembourg Treaty and Articles 26 of the Netherlands-Luxembourg and Denmark-Luxembourg Treaties.

The OECD presented these changes as "*a major step forward in international efforts to counter tax evasion*" and OECD Secretary-General Angel Gurría added: "*I am particularly pleased that having recently withdrawn its reservation to the OECD standard on exchange of information Luxembourg has within a matter of weeks renegotiated its agreement with the United States to allow for the exchange of bank information on request in all tax matters.*" Luxembourg received 1033 requests for information in the years 2006 to 2008. Only 10 were rejected – how major a step forward this actually is, is therefore questionable.

While the new provisions of the Luxembourg-US treaty will, as soon as they have been ratified, enter into force retroactively as of 1 January 2009, the new provisions of the French, Dutch and Danish Treaties will enter into force as of 1 January 2010.

As things stand now, these new provisions would overrule internal law, in particular Article 178bis of the General Tax Code, which forbids the tax authorities from requesting information from financial institutions and investment vehicles. Nevertheless, it is less clear whether a bank could respond to such a request, as Article 458 of the Luxembourg Penal Code forbids a banker to divulge such information, unless authorized by law or as a

witness in court. Thus it seems necessary to modify a number of provisions of internal law to be able to comply with these treaty undertakings.

The amendments to these 4 tax treaties together with the signing a new OECD compliant double tax treaty with Bahrain on 6 May brings to 5 the number of agreements concluded by Luxembourg that implement the internationally agreed tax standards. In order to comply with the criteria which the OECD seems to apply, Luxembourg still needs to sign 7 further amendments.

15. MALAYSIA

Income Tax (Amendment) Act 2009

The Income Tax (Amendment) Act 2009 ("the Act") was gazetted on 23 April 2009 to enact the proposals announced in the 2009 Mini Budget (which provided for an additional stimulus package) in March this year. The Act introduces the following changes to the Income Tax Act, 1967 (ITA):

- a new section 44B has been introduced which allows for current year losses of up to MYR 100,000 to be carried back to the immediately preceding year. This benefit of carry-back of tax losses is available for the years of assessment 2009 and 2010 to all businesses including partnerships and sole proprietors. There are certain categories of taxpayers who are not entitled to benefit from the loss carry-back, including companies enjoying certain tax incentives, such as the pioneer status, investment tax allowance, reinvestment allowance, etc;
- a new section 46B has been introduced to give effect to the tax deduction for individuals in relation to interest costs arising from housing loans in respect of sale and purchase agreements executed between 10 March 2009 and 31 December 2010;
- paragraphs 8A, 8B and 32A have been introduced into Schedule 3 to allow for the claim of accelerated capital allowances of 50% per year to be claimed in respect of prescribed qualifying capital expenditure (up to MYR 100,000) incurred on renovation or refurbishment between 10 March 2009 and 31 December 2010; and
- paragraph 15(1) of Schedule 6 has been amended to increase the tax exemption in respect of compensation for loss of employment from MYR 6,000 to MYR 10,000 for each completed year of service.

Gazette Orders

Income Tax (Exemption) Order 2009

The above gazette order enacts the proposals announced in the 2009 Budget to grant a tax exemption in respect of the following benefits-in-kind and perquisites arising from employment:

- travelling allowance, petrol cards and petrol allowance from home to the work place and vice-versa up to an amount of MYR 2,400 per year;

- travelling allowance, petrol cards and petrol allowance which are incurred for the purpose of performing official duties up to an amount of MYR 6,000 per year;
- child care allowances up to an amount of MYR 2,400 per year;
- discounted prices in respect of consumable business products of the employer up to an amount of MYR 1,000 per year; and
- subsidies on interest in respect of housing, education or car loans up to an amount of MYR 300,000.

It should be noted that the above exemptions do not apply to directors of controlled companies, sole proprietors and partners.

Income Tax (Deduction for Benefit and Gift from Employer to Employee) Rules 2009

The above Order prescribes tax deductions for employers in relation to the following benefits and gifts provided to employees:

- payment of monthly bills for subscription of broadband, fixed line telephones, mobile phones or pagers registered in either the employees' or employer's name;
- travelling allowances, petrol cards or petrol allowances provided for employees for travel to and from home to the place of work;
- personal digital assistants, telephones, mobile phones or pagers.

Income Tax (Exemption) (No. 2) Order 2009

This order relates to Malaysian incorporated companies which are engaged in the business of life sciences and meet the requisite criteria to qualify for Bionexus status. Bionexus status companies are exempt from tax for a period of 10 years. The above Order has been gazetted to enact a concessionary tax rate of 20% for such companies upon the expiry of their 10-year tax exempt period. It should be noted that the concessionary tax rate applies in respect of income from qualifying activities for a further 10 years following the expiry of the tax exempt period.

Labuan

Commitment to OECD's Exchange of Information standard

The Organization for Economic Cooperation & Development (OECD) announced earlier this year that Labuan was on its tax haven blacklist for non-compliance with the international standard of exchange of information on taxation. However, this announcement was subsequently withdrawn following the assurance from the Labuan Offshore Financial Services Authority (LOFSA) that Labuan is working towards adhering to the international standard on the exchange of information on taxation.

Flexibility for Labuan Holding Companies to be Located Onshore in Malaysia

Under the financial liberalization package recently announced by the Prime Minister, Labuan holding companies are now given the flexibility to locate their operational and management offices onshore in Malaysia effective 1 June 2009 upon satisfying several criteria, including the requirement for the Labuan holding company to have made an irrevocable election under Section 3A of the Labuan Offshore Income Tax Act 1990 to be taxed under the ITA. Such companies will be allowed to undertake the following activities from their Kuala Lumpur offices:

- holding of investments in securities, stocks, shares, loans, deposits or immovable properties;
- provision of management services including administrative, human resource, accounting and backroom support services to related companies within Malaysia, or related or non-related companies outside Malaysia;
- management of surplus funds and provision of credit facilities to related companies within the group in and outside of Malaysia;
- trading or re-invoicing activities outside Malaysia.

16. MEXICO

As we mentioned in the last Quarterly, Mexico and the Netherlands signed a new protocol ("Protocol") to modify the Convention for the Avoidance of Double Taxation ("Convention"), which will enter into force in 1 January 2010.

Many important amendments have been included in the new Protocol of the Convention, for example, new taxes covered by the Convention, clarification on definitions of certain terms, new permanent establishment provisions, new capital gain rules, lower WHT rates on interest income and mutual agreement procedures to solve dual residence issues, among other subjects of importance.

However, there is an issue that has generated special attention to tax practitioners in Mexico in Article I of the new Protocol. Such an article establishes that benefits from the Convention are not applicable to entities or other persons that, based on a special regime in accordance with their local law, are fully or partially exempt from taxes in either the Netherlands or Mexico. However, the said article establishes that a special regime may only be determined by mutual agreement between the competent tax authorities of the Netherlands and Mexico.

In this regard, a very important matter has been brought for discussion, in order to define whether or not the Dutch Participation Exemption Regime can be deemed as a special tax regime under Dutch law to exempt taxation of a resident entity claiming Convention benefits, with the consequence that Dutch entities with the said regime cannot benefit anymore from the Convention due to Article I of the new Protocol.

Someone can argue that the Dutch Participation Exemption Regime is only a domestic measure to avoid double taxation for Dutch resident entities, even if it may derive in double non-taxation when in an international transaction the source country gives up its right to tax certain types of income under a convention for the avoidance of double taxation.

Notwithstanding the above, the decision to determine if the Participation Exemption Regime is a special regime to exempt Dutch entities can only be reached among the Mexican and the Dutch government through a mutual agreement procedure. It is our understanding that the Dutch government would make a strong defense to avoid that qualification, due to the importance of this tax regime in the economy of the Netherlands.

Even if we conclude that the benefits of the Convention would still apply to Dutch entities with Participation Exemption Regime, we should be aware of any type of negotiation that the Mexican and the Dutch government may initiate on this regard, in order to prevent and to alert our clients of future changes to their structure for investing in Mexico through the Netherlands.

17. THE NETHERLANDS

Amendments to the Dutch Inheritance and Gift Tax Act

The Dutch Government announced proposed amendments to the Dutch Inheritance and Gift Tax Act in April this year. Below are set out the main proposed amendments:

- reduction of tax rates;
- repeal of transfer tax for real estate and enterprises transferred by gift or inheritance if the donor or deceased is not deemed a Dutch resident;
- new regime for special purpose funds;
- reduction of tax on business succession.

Reduction of rates

The current rates for inheritance and gift tax will be simplified and reduced. The current rate structure includes 21 different rates, the lowest being 5% for inheritances and gifts to partners and children below the sum of € 22.763 and the highest being 68% for gifts or inheritances to other beneficiaries exceeding the sum of € 910.163.

The proposal now only provides for six rates:

	I	II	III
Taxable amount	Partners and children	Grandchildren	Other beneficiaries
0 – 125.000	10%	18%	30%
125.000 and higher	20%	36%	40%

Exemptions:

The proposal provides for the following exemptions:

Exemptions inheritance tax	
Partners	€ 600.000
Children and grandchildren	€ 19.000
Other beneficiaries	€ 2.000

Exemptions gift tax	
Partners and children	€ 5.000
Children (one time only)	€ 24.000
Other beneficiaries	€ 2.000

As the current rates for gifts totalling less than € 45.519 made to partners and children are lower than the proposed rates, it might be advantageous to donate to children before the new legislation enters into force.

Transfer tax

Gifts and inheritances in the form of real estate, shares in Dutch enterprises or Dutch enterprises bequeathed by non-Dutch residents are currently subject to tax (hereinafter: transfer tax). No provision has been made for this tax under the proposed legislation. This means that non-residents will completely exempted from Dutch transfer tax in the future. However, the gift or inheritance might be subject to the tax of the resident country of the donator/deceased or the beneficiary. Proposed legislation maintains the provision stipulating that Dutch nationals will be deemed residents for a 10-year period after leaving the country. This provision applies to non-nationals with respect to gift tax for a 1-year period.

New regime for special purpose funds

The Dutch Government wishes to implement legislation ascribing the property of special purpose funds, such as trusts and the Dutch Antilles special purpose fund (*Stichting Antilliaans Particulier Fonds*) to the settler of such funds. The proposed legislation contains income tax and gift and inheritance tax. Legislation concerning public benefit funds will also be amended.

- Special purpose funds

The proposed legislation ignores the existence of the special purpose fund. Consequently, property belonging to and income received by the special purpose fund is ascribed to the settler of such fund. Hence, the settler is liable for tax on the income and capital of the special purpose fund. Once the new legislation takes effect it will override the provisions stipulated in the deed or letter drawn up for the special purpose fund. Definitions such as 'revocable', 'discretionary' and 'fixed' will be disregarded. Only in cases, where it is clear that the beneficiary has an explicit right to the capital of the special purpose fund, will such capital and income be ascribed to the beneficiary.

On the death of the settler, the rights to the capital of the special purpose fund will be attributed to the successor. Note that inheritance tax is also payable on the capital received. Payments made by the special purpose fund to beneficiaries are deemed gifts made by the settler to the beneficiaries.

- Charity funds

Two different types of benefit funds exist under Dutch Tax Law: the *Public Benefit Organisation* and the *Special Purpose Benefit Organisation*.

- Public Benefit Organization (SBO)

An organisation is considered a SBO if its activities include serving a public benefit organisation for more than 50%. Under the new proposed legislation this percentage is increased to 90%. Consequently, organisations not meeting the new requirement will lose their SBO status.

The SBO status is subject to a ruling given by the Dutch Tax Authorities. A consequence of the new legislation is that all current rulings will expire and the SBO must apply for a new ruling, which ruling will apply with retroactive effect as of 1 January 2010.

Donations or inheritances received by an SBO are exempted from gift and inheritance tax. Moreover, donations made to an SBO may, under special conditions, be deducted in the donator's income tax return.

- Special Purpose Benefit Organization (SPBO)

The new legislation proposes the introduction of a new special purpose fund, the SPBO. The aim of such organisation must be to serve a private purpose but it must also serve the general interest. Examples are sport clubs, music clubs and community centres. An SPBO may not pursue profit, no ruling is required from the Tax Authorities, it simply has to fulfil all legal requirements.

A SPBO is, like the SBO, exempted from gift and inheritance tax. Donations made to an SPBO are not deductible from the income tax.

Succession of a business

Succession of a business is currently exempted from the gift or inheritance tax for 75% on condition that the grantor is 55 years old or disabled. In addition, the beneficiary must continue the enterprise for at least five years after succession. Payment of the remaining 25% may be deferred for 10 years.

In the proposed bill exemption has been increased to 90% of the actual acquisition. Payment of the remaining 10% may be deferred for 10 years. This increase is under criticism as many consider it too large. The exemption applies to privately held enterprises and shares representing a substantial interest in an enterprise in active companies. The succession of passive companies will not be facilitated.

Conclusion

Above are set out the most significant proposed amendments to the Inheritance and Gift Tax Act. Amendments to special purpose funds such as trusts and SPF's are the most radical. It can be concluded that in the light of these amendments all existing gift and inheritance plans should be studied and reviewed.

Consultation document from Dutch Ministry of Finance on treatment of interest and application of participation exemption

The Dutch Ministry of Finance has published an important consultation document on the future tax treatment of group interest in the Netherlands and the application of the Dutch participation exemption. If the measures discussed in the consultation document found their way into a bill, they would enter into force on January 1st, 2010 at the earliest. The document does not state whether and how existing situations would be grandfathered.

We are expecting the majority of the measures in the consultation document to be laid down in a bill which will be submitted to Dutch Parliament after this summer. The Ministry of Finance has asked for comments on the measures in the consultation document and these comments can be submitted until August 1st. We will work together with other tax lawyers, lobbyists and reporters in order to bring the important issues to the attention of the Ministry.

Proposed changes

- Introduction of a mandatory "group interest box"

Parliament has already approved of the introduction of an optional group interest box as of 2007, but the entry into force of this optional version has been suspended while the EC decide whether it constitutes incompatible state aid. Until now the EC has only confirmed that the war chest function of the interest box is acceptable and the optional interest box has not entered into force. The Ministry now proposes a mandatory group interest box. The mandatory character aims to reduce the risk of the EC perceiving the interest box as incompatible state aid.

The effect of the mandatory interest box would be that the balance of group interest income and group interest expense will be taken into account for corporate tax purposes at an effective rate of 5% instead of at the statutory rate of 25,5% (2009). The 5% rate is achieved by only including approximately 20% of the balance of the interest income and interest expense in the Dutch basis of assessment. 80% of the balance of group interest income and interest expense will therefore be exempt or non-deductible, as the case may be.

Currency exchange results, changes in the value of group receivables and debts and hedging instruments will fall within the scope of the mandatory box. So will the revenues from temporary liquidities which are held with an eye on future acquisitions of qualifying participations, the interest component of lease and

rental payments and interest on and changes in value of certain hybrid loans.

- Impact and opportunities

It is expected that the proposed rules will have a limited impact on Dutch small and mid-sized companies without foreign subsidiaries.

The mandatory group interest box would make the Netherlands very attractive for international group financing activities. Substantial tax savings can be achieved if such activities are financed with equity.

The proposed rules may impact the treatment of existing structures involving hybrid loans. At present, income on qualifying hybrid loans is exempt in the Netherlands pursuant to the participation exemption. The measures in the consultation document would have the effect that the interest income is taxed at the effective rate of 5%.

The measures described below and the mandatory interest box would have a negative impact on highly leveraged acquisitions of Dutch companies. In the recent past a number of Dutch companies have been acquired by private equity funds in highly leveraged deals. These private equity deals do not sit well with the Dutch Government because they generally result in a considerable erosion of the Dutch tax base.

▪ New rules for the denial of interest deductions

The consultation document contains two proposals to limit the deduction of interest on both group debt and third party debt. The Ministry of Finance stated that after the consultation period has elapsed they will pick one of these to be laid down in a bill:

1. Specific rules limiting the deduction of interest on debt to finance the acquisition of participations and the reintroduction of a restriction of the deduction of interest by fiscal units. These rules will take the equity position of the company into account to calculate the non-deductible interest.
2. Earning stripping rules. These rules are based on the current German system. Interest would not be deductible in the event that i) the company is part of a group and to the extent that ii) the balance of the interest income and the interest expense exceeds 30% of EBITDA. Interest would, however, nevertheless be deductible in the case that the debt/equity ratio of the company would be better than the debt/equity ratio of the group. Furthermore, non-deductible interest in a specific year could be carried forward 9 years.

The current thin capitalization rules would be replaced by one of these proposed regimes. The anti-abuse doctrine and the anti-base erosion rules may be kept. The deductibility of interest would not be subject to any restrictions up to a threshold of EUR 250.000.

- Impact and opportunities

For Dutch small and mid-sized companies without foreign subsidiaries the proposed rules would have a limited impact, if any, due to the threshold of EUR 250.000.

Under the current thin capitalisation rules the equity could be increased by contributing (foreign) participations in a Dutch company. Hereby, the debt/equity ratio increased and thus the amount of deductible interest. Based on the proposed rules this may not be beneficial anymore.

In addition to the general group interest box these specific rules should further restrict interest deductions in highly leveraged structures.

▪ Relaxation of the requirements of the participation exemption

It has been proposed that the Dutch participation exemption becomes even more flexible. At present there are two tests to determine whether the participation exemption applies: the asset and the rate test. In addition to these tests a general test would be introduced which would look at the objective of the Dutch company which owns the subsidiary.

The participation exemption will apply if the objective is that the subsidiary is not owned as merely a passive investment. The documents clearly states that the participation exemption will in general apply to normal Dutch holding structures. If a subsidiary fails the "objective" test, it can nevertheless qualify for the participation exemption in the event that it meets one of the (revised) asset or rate tests. These revised tests are designed to make it easier to qualify for the participation exemption.

- Impact and opportunities

The relaxation of the participation exemption will make it much easier to confirm that the participation exemption applies. This is also relevant for FIN48 reviews.

In the consultation document the Secretary of Finance states that (foreign) financing companies should in future qualify for the participation exemption if they are taxed at an effective rate of 5%; these companies would meet the rate test because similar Netherlands companies would also be taxed at an effective rate of 5% (analogous with the group financing box regime).

▪ Corporate tax rate

The stricter rules are expected to increase the corporate tax revenues. The Government would aim to neutralise this effect with certain tax concessions and some commentators speculate that the Dividend Tax Act may be abolished. A further decrease of the corporate tax rate may also be considered.

18. PAKISTAN

The Finance Bill 2009, presented in the National Parliament of Pakistan on 13 June 2009, contains a number of tax changes in various tax codes. The following are the salient features of tax proposals.

Income tax

Relief measures

- The basic limit of exemption from income tax in respect of salaried persons is to be increased from PKR 180,000 to PKR 200,000. In the case of women salaried taxpayers, this limit is to be increased from PKR 240,000 to PKR 260,000;
- presently senior citizens are allowed 50% relief in tax liability provided the taxable income, in a tax year, does not exceed PKR 500,000. The limit is now enhanced to PKR 750,000;
- standard rate of WHT on the supply of goods is 3.5%. In the case of cigarettes and pharmaceutical products distributors, the rate will be reduced to 1% as from 1 July 2009;
- presently, receipts form accumulated balance of voluntary pension schemes is exempt up to 25% of the available balance. In order to promote the voluntary pension schemes and allow relief to pensioners the limit is to be enhanced to 50%;
- tax credit on interest payment for housing loans is restricted to 45% of the taxable income or PKR 500,000, whichever is lower. The limit is now enhanced to 50% and PKR 700,000 respectively.

Revenue measures

- WHT on imports was reduced from 5% to 2% last year, but has been raised again to 4%;
- last year minimum tax of 0.5% on declared turnover by the companies was deleted, and has since been restored;
- depreciation on passenger transport vehicles is allowed on total cost that will now be restricted at PKR 1.5.

Technical measures

- At present, taxpayers are allowed to file revised returns any time within five years of filing the original return. This facility is withdrawn in cases where the department has initiated proceedings for amendment of assessment order;
- in order to safeguard the interest of revenue, it has been proposed that in certain cases where departmental appeals are pending in courts the Commissioner will be empowered to withhold refunds.;
- in the cases of taxpayers having special tax year calculation of additional tax for delayed payment of advance, tax will be due as from the first day of the last quarter of the relevant tax year instead of 1 April as allowed in the case of taxpayers presenting a normal tax year;

- presently the taxpayers are allowed to rework out the cost of an asset purchased against a loan in foreign currency, for the purpose of depreciation. An amendment has been proposed to restrict the revaluation of the asset only in the year the exchange fluctuation occurred and not in previous years.

Measures for broadening of tax base

- In order to broaden the tax base and promote documentation of economy, importers, exporters and service providers are being required to file normal return of income instead of simple statement. Further tax deducted/collected from such taxpayers would be treated as minimum instead of final tax;
- the obtaining of National Tax Number (NTN) is made mandatory for purchasing property, obtaining commercial and industrial gas/electricity connections and opening a bank account. All NTN holders are also proposed to file the necessary returns;
- in order to ensure filing of income tax returns by all persons having reasonable resources and income, it is proposed that any person owning immovable property such as land area measuring 500 sq. yards, or a flat having covered area of 2000 sq.ft or owns a motor vehicle with an engine capacity of 1000CC or more shall file a return of income;
- to accelerate the pace of documentation relative to the economy and the broadening of tax base, the manufacturers are being incentivized by allowing tax credit at 2.5% of the tax payable if they are able to make at least 90% of their sales to sales tax registered persons;
- in order to curb speculative transactions in real estate business the rate of Capital Value Tax (CVT) on transfer of immoveable property is enhanced from 2% to 4%.

Customs act, 1969

Relief Measures

- Concession/exemption on pharmaceutical raw materials, lifesaving drugs and cancer diagnostic;
- exemption from customs duty on colostomy bags (PCT 3926.9050);
- reduction of duty on mobile phones from PKR 500 per set to PKR 250 per set;
- exemption of duty on calf milk replacer (CMR) from the existing 20% duty rate;
- exemption of duty on premix of micro nutrients (cattle feed premix) from 20% duty rate for dairy development;
- reduction of duty from 10% to 5% on raw materials for manufacturing pre-fabricated steel buildings;
- continuation of exemption of duty on import of agricultural tractors;
- reduction of duty on import of Kits for 4-stroke auto-rickshaws from 32.5% to 20%;

- extension in scope of exempted relief goods falling under chapter 99 of Customs Tariff.

Protection to local industry

- Increase in duty on hydrogen peroxide from 5% to 10% to protect local manufacturers;
- increase in duty on Isobutyl Acetate from 5% to 20% to protect local manufacturers;
- increase in duty on Welded stainless steel pipes from 5% to 15% to protect local manufacturers;
- increase of duty on multi system air conditioners which have a capacity of 5 tons or more from 10% to 35% plus regulatory duty of 15%;
- reduction in concessionary rate by 5% on import of pharmaceutical packing materials (PVC rigid film and aluminum foil);
- incentive for manufacturing of LPG, CNG dispensers and energy efficient for doors and windows;
- reduction of duty from 10% to 5% on CRC black plates for the manufacturing of tin plates;
- reduction of duty on raw materials for transformers and control panels;
- exemption from duty on import of linear alkyl benzene from 5%;
- increase of duty on import of Spark Plugs and Wire Condensers from 5% to 10%;
- increase in duty on plastic sanitary ware from 20% to 25%. Continuation of 5% CD rate on SKD kits for LCD/Plasma TVs manufacturers for a further period of one year;
- increase in scope of exemptions on import of solar equipments;
- exemption on steel tubes for manufacturing CNG cylinders;
- increase of duty on tufted carpets from 10% to 15% to avoid misdeclaration with other types of carpets;
- rationalization of duty on silicon sealant;
- exemption on inputs for manufacturing parts/components for the engineering sector;
- increase in duty rates on conductors falling under PCT code 8544.6000 from 20% to 25%;
- partial waiver of exemption of RD for manufacturers of sack Kraft paper bags;
- inclusion of condition "Not manufactured locally" in SRO 656(I)/06 for OEMS.
- freezing duty structure on cars/Jeeps and LCVs for a period of one year.

Tariff rationalization

- Regulatory duty of 10% on Pigment thickener is merged in Tariff;
- rationalization of duty on unglazed ceramic tiles to bring duty incidence at par with that on glazed tiles.

- rationalization of duty on Spin finish oil to check misdeclaration;
- rationalization of duty on LED panels to check misdeclaration;
- rationalization of duty rate on carbon black of rubber grade and other;
- uniform rate of duty on Cameras of PCT 8525.8000 to avoid misdeclaration;
- rationalization of duty on rolling coating printing ink;
- rationalization of duty on printed aluminum foil to avoid misdeclaration;
- increase in duty on residue oil (PCT Code 2713.9090) from 10% to 15%;
- rationalization of duty rate on import of cinematographic films from 5%ad.val. to 5% ad.val. plus Rs.5 per meter;
- improvement in Tariff Based System for vehicles:
 - customs Duty on CBU motorcycles is proposed to be reduced from 70% to 65%;
 - customs Duty on non-localized components and sub-assemblies of motorcycles is proposed to be reduced from 20% to 15%;
 - additional Duty of 32.5% is proposed to be increased on four localized parts of motorcycles to protect local vendor industry;
 - customs Duty on five non-localized components used in the manufacture of 'Trailers' is proposed to be reduced from 15% to 5% to promote local manufacturing of Trailers;
 - tyres have been included in TBS on statutory rate of duty
- change in description of PCT codes 3824.9094 and 7228.3010;
- correction of PCT Codes of Polyamides based paints and CNG buses;
- creation of separate PCT code for cryogenic tanks and secondary quality steel sheets falling under PCT code 7210.5000.

Sales tax & federal excise

- Zero-rating of wheel chairs for special people.
 - Zero-rating of Sales Tax on import and local supply of wheel chairs is aimed at providing wheel chairs to special people at cheaper prices.
Enforced through S.R.O. 472(I)/2009, dated 13 June 2009, effective from 14 June 2009.
- Exemption of Lysine Sulphate.
 - Exemption of Sales Tax on import and local supply of Lysine Sulphate is aimed at providing cheaper raw materials for poultry feed which will result into decrease in prices of poultry products.
Enforced through SRO 477(I)/2009, dated 13 June 2009, effective from 1 July 2009.

- Reduction of Federal Excise Duty on cement from PKR 900 / PMT to PKR 700/ PMT.
Enforced through amendment in Table I of First Schedule to the Federal Excise Act in 2005, effective from 14 June 2009.
- Withdrawal of 5% Federal Excise Duty on motor cars.
Enforced through SRO 474(I)/2009 dated 13 June 2009, effective from 14 June 2009.
- Reduction of Federal Excise Duty on telecommunication services.
 - Reduction of Federal Excise Duty on telecommunication services from 21% to 19 %.
Enforced through amendment in Table II First Schedule to the Federal Excise Act, 2005, effective from 1 July 2009.
- Reduction of activation charges of cellular phones.
 - Reduction of activation charges of cellular phones from PKR 500 to PKR 250.
Enforced through SRO 476(I)/2008 dated 13 June 2009, effective from 1 July 2009.
- Withdrawal of exemption on import of ware potatoes and onions.
 - Withdrawal of Exemption on import of ware potatoes and onions is aimed at providing protection to local growers of potatoes and onion.
Enforced through amendment in Sixth Schedule to Sales Tax Act, 1990, effective as from 14 June 2009.
- Enhancement of Federal Excise Duty on Cigarette.
 - Enhancement of rate of Federal Excise Duty on locally produced cigarette in different slabs for increasing revenue and discouraging cigarette smoking.
Enforced through amendment in Table I of First Schedule to the Federal Excise Act, 2005, effective as from 14 June 2009.
- Levy of FED on advertisement in newspapers, periodicals, hoarding boards, pole signs, sign board and shop boards.
Enforced through amendment in Table II of First Schedule to the Federal Excise Act, 2005, effective as from 1 July 2009.
- Enhancement of FED on short message services.
 - Levy of twenty paisa per SMS in addition to the rate specified for telecommunication services.
Enforced through amendment in Table II of First Schedule to the Federal Excise Act, 2005, effective as from 1 July 2009.
- Enhancement of rate of FED on insurance services from 10% to 16%.
 - The rate of FED on insurance services from 10% to 16% in VAT mode is aimed at widening tax net.
Enforced through amendment in Table II of First Schedule to the Federal Excise Act, 2005, effective as from 1 July 2009.
- Levy of FED on fund services provided by banks.
 - The FED: 16% in VAT mode has been levied on fund / non-fund services provided by banking companies and non-banking financial companies to widen the tax net.
Enforced through amendment in Table II of First Schedule to the Federal Excise Act, 2005, effective as from 1 July 2009.
- Levy of FED on services provided by the port and terminal operators including wharfage in respect of imports.
 - The FED: 16% in VAT mode has been levied on services provided by the port and terminal operators including wharfage in respect of imports to widen tax net.
Enforced through amendment in Table II of First Schedule to the Federal Excise Act, 2005, effective as from 1 July 2009.
- Levy of FED on services provided by stockbroker.
 - The FED: 16% in VAT mode has been levied on services provided by stockbrokers is aimed at widening the tax net.
Enforced through amendment in Table II of First Schedule to the Federal Excise Act, 2005, effective as from 1 July 2009.
Enforced through amendment in Sales Tax Act, 1990 and Federal Excise Act, 2005, effective as from July 2009.
- Introduction of penalty / imprisonment for violation of section 40B of the Sales Tax Act, 1990.
 - The penalty / imprisonment for violation of section 40B has been introduced to make enforcement more effective.
Enforced through amendment in section 33 of Sales Tax Act, 1990, effective as from 1 July 2009.
- Redefining the time period regarding reopening of any decision or order by the Board or Collector to three years.
 - The time period for reopening the cases under Sales Tax Act, 1990 and Federal Excise Act, 2005 is changed to three years.
Enforced through amendment in section 45A of Sales Tax Act, 1990 and section 35 of Federal Excise Act, 2005, effective as from 1 July 2009.

19. PERU

New regulations applicable to depreciation of constructions and buildings for Income Tax purposes

Pursuant to Law No. 29342, published on 7 April 2009, as from 2010, the annual depreciation rate applicable to buildings and constructions will be 5% instead of the 3% applicable according to the Income Tax Law currently in force. This is an incentive given by the Peruvian Government to avoid negative effects of the downturn.

On the other hand, the referred Law has established an exceptional and transitory depreciation regime applicable for tax purposes to new buildings and constructions, to the extent that certain requirements are met. In that sense, as from fiscal year 2010, buildings and constructions may be depreciated for Income Tax purposes using an accelerated annual depreciation rate equivalent to 20%, provided that the taxpayer fulfills with the following requirements:

- the construction has to be initiated starting from 1 January 2009;
- construction will have to at least reach 80% of the building by 31 December 2010.

20. POLAND

Simplifications in deductibility of costs related to R&D works

As of 22 May 2009 amendments regarding costs related to R&D works came into force. According to the new regulations, costs related to R&D works may be deducted:

- on a one-off basis:
 - in the month in which they were incurred; or
 - in the year in which the R&D works were finished.
- in a period no longer than 12 months in equal amounts, starting from the month in which they were incurred; or
- in at least 12-month period as depreciation write-offs, if classified as intangible assets.

Introduced changes apply to R&D works commenced after 1 January 2009.

Previous regulations specified limited possibilities of reduction of taxable income by such costs. As a rule, expenses related to R&D works might be deducted in a form of depreciation write-offs under certain conditions. However, if not classified as intangible assets, such costs could have been deducted in the year in which R&D works were finished.

Practical implications

New regulations are aimed at underpinning entrepreneurs running R&D works. They constitute a part of the governmental anti-crisis program.

21. PORTUGAL

Portugal addresses foreign funds and trusts claiming tax treaty benefits

On 6 April 2009, the Portuguese tax authorities issued Circular Letter 6/2009 on the application of tax treaties to Portuguese-source income derived by foreign investment funds, pension funds and trusts. As this is the first time that the Portuguese tax authorities have ventured into the field of tax treaty entitlement regarding collective investment vehicles (CIVs) and trusts, this interpretation represents a major step towards clarifying the tax treatment for any nonresidents using this type of vehicle to invest directly in Portugal. Note that this Circular is solely a statement of the Portuguese tax authorities' interpretation of this subject and as such is only binding on the tax authorities and not on the taxpayers.

As regards the possibility of investment funds and pension funds benefiting from the application of tax treaties, the tax authorities' new position is based on the following requirements being met:

- the fund must qualify as a "person" under the tax treaty, which generally includes an individual, a company treated as a body corporate for tax purposes, or any other body of persons;
- the fund must qualify as a "resident" under the tax treaty, i.e., liable for tax on a personal, unlimited basis and must not be treated as fiscally transparent in its State of residence; and
- the fund must qualify as the "beneficial owner" of the income received.

According to the Portuguese tax authorities, verification of compliance with the requirements listed above should be made using the current tax treaty RFI forms (duly certified by the tax authorities of the State of residence), which will need to be supplemented by a statement from the tax authorities of the State of residence confirming that the fund meets the requirement for "unlimited comprehensive liability for tax" and is not treated as a fiscally transparent entity. As regards Dutch recognized pension funds, the Circular Letter refers to the provision in the Protocol to the tax treaty that states that such funds are considered as residents of the Netherlands despite being generally exempt from tax.

As regards trusts, the general position of the tax authorities is that trusts do not qualify at all for tax treaty benefits. However, the Circular Letter excludes situations where a tax treaty expressly states that such trusts may claim tax treaty benefits (e.g., Portugal's tax treaties with the US and Canada), provided that the requirements and conditions set forth are met, including the requirement that the trust qualifies as the beneficial owner of the income received.

22. ROMANIA

Amendments to the Romanian Fiscal Code

Amendments to the Romanian Fiscal Code and related application Norms effective as of 1 May 2009 were approved by GEO¹ 34/2009 and GD² 488/2009, respectively.

The key amendments are:

Corporate income tax

The **concept of minimum corporate income tax** was extended to all taxpayers. Previously this was applied only to night clubs, discos, casinos, and the like.

Specifically, taxpayers whose corporate income tax liability assessed under the general rule is lower than the amount of minimum corporate income tax for the corresponding annual income level presented in the table below are obliged to pay a minimum corporate income tax. The total annual income taken into consideration is the annual income of the previous year less income from inventory variation, income from tangible assets' production, etc.

Total annual income (EUR)*	Minimum CIT (EUR)*
0 -12,000	500
12,000 – 50,000	1,000
50,000 – 100,000	1,500
100,000 – 1,000,000	2,000
1 mil. - 5 mil.	2,500
5 mil. - 30 mil.	5,000
More than 30 mil.	10,000

* Based on a RON/EUR exchange rate of approximately 4.3

Newly incorporated taxpayers shall make quarterly corporate income tax prepayments assessed at the level of the annual minimum corporate income tax related to the first level of total annual income (i.e., RON 2,200).

Inactive taxpayers registered as such with the Romanian Trade Register are not required to pay **the minimum corporate income tax** for the period during which they are registered as inactive.

The corporate income tax prepayments owed by taxpayers such as commercial banks, Romanian legal entities, and Romanian branches of banks, foreign legal entities which incurred fiscal losses in 2008, are assessed at a quarter of the annual minimum corporate income tax level (previously such taxpayers were to pay 16% corporate income tax of their accounting profits).

¹ Government Emergency Ordinance

² Government Decision

Micro-enterprises owe the same minimum corporate income tax if their normal income tax is below the annual minimum corporate income tax.

Separately, certain restrictions were introduced with regard to deductibility of fuel expense. Thus, fuel expenses incurred between 1 May 2009 – 31 December 2010 for motor road vehicles, owned or used by taxpayers that are normally used for persons' road transportation, with a maximum authorized weight of 3,500 kg having no more than 9 passenger seats, are deemed as non-deductible for corporate income tax purposes. These provisions do not apply to fuel expenses incurred with certain categories of vehicles, including those vehicles used for persons' transportation against payment (e.g., taxi), for rental to other persons, vehicles used exclusively for interventions, repairs, security and protection, courier activities, personnel transportation from and to the place where the business activity is conducted, vehicles used by sales agents and work force recruiting agents, etc.

Additionally, another new measure envisages revaluation reserves. As such, revaluation reserves related to revaluations of depreciable non-current assets and land, performed after 1 January 2004, shall be taxed simultaneously with the deduction of the tax depreciation charges or of the expenses incurred with disposal of and/or write-off of the respective non-current assets, provided that the revaluation is recognized for tax purposes. Until the publication of GEO 34/2009, taxation of such revaluation reserves was postponed until their change in destination, by means of distribution to shareholders, swap into share capital, etc., and thus, not simultaneously with their deduction for corporate income tax purposes.

Value added tax

- Express limitations of the VAT deduction right concerning road vehicles until 31 December 2010

VAT relating to the acquisition of road vehicles designed exclusively for the transport of passengers and meeting certain technical characteristics (i.e. weight of up to 3500 kg and with a capacity of up to 9 seats, including the driver's seat), as well as VAT relating to the acquisition of fuel for running such vehicles can no longer be deducted as of 1 May 2009 until 31 December 2010. An exception is provided for certain categories of vehicles expressly regulated (e.g. vehicles used for intervention, security and protection, courier services, passenger transport services, taxi, driving schools, rental, resale, etc). For the purpose of this limitation, the concept of "acquisition" includes buying of vehicles in Romania, imports and intra-Community acquisitions of vehicles. Leasing is deemed as service for VAT purposes.

- VAT period – new rules concerning switching from the calendar quarter to the calendar month

According to Article 156¹ (6¹) and (6²) added to the Fiscal Code by GEO 34/2009, carrying out a single intra-Community acquisition subject to VAT in Romania by a taxable person filing quarterly VAT returns automatically creates an obligation to switch

to monthly VAT reporting and payment obligations. To this end, the taxable persons who will find themselves in such a situation will need to file a declaration with the tax authorities whereby to amend their VAT period, within 5 working days from the date when the VAT chargeability on that intra-Community acquisition arises.

Amendments to the Romanian Fiscal Procedure Code

New fine for failure to file or incorrect filing of EC sales and purchases lists

The fine for failure to file or incorrect / incomplete filing of the EC sales and purchases list will be calculated as 2% of the amount of intra-Community supplies and/or acquisitions of goods undeclared or, as the case may be, the undeclared differences resulting from faulty declarations. The fine does not apply if the taxpayer rectifies the recapitulative statements within the legal filing deadline or even after the legal deadline elapses, as long as the correction is done due to reasons out of the taxpayer's control. The fine is reduced to half if the recapitulative statement is corrected before the legal deadline for filing the next recapitulative statement lapses.

23. SPAIN

Spanish law brought into line with EU law on VAT and on taxation of nonresidents

The Ministry of Finance has recently published a Preliminary Bill making the necessary amendments to bring Spanish legislation into line with EU law and, in particular, with the VAT Directive amending certain rules as regards the place of supply of services (Council Directive 2008/8/EC), and with the freedom of movement of workers, services and capital.

The Preliminary Bill would introduce two main new changes in VAT legislation:

- As from 1 January 2010, the general rule for the place of supply of services (at present the place where the supplier is established) would be amended so that once the Preliminary Bill became law, the reverse rule would apply, that is, services would be deemed to be supplied where the recipient is established, unless the recipient were a final consumer (i.e., not a trader or a professional). Thus, the rule for the place of supply of services to traders (where the recipient is established) would become the general rule, and would entail amending certain special provisions that rely on this rule.
- The other main new feature with respect to VAT would be the modification of the procedure for refunding VAT borne in other EU Member States. Traders established in Spain would be able to claim refunds of the foreign input VAT on the Spanish State Tax Agency's website, and EU traders not established in Spain would be able to claim refunds of the Spanish VAT they bear through the electronic portal that their own tax authorities set up for these purposes.

As regards the proposed changes to nonresident income tax legislation, the following are noteworthy:

- The scope of the tax exemption for dividend distributions would be extended to include European pension funds, although the exemption would be instrumented through a WHT and subsequent refund mechanism. This is Spain's response to the infringement procedure recently commenced against this country by the European Commission relative to this matter.
- The law is changed to permit the deduction of expenses related to income obtained in Spain by nonresidents (residing in the EU) other than through a permanent establishment, so that in practice they are taxed as if they were tax resident in Spain, on their net income, although at the tax rates envisaged for nonresidents.

24. SWITZERLAND

Exchange of information – Amendment of tax treaties

Switzerland has withdrawn its reservation against article 26 of the OECD model tax convention in order to be removed from the OECD's grey list of countries that are not yet compliant with OECD tax cooperation rules. According to the OECD, the 38 territories on the grey list, besides Switzerland, also Luxembourg, Austria, Belgium and Liechtenstein, have committed to OECD standards but have yet to fully implement the required changes.

Immediately after withdrawing its reservation against article 26 of the OECD model tax convention, Switzerland has commenced negotiations with various treaty countries to amend the provision about the exchange of information in the respective tax treaties.

The first tax treaty having been amended is the tax treaty with Denmark. However, but for article 27 concerning the exchange of information, no other changes have been made. This means that article 13 concerning capital gains had not been adapted to the OECD model tax convention and any capital gain on the sale of real estate companies may only be taxed in the state of residence of the seller.

The second treaty that has been amended is the tax treaty with Luxembourg. Currently, it is still unclear whether article 13 will remain unchanged. Switzerland usually insists on the right of the property state to tax the real estate capital gain upon a share deal.

The third treaty to include the new provision with regard to the exchange of information is Norway.

The amended tax treaties still need to be signed and ratified. It is expected that by the end of the year 12 treaties will have been modified with regard to the exchange of information and be ready for signing. So far, at least 23 countries have requested negotiations.

Influence on real estate investments

Since article 13 concerning capital gains is to remain unchanged in the tax treaty of Switzerland with Denmark, real estate investments involving Swiss real estate can still be structured tax efficiently through Denmark: By exiting the investment via a share deal the capital gain on the real estate remains untaxed due to the treaty provision on capital gains.

Currently, a Luxembourg structure allows a tax efficient exit from Swiss real estate investments via a share deal. At this stage, it is unclear whether this will be possible in the future.

Prior to the revision of Switzerland's tax treaty with the Netherlands such structuring could also be set up through the Netherlands. However, as the new treaty, containing the equivalent of article 13 paragraph 4 of the OECD model tax convention, is to enter into force in the near future (the earliest as of 1 January 2010) such structuring will be obsolete.

25. THAILAND

Implementation of Tax Measures to Boost Thai Economy for year 2009

As mentioned in the previous Taxand Quarterly (No. 14) regarding the tax measures to boost Thai economy for the year 2009, at present, such measurements were actually implemented. To recapitulate, the details of the said measures (only the ones that are interesting for the investors and their employees) are as follows:

Individual – Subsidizing part of cost of living

In the calculation of minimum tax at the rate of 0.5 % of the assessable income other than salary and wages, the personal income tax will be exempt in the amount not exceeding THB 5,000 if the said assessable income is derived from 1 January 2009. Therefore, the minimum tax will be exempt up to THB 5,000. However, the taxpayer is still subject to pay a personal income tax on the assessable income after deduction of expense and allowance at the progressive tax rates (5-37%).

The capital source for SMEs

The qualified venture capital registered with the Office of the Securities and Exchange Commission within 31 December 2011 will be exempt from corporate income tax on any dividend received from SME, and any capital gain from transfer of SME's shares.

In addition, the qualified venture capital will also be exempt from corporate income tax on the capital gain from transfer of shares of any SME which has entered into the Stock Exchange of Thailand and has increased its fixed assets excluding land to be more than THB 200 Million or has increased its employees to be more than 200 persons. However, such shares must have been held by the qualified venture capital before entering into the Stock Exchange of Thailand of such SME.

Real estate industry

The amount paid for buying new residence within the year 2009 capped at THB 300,000 will be exempt from personal income tax under the conditions which are (1) the new residence must not have been registered before, (2) the payment and the transfer registration must be made within the year 2009, and (3) the taxpayer must have been the owner of such new residence for 3 years, successively.

Tourism industry

Company or juristic partnership organizing a seminar in Thailand for its employees during the year 2009, will be able to deduct any accommodation expenses and seminar expense at the rate of 200% in the calculation of corporate income tax.

Debt restructuring

Tax measures for debt restructuring for non-performing loans will be granted, for the year 2009, as follows:

Income derived from the release of debt of the debtor of qualified financial institution creditor or other creditor, will be exempt from income tax.

Qualified financial institution creditor or other creditor will be able to write-off bad debt without the normal rule.

Transfer of property, sale or service, and documenting from debt restructuring between debtor and qualified financial institution creditor, or debtor and other creditor, will be exempt from income tax, value added tax, specific business tax and stamp duty. In addition, the transfer fee for registration of land and building will be reduced to 0.01% of the appraisal price under the Land Code soon.

Transfer of immovable property as collateral as well as its documenting of debtor of qualified financial institution creditor to other person than such qualified financial institution creditor, will be exempt from income tax, specific business tax and stamp duty. Additionally, the transfer fee for registration of land and building will be reduced to 0.01% of the appraisal price under the Land Code soon. However, such income from the transfer shall be paid to such qualified financial institution creditor not more than its unpaid debt or its guarantee contract.

M&A (partial business transfer)

Any income derived or any documenting from the partial business transfer between Thai public company or Thai private company and other Thai public or private company which is a company in the same group within the year 2009 will be exempt from value added tax, specific business tax, and stamp duty. However, they must be in the same group no less than 6 months after 31 December 2009. Note that such income from the partial business transfer is still subject to corporate income tax. This tax incentive used to be given during the years 2001-2003.

Unlike the partial business transfer, the transfer of whole business will be exempt from corporate income tax, specific business, stamp duty under various Royal Decrees and will be exempt from VAT under the provision of the Revenue Code, without time limit.

Other legislation

In addition, on 18 May 2009, Thai government decided to extend the tax reduction measure for any sale of immovable property for commercial purpose launched in 2008 to another year to stimulate real estate industry. As a result, the tax rate of specific business tax (including local tax) will be reduced to 0.11% for the sale of any immovable property for commercial purpose from 29 March 2009 to 28 March 2010.

Moreover, the registration fee for transfer and mortgage of office building, condominium, immovable property under the Land Allocation Act, and a resident building with the area not exceeding 1 Rai (1,600 square meters) are also reduced to 0.01% of the appraisal price.

26. UKRAINE

Ukraine-Belgium and Ukraine-China Tax Treaties: Forms of Residency Certificates

In order to apply benefits under a tax treaty, a Ukrainian payer of income (withholding agent) must hold a certificate confirming payee's residence in the treaty country. A certificate will be issued either in the form of the treaty country or in a specific Ukrainian form. A certificate in the form of the treaty country must include certain information as required under the Resolution of Cabinet of Ministers of Ukraine of 6 May 2001 No. 470.

It happens that authorities abroad refuse to issue residency certificates in the Ukrainian form but rather issue certificates in the form of the treaty country. If the latter form lacks all information required under the Resolution No. 47, then Ukrainian local tax inspectors may refuse to accept such residency certificates.

Recent letters of the State Tax Administration of Ukraine ("STAU") inform on the forms of certificates acceptable for the purposes of Ukraine-Belgium and Ukraine-China tax treaties. For residents of Belgium or China this will be certificates in the form which is customarily issued by the Ministry of Finance of Belgium and China's State Administration of Taxation, respectively.

In addition, certificates issued by Belgian authorities shall be certified with apostil, certificates issued by Chinese authorities do not require further legalization or certification with apostil.

STAU letters are expected to remove the risk of certificates from Belgium and China not being accepted, as local tax inspections are explicitly instructed to accept them.

STAU letters of 31 March 2009 No. 6696/7/12-0117 and of 10 April 2009 No. 7597/7/12-0117

Ukraine-Morocco Tax Treaty entered into force

According to information from the Ukrainian Ministry of Foreign Affairs, a tax treaty between Ukraine and Morocco entered into force on 30 March 2009.

The treaty will enter into effect in Ukraine as of 1 January 2010 as regards to withholding taxes and for any taxation period beginning on or after 1 January 2010 as regards to other taxes.

Under the treaty the WHT rate for dividends, interest and royalties is 10%. Interest income of governmental institutions is exempt from source-country withholding tax.

Letter of Ministry of Foreign Affairs dated 7 April 2009 No. 72/14-612/1-898.

27. VENEZUELA

In the Official Gazette of 26 March 2009, the National Assembly increased The Value Added Tax (VAT) rate from 9% to 12%, as per the Partial Amendment Law for the 2009 Fiscal Year Budget Law. This amendment entered into effect on 1 April 2009.

The Ministry of People's Power for Tourism, published in the Official Gazette No. 39.167 of 28 April 2009, through the National Commission of Casinos, Bingo Halls and Machines Slot, issued the Administrative Order No. 12, which establishes the bases in order to determine the amount of royalties and special contributions to be paid. Likewise, the Casinos, Bingo Halls and Slot Machines National Commission established the obligation for the different licensees to submit special reports at the end of each month.

The SENIAT informed that the average interest rate for loans, set by the Venezuelan Central Bank, for (i) January 2009 was 26.41% (Official Gazette of 10 March 2009), (ii) February 2009 was 26.89% (Official Gazette of 23 March 2009), (iii) March 2009 was 25.87% (Official Gazette of 4 May 2009), and (iv) April 2009 was 24.65 (Official Gazette of 13 May 2009) for purposes of calculation of late payment charges caused by tax debts, which are determined at 1.2 times said rate.

The President of the Republic issued Decree N° 6.707, published in the Official Gazette No. 39,178 of 14 May 2009, in which he ordered the abolition of the Ministry of Popular Power for Telecommunications and Informatics, and as a result established the competence of the Ministry of Popular Power for Science, Technology and Industry and Intermediate for Public Works and Housing.

New lists of products that will require Certificates of Non-Production or Insufficient Production (No. 2) and those that will not (No. 1) were published in the Special Official Gazette of 14 May 2009. These lists repeal the previous ones issued in March 2009 and are the basis that CADIVI will use to authorize entities and individuals to purchase foreign exchange at the official exchange rate for import purposes.

The Law of Partial Amendment to the Decree with the Status, Value, and Force of Law for Public Contracting was published in the Official Gazette of 24 April 2009.

The said Law establishes new provisions on matters related to the contracting with State agencies and entities (public bidding processes), with respect to the formalities to be met in the processing of the kind of processes in which the companies may participate. Additionally the Law establishes new penalties for public officials and private parties or companies that participate in processes for the selection of contractors or that contract with State agencies and entities.

The Regulations to the Public Contracting Law were published in the Official Gazette of 19 May 2009.

The said Regulations establish provisions regarding the contracting with State agencies and entities (public bidding processes), with respect to the procedure and formalities to be met in the processing of the types of contracting in which the companies may participate according to the Public Contracting Law. Likewise, the Regulations establish the powers of the agencies in charge of supervising the contracts entered into by the State.

The Regulations repeal the Partial Regulations to the Decree of Partial Amendment to the Bidding Law, published in the Official Gazette of 14 November 2005; the Partial Regulations to the Decree of Partial Amendment to Bidding Law for the Direct Acquisition in case of Works, Services or Acquisition of Goods, published in the Official Gazette of 13 May 2003; and Decree N° 1.417 regarding the General Contracting Conditions for the Execution of Works, published in the Extraordinary Official Gazette of 31 July 1996.

RULINGS

1. CHINA

China issues guidance on Enterprise Income Tax (“EIT”) treatment for real estate enterprises

Based on the old circular applied to domestic real estate enterprises (Guoshuifa [2006] No. 31) while incorporating certain rules in respect of foreign-invested property developers, the State Administration of Taxation (“SAT”) issued specific guidance (Guoshuifa [2009] No.31) on the EIT treatment for real estate enterprises. In comparison with the old rule, the lower limit of assessable gross profit margin rate was reduced by 5% (with the exception of “economically affordable” housing), which will be reduced by either 15%, 10% or 5%, depending on where the housing is located. The new rule also provides other supports to the real estate industry, i.e. products developed for self-use are no longer deemed a sale, and the restriction on tax deductions of accrued expenses is relaxed to some extent. Other guidance includes: defining concept of “taxable costs”; clarifying commission deduction where a foreign agency is entrusted to sell real estate; and regulating the pre-tax deduction of interest expense; etc.

Value-Added Tax (“VAT”) for releasing duty-free equipment from customs supervision is VAT creditable.

In connection with the new VAT reform in China, starting from 1 January 2009, the policy of import VAT exemptions on equipment is abolished and VAT payment for equipment importation is VAT creditable. In the form of a reply to the Shenzhen State Tax Bureau’s queries (Guoshuihan [2009] No. 158), the SAT stated that VAT repaid is VAT creditable if the relevant VAT invoices are obtained from Customs after 1 January 2009.

China clarifies the recognition criteria of tax resident status for Chinese-controlled offshore companies

On 22 April 2009, the SAT issued a notice (Guoshuifa [2009] No.82) to set out the criteria for determining the “place of effective management” for Chinese-controlled offshore companies, and stipulates the application of substance-over-form principle. The notice is effective retroactively as from 1 January 2008. The key parameters for the recognition are as following: locations in which board members and senior management of the company reside; locations in which board and management functions are exercised and decisions made; and locations in which the company seals, books and records are kept. When a Chinese-controlled offshore company is recognized as a tax residency in China, it shall be subject to EIT on its income from sources within and outside the PRC and it shall be subject to PRC withholding tax as well.

New reorganization tax rule is issued in China

The Ministry of Finance and the SAT jointly issued new reorganization a tax rule (Caishui [2009] No. 59) on 30 April 2009, which is effective retroactively as from 1 January 2008. The new rule contemplates the six types of company reorganization, i.e. change of legal form, debt restructuring, equity acquisition, asset acquisition, merger and split. The Key change is that it introduces a special tax treatment for qualified reorganization, which means that taxpayers may choose to defer the recognition of gain or loss for certain transactions if certain requirements are met. When choosing the special tax treatment, both the transferor and the transferee are required to submit relevant supporting documents to the tax authorities with the annual tax return filing for the year in which the special reorganization is completed.

2. INDIA

CBDT issues new forms to be filed before remittance to nonresidents

The Central Board of Direct Taxes (“CBDT”) has issued new rules prescribing a reporting requirement in Form 15CA and a format for a certificate from a Chartered Accountant in Form 15CB in relation to the remittances to nonresidents. These forms are to be filed the tax office in electronic form and physical form before the remittance. This rule takes effect as from 1 July 2009.

3. IRELAND

Underpayment of Preliminary Corporation Tax

Revenue has confirmed that it will waive penalty interest charges arising where a company fails to comply with its preliminary corporation tax obligations due solely to a fluctuation in foreign currency exchange rates. This applies to payments made in a functional currency other than the Euro. The functional currency values equivalent to the euro payments actually made are to be determined by reference to the “representative rate of exchange” for either the day on which the payment was made or the most recent day, for which such a rate was recorded, before the payment date.

Accounting Treatment of Research and Development (“R&D”) Tax Credits

Revenue acknowledge that some companies account for the R&D tax credit through their profit and loss account or income statement in arriving at the pre-tax profit or loss rather than recognizing it as a reduction to their tax charge.

Revenue has confirmed that where a company accounts for the R&D tax credit through profit or loss before tax, the tax credit will not be regarded as taxable income of that company or another company to which the credit has been surrendered.

Trusts and Offshore Structures

Revenue Investigations

Revenue has announced that an investigation into the tax treatment of both Irish and foreign "settlements" will commence on 1 September 2009.

Revenue will investigate persons who have undeclared tax liabilities arising from the settlement of property, assets and funds on trusts and other similar structures including foundations, establishments, trust enterprises and offshore companies.

Revenue has provided taxpayers with the opportunity to make a qualifying disclosure in advance of this investigation. The benefits of making a disclosure are significant and include:

- mitigation of tax penalties;
- non-publication; and
- non-prosecution.

The qualifying disclosure must be made to Revenue before 31 October 2009. A notice of intention to avail of the qualifying disclosure must be submitted to Revenue no later than 1 September 2009.

Persons who are already under enquiry or who come within certain excluded categories are precluded from making a qualifying disclosure of any undeclared/under-declared tax liability arising from such trust and offshore structures.

The following groups are excluded from making a qualifying disclosure:

- holders of Bogus Non-Resident accounts;
- Ansbacher and CMI/NIB cases;
- persons under investigation or who may come under investigation arising from the Moriarty or Flood/Mahon tribunal; and
- persons previously required to make disclosures relating to an offshore account/financial product, Single Premium Policy or DIRT- liable accounts.

Reporting Obligations

The Finance (No. 2) Act 2008 introduced new provisions requiring persons to deliver information to Revenue when, in the course of a trade or profession, they are concerned with the establishment of a settlement where the settler is resident in Ireland and the trustees are not resident in Ireland.

The information must be delivered by means of a return form issued by the Revenue. The details that must be provided are as follows:

- the name and address of the settler;
- the names and addresses of the persons who are the trustees of the settlement; and
- the date on which the settlement was made or created.

The time limits for delivery of returns have been extended as follows:

- in the case of a settlement made in the 5-year period between 24 December 2003 and 23 December 2008 the time limit for delivery is extended to 1 September 2009;
- in the case of a settlement made in the period between 24 December 2008 and 30 April 2009 the time limit for delivery is also extended to the same date i.e. 1 September 2009;
- in the case of a settlement made on or after 1 May 2009 the return is due within 4 months of the making of the settlement.

4. NORWAY

Functional currency as accounting currency – conversion for tax purposes

Companies that use functional currency have to convert their currency denomination to Norwegian kroner (NOK) for tax purposes. A recent statement issued by the Norwegian Ministry of Finance clarifies how the relevant conversions are to be made, and taxation of conversion differences.

Conversion to NOK

According to the Norwegian Taxation Act assessment and taxation shall be implemented in NOK. Companies that use functional currency as accounting currency must convert each single item in the tax forms into NOK, and then compute the tax result in NOK. The companies may not compute a tax result in functional currency and subsequently convert it to NOK (net income principle). However, to the extent a single item in a tax form consists of the sum of several transactions, the conversion only applies to the total item, and not every underlying transaction.

Balance sheet items that constitute non-cash items should be converted into historic currency, whereas cash items shall be converted into the currency rate at the end of the fiscal year. Items in the Profit and Loss Account (P&L) concerning wages should be converted into NOK with the currency rate at the time of the payment, whereas items concerning VAT should be converted into NOK with the currency rate at the time of the invoice. Conversion of other items in the P&L shall, as a main rule, be based on average currency rate.

Taxation of conversion differences

When converting items into NOK, conversion differences may occur as the recalculated tax result does not correspond with the change in the equity that fiscal year. This is a result of the cash items in the balance sheet and the items in the P&L being converted using different currency rates, and currency rates related to cash items in the balance can change during the fiscal year. The Norwegian Ministry of Finance assumes that such conversion differences, as a main rule, should either be considered as taxable currency income or deductible currency loss.

5. POLAND

Rules of taxation of electricity trade under excise duty law - general ruling of the Polish Minister of Finance of 31 March 2009 (AE6/0033/13/IRZ/1772)

As reported in the last edition of *Taxand Quarterly*, in March 2009 new Excise Duty Act came into force in Poland, implementing a new definition of "final consumer". Further to its wording, final consumer is an entity that purchases electricity but does not have a license to acquire, transfer, distribute or trade electricity in the terms of the electricity law.

Further to the general provisions of the Excise Duty Act, the regulations do not cover taxation of purchase of electricity by a licensed entity for its own purposes. The Minister of Finance (MF) however, having noticed this loophole, issued a general ruling stating that licensed entities buying electricity for their own purposes should be treated as final consumers. Consequently, transactions of this kind shall be classified as taxable sale of electricity to the final consumer at the territory of Poland. Tax liability rests on the seller of the electricity.

Practical implications

From the perspective of taxpayers, the legal basis of the ruling is doubtful. The MF interpretation of the term of "final consumer" exceeds the literal wording of the regulations. In practice, the standpoint presented by the MF may imply a material risk on electricity producers and distributors.

6. SPAIN

Interposition of holding companies or pass-through entities does not hinder application of participation exemption regime

Spanish corporate income tax legislation establishes an exemption for dividends and gains from holdings in nonresident entities, provided that the following requirements are met:

- the holding (direct or indirect) in the nonresident entity must reach at least 5 % and be maintained without interruption for a one-year period (which can be completed after the distribution);
- the nonresident entity must have been charged a foreign income tax of a nature identical or analogous to Spanish corporate income tax, a requirement which is deemed to have been met where Spain has signed a tax treaty with the country of residence;
- the income distributed or shared must come from the pursuit of business activities abroad.

However, the legislation contains certain specific rules on dividends and gains generated through holding companies, and these rules raised certain technical issues.

The Directorate-General of Taxes ("DGT") has recently published a binding ruling dated 29 April 2009 drawn up at the request of a Spanish entity which intended to invest in European operating entities through a French holding company formed for such purpose, which would in turn participate as the manager of a French pass-through collective investment institution (CFPR), ultimately investing on a direct basis in the European operating entities.

The DGT considered that the fact that these holdings were owned through holding companies and a CFPR that would merely channel the investments did not affect the application of the participation exemption regime, and that, provided that the holdings in the last-tier operating entities met the statutory requirements, this exemption could be claimed.

7. THAILAND

Thai Revenue Department issued a ruling categorizing the long-period and short-period investments in shares of other companies, as well as guidance concerning the deductibility of the loss from these investments.

Under Section 65ter (17) of Thai Revenue Code (TRC), an amount by which an asset other than stock-in-trade is devalued shall not be allowed as an expense and subject to the provision of Section 65bis of the Revenue Code.

Moreover, Section 65ter (13) of TRC rules that any expense not exclusively expended for the purpose of acquiring profits or for the purpose of business shall not be allowed as an expense.

Section 65bis (3) of TRC rules that the value of all assets, other than the stock-in-trade, shall be taken at the price they may normally be purchased. In the case where the values of the assets are increased by revaluation, the additional value shall not be included in the computation of net profits or loss.

For the stock-in-trade on hand on the closing date of an accounting period, it shall be valued at cost or market price, whichever is the lower, and the value thus defined shall be taken as the value of the stock-in-trade carried forward to the next accounting period under Section 65bis (6) of TRC.

In general practice, the investment in shares, normally, in the Stock Exchange shall be treated as the stock-in-trade which is subject to Section 65bis (6) of TRC. Other investment in shares will be considered as asset subject to Section 65bis (3) of TRC.

Early this year, Thai Revenue Department issued a tax ruling No. Gor. Khor. 0702/30 Lor. Wor, dated 6 January 2009 categorizing the long-period and short-period investments in shares of other companies as well as guidance concerning the deductibility of the loss from the sales of these investments. It ruled from the case where a company had the clear intention to invest in the shares of another company and recorded such investment in the current assets, stock-in-trade, or stock-in-market account with the following conditions:

- the stock shall be traded, immediately, in the market;

- the stock must be traded regularly; and
- the company has the intention to sell the invested shares within its accounting period or within 1 year, whichever is longer.

It ruled that such shares or stocks in this case shall be treated as stock-in-trade which is subject to Section 65 bis (6) of TRC that it shall be valued at cost or market price, whichever is the lower.

In the case where the company invested in the shares of another company and recorded such an investment in the non-current investment, whether it is temporary or long-term investment shall be considered as an asset which is subject to Sections 65 bis (3) and 65 ter (17) of TRC i.e. its increased value shall not be included in the computation of net profits or loss, and its devaluation shall not be allowed as an expense, respectively.

However, in the case where the company sells its investment regardless of stock-in-trade, temporary or long-term investment, the loss incurred from the sale shall be considered as an allowable expense which is not subject to Section 65 ter (13) of TRC.

COURT CASES

1. EUROPEAN COURT OF JUSTICE

23 April 2009, Case C-544/07 (Rüffler) – Poland – Deduction of health insurance contributions paid in another Member State

A German citizen, being a permanent resident of Poland was employed in Germany, where he was earning German-source income: the invalidity and occupational pensions. The corresponding contributions, including health insurance contributions, were deducted from his revenues in Germany.

As a Polish resident, the German citizen was subject to taxation in Poland on his worldwide income. However, according to the provisions of the Tax Treaty between Poland and Germany, the invalidity pension is subject to taxation only in Germany, while occupational pension – only on the territory of Poland. Therefore, the German citizen wanted to reduce income tax due in Poland by the amount of health insurance contributions deducted in Germany. However, Polish tax authorities refused to accept such a settlement.

The ECJ ruled that on the basis of national law, Poland cannot limit a possibility of income tax reduction by the amount of health insurance contributions only to those which paid in Poland. Consequently, health insurance contributions paid under the compulsory health insurance scheme of any of Member State may be deducted from income tax due in Poland.

Notwithstanding the proceedings before the ECJ, amendments allowing the reduction of the amount of health insurance contributions paid in another Member State from the income tax due in Poland have been introduced to the Polish tax law as of 1 December 2008.

Practical implications

The ruling may constitute a basis for a refund of an excess income tax paid in Poland during the period of 1 May 2004 and 30 November 2008 by other Member States' residents.

ECJ Judgment of 18 June 2009, ABERDEEN SICAV (Investment Fund)

The ECJ issued on 18 June its decision on the Aberdeen Case (C-303/7) related to a Luxembourg SICAV (investment fund) which had invested in shares in a Finnish company (real estate Investment Company). Under Finnish law payments made to Finnish Parent companies or funds were exempt of WHT, whereas a WHT applied if the dividends had been paid to a SICAV resident in another Member State.

In its decision, the ECJ ruled that the freedom of establishment provisions is not in line with a Member State law which discriminates between payments to national and foreign (EU) investment funds. This conclusion is not jeopardized by the fact that the EU parent company - (in this case, the Luxembourg SICAV) is an open-ended investment company which has a legal form unknown in the law of the former State - does not

appear on the list of companies referred to in the Parent-Subsidiary Directive, and is exempt from income tax under the law of the other Member State.

This decision appears to confirm the traditional view of the ECJ as regards to payments of dividend payments within the EU and the EEA. We can quote as other leading cases in this respect Persche (C-318/07) and Centro di Musicologia (C-386/04) for charities, Amurta (C-379/05) for companies, and more recently Commission vs Netherlands (11 June 2009, case C-521/07) for EEA companies. The underlying reasoning in all of these cases is that dividend payments are not only ruled by the parent-subsidiary directive but, obviously, also for the Treaty freedoms as freedom of movement of capital and freedom of establishment. There are still pending cases and infringement procedures in outbound dividends (case C-487/08) and pension funds.

As a conclusion we can state that the ECJ case law is clear in the recognition of a true single market (EU and EEA) with regard to dividend payments. Thus there is an opportunity to ask for the refund of taxes unduly paid in breach of community law, available to companies, pension funds, investment funds and charities of the EU or EEA area.

2. COUNTRIES

2.1 AUSTRALIA

Interest deductibility on subordinated loan

A recent decision of the Full Federal Court of Australia has confirmed a judgment denying a local Bank ("**St George**") a deduction for interest paid on a subordinated loan issue.

The relevant facts involved a debenture issued by the bank in 1997, prior to the commencement of Australia's debt-equity rules on 1 July 2001, and interest paid on the debenture in years before and after the commencement of those rules. The transaction involved:

- a special purpose limited liability company ("**LLC**") in the US raised USD 250 million through the issue of redeemable preference shares (which qualified as Tier 1 capital of the St George consolidated group for the capital adequacy requirements of the Reserve Bank, the regulator of the banking industry at that time);
- although the shares were redeemable, LLC had the option of putting another share in LLC to the investors in lieu of repaying the amount subscribed, and then a further share and so on. (However, the dividends under each succeeding share issue became larger and so it was expected in the market that at some stage St George would re-finance and redeem the shares for cash);
- LLC lent the funds raised to St George at interest under the debenture arrangement (the debenture qualified as Lower Tier 2 capital for regulatory purposes for St George on a stand-alone basis);

- although the debenture was to be repaid by St George to LLC at the expiry of the term, surplus funds remaining after redeeming the shares would then flow back to St George (as it would at that time be the only investor in LLC);
- the dates and rates of interest payable by St George on the loan exactly matched the dates and rates of dividends to be paid by LLC to its investors; and
- the rights of LLC under the debenture were subordinated to other creditors of St George and St George could also prevent LLC from paying a dividend to the holders of the redeemable preference shares if necessary.

The net effect of the two transactions satisfied the regulator that St George had effectively raised USD 250 million in additional, sufficiently permanent, equity to amount to Tier 1 capital for the St George consolidated group.

The Full Federal Court confirmed the decision of the judge at first instance that the interest paid on the debenture was not deductible. The Court approached the issue on the basis that the capital structure of a company can be a structural advantage of a capital nature, especially in those cases where a regulatory obligation (in this case, the capital adequacy requirements of the regulator) imposes particular requirements about the company's capital structure. And where that was the case, the cost of meeting the regulatory requirement may be capital in nature. The Court drew an analogy with the cost of acquiring and holding a particular kind of license such as a TV broadcasting license. So, in this case, meeting the regulator's capital requirements went to the ongoing ability of St George to operate as a bank. The Court was not dissuaded from this view by St George's arguments that the arrangement only secured the additional funds for a limited term, nor by the fact that the interest expense to maintain this structure was recurrent.

In the Australian banking industry, it is generally understood that no deduction is allowable for the costs of maintaining Tier 1 capital but the cost of Lower Tier 2 capital would ordinarily be regarded as deductible. On one reading, perhaps this judgment is merely an example where a Court characterized the debenture (Lower Tier 2 capital for St George on a stand-alone basis) in the same way as the money raised by LLC (Tier 1 capital for the St George group) because the links between the two instruments were so closely established – that is, when St George paid interest on the debentures it should really be viewed as paying the dividends on the shares issued by LLC. If that were the proper reading of the case, it might not be too surprising.

We noted above that similar instruments would now be governed by statutory debt-equity rules which, in general terms, began operation for instruments issued after 1 July 2001.

Losses of in-house finance companies

The Australian Taxation Office (“ATO”) has been concerned for some time about the tax issues arising from in-house finance companies operating within large listed groups. A recent decision of the Federal Court involving an in-house finance company in the BHP Billiton group challenges the ATO's view of the way the tax issues should be addressed.

The case arose out of the decision in 2000 by BHP Billiton Finance Ltd (“Finance”) to write off the principal – totaling about AUD 2 billion – of two loans made to other BHP subsidiaries. The taxpayer claimed a tax deduction for amount written off as a bad debt on the basis that it was carrying on business as a money lender. As a result of this, the two borrowers made adjustments to their tax positions on the basis that the commercial debt forgiveness rules applied to them.

The Commissioner disputed the deduction claimed by Finance on a series of grounds: that Finance was not carrying on an independent business as a money lender, that the loans were not made in the ordinary course of that business, that the loans were not bad when written off and that the general anti-avoidance rule applied to deny Finance the benefit of the tax deduction.

A large part of the judgment was taken up with describing the facts and circumstances surrounding Finance's operations: the frequency of its borrowings, the identity of the lenders, the amounts involved, the frequency and size of the loans it made to group members, the rates of interest charged and received, the terms of those loans and the loan documentation, the oversight of its loan portfolio, the circumstances surrounding the making of the 2 loans in question, the significance of letters of comfort given to the borrowers in connection with the borrowings and the revocation of those letters, the failure of the projects undertaken by the two borrowers, the decision to write off the 2 loans, and so on. This long recitation is not surprising since, at the heart of the case, lay questions of fact – was Finance carrying on a business as a money lender, were these loans within the ordinary course of that business and were they bad when written off?

The Commissioner argued that Finance was not carrying on a money lending business because its activities were wholly controlled by BHP Billiton and it did not operate as an independent entity. The judge rejected this argument on the facts and because it was contrary to long-established authority that a subsidiary is not a mere proxy for its parent.

The ATO also argued that the loans were not made in the ordinary course of that business. Again, this argument was rejected on the facts.

The ATO disputed that one of the loans was bad when written off. This argument stemmed from the fact that the borrowers had the benefit of letters of comfort from the parent company at the time that Finance made the loans, although there was some dispute about whether the letters remained on foot at the time that the loans were written off. The judge agreed with Finance that those letters created no rights in favor of Finance, and noted

further that even if they did, their effect did not extend to support the ATO's argument – i.e., the ATO could not claim the loans were still viable simply by showing that Finance might have been able to bring some action based on the letters.

The ATO had apparently put the view that the debt should not be regarded as bad because, within a single corporate group, the parent could always put the borrower in funds to pay its debts. The judge re-stated the argument as amounting to a view that, “no debt between two wholly owned subsidiaries is ever bad because ... the parent will always ‘sort it out’.” She rejected the argument saying, “if such a submission were to be accepted, the effect would be that the form of all transactions between wholly-owned subsidiaries would be disregarded for tax purposes.”

2.2 INDIA

Eli Lilly and Company (India) Pvt. Ltd (Supreme Court)

The Supreme Court of India has held that salaries paid offshore (in the home country) to a nonresident employee (“expatriate”) for rendering services in India is liable for WHT in India. As per the Income Tax Act, 1961 (“the Act”), salary payable to the expatriate for services rendered in India is taxable in India, but there was doubt about the WHT obligation of the nonresident employer, when part of the salary for services rendered in India, was paid in the home country. In the present case, one portion of the salary was paid by the Indian entity to which the expatriate was seconded to, and regarding the Indian salary tax was withheld by the Indian entity. But the balance salary paid in the home country was not included for WHT. The Apex Court confirmed that when the income is liable to tax in India and when the Act provides for WHT based on an estimation of the expatriate's income chargeable to tax, the salary paid abroad should also be included.

UAE Exchange Centre Ltd vs. Union of India (Delhi High Court)

The taxpayer, a United Arab Emirates (“UAE”) company, was engaged in offering remittance services for nonresident Indian customers in UAE for transmitting monies to beneficiaries in India by telegraphic transfer (“TT”) or through its Liaison Offices (“LO”) in India. The contract with customers for remitting the money is entered and executed in UAE. A fixed commission per transaction is collected in UAE, irrespective of whether the customer opts to send the money through TT or the LO. The activity performed by the LO is to download the payment instructions, print checks and dispatch them to the recipients as instructed by the customers. The taxpayer applied to the Authority for Advance Ruling (“AAR”) holding the question whether the LO can be treated as a Permanent Establishment (“PE”) under the India-UAE tax treaty so as to attribute income to such a PE. The AAR ruled that the LO carried on activities integral to the business and therefore, LO should be construed as a PE. However, the High Court has reversed the ruling of the AAR by holding that the activity carried on by the LO has to be treated as preparatory or

auxiliary in nature and the activities of the PE cannot result in a PE.

Epcos AG, Germany (Pune Tribunal)

The taxpayer, a German company, was engaged in the business of designing, manufacturing and marketing electronic components in different parts of the world. The taxpayer received royalties, product marketing services fees, Information Technology support services fees, Interest on loans and Sales support fees from its Indian Subsidiary. The taxpayer claimed that it had no PE in India and that the above receipts were taxable at the lower rates as per different articles of the India-Germany tax treaty. The Tax Officer contended that the Indian Subsidiary was a PE for the taxpayer. He alleged that the Parent was conducting business in India through its subsidiary, since the employees of the Subsidiary were carrying on the same functions as the Parent, under the guidance of the Parent and he denied the lower rate prescribed by the DTAA. On appeal, the Tribunal held that the mere existence of a subsidiary does not by itself create a PE for a nonresident. Even though the employees of the subsidiary carried on activities which were similar to that of the Parent, it would not amount to carrying on the business of the parent and therefore, it cannot be said to lead to the existence of a PE. Even if the PE were to exist, the application of a lower rate as per the tax treaty could be rejected, only if there is a live nexus between the income and the PE. Accordingly, the Tribunal concluded that the subsidiary cannot be construed as a PE of the taxpayer foreign company and the lower rate of tax cannot be denied.

Krupp UHDE GMBH (Mumbai Tribunal)

The taxpayer, a German company, was providing supervisory activities in connection with a construction project in India. An issue arose in determining whether the taxpayer had a PE in India as per Article 5 of the India-Germany tax treaty, which provides that supervisory activities carried out for more than six months in connection with a building site or construction, assembly or installation project in India would constitute a PE. In computing such periods, the Tax Officer aggregated the periods of various projects and concluded that it exceeded six months and hence constituted a PE. The Tribunal has ruled in favor of the taxpayer that (a) the period of activity of unconnected projects should not be aggregated and that it should be computed independently for each project and (b) the ‘starting point’ for counting should begin on the day the supervisory activity starts and not on the day the project starts. The Tribunal, however, rejected the taxpayer's contention that (c) only the actual period of activity should be considered and ‘intervening periods’ should be excluded and (d) the period of six months must fall within the same ‘financial year’. The Tribunal held that these contentions would defeat the purpose of the provisions. The Tribunal ruled in favor of the taxpayer by holding that the activities did not constitute a PE in India as the threshold period of six months was not crossed in any project taken independently.

Daimler Chrysler India Private Limited (Pune Tribunal)

The taxpayer, an Indian company, brought forward losses from earlier years. The majority shareholding in the taxpayer company was held by a German company ("the Parent") listed in the German stock exchange ("SE"). The Parent merged with another German company resulting in a change in the shareholding pattern of the Indian taxpayer company. The tax officer applied section 79 of the Act, as it stood at the time, which provided that a taxpayer is entitled to carry forward and set off losses only if shareholders, who beneficially hold more than 51 % of the voting rights on the last day of the year in which the loss was suffered, continue to beneficially hold 51 % of the voting rights on the last day of the year in which the loss sought to be set off. Applying this provision, the tax officer denied the set off of losses of the taxpayer since the shareholding had changed due to the takeover at the Parent level. The Tribunal accepted the contentions of the taxpayer that such treatment could be construed as discrimination, under Article 24 of the tax treaty between India and Germany. The Tribunal held that this would be a case where an enterprise in a contracting state, the capital of which is wholly or partly owned or controlled by residents of another state is subject to more burdensome taxation than similar enterprises in the first-mentioned state. The Tribunal came to such a conclusion because section 79 of the Act will not apply to an Indian Subsidiary of a public company listed on Indian stock exchange, whereas it would apply to an Indian subsidiary of a company listed in German stock exchange. The Tribunal held that section 79 of the Act would be hit by Article 24 of the tax treaty and the loss cannot be disallowed to the taxpayer.

Worley Parsons Services Pty Ltd (AAR)

The decisions of the AAR on three separate applications by the company are reported hereunder.

The applicant, an Australian company, agreed to provide services under Engineering and Procurement ("EP") Contract with an Indian company in respect of the latter's cross-country pipeline project in India. The applicant had a PE in India. About 80 % of the EP services were performed in Australia. While there was no dispute that the receipts fell within the meaning of 'Royalty' under Article 12(3) of the India-Australia tax treaty and Section 9(1)(vi) of the Act, the applicant approached the AAR and contended that since it had a PE in India and its receipts are 'effectively connected to the PE', the net income attributable to the PE should be taxed as business profits under Article 7, and not on gross receipts as royalty under Article 12 of the tax treaty. It also contended alternatively that the royalty income pertaining to work carried out outside India is not taxable in India in light of the decision of the Apex Court decision in *Ishikawajima Heavy Industries Ltd.* The AAR held that basic facts relating to functions exercised by staff stationed at PE, work performed by them, billing at PE level were not produced in support of the applicant's contention to show 'effective connection'. It also observed that the India-Japan tax treaty (as in the *Ishikawajima's* case) used the word 'contract' instead of 'services' used in the India-Australia tax treaty, which were required to be effectively connected to the PE. The AAR held that it was not

enough under the India-Australia tax treaty to show that the contract is effectively connected to the PE, but the services should also be shown to be so connected. As the applicant failed to do so in this case, the AAR held that the receipts will not be excluded from the purview of Article 12 of the tax treaty. It also held that the receipts will be taxed in India as certain key activities of the contract have been performed in India and the ratio of the Apex Court would not apply. Accordingly, the AAR held that the receipts are taxable as royalty on a gross basis.

In another application before the AAR, the applicant stated that it had entered into several agreements with an Indian company in order to provide services involving the review of various technical and commercial bid documents, detailed designs and engineering documents, as well as services for studying and suggesting changes to existing processing facilities so as to optimize the latter, and so on. The applicants' employees visited India for different periods of time for the execution of various contracts. The issue posed to the AAR was whether the receipts earned by the applicant under these various contracts could be considered as royalties as per the Article 12 of India-Australia tax treaty (there is no separate definition relative to fees for technical services under the treaty) and on the other hand, to determine whether the number of days spent by the applicant's employees in India for each contract should be aggregated in order to ascertain whether a Service PE exposure results for the nonresident in India. On the question of considering the sums as 'royalty', the AAR observed that the applicant had not 'made available' to the Indian company, any technical knowledge, experience, skill or know-how which he possessed in a way that it can be used again by the Indian company once the contracts are completed by the nonresident, and therefore held that the payments could not be considered as 'royalty' under the tax treaty. On the PE issue, the AAR observed that various contracts involving rendering of services were with the same party; the activities were to be carried out at the same place and the nature of work and services were of the same pattern. It held that from a geographical and commercial perspective, the services could not be dissociated from each other and the AAR held that the periods of stay were to be aggregated. However, the AAR held that if a contract begins and ends before the initiation of the next contract, then the periods of stay cannot be aggregated.

In the other application to the AAR, the applicant stated that it had an agreement with another Indian company to provide engineering services in connection with the setting up of an Alumina refinery in India. The services involved the collection of data, the preparation of project design and the transfer of the designs. The preparation of the designs was carried out in Australia, while the rest was performed in India. The receipts of the applicant could admittedly be considered as royalties and the applicant did not have a PE in India with regards to this contract. The applicant sought for Advance Ruling on whether the receipts from this contract were taxable only to the extent of services utilized as well as rendered in India and, whether the services outside India were not taxable by relying on the Apex Court decision in *Ishikawajima Harima Heavy Industries*. The AAR

observed that the principle of territorial nexus could not be understood in a narrow sense especially since the India-Australia tax treaty itself concedes the power to tax royalties to the contracting state in which they arise. The AAR applied the test of 'live link' and held that sufficient territorial nexus exists to subject the royalty income to tax in India since, not only the services have been utilized in India for the benefit of a resident in India, but also part of the services were actually undertaken in India. Distinguishing the case of *Ishikawajima*, the AAR stated that in the case held before the Apex Court, there were offshore and onshore supplies of goods and engineering services, unlike the applicant's present case where the services related to a single contract. Accordingly, the AAR held that section 9(1) (vi) of the Act cannot be interpreted to tax only proportionate deemed income in respect of a single agreement which does not have severable elements.

2.3 SPAIN

Courts adopt restrictive interpretation on dividends paid to EU parent companies of non-European multinationals

Under Spanish nonresident income tax legislation, income distributed by subsidiaries resident in Spain to their parent companies resident in other EU Member States or to the permanent establishments of such parent companies located in other EU Member States will be tax-exempt under certain conditions.

However, the legislation contains an anti-abuse provision whereby the exemption will not apply where the majority of the voting rights at the parent company are held, directly or indirectly, by individuals or legal entities that do not reside in an EU Member State, unless the parent company (i) actually engages in a business activity directly related to the business activity pursued by the subsidiary; or (ii) has as its purpose the management and administration of the subsidiary through the suitable organization of human and material resources; or (iii) proves that it has been formed for valid economic reasons and not to unduly qualify for the exemption.

In this regard, the National Appellate Court has recently made public two judgments dated 16 June 2008 and 22 January 2009, respectively, confirming the decisions of the Central Economic-Administrative Tribunal (an administrative court forming part of the Ministry of Finance) of 15 October 2004 and 14 October 2004, which had taken the interpretation of the three exceptions to the anti-abuse provision to the limit by seeming to apply them cumulatively. Therefore, on the above judgments the National Appellate Court supports the same legal criteria showed on the decision of the Central Economic-Administrative Tribunal dated on 14 June 2007.

The facts considered in the above judgments involved several dividend distributions by a Spanish subsidiary to a fully operational Dutch parent company (with various employees and three directors, two of whom were resident in the United States), which in turn was a subsidiary of another Dutch company, ultimately controlled 100% by a company that was tax resident in the U.S. The direct parent company of the Spanish

company engaged in financial activities for the group as well as in manufacturing processes that were then implemented at the various subsidiaries of the group.

The National Appellate Court rejected the application of the three exceptions of the anti-abuse provision to the Dutch parent company on the following grounds:

- Actual pursuit of a business activity directly related to the business activity carried on by the subsidiary: of all of the activities pursued by the Dutch parent company, only the manufacturing processes activity could be directly related, but there was no evidence that these activities were actually being pursued or that the parent company had the human and material resources for this task.
- Corporate purpose of management and administration of the subsidiary through the suitable organization of human and material resources:
 - the U.S. directors did not perform functions of administrative control or management of the subsidiary;
 - there was no evidence that the Spanish subsidiary was dependent on its Dutch parent company, since there were no invoices from the parent company to the subsidiary, nor was there any record that the parent company had received any payment for its financial activities.
- Formation of the parent company for valid economic reasons: the parent company had only been tax resident in The Netherlands since 1995 (before that, it was tax resident in Bermuda), the year in which it acquired its holding in the Spanish subsidiary, and, in the Court's opinion, its tax residence was changed precisely to claim the dividend distribution exemption.

As can be seen, both the Spanish tax authorities and the courts have continued to interpret this provision very restrictively. Nevertheless, in our opinion, in the case analyzed above the National Appellate Court could have taken an excessively strict line in these judgments (a line which could run counter to the spirit of the Parent-Subsidiary Directive).

OTHER NEWS

1. COUNTRIES

1.1 AUSTRALIA

Employee and executive share plans

In the Australian Budget on 12 May 2009, the Government announced its intention to make major changes to the rules governing the taxation of employee and executive share plans. Where shares or options are issued at a discount, these rules currently allow employees one of two types of tax treatment:

- where the shares are subject to restrictions on their disposal or conditions that may lead to forfeiture, employees can elect to defer tax on the discount until those restrictions expire, up to a maximum period of 10 years; or
- employees can elect to treat up to AUD 1,000 of the discount as exempt income for broadly based plans.

The Budget announcement proposed that tax deferral for employee share and option plans would be eliminated entirely – all grants of shares and options after the date of the Budget would be taxed up-front – and the AUD 1,000 tax exemption available for broadly based plans would be limited to employees with incomes below the average wage (about AUD 60,000).

After widespread criticism, the Government announced on 24 May 2009 that it would consult with industry to ameliorate the proposal, and in particular to consider reinstating tax deferral in 'limited circumstances', including where there is a 'real risk of forfeiture'. The consultation is currently underway and a revised 'policy options paper' containing new proposals was released in early June.

Under the revised version, up-front taxation as proposed in the Budget has been replaced with tax at the time that qualification criteria (such as meeting performance hurdles and remaining in employment) are satisfied. Restrictions on sale will not defer tax. Similarly, for options and rights, tax will be imposed when qualification criteria are satisfied, rather than on later exercise of the option or right. The maximum deferral period where shares or options are issued subject to qualification criteria will be reduced to 7 years.

The AUD 1,000 tax exemption available for broadly based plans will now be limited to employees with incomes below AUD 150,000.

Submissions on the revised proposal are still being solicited and so it is possible that there will be further movement in this area.

1.2 POLAND

European Commission initiates action against discriminatory taxation of foreign pension funds, investment funds and financial institutions (reference number is 2006/4093)

The European Commission sent on 14 May 2009 to Poland a reasoned opinion (second step of the infringement procedure) regarding rules of taxation of:

- interest and dividends transferred to foreign pension and investment funds; and
- interest paid to foreign financial institutions.

Pension and investment funds are exempt from corporation tax only if they are Polish residents. Consequently payment of dividends and interest remain tax neutral, if made to domestic funds. On the other hand, similar transfers to foreign funds trigger taxation under general rules (19% WHT for dividends / 20% WHT for interest) unless tax treaty provides otherwise.

When it comes to interest paid to financial institutions, according to the Polish regulations WHT is calculated on gross base with respect to foreign entities, while to domestic beneficiaries - on net amount.

The regulations described are deemed to be discriminatory.

Poland has two months to prepare a reasoned opinion to avoid proceedings before the ECJ.

Practical implications

As a result of infringement procedure, Poland may either spread the corporate income tax exemption on foreign funds or repeal the current regulations.

1.3 USA

The President Said What?? Obama Proposes Massive Changes to US Taxation of International Operations

Could we really be facing a complete overhaul of the U.S. system of international taxation? For the first time since the Kennedy administration, the President has come out swinging at the fundamentals of the US taxation of multinational corporations and is seeking to garner support for sweeping changes. President Barack Obama made some inflammatory statements, which no doubt will be followed by many more inflammatory retorts from his opponents in the coming weeks and months. Many large corporations have already voiced their displeasure or aligned themselves with lobbying efforts aimed at scuttling the proposals.

First, what was said? In a nutshell, these proposals combine legislation that has been introduced over the past few years, some of which we have discussed before. (See A&M Tax Advisor Weekly, Issue 41-2008.) However, for the first time we have first-hand insight into which ones the President intends to get behind and push.

The following are three tenets of the President's proposal:

Deferral

"For years, we've talked about ending tax breaks for companies that ship jobs overseas and giving tax breaks to companies that create jobs here in America. That's what our budget will finally do. We will stop letting American companies that create jobs overseas take deductions on their expenses when they do not pay any American taxes on their profits."

We take this to mean that the President supports portions of the Rangel Bill introduced in 2007. In that bill, the allocation of "expenses and taxes" would be changed for United States corporations that defer "active business income" that is earned through controlled foreign corporations (CFCs). The language in the bill suggests that income is deferred while the deductions "associated" with this income are taken into account on a current basis. Under the Rangel proposal, these deductions would be deferred along with income, until repatriation to the United States, which is when the deferred income is taxed.

These proposals generate numerous questions. For example, assume that a US-based company has a foreign subsidiary to manufacture for and sell to its overseas customers. In that case, the foreign subsidiary has a complete profit and loss statement, encompassing income and expenses of doing business in that country, including a payment to the US parent for any royalty or fee attributable to the use of intellectual property. Is the US proposal going to require that expenses in the US be allocated and apportioned to un-repatriated foreign source income as well as currently taxed amounts in a manner consistent with (or identical to) the regulations under Internal Revenue Code Section 861? If the US parent's current expenses reflect the cost of conducting its US business, such an allocation would create an uneven "bunching" of income. In years when the foreign subsidiary did not pay a dividend, the US profits would be fully recognized, with only partial expenses available to reduce taxable income. In years when the foreign earnings were recognized in the US as a dividend, the net profits would be offset by the previously "deferred" expenses. Rather than making it attractive to incur US-based costs (for payroll, depreciation, interest, etc.) the changes would make it less desirable, as those expenses would be subject to deferred deduction. Alternatively, expenses incurred abroad would be immediately deductible against foreign earnings and would reduce the distributable profits available to return to the US in the form of dividends.

Also, if the current rules for foreign tax credit utilization remain, in the year when the income is repatriated, a limited foreign tax credit would be available because the foreign profits would be over-burdened with both foreign and US expenses, which might create a foreign source loss. This effect would be exacerbated by the overall foreign loss rules and could eliminate the possibility of any foreign tax credit relief in the future.

Multinational companies have been portrayed as "tax cheats" and worse, but often the expansion and growth of a business requires capital. A foreign subsidiary may not be able to repatriate funds because of local country capital requirements or foreign currency restrictions, among the myriad of complications in doing business overseas.

In prior versions of the proposals to end deferral, there was an accompanying corporate rate reduction. While President Obama made no reference to such a rate reduction in his remarks, it may be one way for him to garner the support he needs. However, this time Treasury needs to raise a lot more revenue, so the rate reduction may not be an option.

Check-the-Box

"For years, we've talked about shutting down overseas tax havens that let companies set up operations to avoid paying taxes in America.... That's why we are closing one of our biggest tax loopholes. It's a loophole that lets subsidiaries of some of our largest companies tell the IRS that they're paying taxes abroad, tell foreign governments that they're paying taxes elsewhere — and avoid paying taxes anywhere."

These comments ostensibly relate to the "check-the-box rules." (See A&M Tax Advisor Weekly, Issue 49-2007.) These rules have come under fire again recently and have been mentioned by Obama administration officials as a loophole that will be eliminated. Recent comments have described the rules as having allowed companies to make their foreign subsidiaries "disappear" for tax purposes — permitting them to legally shift income to tax havens. The proposals would require certain entities to be viewed as separate corporations for tax purposes. For those of us with long memories, we recall the days before "check-the-box," when the same planning existed but was preceded by exhaustive exercises by tax and legal practitioners to structure each new entity as having a predominance of either corporate or partnership characteristics. One could argue that the problem is not the availability of the election but instead the tax result driving the desire for different entity types that should be fixed.

Foreign Tax Credits

Obama's statements have also mentioned certain aspects of proposed and enacted legislation related to foreign tax credits. The US tax system provides for a credit against US tax when foreign taxes have been paid on the underlying profits. This system seeks to eliminate the double taxation of profits that have been earned and taxed abroad. The perception is that some US businesses use loopholes to artificially inflate or accelerate the foreign taxes claimed against their U.S. tax liability. Some new rules have recently been enacted, while other aspects remain proposed. These rules are mainly aimed at highly structured transactions considered as having little or no economic substance, but they could affect the relationships of companies entering into a joint venture agreement. That potential impact of the technical taxpayer rules is the subject of next week's A&M Tax Advisor Weekly.

Alvarez & Marsal Taxand Says

Although the proposals have a long and hard fight ahead of them, and are perhaps several years from reality, taxpayers can take steps to prepare themselves.

Top Priority

Address your allocation and apportionment methodology and results. As it becomes harder and harder to claim a foreign tax credit, even taxpayers with previous "excess limitation" positions could find themselves in a bind. Interest expense being the single biggest factor in inefficient foreign tax credit utilization, every company should revisit whether the local country subsidiary or parent company bears the cost of debt (and their debt/equity profile around the globe). For example, it might be more favorable to carry debt at the subsidiary than carrying the global debt load at the parent company level. Minding the CFC interest netting rules, even if the cost of debt increases incrementally, the value of a current versus deferred deduction may prove compelling. For those of you who delayed and hoped for relief under the worldwide apportionment rules, the likelihood of those rules ever becoming effective is growing more remote all the time.

After revisiting your interest expense, carefully examine the allocation and apportionment of all expenses. This analysis is often overlooked or shortcut, even though the methodology you develop (and can support) can mean the difference between getting a foreign tax credit and being double taxed on foreign earnings. How does an effective tax rate of 70% sound?

Next Up

Assess your holding company structure. Now may not be the time to implement the same old holding company. To the extent you end up with one big pool of earnings, the incremental cost of repatriation could be exorbitant, and you could lose your ability to repatriate more efficiently from higher-taxed earnings. Care should be taken before making new check-the-box elections.

You should also carefully consider whether now is the time to proactively bring back higher-taxed earnings and the accompanying foreign tax credit. There has been talk of co-mingling all pools together, almost certainly resulting in a pool for which the average rate will be well below the US rate.

Rounding Out the Top Three

Ensure that you have an accurate and complete mechanism for determining and tracking the earnings and profits (E&P) of your foreign subsidiaries. The calculation of E&P can have a big impact on your ability to claim foreign tax credits, and it may now also affect your current US taxable income. Give your foreign E&P the same scrutiny you give any corporate income or deduction in your US return. You should also gather and retain sufficient data and records to support the foreign taxes associated with your E&P. Often these pools of E&P and taxes can go back for many years and may require some work to justify.

SPECIAL FEATURES

NORWEGIAN NEW TAX RULES AND THE SIGNIFICANCE OF OPTIMAL TAX PLANNING WHEN REHABILITATING PROPERTY

Deduction for maintenance costs

Landowners and tenants with long-term lease agreements who consider rehabilitating property should pay close attention to the tax rules already in the engineering phase. Potential upside is up to 20% saving by optimal adaption to the tax rules.

According to Norwegian tax law, costs related to maintenance of fixed assets (including real estate) are tax deductible. On the other hand, upgrades shall be capitalized and tax deduction may be given in the form of depreciations if the item decreases in value over time.

Maintenance includes costs related to bringing an object, e.g. a building, back to its former (original) state or similar state by today's standards, whereas upgrades entail an increased standard or a material change of the object.

The economic impact of whether rehabilitation costs shall be considered as directly tax deductible maintenance or upgrades that shall be capitalized is potentially up to 20% of the investment costs. In other words, the investment costs can decrease by up to 20% if rehabilitation is carried out in the "right" way. The following example illustrates this (based on a discount rate of 6%):

An investment cost of 100 leads to a financial strain (net present value) of 72 after tax if the costs are directly deducted for tax purposes (28% corporate tax rate in Norway) and the deduction can be utilized immediately (not through loss carried forward).

An investment cost of 100 leads to a financial strain (net present value) of approx. 88 after tax if the cost is to be capitalized and depreciated at a rate of 4% (industrial property) and 92.5 in cases where depreciation rate is 2% (office buildings etc.).

By optimal application of the tax rules, investment costs can be reduced by up to 16% for buildings that are depreciated at 4% and by up to 20% for buildings that are depreciated at 2%.

New depreciation rules for fixed technical installations

Pursuant to Norwegian tax law, fixed installations in buildings have been depreciated as a part of the building itself, i.e. with 2% for commercial buildings and 4% for other industrial buildings.

The Norwegian Ministry of Finance has now notified introduction of new regulations implying that fixed technical installations shall no longer be depreciated as a part of the building, but shall be classified in a separate depreciation group with a depreciation rate of 10%. The Ministry proposes one joint balance/depreciation group

for fixed installations in each building. The proposal may involve an increased financial strain on owners if they fail to take an optimal approach to the new rules.

Fixed technical installations shall mean e.g. heating, cold storage, electrical installations, sanitary installations etc. in buildings.

According to existing rules, a significant part of costs related to rehabilitation/investments in fixed technical installations will often be classified as maintenance and, hence, can be deducted directly for tax purposes. The same often applies in many (most) cases related to total replacement, e.g. of electrical installations.

The proposal by the Ministry of Finance will involve a tax disadvantage in cases where full replacement of a fixed technical installation formerly would have been considered as maintenance. When introducing fixed technical installations as a separate depreciation group, full replacement will be treated as acquisition of a new fixed asset, and thus subject to capitalization and depreciation.

For cases which formerly would be subject to capitalization (because and to the extent an increase of standard/improvement exists), the proposal involves a more favorable solution for tax payers since the depreciation rate has been increased to 10%.

In practice, this means that new buildings will benefit from more lenient depreciation rules for fixed technical installations. On the other hand, older buildings, which constitute the greater part in volume, will be subject to stricter and more financially straining depreciation rules.

Consequently, the new rules may lead to owners of older buildings to be reluctant with regards to initiating total replacements of fixed technical installations, and instead perform maintenance on smaller parts of the installations from time to time, in order to achieve direct tax deduction for costs.

TAXAND NEWS

TAXAND SUCCESS AT ITR EUROPEAN TAX AWARDS 2009

Taxand is celebrating following its success at the 2009 ITR European Tax Awards. Taxand members were presented with 10 awards at the ceremony - more than any other advisory firms - held at the prestigious Dorchester Hotel in London on the 19th May 2009.



After being shortlisted for some 14 National Tax Firm of the Year awards we won 8, in Cyprus, Greece, Ireland, Luxembourg (for the fourth year in a row), Malta, Spain (for the fifth consecutive year), Turkey and the Ukraine. Up for 5 National Transfer Pricing Firm of the Year awards, we were also delighted to win 2 in France and the Ukraine.

In recognition of our integrated approach and cross-border capability, Taxand was also nominated in 3 pan-european award categories - European Tax Firm of the Year, European Indirect Tax Firm of the Year and European M&A Tax Transaction of the Year.

Being shortlisted for some 22 awards covering most of the 24 jurisdictions under scrutiny was a great achievement for Taxand. Our year-on-year performance is indicative of our market penetration and the reputation we are building through providing practical, independent tax advice, fast.

The awards were determined by a panel from the Tax Executives Institute's European Chapter and ITR's editorial team following initial research canvassing the perspectives of tax executives, in-house counsel, tax advisors and private-practice lawyers.

In 2008 Taxand won all 3 ITR Best Newcomer awards in Europe, Americas and Asia recognising our cross-border tax expertise worldwide.

To learn more visit: www.taxand.com/media.

30 TAXAND COUNTRIES VOTED TOP IN ITR PLANNING SURVEY

Tax executives from multinational companies, tax officials and advisors voted in the second International Tax Review online poll for their top 3 tax planning firms in 47 jurisdictions. In 30 countries, that's nearly three quarters

of the territories covered, Taxand members were nominated as either number 1 or number 2 local advisors.

Taxanders in Argentina, Australia, Canada, China, Columbia, Cyprus, Denmark, France, Germany, Greece, India, Ireland, Japan, Korea, Luxembourg, Malaysia, Malta, Mexico, Netherlands, Peru, Poland, Portugal, Russia, Singapore, Spain, Sweden, Switzerland, Turkey, UK and Venezuela were all recommended, unprompted. In just one year Taxand has achieved votes in 150% more countries. This is an incredible achievement and truly demonstrates the rapidly rising market recognition of Taxand excellence worldwide.

Taxanders from around the world were invited by the ITR to comment on the market context surrounding the tax planning survey which was published in the May edition. Uncertainty about the fate of the global economy and a more uncompromising attitude from tax authorities has encouraged tax executives to seek out Taxand advisors whose reputations they know and trust.

Download the survey at: www.taxand.com/media.

TAXAND WHERE YOU ARE

Taxanders regularly attend the world's major tax and financial conferences, symposia and other events as well as coming together with clients at our conferences and seminars worldwide. Join Taxand at events in your region. Whether you want to arrange a bespoke on-site meeting or simply network with Taxanders from your area, just get in touch. Here's a quick overview of upcoming diary dates.

- TAXAND VIKING MEETING, 25-26 June, Stockholm – Sweden are hosting this year's Nordic meeting bringing together clients and contacts.
- 21st ANNUAL CONFERENCE OF THE WORLD CENTRE FOR EMPLOYEE OWNERSHIP, July 9-10, Cannes - speakers from the UK and Spain are co-presenting.
- CCH Asia Tax Summit, July 16-17, Singapore, Optimising Tax Benefits & Staying Resilient - 4 Taxand Speakers from India, Malaysia, Singapore and Thailand will be leading sessions.
- IFA CONGRESS, 30 Aug – 4 Sep, Vancouver – over 20 Taxanders will be attending with on-site client meetings arranged.
- TAXAND REAL ESTATE SEMINAR - November, Amsterdam. The agenda and date is coming soon. This event brings together Taxand real estate team speakers from around Europe to talk to issues of interest for Netherlands based clients and will include bespoke one-to-one client meetings.
- TAXAND's 2010 GLOBAL CONFERENCE, 14-16 April 2010, Berlin, will be hosted by Luther, our German Taxanders.

To find out more visit: www.taxand.com/events.

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