ARGENTINA: Buenos Aires, Córdoba, Mendoza, Rosario, Salta, Tucumán. CHILE: Santiago de Chile, Punta Arenas , Talca. COLOMBIA: Barranquilla, Bogota D.C. GERMANY: Frankfurt, Garmisch-Partenkirchen, Gerlingen, Leipzig, Leonberg, Munich, Rottenburg, Stuttgart, Tübingen, Waldshut-Tiengen. MEXICO: Aguascalientes, Cancún, Chihuahua, Ciudad Juarez, Estado de México, Guadalajara, León, México D.F., Monterrey, Querétaro. PORTUGAL: Lisbon, Porto. SPAIN: A Coruña, Alicante, Barcelona, Bilbao, Cartagena, Las Palmas de Gran Canarias, Madrid, Málaga, Murcia, Palma de Mallorca, Seville, Valencia, Valladolid, Vigo, Zaragoza. THE NETHERLANDS: Amersfoort, Amsterdam. URUGUAY: Montevideo.

ÍNDEX

The special regime applicable for new investments depreciation in Corporate Income Tax

ANDORRA

One of the main targets of the Principality of Andorra is that both domestic and foreign companies invest in Andorra. For this reason the Corporate Income Tax Law foresees special regimes in order to allow entities fixed in Andorra to be more competitive from a taxation perspective.

On one hand, in order to ensure that the Andorran companies can be competitive worldwide the Andorran Corporate Income Tax Law foresees some special regimes. Specifically, these special tax regimes consist in allowing some reductions in the tax basis with the purpose of making these companies more efficient from a tax point of view.

On the other hand, another important objective of the Andorran Corporate Income Tax Law is to attract foreign investments. In this regard, the mentioned Corporate Income Tax Law also lays down other mechanisms specifically designed to make the Andorran tax system attractive to foreign capitals.

However, in the Andorran Corporate Income Tax there are also some special tax regimes which fulfil the targets previously explained, being interesting to the Andorran domestic entities as well as the foreign entities that decide to establish their business in the Principality of Andorra. One of these special tax regimes is the one applicable for new investments depreciation.

The Andorran Corporate Income Tax Law foresees which reductions are applicable to this kind of tax regime and, at the same time, it details all the

requirements that should be fulfilled in order to apply the abovementioned special tax regime.

Which kinds of entities are able to apply the special regime?

Based on the provisions of the Andorran Corporate Income Tax Law responsible of the regulation of this special tax regime, all the companies constituted according to the Andorran Mercantile Laws can apply this special tax regime.

Hereof, we would like to highlight that this special tax regime is just applicable when the entities abovementioned perform new investments in rights and assets destined to be used on its main activity.

What does the special regime consist?

In general terms, the Andorran Corporate Tax Law establishes that the companies which are subject to the abovementioned tax can consider the expenses corresponding to the depreciation of its rights and assets, registered in its accounting books, as deductible for tax purposes provided that the mentioned expenses are calculated in accordance with the percentages fixed on the Andorran Corporate Income Law.

In case that this special tax regime could be applicable, the percentage of depreciation that could be considered as deductible for Corporate Income Tax purposes will be increased. In this regard, the tax depreciation of the rights and assets acquired after the entry on force of the Corporate Income Tax would be calculated multiplying by 2.5 the percentage usually established on the Law.

This special regime will imply the corresponding adjustment to the Corporate Income Tax basis, amounting to the difference between the depreciation expenses registered for accounting purposes and the depreciation calculated according the special tax regime regulation.

Finally, we would like to highlight that all the adjustments performed by the companies to the Corporate Income Tax basis regarding this special tax regime must be fully informed on the Annual Accounts of these companies.

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Branches of foreign companies and Personal Property Tax, a long controversy that finally solved the Supreme Court

ARGENTINA

The beginning of this legal controversy is in May 15, 2002, when the Law 25.585 extended the Personal Property Tax and included in the article 25.1 of the Law 23.966 of the Tax the "charge corresponding to the shares in the capital of the societies regulated (1) by the Law 19.550 whose owners are natural persons and / or domiciled in the country or abroad and / or companies and / or any other type of person domiciled abroad will be settled or paid by companies governed by the law ... ".

Later, this legal amendment is regulated in April, 2003, by the Decree 988/2003, which clearly advances on the terms of the Law and extends, illegally from our point of view –and now also from the point of view of the Supreme Court of Justice-, the object of the tax. Now, we transcribe the text of the regulations:

"The determination of the charge of the article incorporated after de article 25 of the law, will be settled and paid as a unique and final payment by the companies included in the Law 19.550 included the establishments belonging to foreign societies referred in the article 118 of this law [2], societies of fact and irregular societies".

We can see that the text of the decree advances over the law: it uses the word "included" instead of "regulated". This change of terms is very important, because talking about companies included in the Law of Commercial Societies has a much broader scope than talking about only the regulated societies of the law. The branches of foreign companies are included in the law 19.550, but only for provide the formal requirements for their registration: the functioning of these societies is regulated by the rules of the country of the Headquarters.

Also, the text assimilates illegally the shares mentioned in the law with the contributions of the Headquarters to the Branch (the funds that the branch needs to operate). These contributions are an extension of the equity of the Headquarters, and have nothing to do with a social participation.

This illegal extension of the subject of the tax was raised by the doctrine since its sanction, but the Federal Administration applied the text of the decree and made tax adjustments in the cases of branches of foreign companies with no settled taxes.

In order to put this situation in its proper terms, we found the first antecedent in the Report 507/2004 of the National Treasury Attorney's Office, in the case of the Argentinian branch of the national airline of Israel, EL-AL. Here, the Attorney expresses that the branches don't differ from its parent company, because don't have legal entity or its own equity, so the foreign company is not and can't be a shareholder of its Argentinian branch.

With the subsequent Report 380/2005, the Attorney tried to limit the scope of the previous advice, arguing that the opinion was only for this particular case, and so the conclusions of the Report 507/2004 were specifically for a branch of a foreign state and can't be extrapolated to other different cases. It seems that the situation was kept in a similar point at which it was before the first Report, clearing the controversial just for the case of branches of companies belonging to a foreign state, and maintaining the fiscal criteria for the rest of branches.

The case under review

It is a branch of a foreign bank, The Bank of Tokyo – Mitsubishi UFJ Ltd., which, according the rules of the previous Decree, entered in the Personal Property Tax as a responsible substitute but, later, in knowledge of the Report 507/2004, claimed the return of the paid by the action of repetition to the AFIP, under the Article 81 of the Law 11.683 of Fiscal Procedure.

The first judge that intervened in the case upheld the claim of the company and considered that the payment of the tax was unfair. The Treasury appealed to the National Court of Appeals, and the Court upheld the first instance on 22/11/2011.

The Court warned that with the mere reading of the rules of the Decree, included the reform of the Decree 988/2003, the writing differs from Article 25.1 of the law. This is because the incorporation of stables establishments belonging to foreign companies, has added a different subject than those provided by law, while the tribute, which was to determine the taxable event over shareholders, happens to also integrate with the capital that the parent owns this branch.

Finally, the Court considered that the imposition was unfair, because the taxpayer don't meet any of the characteristics of the subjects of the Law 23.966, and confirmed the judgment of the first judge that the branches of foreign companies, publics or privates, are outside the obligation to act as responsible substitute in the Personal Property Tax.

The Treasury made an extraordinary appeal to the Supreme Court, which concluded that the legal norm doesn't obligate the branches of foreign companies to act as responsible substitutes of the tax. This substitution will be given by "the tax of the shares in the capital" of the branches, but this is incorrect because these branches are, in fact, the same foreign society with the same equity.

In conclusion, a branch of a foreign company is not under the norm incorporated to the Personal Property Tax, and it isn't obligated to act as like a substitute responsible of the tax. This conclusion leaves void the tax claim and confirms the judgment of the Court of Appeals.

Thus, without saying so, the Supreme Court has considered that Decree 988/2003 including the branches of foreign companies in the Personal Property Tax is illegal. If the Treasury demands the tribute, is against the guarantee of legality of the Constitution.
We recommend memorizing this jurisprudential precedent to settle this tax in the next due date in the case of branches of foreign companies and, based on it, apply for cancellation of the Personal Property Tax.

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[1] Underlining is own
[2] Underlining is own

IFRS in Colombia

COLOMBIA

The main regulations which governed Colombia in the accounting field as of 1993 were the Colombian laws established in Decree 2649, which arose primarily to comply with the country's tax legislation, and were characterized as generally enforced and based on the Single Account Plan (PUC) for the issuance of financial statements, which caused a complex understanding for businesses or people who did not know the law, especially foreign investors.

Later, given the negotiations of the FTAs (Fair Trade Agreements) with specific countries and the increasing opening of new markets, the Colombian government identified the need to use a global language already created for the accounting area by the International Accounting Standards Board (IASB); as such, since 1999 the Colombian government began implementing the necessary arrangements for the use of international financial reporting standards (IFRS) in the country, a process that lasted approximately 10 years and which ended with the 2009, 1314 Act where the conversion to IFRS was adopted between 2010 and 2014. [1]

Given that "IFRS determine the requirements for recognizing, measuring, presenting and disclosing financial information that is important in the financial statements for general purposes, which satisfy the needs of stakeholders including shareholders, employees, creditors and the general public" [2] it is very important that Colombia incorporate these now that with this process the country would achieve greater transparency of information, less corruption and more clarity in procedures, which allows the country to be more interesting to foreign investors.

To carry out the implementation of IFRS, the Technical Board of Public Accountancy (CTCP) chose to give a period of two years for organizations doing business in Colombia to deliver their first financial statement reports with IFRS. Aside from this period they made three division groups to run the process: the first corresponds to security issuers and public interest companies who had to start implementing full IFRS in January 2014 and is expected to deliver the first report in December 2015; Second are the large and medium companies that are not security issuers or public interest entities, which apply IFRS SMEs, with the deadline for submitting the first report in December 2016 and starting the transition in January of this year. Finally to Group Three belong small and micro enterprises who, like group one, should start their transition in January 2014 and deliver the first report in December 2015. However, in this case, they're applying as IFRS Micro-enterprises. [3]

Despite the criticism, delay and low compliance to pre-established dates in Colombia to carry out the process of convergence to International Financial Reporting Standards, it is essential to undertake this process as the requirements of the global market demand that countries are prepared for these requirements and that a global standardization is achieved in the field of financial information. It is worth noting that Auren Colombia is prepared to advise and support the different companies that must face this change with excellent results.

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[2] Luna, J. y Muñoz, L. (2011) "Colombia: hacia la adopción y aplicación de las NIIF y su importancia" [online] available at: http://aprendeenlinea.udea.edu.co/revistas/index.php/adversia/article/viewFile/10954/10047 recuperado Feb. 19 de 2015

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UK and Croatia signed Double Taxation Avoidance Agreement

CROATIA

Croatia and the UK have signed an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains. The Agreement was duly signed on January 15th, 2015 and it shall enter into force when both countries complete their Parliamentary procedures and exchange a diplomatic note, which is expected by the end of 2015. The Agreement applies to persons who are residents of one or both Contracting States in regards to (i) the taxes on income and on (ii) capital gains imposed on behalf of a Contracting State, irrespective of the manner in which they are levied. The Agreement is expected to have an impact on increase of direct investments between Croatia and UK.

Furthermore, legal entities who conduct international transport of goods between UK and Croatia pay income tax only in their resident State. Same also applies to the corporate income tax in general, including income from international shipping and air transportation, provided however that the company does not have a permanent establishment (PE) in other State. In that case, the company's PE shall be liable for tax in the State where the services were provided.

Furthermore, according to the agreement a 5% withholding tax rate shall be applicable in the Source State, on interest and royalty payments. With regards to dividends, a 5 % withholding tax rate shall apply, provided that the beneficiary has a controlling interest (directly or indirectly) of at least 25% in the share capital of the dividend paying company. A 15% rate will apply in the case where the dividends are paid out of income (including gains) which is derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax. In a different case, a 10% withholding tax shall apply. Conclusively, board members, artists, sport professionals and workers can pay their income tax within the contractual State where the income is created, whereas the pension income is taxed in the State where the beneficiary is resident.

Equal treatment towards companies of both countries is also stipulated in the Agreement as the principle, and the procedure of mutual cooperation with the usage of diplomatic channels, which would contribute to a more effective problem solving.

The Agreement will have a significant impact on transactions between UK and Croatia, even though the UK restricted free movement of workers from and to Croatia for 7 years as of July 1st, 2013. As previously said, the main goal is to make an economic impact on the Croatian and UK companies.

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Russia's Deoffshorization Law and Cyprus companies

CYPRUS

Cyprus companies have a long history of presence in Russian structures. The Russian Deoffshorization Law and more specific the introduction of Controlled Foreign Company ("CFC") rules which was set to prevent the shift of profits in preferential tax jurisdictions and re-route funds back to Russian could also shudder the domination of Cyprus companies in such structures.

Nonetheless, as it is construed from the aforementioned legislation, nothing is black and white and each case must be viewed on its own merits. In the same line, the Russian Ministry of Finance has recently clarified the criteria based on which the profits of a Cyprus company shall be exempted from Russian taxation. The Ministry has clarified that companies whose large majority of income (more than 80%) is active shall be exempted. However, the active companies' test is not expected to be straightforward, with the list of passive income to include dividends, interest and royalties as well as rental and lease income and income from the provisions of consulting, marketing, legal and other services.

Further, the Ministry of Finance notes that the effective tax rate test whereby companies registered in jurisdictions which exchange information with Russia and impose an effective tax rate equal or higher than 75% of the average tax rate that would have been imposed in accordance to the Russian Tax legislation, must also be considered for the purpose of determining whether the profits of the Cyprus company are exempted from Russian taxation. The exchange of information for tax purposes between the two jurisdictions is accomplished based on the Russian

- Cyprus Income and Capital Tax Treaty currently in force. The various international tax developments taking place have also urged Cyprus to re-examine its tax regime in order to catch up and possible radical changes may be on the horizon. Legislative changes that are expected to reaffirm Cyprus's attractiveness as an international business center are expected to be presented to the Council of Ministers and be soon on the way.

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Tightening of the German Income Tax Act on moving abroad

GERMANY

Because of the case "Wolfgang Porsche" the Article 50i of the German Income Tax Act was tightened up since the assessment period in 2014: a new paragraph 2 was inserted which prohibits the tax neutral restructuring of private companies with shareholders who have moved away from Germany. It´s about preventing the abuse of legal structure after emigrating abroad. In this regard, reorganizations and incorporations, tax transactions as well as cases of structural changes and company splits related to asset management partnerships are only possible with taxation of hidden reserves. This rule applies to all cases, not only to cases after June 29,.2013. This means that reorganizations completed before June 29,.2013 are now subject to the new regulation and because of that an excessive effect is achieved.

Based on 3 cases from practice, this should be illustrated:

Case 1:
A taxpayer resident in Germany brings his participation in a German corporation into a German deemed commercial partnership (GmbH & Co. KG) on 01/07/2000. He continues being resident in Germany. In case the taxpayer makes a gratuitous business succession or transfer of shares, the matter of Article 50i is fulfilled. The effects come into play even in case the taxpayer should die. It should be noted that in this case no hidden reserves are realized. Nevertheless, the matter of fact is fulfilled.

Case 2:
A taxpayer resident in Germany brings his participation in a German corporation into a German deemed commercial partnership (GmbH & Co. KG) on 01/05/2012. He moves into a country with double taxation agreement with Germany. After the move, he either moves back or donates or inherits his share to his daughter who is still resident in Germany. According to the new regulation a gratuitous transfer at book values should not be possible, although the gratuitous transfer leads to the recovery of the original German right of taxation.

Case 3:
A taxpayer resident in Germany brings his participation in a German corporation into a German deemed commercial partnership (GmbH & Co. KG) on 01/02/2013. He moves into a country with double taxation agreement with Germany. After the move he donates or inherits his share to his son, who is also resident abroad. Under the new regulation it should not be possible to transfer at book value, although the gratuitous transfer does not alter the continuing right of taxation against the son. This effect is not compatible with European fundamental principles if the taxpayer is resident in another EU country, especially since no appropriate deferral arrangement, corresponding to Article 6 of the Foreign Transaction Tax Act (AStG), was provided.

The change of this regulation leads, due to the forced realization, to unforeseeable taxation results, particularly in the SME sector, and avoids in the future necessary restructuring. Especially in EU / EEA cases the suspension of book value transfers without inflow of cash may be contrary to European law. Therefore at this point literature requires a tax deferral through an easement provision by the tax authorities.

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Location savings

INDIA

The objective of any corporate enterprise is to maximise profits. The options available are to either reduce costs or to generate additional revenue by capturing a higher market share. Aided by today's globalized economic atmosphere, advances in telecommunications and science, at times multi national enterprises ("MNE") pursue the route of cost of reduction, as it results in higher profits despite a stagnant market share.

Many MNEs have set up their operations in low cost jurisdictions to reap the inherent benefits of acquiring the talent at lower costs. India and China are two of the economies well known for providing low cost benefits, as evident from their presence in the list of top outsourcing destinations in the world. It is no surprise that the tax authorities in such countries demonstrate a very aggressive and rigid approach towards the issue of location savings and have expressed an intention of bringing back the maximum of the benefits of location savings accruing from operating in these geographies to their respective economies.

Location Savings

In common parlance, location savings can be understood as savings in cost that accrue to a firm on account of operating in a low-cost jurisdiction vis-a-vis a high cost jurisdiction. According to OECD guidelines, location savings are the net savings that accrue to an MNE on account of relocation of its business to a location where the costs incurred are lower than what would have been incurred in the former jurisdiction.

The UN manual defines location savings as "the cost savings or benefits such as cheaper production or service costs resulting from locating a manufacturing or other operation in a low cost jurisdiction".The UN guidelines also state that there may exist certain location specific handicaps,which could lead to an increase in certain cost items for the MNE if the operations are relocated to a low cost jurisdiction,such incremental costs have been termed as 'dis-savings'.Examples of such dis-savings are - irregularity of power supply,poor quality of raw materials,training cost of labour etc. Hence in order to determine the benefit (in terms of reduced costs) which has accrued to the MNE, it is important to consider the location specific dis-savings as well since the important factor to determine is the "net" locations savings.

Location Savings and Transfer Pricing

The interconnection between location savings and attraction of transfer pricing laws on the same is the crux here.The transfer pricing issue around location savings is that whether a portion of benefit derived by an MNE on account of operating in a low cost jurisdiction vis-a-vis in another high cost jurisdiction, should be allocated to and consequently taxed in low cost jurisdiction. Indian Transfer Pricing authorities are of the opinion that MNEs continuously search for alternatives to lower their costs in order to increase their profits and India provides operational advantages to the MNEs such as reduced labour costs, raw material costs, infrastructure costs, tax incentives etc.Thus India should also get a share in such profits.

Location Specifc Advantages and Location Rent

The concept of Location Savings cannot be analyzed on a standalone basis.One needs to also consider Location Specific Advantages ('LSA') and Location Rent.To identify benefits of operating in one jurisdiction vis-a-vis another, both Location Savings and Location Specific Advantages need to be considered. These three concepts are interlinked and have a direct bearing on each other.

LSAs are specific characteristics of a particular location that make it possible for companies operating there to take advantages of those specific characteristics to earn higher profits.They may not necessarily lead to a reduction in cost, but still be advantageous to the operations of MNC.Examples of LSAa s are specialized and skilled manpower, large customer base, proximity to growing markets, distribution channels etc.

It is not necessary that entire location savings get reflected in terms of incremental profits.In these competitive times,it is quite possible that a portion of the location savings would be passed on to the customers in the form of reduced prices and only a portion is retained with the MNE as incremental profit.This incremental profit is known as Location Rent.

Apportionment of Location Savings

Where significant location savings are derived,the question arises whether and,if so, they should be shared among the parties and in particular whether part of the location savings should be allocated to the entity in the low cost jurisdiction i.e whether an entity operating in a low cost jurisdiction should receive additional compensation on account of location savings.Secondly, the issue is in what manner the benfit derived by operating in a low-cost jurisdiction should be computed and then allocated to the associate enterprise.Under arm's length pricing,allocation of location savings between associated enterprises should be made by reference to what independent parties would have agreed in comparable circumstances.

The general principle stated across guidelines is to apportion the benefit amongst parties on the basis of functions performed,risks assumed and assets employed ("FAR") by each of the enterprises.

Legal Jurisprudence

Li and Fung's Case

In Li and Fung's case, the taxpayer was engaged in providing sourcing services to clients worldwide,including its AE in Hong Kong, and was remunerated on a cost-plus mark up of 5 percent by its AE.On the allegation that the taxpayer was performing all critical functions,was assuming significant risk and had created valuable intangibles over a period of time, the TPO rejected FAR profile submitted by the taxpayer.Considering that the AE was being remunerated on a commission-on-FOB value basis,the TPO proceeded to compute the transfer pricing addition by considering a 5 percent commission on FOB value of goods sourced by the taxpayer for its AE.TPO alleged that taxpayer should be entitled to the location savings enjoyed by AE due to the taxpayer.

Ruling against the taxpayer,the Appellate Tribunal concluded that the taxpayer was not a low-risk service provider and that it performed critical functions,had incurred time and expense in creating valuable intangibles which were beneficial to the group.It was further

noted that the AE did not perform any critical functions .The Appellate Tribunal noted that the taxpayer's conduct and operations in India did create Location Savings for the AE,the benefit of which the taxpayer is entitled to.Given the facts,the Appellate Tribunal ruled that the commission received by the AE (5 percent of FOB value of goods sourced) was to be shared in the ratio of 80:20 to India. Although the case discusses Location Savings, it has not provided a definitive ruling on the aspect. The core issue was the FAR profile and remuneration model of the same.

Conclusion

The issue of location savings is in a very nascent stages in India would be a bone of stress for the MNE groups operating in India.The tax authorities have clearly stated their rigid views and are sure to approach this issue in a much stricter manner. Location savings and its apportionment will be unique in very case and it seems difficult that industry specific methodology can be formulated for the same.It can be said that in coming times location savings would be an interesting issue to track, especially the statement of Indian Tax Authorities in this regard.

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The new double taxation treaty between Germany and Israel

ISRAEL

New tax treaty between Germany and Israel is expected to ease investors, companies and individuals on bilateral management of business.

Israel has tax treaties with more than 50 foreign countries. The main purpose of tax treaty is to precede economic relationship between both countries by eliminating fiscal obstacles and strengthen collaboration between them.

Recent update regarding the updated tax treaty between Germany and Israel was signed in August 2014 and is expected to be effective during 2015. Israel and Germany has a deep history of mutual collaboration, the first tax treaty was signed in 1962 in Germany, and then in 1977 was updated by leaders of both countries in Jerusalem. The need in the new treaty was born following an accelerated globalization processes due to improved communication and shortening distances between Israel and Europe. Moreover, Israeli economics meets international standards according to global changes and has transformed from developing to developed country.

The main changes in the new tax treaty between Israel and Germany addresses a variety of issues such as adjustment of terms in accordance with the Model Tax Treaty of the OECD, reduction of tax rates and addition of few economic issues which become relevant at new economic global reality.

The main facilitation and improvements in new tax treaty relates to the following:

- Withholding tax on dividends has the most substantial change in the new tax treaty. The change relates to reduction of the withholding tax rate from 25% according to the previous treaty to 10% in most cases under the new treaty, and even 5% if the beneficial owner is the company that holds at least 10% of the capital of the company paying the dividends.

- The same is regarding the withholding tax on royalties which is expected to decrease from 5% to zero and on interest – from 15% to 5% according to the new treaty between Germany and Israel. Regarding the real estate investment companies, up to 15% withholding tax will be applied in most cases.

- The new tax treaty provides exemption from capital gain taxes payment in country of origin, based on the Model Tax Treaty of the OECD; unless the capital gain is derived from real estate transaction.

- Pensions, annuities and similar payments are expected to be tax-free in contrast to previous tax treaties of 1962 and 1977. This characterizes the new treaty as humanity and social treaty.

- Information exchange between Germany and Israel regarding "Dirty" capital disclosure will be more efficient by the new treaty which is based on the Model Tax Treaty of the OECD. The new treaty also includes issues of elimination of double taxation, a non-discrimination clause and mutual agreement procedure.

The new treaty relates to additional issues such as individuals residence definition and permanent establishment, taxation specification, government involvement and deals with specific type of industries such as art, sports, shipping, air transportation and more.

In conclusion, the new treaty prevents double taxation between both countries, develops trade and provides certainty to German and Israeli citizens and companies. Withholding tax reduction will ease on companies and individuals to develop new strategies and attract new investments in both countries.

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Italy: Voluntary disclosure of assets and income

ITALY

On 15 December 2014 the Italian Parliament approved the law on "voluntary disclosure" (law no. 186/2014). "Voluntary disclosure" means that the taxpayer (individuals and taxpayers other than individuals) declares assets (e.g. bank accounts, property, securities) and income held abroad which had not been declared to the Italian tax authority in the annual tax return in the last years.

The taxpayer has to submit a request to the Italian tax authority in which all the investments and activities held abroad at the end of the single year have to be indicated.

For each year the taxpayer has also to indicate the income which has not been declared in the annual tax return. According to the form, assets and earnings starting from the year 2004 can be disclosed.

At the same time the taxpayer has to provide to the tax authority all documents and information necessary for the reconstruction of the income for each year.

The request has to be sent online to the Italian tax authority either by the taxpayer or by an authorized advisor (e.g. tax advisor) within 30 September 2014.
The voluntary disclosure is neither a tax shelter nor an amnesty and it is not anonymous.

The tax authority will verify each request and calculate the taxes, sanctions and default interests to be paid by the taxpayer.

The voluntary disclosure is possible also for domestic assets and earnings which had not been declared to the tax authority in the last years.

Main advantages of the voluntary disclosure: The voluntary disclosure allows the taxpayer to disclose assets and income not yet declared, to pay reduced sanctions and in certain cases to reduce or avoid criminal law rules.

The Italian tax authority will publish a Circular letter in the next weeks in order to explain the details of the voluntary disclosure.

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New rules on dividens taxation

MEXICO

Tax exercises in Mexico correspond to calendar (January to December) for all taxpayers. Once that entities have duly quantify its financial net profit, they are entitled to pay dividends to their stakeholders. In this case, it is important to remember amendments to the income tax law (ITL) that came into effect starting January, 2014.
Briefly, those changes are:

- Entities paying dividends to Mexican individuals or foreign residents shall withhold an additional 10% tax on paid dividends[1].
- This additional tax shall apply only to those dividends coming from profits obtained during 2014 or later.

Earlier than 2014, dividends were only subject to taxation at the entity level not at shareholder´s, as long as the dividend paid came from profits that never had paid the corporate tax rate.

Taxpayers should keep in mind that those tax provisions related with taxation of dividends at the entity´s level are still in force, so, if dividends paid are not coming from the "Net Tax Profit Account" or "CUFIN" they shall be levied according with the Law[2].

Finally, the withholding tax foreseen in the new 2014 regulations may be reduced whether a Double Taxation Tax Treaty is applicable.

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[1] Articles 140th and 164th of ITL
[2] Article 10th ITL

The Innovation box, an alternative to reduce your effective tax rate

THE NETHERLANDS

Introduction

In order to enhance the so called 'knowledge economy' in the Netherlands, in 2007 the so-called "Patent Box" regime was introduced. Due to the complexity of the regime, as of January 1, 2010 an improved version of the regime was introduced under a new name: the 'Innovation Box.'

One of the main advantages of the Innovation Box is the tax rate. Under the Innovation Box regime, a tax rate of 5% applies to the income (including capital gains) derived from qualifying intangibles (instead of the normal Dutch corporate income tax rate of 25%). Moreover, any expenses or losses related to the intangibles are deductible at the ordinary rate of 25%. Another advantage compared to the Patent Box is that under the Innovation Box regime, there is not a maximum amount of benefits that a tax payer can obtain. The Innovation Box regime is only applied if a taxpayer has opted to use the regime.

Qualifying Intangibles

The following intangibles can qualify for the application of the Innovation Box:

(i) Self-developed Intangibles for which a patent (Dutch or foreign) is granted; and / or
(ii) Self-developed intangibles that originate from activities for which a so-called 'R&D Declaration' is granted by "Agentschap NL", an executive part of the Dutch Ministry of Economic Affairs. In that case it is not required to obtain a patent. As a result, companies that do not intend to apply for patents for the results of their R&D (Research & Development) efforts or that develop intangibles that are not patentable (such as software and trade secrets) can benefit from the Innovation Box. It should be taken into account that the concept of self-development is interpreted in a stricter way and requires the tax payer to avail of research staff to carry out the R&D itself.

Marketing intangibles or brands are excluded from the Innovation Box. Therefore, to the extent part of the income earned is attributed to a marketing intangible or brand, that income will not qualify for the Innovation Box.

Because the 5% tax rate under the Innovation Box only applies to "qualifying income" (i.e., income derived from qualifying intangibles), the non-qualifying income will continue to be subject to the regular Dutch corporate income tax rate.

In almost all cases, tax payers agree with the Dutch tax authorities upfront on the level of income that is considered qualifying income. Consequently, upfront certainty is obtained on the Dutch tax position.

Contract R&D

The Innovation Box offers tax saving possibilities for all companies in the Netherlands and abroad, since it is not required that the R&D activities actually take place in the Netherlands. Research carried out abroad can also qualify, provided the benefits accrue in the Netherlands. However, in that case it is required that a Dutch company bears the risks and expenses of the R&D activities. Furthermore the Dutch company is obliged to coordinate and manage the R&D activities that are performed outside The Netherlands. In practice companies often choose in this respect for Contract R&D agreements, on the basis of which the company developing the intangibles is remunerated on the basis of the cost-plus method. In this respect the cost-plus percentage should be determined on an at arm's length basis.

Migration of Existing Intangibles

As mentioned above, income from intangibles that have not been self-developed by the Dutch taxpayer or have not been developed for the risk and account of the taxpayer do not qualify for the Innovation Box. Nevertheless, the Innovation Box can still be very interesting for existing patents or other R&D intangibles that will be further developed by the taxpayer. The latter is an essential condition.

The basic idea in this respect would be to transfer foreign intangibles to the Netherlands. This could be achieved by means of a sale of the intangibles to a Dutch company. This would however in most cases trigger corporate tax on the resulting capital gain in the country of the seller of the intangibles. In the Netherlands a step-up in basis to market-value of the intangibles would be provided, which could be amortized and offset against (future) income.

Alternatively, it could be considered to move the place of effective management of a foreign company that owns intangibles to the Netherlands. The tax treatment in the Netherlands would be identical as described above (step up in basis to market value and amortization of that market value). However, in some countries this alternative may avoid capital gains taxation on the value of the intangibles.

If in both situations the intangibles are further developed by the taxpayer, when time elapses, the 'old' intangibles will be replaced by 'new' intangibles that may qualify for the Innovation Box. Consequently, income from the 'old' intangibles can be (partially) offset against the amortizations, while income from the 'new' intangibles may qualify for the Innovation Box.

Conclusion

The Innovation Box offers innovative taxpayers in the Netherlands and abroad an excellent opportunity to reduce their effective tax rate. The implementation of any structure in this respect requires however careful tax planning.

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Groups of Companies Portuguese Corporate Income Tax Code adapts to recent case law of the Court of Justice of the European Union

PORTUGAL

With the approval of Law 82-C/2014, of 31 December, a new Article 69-A was included in the Corporate Income Tax Code (CIRC) in order to adapt the special taxation scheme for groups of companies to recent case law of the Court of Justice of the European Union, set out in the judgment rendered in the case C-41/13, on 12 June 2014, published in the Official Journal of the European Union on 25 August 2014.

With this new provision, parent companies, as defined in Article 69.2 of the Corporate Income Tax Code, can now opt for application of the Special Taxation Scheme for Groups of Companies (RETGS), even if they do not have a seat or registered office in Portugal, provided certain conditions are cumulatively met.

Conditions for access to RETGS

For this group scheme to apply, the following requirements must be met:

a) The parent company must be based in a Member State or in an EEA country that is committed to administrative cooperation in the field of taxation equivalent to that established in the EU;

b) Have had a holding in the controlled companies for more than one year, with reference to the start date of the application of the scheme;

c) Not have, directly or indirectly, at least 75% of its capital held by a company resident in Portugal that meets the requirements of Article 69 of the CIRC to be classified as a parent company, provided this grants it more than 50% of voting rights, pursuant to Paragraph 6 of that article;

d) Not have waived application of the scheme in the three previous years, with reference to the start date for application of the scheme;

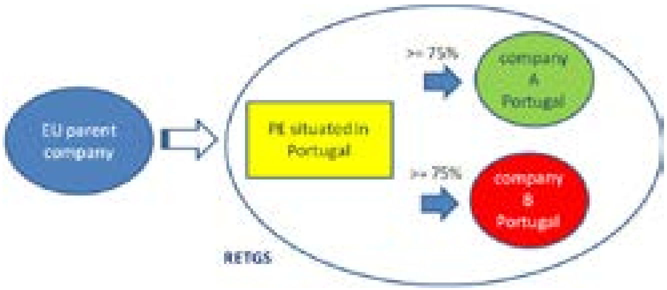
e) Be subject to and not exempt from a tax referred to in Article 2 of Council Directive 2011/96/EU, of 30 November 2011, or a tax of a nature identical or similar to Corporation Tax;

f) Be a limited liability company;

g) The scheme can only be applied when the parent company has a permanent establishment in Portugal through which it has holdings in the controlled companies and provided none of the situations set out in (a), (c), (d) or (e) of Article 69.4 of the CIRC occur, mutatis mutandis.

The option determines the application of the special taxation scheme for groups of companies with respect to all the controlled companies with seat and registered office in Portugal with regard to which the conditions laid down Article 69.3 and 4 of the CIRC are met, as well as the permanent establishment of the parent company situated in this country through which the holdings are effectively held.

Example of application:



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Holding Companies & VAT

UNITED KINGDOM

What are the issues concerning holding companies & VAT?

The main issue in relation to holding companies is whether and to what extent a holding company can be properly said to be carrying on an economic activity(referred to as business in UK law) & hence the effect on its ability to recover input tax.
Until the changes in 2014, HMRC's policy was based on the CJEU judgement in the case of Polysar Investments Netherlands BV[1993] STC 222. New Release 59/93 by HMRC, stated that a holding company could not register for VAT and recover input tax incurred on any of it's purchases unless:

- It has its own taxable trading activities including genuine management services to separate trading subsidiaries; or
- It is included in a VAT group with trading subsidiaries.

It is to be noted that as per Article 11 of VAT Directive, a VAT Group is a single taxable person, with a single VAT registration, and makes a single VAT Return for the whole group

Also, section 43(1)(b) VAT Act 1994 states that all supplies are made by the representative member of the group, and if that happens to be the holding company, the supplies made by the group will be deemed to be made by the holding company.

Therefore, keeping the above in mind, under the HMRC policy in NR 59/63, a holding company with no taxable activities of its own could join a VAT group with its trading subsidiaries and would be able to reclaim input tax on its purchases.

What has changed?

Following the Court of Appeal decision in the case of BAA Ltd, HMRC have revised their policy. As per the VAT Input Tax Manual VIT40100, the Court of Appeal noted that the following two conditions apply for the recovery of VAT:

- The tax must be incurred by a taxable person in the course of an economic activity; and
- The goods and services on which the VAT is incurred must have a direct and immediate link with taxable supplies made by that person.

The revised policy is contained in VAT Input Tax Manuals VIT40500 and VIT40600.

According to these,
- a holding company cannot register for VAT on its own if it is involved in investment activities only i.e. acquire shares in subsidiaries, receive dividends from the shareholders, dispose of shares in subsidiaries etc.
- To be registered for VAT in it's own right, the holding company must be making or intending to make taxable supplies.
- A holding company can join a VAT group with its subsidiaries provided at least one member of the group is making taxable supplies.
- A holding company does not automatically become entitled to reclaim VAT on its purchases by joining a VAT group.

VAT is recoverable by holding companies in the following situations:

- VAT on the purchase and maintenance of assets, which are used as part of the economic activity of a company, is recoverable. If shares are acquired to be used for an economic activity, VAT incurred is recoverable.

- If shares are acquired to simply hold, receive dividends and possibly dispose in future, they are being used for investment activity and not the economic activity. Thus, VAT incurred on their purchase will not be recoverable.

- When a holding company, as part of a VAT group, incurs VAT on its purchases and makes genuine taxable supplies to its subsidiaries. It can only reclaim VAT on its purchases, where its supplies to subsidiaries are being used to make taxable supplies outside the group i.e. there is a direct link between the VAT incurred by the holding company and taxable supplies made by the subsidiaries.

  It must be noted that, VAT incurred by holding company is not directly and immediately linked to the supplies made by the subsidiary just because the holding company is charging the subsidiary a fee.

  Also note, that costs incurred by holding company will have a direct and immediate link to taxable supplies, if these costs are components of the price of taxable supplies.

- When a holding company is involved in both the economic and investment activities, it can recover VAT that is attributable to the supplies made as part of economic activity.

Conclusion

The guidance mentioned above, notes that two cases, Larentia and Minerva & Others(C-108/14 and C-109/14) have been referred to CJEU by German courts. HMRC states that a review of the policy will be carried out in light of decisions in these cases. Until then, the revised guidance for recovery of input tax by holding companies applies.

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Bearer shares

URUGUAY

As it is known, Panama has a very beneficial tax system to foreign corporations, which in addition to the free movement of currencies, within the years have made it become a very attractive country for the installation of holdings of national companies, or in those cases in which it is desired to maintain the anonymity of the ownership of certain properties in our country, it can be used Panamanian corporations as their holders, mainly in real estate.

In this context it is that we think of interest to briefly review the main aspects of the new law that will take effect in Panama in the coming months, by which some modifications are introduced to current absolute anonymity in case of ownership of stock certificates issued to the bearer.

Main aspects

The law provides that the owners of issued bearer shares must provide their certificates to an authorized custodian. These custodians can be local (banks, fiduciaries, houses and head offices of security regulated by the Superintendence of Values of that country), lawyers who request it and comply with certain requirements, or foreigners (banks and fiduciaries that have license for the exercise of their activities in jurisdictions member of the Financial Action Task Force on Money Laundering (FATF) or its associated members).

The owners of the certificates shall hand over them to the custodian together with an affidavit in which a series of data enabling identification of the holder of the shares must be detailed (it is noteworthy that just like what happened in our country, it is not disposed the obligation to identify the final beneficiary of the actions). In case of breaching any of the above dispositions, the owner of the shares will not be able to exercise, to his society, his inherent rights as a shareholder without detriment to the legal actions that stakeholders can exercise for the damages caused.
It is provided a series of obligations to the authorized custodians, including keeping in strict reserve the received information, having to provide it only to the competent authorities when it is required. In the event of non-compliance with any of its obligations, it is provided the implementation of various sanctions.

In the event of the transfer of actions, it shall be considered perfected when the authorized custodian is notified in writing by the owner, and the acquirer delivers the affidavit with the details of its data.

It is also envisaged that any inherited disposition that the owner of the actions has left on life regarding its ownership, and which has been duly communicated to the custodian, will be valid, prevailing this disposition on any other that could exist in hereditary matters in the domicile of the owner of the shares. With this rule, it is faster the succession process, giving guarantees to owners regarding the ownership of the aforementioned, once his passing occurred.

The law will go into effect in the month of August of the current year, establishing that shares issued before that date must be delivered to the custodian within a period of 3 years, and the ones issued after its entry into force must be delivered within a period of 20 days from its issuance.

Other considerations

No doubt that this law is the result of the pressure from abroad in exchange for Panama not being included into the "black list" of the OECD, which implies a decrease in investment, barriers to financing, etc. But whatever the reason may be (voluntary or not), the fact is that with the entry into force of the new regulations, Panama begins to align itself with the rest of the countries regarding the issuing of bearer shares, which either have removed them, or have relativized (case of Uruguay) the anonymity of their owners, complying in this way - or at least giving a sign of wanting to comply - with international standards of transparency, main objective of the OECD in recent times.

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Important note on tax refund claims paid for inheritance or gift tax by non residents in Spain

SPAIN

On 3rd September 2014, the European Court of Justice (ECJ) rendered a long-awaited Judgement. The Court confirmed the illegality of a provision of the Spanish Law regarding Inheritance and Gift Tax, and in particular the nullity of the Article which indicated that due to residence in another country, State Law was applicable instead of Autonomic Law. Such provision entailed discriminatory treatment of EU Non-Residents nationals who were subject to taxation in Spain and not able to apply reduced tax, exemptions and discounts applicable in the different Autonomous Communities.

In 2012, the European Commission filed a complaint before the ECJ against the Kingdom of Spain, arguing that the Spanish legal provisions regarding inheritance and gift tax infringed European law, due to the differential tax treatment of Spanish residents and non-resident EU nationals. The ECJ has now unmistakably confirmed that the Spanish legislator infringed primary EU law, by enacting the Law 22/2009 of December 18, of Estate and Gifts Tax, and therefore by failing to fulfil obligations imposed upon each member state by Art. 21 and 63 of the Treaty on the Functioning of the European Union (TFEU).

Non-resident EU nationals did not enjoy certain tax advantages based on the location of real estate in Autonomous Communities. The Judgement confirms a discriminatory treatment from the standpoint of European law caused by such legal differences between Spanish nationals and EU nationals, hence representing an obstacle to the free movement of capital.

Such decision by the highest European Court, confirming violation of EU law, opens the door to request Refunds for excessively and illegally paid taxes, based on the different tax treatment.

If you are Non-Resident in Spain, but UE national, and have paid Inheritance or Gift Tax in Spain within the last 4 years, you are entitled to a refund of overpaid inheritance or donation tax. Please contact us so that we can claim a refund for you through a Request of Refund of Undue Income before the Tax Authorities. Equally, if you are Non-Resident in Spain, but UE national, and have paid Inheritance or Gift Tax in Spain more than 4 years ago, damages and prejudices can be sought through an Action on State Liability which only can be brought before the Spanish Ordinary Courts until September 2015. Please, if this is your case, do contact us immediately so that we can analyze your case and advice you accordingly.

Cases affected by the Judgement are:

1.- Inheritances with a Non- Resident in Spain deceased and 1 or more heirs Resident in Spain
2.- Inheritances with a Resident in Spain deceased and 1 or more Non-Resident heirs.
3.- Gift of real estate when the Donnor is Non-Resident in Spain
4.- Gift of assets or real estate outside Spain and being the Beneficiary a Resident in Spain
5.- Special cases in the Basc Country

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