

Private Wealth Services European Tax Newsletter

The 8th edition of the Private Wealth Services European Tax Newsletter is dedicated to various changes and upcoming amendments in a number of tax jurisdictions, which will have an impact on the tax situations for the wealth management business.

As we seem to be at another critical point of the financial crisis in the European Union, coined by the crisis of the Euro and a financial downturn in several countries, new regulation to better control the markets, ensure stability and transparency was to be expected. This comes along with the governments increased efforts to cut spending and increase tax revenues.

These efforts can be seen in France, but also outside the EU in Switzerland, both of which countries assess options to increase revenue. In France exemptions to the wealth tax shall be abolished, the dividend allowance reduced from 40% to 20% as well as a higher tax rate (45%) for individuals with income over EUR 100,000 will be introduced. In Switzerland, an introduction of a 20% gift tax is discussed.

Spain is forced by the EU Court of Justice to bring its inheritances law in line with EU standards, Norway is, on its own accord, harmonising cross border mergers and other transactions with EU law. This has to be seen in the context of a general push towards harmonisation in the EU and EFTA.

Further to this harmonisation and the surge of taxation, Governments also try to control the markets more closely as seen e.g. in Austria which introduced new rules to control the offsetting of losses. Luxembourg also introduced new regulations but rather than controlling the market, it aims to create a clear framework to foster the establishment of Family Offices.

We hope you will enjoy reading this newsletter and find it to be informative and engaging.

We wish you a wonderful Season and a happy New Year!

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Austria

Budget Supplementary Law 2012 – loss settlement of capital income

In the Budget Supplementary Law 2011 it was designated that not only dividends, interest and other capital claims but also derivatives and income on capital gains are subject to Austrian withholding tax levied by Austrian banks. Capital gains from assets are subject to tax irrespectively of whether they are held as private or business assets of individuals. The withholding tax rate is 25%. In addition, it was the intention that losses of capital income can only be offset through an annual assessment with the tax authority.

On 15 November 2011, the government bill of the Budget Supplementary Law 2012 passed the National Assembly. The essential part of the law is the introduction of the loss settlement to be considered by the custodian bank. This loss settlement is applicable for all accounts which are held by the investor within the same credit institution.

Starting 1 January 2013 the custodian bank has to consider losses from investment income for purposes of the withholding tax calculation of private assets held by individuals. Business accounts and their capital gains and losses as well as custodian accounts with several banks are still subject to annual tax assessment.

Losses from capital income including capital gains and income from derivatives are covered by the settlement. Instead, especially interest on current deposits or bank deposits, these cannot be off-set with losses of capital income.

Some examples to clarify the new rules:

1) capital gains/losses (-) from

	January 2013	July 2013
	Stocks	Bonds
	-50,000	100,000
Withholding tax	0	12,500

2)

	January 2013	July 2013
	Dividends from Y-AG	Losses from disposal of shares
	1,000	-500
Withholding tax debit (-) / credit (+)	-250	+125

For the first time the rule is applicable in 2013 and the credit institution must certificate a written confirmation on loss settlement amounts on the basis of the draft Sec 96 (4) Income Tax Act.

For the period from 1 April 2012 to 31 December 2012 there is an interim ruling for the paying agent who is in the position to roll up the withholding tax amounts until 30 April 2013.

Belgium

The following commentaries are based on the Belgian bill (draft law) of 15 December 2011 (Chamber, Doc 53, 1952/004). One should be careful before taking any action in this respect as the bill is still subject to possible modifications.

The new bill modifies drastically the tax regime of savings products and has a direct impact on operational framework of financial intermediaries such as banks, insurance companies, back office outsourcers, management companies of investment funds, issuer of securities, etc.

The expected changes concern mainly 5 topics:

- the withholding tax
- a new tax surcharge of 4% on movable income
- a new tax on the conversion of bearer securities
- the tax on stock exchange transactions
- the bank secrecy

1. New withholding tax measures

In essence, the changes concern the withholding tax (WHT) rate applicable on savings income and some procedural amendments. The table below shows a synthetic comparison between the existing tax regime on one hand and the expected changes on the other hand. As a rule the draft law does not provide any change to existing exemptions.

(NB: the WHT rates mentioned hereunder are subject to many conditions. The aim of the table below is to give a short overview of the consequences that the bill might generate for the retail investors).

1.1. Withholding tax rates on savings products

See table page 4.

1.2. New statute of limitations for WHT on movable income

This expected change concerns the procedure to claim back undue withholding taxes which have been retained at source. The current procedure lacks some clarity especially because no formal assessment notice is issued by the tax authorities which leads to uncertainties with respect to the applicable statute of limitation (from 6 months up to 10 years). Hence, the bill states that “when no assessment notice is issued for WHT retained at source, the claim for recovery of the WHT wrongly paid to the Treasury lapses after 5 years starting from the 1st of January of the year in which these WHT have been paid”.

The aim of the proposed change is to avoid the statute of limitation of 10 years provided by common law to be applicable. Though the law would only be applicable as from 2011, this brings additional strong arguments to defend the 5 years statute of limitation for the past or even the 10 years statute of limitation.

2. Additional tax on movable income

In essence, the bill provides a tax surcharge of 4% on income of portfolio investments. The taxpayer will have to choose between a withholding at source (followed eventually by a later correction through its personal income tax return) or no withholding at source but a communication by the financial intermediary to the National Bank of

Belgium (BNB) (in this case the tax surcharge, if any, will be levied through the personal income tax return).

Private individuals having movable income (interest and dividends to the exclusion of royalties) exceeding a net amount of EUR 20,000 per year will become subject to an additional 4% tax on qualifying movable income exceeding the said threshold.

The additional tax of 4% will not be due on dividends and interest subject to a 25% WHT rate or on interest from eligible savings deposits which benefit from a tax-exempt tranche (up to EUR 1,770 for tax year 2012). Such income will however be taken into account first when calculating the EUR 20,000 threshold.

The additional tax will neither be due on liquidation bonus nor on States bonds issued and subscribed between 24 November 2011 and 2 December 2011. Moreover, those two types of income will not be taken into account for the purpose of calculating the EUR 20,000 threshold.

see table page 5

3. The new tax on conversion of bearer securities

The bill of 15 December 2011 introduces a tax on the conversion of bearer securities into dematerialised securities or into registered securities in accordance with the law of 14 December 2005 introducing a gradual abolition of bearer securities.

The taxable event is the conversion (i.e. the dematerialization, as provided by the by-laws, of bearer shares through deposit on a securities account of a financial institution or the registration with the issuing company as regards registered shares).

The tax rate will be 1% for conversions realised as from 1 January 2012 and 2% for conversions realised in 2013.

The bill also provides that the tax is calculated at deposit as follows:

for quoted securities, the taxable basis will be the most recent quoted value before the date of deposit on a securities account or with the issuer;

for non quoted securities, the taxable basis will be:

- i. the nominal value for bonds and other debt securities,
- ii. the most recent inventory value for shares in investment funds or
- iii. the book value on the date of deposit (interest excluded) for any other securities.

The tax must be paid:

for conversions in dematerialised securities, by the professional intermediary upon deposit of the bearer securities on a securities account;

for conversions in registered securities, by the issuing company upon registration.

If the conversion is made before the end of this year (31 December 2011 at the latest) no tax will be due. The law of 14 December 2005 provides that for bearer securities issued by quoted companies, the conversion into dematerialised securities takes place automatically through the deposit of the bearer securities on a securities account. A similar regime applies to public debt securities. For bearer securities issued by non-quoted companies, the deposit on a securities account does not automatically lead to a conversion into dematerialised securities. Indeed those bearer securities are only converted if the articles of association of the issuing company foresee such a conversion upon deposit (or are adapted in this sense) and a date of conversion.

Based on the above, when bearer securities

of a non-quoted issuer of which the article of association does not provide for conversion before 31 December 2011 are held on a securities account, the law does not address how the tax will be paid upon conversion.

4. The tax on stock exchange transactions

The bill of 15 December 2011 provides for new rates and new caps for calculation the tax on stock exchange transactions (TOB). For the remaining, no change is envisaged by the bill.

see table page 5.

5. The bank secrecy – the end

5.1. Belgian bank accounts

Since the law of 14 April 2011 any financial institution has to communicate data such as the identity of its clients, their Belgian bank accounts references and contracts, to a central point of contact within the BNB.

When a senior tax inspector finds out that an investigation has e.g. revealed evidence of tax fraud, he may ask to the central point of contact the data available for a particular taxpayer.

The bill adds that to that purpose the financial institutions as well as the National Bank of Belgium may use the registration number of private individuals (as appearing in the National register of individuals) to identify the clients.

5.2. Foreign bank accounts

With respect to foreign bank account in particular, the current obligation to declare, in the personal income tax return, the mere holding of a bank account abroad (without any further information) has not been modified. Although it is not yet provided in the bill, the governmental declaration provided that in the future more information about those foreign bank account should be communicated by the taxpayer to the BNB.

Withholding tax rates on savings products

Categories of securities	WHT rates till 31/12/2011	Expected WHT rates as from 1/1/2012
Interest	15%	21%
Interest from savings deposits to the extent they exceed the first tax-exempt tranche (EUR. 1.770 per taxpayer for tax year 2012)	15%	15%
Interest from savings deposits up to the first tax exempt tranche of EUR. 1.770	0%	0%
State bonds	15%	21% (except for government bonds issued and subscribed during the period from 24 November 2011 to 2 December 2011 – maintained at 15%)
Dividends	25%	25%
Redemption of own shares	10%	21%
Liquidation bonus	10%	10%
Capital gains on shares	Capital gains on shares remain exempted as before	
Reduced rate for strip VVPR and dividends related to registered shares	15%	21%
Reduced rate for dividends from distributing funds (e.g. SICAV) (recognised investment companies)	15%	21%
Gain on shares in eligible capitalization funds (e.g. SICAV) investing more than 40% in debt-related securities	15%	21%
Gain on shares in eligible capitalization funds (e.g. SICAV) investing less than 40% in debt-related securities	0%	0%
Distribution by a Contractual Investment Fund (FCP)	No changes have been foreseen in the bill of 15 December 2011 as regard the tax regime of FCPs which remains a complicated matter.	

Additional tax on movable income

Option	Procedure of assessment / BNB communication	EUR 20,000 threshold and taxable basis		Reimbursement
		Calculation of the EUR 20,000 threshold	Taxable basis of the 4% tax	
Taxpayer does not allow the communication of the amount of movable income received to the central point of contact (National Bank of Belgium)	Additional tax of 4% will need to be withheld at source by the financial intermediary			Any excess additional tax withheld at source can be claimed back via the income tax return. It will be first credited against any personal income tax due based on the tax return, any excess remaining being reimbursed
Taxpayer allows the communication of the amount of movable income received to the central point of contact (National Bank of Belgium)	Additional tax of 4% will not be withheld at source. It will become due based on the personal income tax return. The central point of contact will automatically transmit all information to the tax inspection offices if the taxpayer's movable income exceeds EUR 20,000. If not, they will only do so upon request of the tax offices	<ul style="list-style-type: none"> - Interest (subject to aWHT rate of 0%, 15% when relating to savings deposit¹, 21% or 25%) - Dividends (subject to WHT rate of 21% or 25%) 	<ul style="list-style-type: none"> - Interest (subject to aWHT rate of 0%, 15% when relating to savings deposit¹, 21% or 25%) - Dividends (subject to WHT rate of 21% or 25%) 	N/A

¹ The interest with a 15% WHT rate when relating to States bonds issued and subscribed between 24 November 2011 and 2 December 2011 are not in scope.

The tax on stock exchange transactions

	TOB rates till 31/12/2011	Expected TOB rates as from 1/1/2012
Transactions related to public debt securities, bonds, shares of investment companies, etc.	0.07%	0.09%
Transactions related to other securities (e.g. shares)	0.17%	0.22%
Transactions related to accumulating shares of investment companies such as SICAVs	0.5%	0.65%
	TOB caps till 31/12/2011	Expected TOB caps as from 1/1/2012
All transactions	EUR 500	EUR 650
Transactions related to accumulating shares of investment companies such as SICAVs	EUR 750	EUR 975

France

Due to the economic crisis, France is increasingly seeking for ways to raise taxes to pay off national debts. This was already visible with the last Finance Law and is continuing with the draft of the additional 2011 Amended Finance Law and the 2012 Finance Law currently examined by the Parliament.

The proposals are the following:

- Taxpayers may currently opt, under certain conditions, for dividend and interest income to be subject to a fixed levy at source (charged at 19%, before social contributions), rather than declare this income on their tax return and have it assessed to income tax at the progressive rates. It is proposed to increase this fixed levy for dividends to 21% and for interest to 24% so that the global tax rate including social surtaxes would be respectively 34.5% and 37.5%. The French Senate proposed on 18 November, a complete withdrawal of the fixed levy at source. However, this amendment has a good chance of being revoked by the French National Assembly;
- A withdrawal of the long term exemption regime on gains realised on the sale of securities. Taxpayers were supposed to start benefiting from this regime as of 2012. If this withdrawal is confirmed, this exemption regime will have never applied;
- The creation of an additional income tax charge of:
 - 3% assessed on the portion of the annual net income including capital gains amounting to between EUR 250,000 and EUR 500,000 for a single person and between EUR 500,000 and EUR 1,000,000 for couples.
 - 4% assessed on the portion of the annual net income including capital gains exceeding EUR 500,000 for a single person and EUR 1,000,000 for couples. However, for taxpayers who have a sudden increase of their income compared to the previous two years, taxpayers will be able to do a specific average calculation of their net income in order to determine the assessed income.

The Senate has proposed the following amendments to the 2012 Finance Law:

- A new income tax rate of 45% on the income bracket exceeding EUR 100,000;
- Reduce the dividends' allowance from 40% to 20%;
- Reduce the rebates available in case of inheritance / gifts;
- Repeal the Wealth tax reform and abolish some wealth tax exemption regimes.

However, the French National Assembly should suppress those amendments.

Further on, the government has announced on 24 November its intention to generalise the 10-year statutory period available for the tax administration to take action against tax payers who have not reported their foreign bank accounts and foreign life insurance. This 10-year period is currently only applicable for accounts / assets located in non cooperative States.

Germany

Federal Tax Court (Bundesfinanzhof, BFH) expresses doubts about the constitutionality of the German Inheritance and Gift Tax Act (ErbStG)

1. Essential content of the decision

A decision of the Federal Constitutional Court (BVerfG) in 2006 necessitated a reform of the Inheritance and Gift Tax Act (ErbStG) and the Valuation Tax Act (BewG) which was implemented with effect from 1 January 2009. Crucial points of this reform are on one hand, the valuation of all asset classes at the fair market value, as requested by the Federal Constitutional Court, and on the other hand, the general exemption from inheritance and gift tax of property subject to special commitment to public welfare, which applies to entrepreneurial property in particular.

In a recent court case the 2nd Senate of the Federal Tax Court (BFH) now expresses doubts about the constitutionality of § 19 para.1 in connection with §§ 13a, 13b ErbStG - exemption of entrepreneurial property from inheritance tax – and for this reason decided on 15 October 2011 by court order to call on the Federal Ministry of Finance BMF for intervention.

According to its decision the BFH will deal with the question of whether § 19 para.1 in connection with §§ 13a and 13b ErbStG are unconstitutional. The regulations of §§ 13a and 13b ErbStG regarding an exemption of entrepreneurial property allow that taxpayers, by merely transferring private property of any kind into business structures, (e. g. by contributing capital assets into a business-oriented partnership with asset management purposes or an asset management GmbH), actually create inheritance tax-privileged property. This, contrary to the legal intention, is not subject to any special commitment to public welfare.

In its decision the BFH explicitly mentions several configurations which serve for the inheritance and gift tax exemption of private property that should not be subject to tax privileges according to the legislator's intention, such as the contribution of fixed-term deposits into a so-called Cash GmbH.

As a result, the problem in constitutional law of reducing the inheritance and gift tax burden on property not subject to a special social welfare commitment worsened in comparison with the former legal situation. Instead of an exemption of 65% of the tax-privileged operating assets, which was applicable until 2008, these assets are now tax exempt with 85% or even 100%.

2. Comments and recommendation

In view of the considerable doubts about the constitutionality of the new ErbStG expressed by judges of the BFH on various events, the remarks of the 2nd Senate do not come as a surprise.

The occasion, however, is surprising: The BFH chooses a case which does not deal with the transfer of business assets, or with one of the configurations to obtain an exemption by means of transformation of private property into business assets outlined by the court. It looks as if the BFH took the first case in which a connecting factor existed as an opportunity to express the universally expected doubts about the constitutionality. This leads to the conclusion that a motion to the BVerfG should not be improbable.

The BVerfG will then have three options:

- (1) The court regards the ErbStG as being in accordance with the constitution.
- (2) As already done in 2006, the court

declares the ErbStG in violation of the Constitution and fixes a deadline for the legislator to establish the constitutionality of the law.

- (3) The court declares the criticised regulations of the law void, resulting in a non-applicability of the ErbStG with retroactive effect from 1 January 2009.

An annulment is very rare in connection with the review of the constitutionality of the tax law, but it has occurred already. However, alternative (see point b) is more likely. Here, it would be up to the legislator whether he will risk another attempt to repair the law, or whether he will let the inheritance and gift tax quietly expire, similar to the property tax as at 31 December 1996.

Of course, the possibility cannot be ruled out that the legislator will take action proactively and amend the ErbStG of his own accord.

It is out of the question that plenty of time will go by until a final decision will be made. On the last occasion it took more than five years. Hence, the question is how to proceed in this period of suspense.

- a) Regarding all inheritance cases and all gifts already carried out since 1 January 2009, the procedure should be as follows to avoid negative tax consequences:

- All inheritance and gift tax assessment notices which are not yet final should be kept procedurally open, (e. g. by raising objection against the assessment notice.)
- In view of the risk of subsequent taxation, this applies also to tax assessment notices granting tax exemption of 85% or even 100% on business property.

- b) As to gifts still to be made, it must be clarified by corresponding contractual regulations that the gift can be rescinded, if necessary, (e. g. if - contrary to expectations - the benefits of §§ 13a and 13b ErbStG are denied, but also if the inheritance and gift tax will be cancelled later on.)

- c) We think that the configurations mentioned by the BFH to obtain the exemption according to §§ 13a and 13b

ErbStG are - within the limits of § 42 Tax Code - still possible in suitable cases.

- d) Considering the fact that the legislator could take action as a result of a proactive reaction to the BFH decision, or due to a change of government, the implementation should not be postponed too long in case of gifts, resp. in cases of anticipated succession which are already pending anyway. It cannot be assumed that new regulations of the ErbStG will be more favourable for taxpayers.

Ireland

The Irish government announced their Budget for 2012 on 5 and 6 December 2011. Given the deficit challenges faced by Ireland, the Budget, as expected, brought significant public spending cutbacks and increased tax charges. Being the 5th austerity budget in a row, it was a welcome relief that there were no increases to income tax rates or reductions to tax bands for 2012. However, there were a number of adverse changes to indirect and capital taxes. Despite the array of tough measures, there were some welcome announcements to promote Ireland's export businesses and to encourage foreign direct investment. Some of the key changes relevant to non-Irish based individuals and businesses are detailed below.

1. Business Taxes

In the Minister's speech he reaffirmed the Government's unflinching commitment to the maintenance of Ireland's well established 12.5% corporation tax (CT) rate for trading profits (and 25% for non trading profits).

In addition, to support the Government's commitment to the promotion of job creation and indigenous enterprise, the Budget proposes to extend the exemption for start-up companies from corporation tax and CGT. The proposal is to extend it to new companies which start a new trade in 2012, 2013 and 2014.

Ireland has an existing R&D tax credit regime which allows companies to claim a tax credit for qualifying R&D expenditure. The R&D credit currently applies to incremental expenditure with reference to a fixed base period of 2003. As set out in the Programme for Government, the first EUR 100,000 of qualifying R&D expenditure will now benefit from the

25% R&D tax credit on a volume basis. The tax credit will continue to apply to incremental R&D expenditure in excess of EUR 100,000. The government have also introduced various other positive measures to the R&D regime including increasing the qualifying subcontracted R&D costs and using R&D tax credits to reward key R&D employees, i.e. the credit will be a tax-free payment in the hands of the employee.

The standard rate of VAT will increase from 21% to 23% with effect from 1 January 2012.

2. Personal Taxes

As mentioned, there were no changes to income tax rates or bands for 2012, meaning that the marginal rate of income tax/social security in Ireland has remained at 55% for self-employed income and 52% for employed income. The top rate of tax generally applies to single persons earning more than EUR 32,800 per annum.

Deposit interest retention tax (DIRT) is a tax withheld at source by financial institutions on interest paid - this has increased from 25% to 30% with effect from 1 January 2012.

The rate of capital gains tax (CGT) has increased from 25% to 30% with effect from 7 December 2011.

Capital acquisitions tax (CAT) is a tax payable by a beneficiary who takes a gift or an inheritance. Irish assets are fully taxable regardless of the residence or domicile status of the donor/donee. Worldwide assets are taxable if the donor or recipient is CAT resident (meaning 1. domiciled in Ireland and resident or ordinarily resident in the State, or 2. a person not domiciled in Ireland who has been resident in the State for five consecutive tax years prior the date of the gift and is resident or ordinarily resident in the State on the date of the gift). The rate of the CAT has increased from 25% to 30% with effect from 7 December 2011. The Minister also reduced the parent-to-child tax-free threshold for the CAT purposes from EUR 332,084 to EUR 250,000 and it is thought that similar reductions to other thresholds may be introduced in the Finance Bill.

As previously proposed, a new household charge of EUR 100 per household will be introduced with effect from 1 January 2012. It is anticipated that plans will be issued in 2013 for a value-based property tax which will replace the flat rate.

3. Non-domiciled individuals/foreign aspects

Ireland has a very favourable tax regime for non-domiciled individuals (the Irish concept of domicile is similar to that in the UK). Individuals who are Irish resident but non Irish domiciled can benefit from the remittance basis of taxation. Under the remittance basis, the individual is only liable to Irish income tax on Irish source income and remitted foreign source income. Similarly, only gains on Irish situated assets or remitted foreign gains will be chargeable to capital gains tax in Ireland.

No changes were made to this favourable regime and in fact a number of further measures have been introduced to encourage inward investment of businesses to Ireland and encourage export growth. Full details of these measures will be introduced in the Finance Bill which will be released early next year. The initiatives include the following:

- Introduction of a new special assignee relief programme. The purpose of this is to encourage businesses to locate skilled employees in Ireland. The existing programme provides tax relief of 50% on income in excess of EUR 100,000 with the hope that the new regime will offer greater tax benefits and more flexibility.
- A foreign earnings deduction for individuals who spend at least 60 days per annum developing business in Brazil, Russia, India, China, and South Africa.
- Increase in support for the international funds, corporate treasury, international insurance and the aircraft leasing industries.

4. Irish domiciled individuals living / working abroad

A domicile levy of EUR 200,000 per annum currently applies to individuals who are:

- Domiciled & citizens in Ireland;
- Have worldwide income of more than EUR 1 million;
- Have an income tax liability of less than EUR 200,000;
- Have Irish assets/property with a market value of at least EUR 5 million.

All four conditions must be satisfied to fall within the charge. Where the individual has an Irish income tax liability, a credit will be available for that tax against the domicile levy.

The 2012 budget removed the 'citizenship' condition for payment of the levy. Therefore, individuals who have renounced their Irish citizenship, but are still considered to be domiciled in Ireland, may be liable to the levy.

The revenues generated from the 2010 domicile levy were significantly less than anticipated by the government and therefore the Minister is proposing to closely monitor the tax treatment of "tax exiles" and will announce some further changes to the domicile levy in 2012.

5. Property Incentives

Stamp duty on commercial properties has decreased from a maximum rate of 6% to a flat rate of 2% with effect from 7 December 2011. Stamp duty on residential property has remained at 1% - 2%. This is a welcome change and will hopefully increase Ireland's competitiveness in the international commercial property market.

A new incentive has been introduced which provides an exemption from CGT on property which is purchased in Ireland between 7 December 2011 and 31 December 2013 and held for more than seven years. This may be of interest to overseas investors who would normally be liable to Irish CGT on Irish property gains.

In summary, the Minister announced a wide range of tax raising & cost cutting measures, all of which are intended to raise around EUR 3.8bn for the exchequer, of which EUR 1.6bn is from taxes. Whether or not the measures will be sufficient to meet this target will depend on a variety of factors such as whether the receipts from VAT, which represent a large proportion of the tax raising measures, will actually increase and whether Ireland can continue to grow its export-led economy.

Luxembourg

New Bill of Law on Family Office activities

In 21 October 2011 the Government adopted a bill of law on the creation of a

framework for Family Offices activities in order to restrict to specific regulated professions.

Family Offices are organisations which manage the wealth of private individuals, especially that of so called Ultra High Net Worth Individuals (UHNWI). In the aftermath of the financial crisis, those individuals are now demanding higher standards when it comes to quality, transparency and simplicity of the advice they receive. Whereas the classical role of a private bank encompassed mainly financial investments and asset management, the Family Office engages in the role of a global advisor and manages virtually every aspect from corporate governance and legal advice, to tax advice and estate planning.

Furthermore, the trading name "Family Office" may only be used by professionals active in the regulated sector of either credit institutions, investment advice or wealth credit institution. Or they must be a professional active in a specific, regulated and authorized financial sector or profession such as the Family Office, a domiciliation agent, a professional offering business creation and company management services or a court lawyer.

Family offices services are rendered to one person/family or within the same family, or to entities belonging to the same person/family who are not covered by said law.

This bill is intended to better control this fast growing market and create clear and precise standards for service providers.

Netherlands

Tax treatment of non-profit organisations

The Dutch parliament has recently adopted a Bill called "Geefwet" (Giving-law) that will stimulate donations to non-profit organisations and offers a tax deduction in the personal income tax and corporate income tax from the taxable income of the donations. The Bill will go into force as per 1 January 2012.

To qualify for the tax deduction the non-profit organisation has to have the status of the qualifying non-profit organisation, the so called ANBI-status. In order to be designated as an ANBI-institution some

conditions have to be met. The most important one is that 90% of the activities of the foundation consist of serving a purpose of general interest. This means that the aim and the daily activities of the institution must be serving the common good.

Personal income tax

Deduction of ordinary gifts

Ordinary gifts to an ANBI organisation are deductible from the taxable income of the donors when the gift exceeds the amount of EUR 60 and also exceeds 1% of the total taxable income of a donor. For gifts to cultural institutions such as a museum, a multiplier is applicable. To calculate the deduction for the personal income tax the amount of the donations are multiplied by a factor of 1.25 to a maximum amount of EUR 5,000. As a result, a larger tax advantage is available to the donor.

Deduction of periodical gifts

A periodical gift means that the donor obligates himself to donate a fixed amount for a minimum period of five years or until his earlier death. A notarial deed is necessary. Periodical gifts are fully deductible from the taxable income of the donor. There is no maximum or threshold.

Corporate income tax

Donations by an entity (such as BV or NV) are (partly) deductible from the taxable income in the corporate income tax. The deduction is dependent on the profits of the giver-entity. The donations can be deducted annually from the taxable income of the donor to the maximum amount of EUR 100,000. The deduction may also not exceed 50% of the annual profit of the giver-entity.

Comparable to the situation in personal income tax, a multiplier is available regarding donations made to cultural institutions. The deduction is then calculated by multiplying the amount of the gift by a factor of 1.5 to a maximum amount of EUR 5,000.

Norway

Capital Insurance in Norway

Recently Norwegian and foreign insurance companies have offered new capital insurance products (unit linked) where it is

possible to make the investments in specific assets such as unlisted shares, bonds etc.

The insurance component is an additional contribution of typically 1% of the net value of the assets in case of death of the insured person. It is commonly regarded as clarified that this is in line with the Norwegian requirements based on letters exchanged between the Ministry of Finance and the Financial Supervisory Authorities.

There are several legal and tax effects to consider when entering into a capital insurance policy compared to direct investments, and we recommend this to be carefully analyzed in each case.

One of the effects of deferred taxation of capital gains is, that the policy will be taxed at the point of surrender or death. This is quite similar to the Norwegian tax exemption method, but there is no need for an intermediary holding company. The capital insurance may also include other asset classes than those comprised by the tax exemption method.

It is also possible to achieve protection from creditors or a bankruptcy estate as policies have a specific protection by law. There will be various differences between a policy and direct investments regarding net wealth tax and inheritance tax.

Cross Border Tax Free Restructuring

The Norwegian Tax Act is amended to allow tax free cross border mergers and other transactions. The situation is more or less aligned with those within the European Union. The principle of continuance of tax positions will apply in most cases, and open the door for opportunities to restructure ownership including share swaps on a wide scale.

Exit tax may apply in case where assets or rights are transferred from the Norwegian territory. Based on recent case law from the Court of Justice of the European Union (for instance the so-called National Grid case of 29 November 2011); the Norwegian exit rules may be challenged and the taxation may be deferred to the point of disposal of the assets and not at the exit date.

Russia

The Protocol to the Double Tax Treaty (DTT) between the Grand Duchy of

Luxembourg and the Russian Federation (the "Treaty") was signed on 21 November 2011. The Protocol must be ratified after signing. Below we provide a brief overview of the main amendments to the Treaty.

Reduction of dividend withholding tax rate

The Protocol reduces the minimum withholding tax rate on dividends to 5%. To be eligible for the reduced rate, dividend recipients must meet the following conditions:

- be the beneficial owners of the dividends;
- hold shares representing at least 10% of the capital of the company paying the dividends; and
- have invested at least EUR 80,000 or the same value in roubles in the capital of the company paying the dividends.

If these conditions are not met, dividends may be taxed at 15%.

As a result, these changes mark an improvement in the terms of the DTT (under the current version, the minimum dividend withholding tax rate is 10%), which should help to make Luxembourg an attractive jurisdiction for structuring investments in Russia comparable to the Netherlands and Cyprus.

The Protocol does not stipulate a minimum shareholding period for applying the reduced withholding tax rate on dividends.

Please, also note that in most of the cases, when a Luxembourg company is paying dividends, the 15% rate is reduced to 0% under the internal legislation.

New definition of dividends

The Protocol clarifies that reduced dividend withholding tax rates will apply for the following payments that qualify as dividends for the purposes of the application of article 10 of the DTT:

- payments on units of mutual investment funds or any other collective investment vehicles (except for those that invest mainly in immovable property); and
- payments on depositary receipts.

Such payments will be subject to the withholding tax rates established for

dividends (i.e. 5% or 15%). The new terms eliminate the previous uncertainty about which Russian withholding tax rate should be applied to such payments made from Russia.

Please note that under Luxembourg domestic law, distributions by collective investment vehicles (such as SICAV, SICAF, FCP), whether paid to resident or non-resident (Russian) investors, are, in principle, not subject to any Luxembourg withholding tax.

Changes in taxation of capital gains derived mainly from investments to immovable property

In general, the country where the seller of shares is a tax resident, has the exclusive right to tax income from sales of shares in companies of the other DTT contracting country.

A key change introduced by the Protocol relates to the sale by a resident of one contracting country of shares in a company that is a resident of the other DTT contracting state, deriving more than 50% of their value directly or indirectly from immovable property located in the other contracting country. In this case, the country where the immovable property is located will also have the right to tax income earned. The new provisions are in line with the OECD Model Convention on Taxation of Income and Capital. Overall, these provisions are similar to those new provisions that have been added to both the Cyprus - Russia and Switzerland – Russia Double Tax Treaties.

This change is detrimental to the taxpayer's position, as the previous version of the DTT exempts such income from taxation.

The country where the seller is tax resident will retain exclusive taxation rights in those cases where:

- shares of the company with residence in the other DTT contracting state are alienated in the course of a corporate reorganisation;
- alienated shares are listed on a recognised stock exchange; or
- the seller of the shares is a pension fund or similar entity, or the government of one of the two countries.

Additionally, the Protocol clarifies that, under article 6 of the DTT, income

received from units in mutual investment funds organised primarily for investing in immovable property is considered as "income from immovable property" and can be taxed in the country where the immovable property is located. However, the Protocol does not provide a clear definition of such "income", i.e. whether it is income from payments on mutual investment fund units, or from redeeming or selling such units.

Changes in taxation of other income

Note also that a new clause has been added to article 21 ("Other Income") that is unfavourable to the taxpayer. The previous version of the DTT said that the income of a person who is a resident of one country (and such income is not itemised in other articles of the DTT, regardless of its source) is taxable only in this country (except for those cases specified in article 21.2). However, under the new version, such "other income" may also be subject to withholding tax in the other country. Russian liquidation payments and fines may be an example of such other income concerning which the taxpayer's position worsens. In Luxembourg liquidation payments are nevertheless not subject to withholding tax under the Luxembourg domestic law.

Meanwhile, according to changes in article 23 of the DTT, the possibility of offsetting previously paid taxes will now extend to Luxembourg residents' income specified not only in article 10 ("Dividends") but also in article 21 ("Other Income").

Exchange of information

Article 26 of the DTT was brought into line with article 26 of the OECD Model Convention on Taxation of Income and Capital. The changes are aimed at achieving compliance with OECD policy standards on fiscal transparency and information sharing on tax issues.

The changes introduced directly stipulate that even if one country does not request certain information from taxpayers for its own purposes, this should not hinder the other country from requesting and gathering such information from taxpayers.

Exchange of information is not limited to the taxes covered by the Treaty. This means that the contracting countries can share information on other taxes not specified in article 2 of the Treaty, e.g. VAT.

Moreover, the new DTT provisions directly stipulate that professional secrets (e.g. information held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity) cannot serve as grounds for refusing to provide information.

In addition, the Annex to the Protocol describes the requirements for information necessary for filing requests (e.g. identify the person subject to such request, the desired format of the information, etc.).

Note, however, that the new provisions say nothing about exchange of information that cannot be obtained due to the requirements of domestic law or in the normal administrative practice of any contracting country.

Overall, these provisions are similar to those new provisions that have been - added to both the Cyprus - Russia and Switzerland – Russia Double Tax Treaties.

Limitation of benefits

The Protocol envisages including a provision on limitation of benefits in the DTT (article 29). Under this article, benefits stipulated by the DTT would not apply to companies with tax residence in either Russia or Luxembourg if the authorities of both contracting countries conclude that such companies are established mainly for the purposes to obtain benefits under the DTT.

At the moment the practical aspects of applying this provision remain unclear.

In comparison, the provisions on the limitation of benefits under the Protocol to the Cyprus-Russia DTT seem to be much more narrowly worded and should apply only to those companies that are registered in none of the contracting states and become Russian or Cypriot tax residents only for the purposes of taking advantage of the DTT benefits. In comparison, the provisions on limitation of benefits under the Protocol to the Swiss-Russia DTT, contain very wide wording of the new anti-conduit rules, which might lead in practice to unfavourable and extended interpretation by the tax authorities.

Other changes

The Protocol clarifies the existing rules for determining tax residence. Thus, if a company's actual place of effective

management cannot be determined, the Russian and Luxembourg tax authorities should consult each other to reach a mutual agreement on this issue. In particular, the following criteria will be taken into consideration:

- where Board of Directors meetings are held;
- where the company's day-to-day management is carried on; and
- where the company's senior executives work.

The criteria for determining a company's tax residency are more detailed than those in other DTTs to which Russia is a party but such an approach is in line with the Commentary on the OECD Model Convention and is proving the general international trend to increase the substance and the business rationale of any structure. Practical application of the provision (if it takes effect without any changes) may affect traditional Luxembourg-based structures, e.g. for creating companies as IPO vehicles.

The Protocol also expands the definition of "permanent establishment". Article 5 of the DTT was amended in a similar way to the Protocol to the Cyprus-Russia DTT. These amendments bring the provisions of the article in line with the OECD Model Convention.

Under the Protocol, a permanent establishment also arises if one company that is resident in one contracting state provides services in the other contracting country by involving individuals who are present in that state for over 183 days within any 12 month period and, if a number of other special requirements are also met.

Finally, it should be noted that article 29 "Exclusion of Certain Companies" of the previous version of the Treaty, which excluded from the application of the Treaty Luxembourg holding companies governed by the law of 31 July 1929 (i.e. Holding 29) and Luxembourg companies subject to the similar tax regime, was deleted and replaced by new Limitation of Benefits clause. Based on this and on the new definition of "dividends", as provided by Article 10 "Dividends" of the Treaty there are arguments to consider that Luxembourg investment funds in the form of SICAV/

SICAF may benefit from the Treaty as soon as the Treaty is in force. Please note that about 30 DTTs concluded by Luxembourg apply to SICAV/SICAF.

What should you already start thinking about?

Given the changes, particularly the reduction in the dividend withholding tax rate to 5%, Luxembourg is now comparable for creating ownership structures for Russian assets with those jurisdictions (e.g. Cyprus and the Netherlands) that are frequently used for the establishment of holding companies. However, limitations related to the taxation of profits from alienation of shares in companies, immovable property investments and other income (e.g. liquidation payments) should be kept in mind.

At the same time, as a general trend, the creation of sufficient presence should be considered, both in existing and brand new structures, taking into account the new terms for applying the DTT.

Spain

EU Tax Residents / Possible Refunds of Spanish Inheritance Tax

Recent decision of the European Commission which directly concerns individuals who are resident in a EU Member State and who have paid Inheritance Tax in Spain.

1. Background

The European Commission has decided to refer Spain to the Court of Justice of the European Union for its discriminatory rules on inheritance and gift tax that require non-residents to pay higher taxes than residents.

The Commission had already formally requested Spain on 5 May 2010 (IP/10/513) and additionally on 17 February 2011 to take action to ensure compliance with the EU rules in regard to inheritance and gift tax provisions. However, no amendments have been made to Spanish legislation on the matter.

Inheritance and gift tax in Spain are regulated at both state level and at the level of autonomous communities. The autonomous communities' legislation grants

residents a number of tax benefits which, in practice, allow them to pay much lower taxes than non-residents.

Example:

A tax resident in Spain who inherits assets subject to Spanish Inheritance Tax is entitled, under certain circumstances, to benefit from a 99% tax exemption whereas a tax resident in another Member State, in the same situation, would be taxed up to 34%.

The Commission considers that this discriminatory tax treatment constitutes an obstacle to the free movement of persons and capital, a fundamental principles of the EU Single Market, and is in breach of the Treaty on the Functioning of the European Union (Articles 45 and 63 respectively).

2. Legal actions

In view of the points which are challenged and the arguments advanced by the Commission, it seems reasonable to foresee that Spain would be condemned, in a few years.

However, this possible condemnation would not directly improve the tax situation of EU tax residents which already paid inheritance taxes at a higher rate than Spanish tax resident.

Accordingly, should EU tax residents want to challenge the excess of Inheritance tax paid in Spain, they would have to personally claim for a refund of such excess before the competent Spanish Tax Office. Should this not be done in time, these legal actions could be time bared at the moment the CJEU judgment would be ruled.

3. What needs to be done ?

- Analyse of each individual situation in order to value possible legal actions.

- Claim before the competent Spanish Tax Office.

- Should this be necessary, claim before the competent Spanish Courts.

Switzerland

Estate and donation tax

According to a constitutional initiative initiated largely by left-wing parties, a new 20% estate

and donation tax shall be introduced and the existing cantonal donation and estate tax laws shall be abolished (currently, almost all cantons provide for full exemption on transfers to descendants and spouses). If approved by the majority of Swiss people and cantons, donations made as from 1 January 2012 will be added to the taxable estate.

The following exemptions apply to the 20% flat rate tax on estates and donations in case of Swiss domicile of the deceased or donor:

- Gifts and estates to spouses and registered partners;
- Gifts and estates not exceeding in aggregate CHF 2 millions;
- Gifts and estates to income tax exempt entities such as charities;
- Annual donations of not more than CHF 20,000 per donation.

Reduced rates and additional exemptions shall be applicable in case of a transfer of enterprises or farms in the course of a gift or estate, whereas the reduction itself is not specified any further. Such reduction shall be available only in case the enterprise or farm is operated by the heirs or donees for ten years following the transfer.

Due to Swiss legal procedure, the initiative can be put on the ballot the earliest in 2013, more likely 2014. Accordingly, if approved by the Swiss people and majority of cantons, the proposed changes will enter into force as from 1 January 2015, more likely as from 1 January 2016. Irrespective of the entry into force and due to the retroactive application, donations made as from 1 January 2012 are taken into consideration when calculating the taxable basis for estate tax purposes.

New Swiss/German and Swiss/UK Tax Agreement on Final Withholding Tax

Switzerland signed tax agreements with Germany and the UK under which banking operations in Switzerland will be required to either report certain information in relation to accounts maintained by German or UK taxpayers to the Swiss Federal Tax Administration to be relayed to the tax administrations in Germany and the UK or to operate an "anonymous" final withholding tax on payments ("Swiss Final Withholding Tax") made

to those accounts. The Tax Agreement also introduces provisions to enable the regularisation of prior year tax liabilities for those account holders through the operation of a one-off lump sum levy or a Voluntary Disclosure of account related information.

The Agreements now require the approval of the parliaments in Switzerland as well as in Germany and the UK, and are expected to enter into force on 1 January 2013.

Since our last newsletter Switzerland has published a draft version of a Swiss "Framework" law ("Bundesgesetz über die Internationale Quellenbesteuerung") in connection with the Tax Agreements which will be applicable not only to the existing agreements but also to all future Tax Agreements Switzerland will conclude with other countries. This "Framework" law sets out the organisation, procedure and the legal process with respect to the Tax Agreements. Furthermore the framework law contains provisions on the applicable sanctions. It comes with a report containing further information on the framework law. In addition the Swiss Federal Tax Administration is working on draft guidance ("Wegleitung") for the implementation of the Tax Agreements. The draft guidance is expected for late December.

This Newsletter focuses on the main differences between the Swiss/German and the Swiss/UK Tax Agreement as well as the latest reactions in the press on the agreements.

Main Differences between the two agreements:

The Tax Agreements are not only very similar in their structure but also in their content. The tax rates for the regularisation of the past (34%) for example are identical. The differences between the two agreements are due primarily to the inherent differences in the tax systems of Germany and the UK, and concern in particular: the tax rates for future income, some procedural arrangements and special rules for "non-UK domiciled individuals".

- **Tax rates**
The intention of the agreements is to mirror local tax legislation. Therefore the rates for anonymous Withholding

Tax payments for the future differ for Germany and the UK. The rate for Germany is 26.375% while the rates for the UK are between 27 to 48% depending on the category of income (interest income 48%, dividend income 40%, other income 48% and capital gains 27%).

For the regularisation of the past, both countries use the same formula and tax rates to calculate the final withholding tax one-off lump sum levy. The tax amounts to between 19% and 34% of the clients' asset holdings and is determined on the basis of a formula contained in the Tax Agreements; the effective tax rate for affected German and UK clients is likely to be between 20% and 25% of the assets held in Switzerland.

- **Tax basis for capital gains and loss offsetting rules for the future**
Both agreements use different methods to calculate capital gains and losses - carry-forward and loss offsetting for the future taxation.
- **Timing concerning the taxation for the future**
To date it is not completely clear until when the tax for the future needs to be levied for German clients. The German Tax Agreement only refers to the transfer of the tax to the Swiss Federal Tax Administration (at the latest three months after tax year end). According to the UK Tax Agreement the tax shall be levied on an arising basis and be transferred to the Swiss Federal Tax Administration within a certain deadline (not later than two months after the end of the calendar year).
- **Tax status**
Other than the German/Swiss Tax Agreement the UK/Swiss agreement knows two different tax statuses, a domiciled individual and a non-domiciled individual status. Customers with a "non-UK domiciled individual" status have two additional options to regularise untaxed assets held in Switzerland, namely the opt-out method and self assessment method.
- **Options of regularisation outside the agreement differ also**
There has always been the option for German as well as for UK taxpayers to regularise their untaxed assets in Switzerland outside the provisions of the

new Tax Agreements. German tax payers can choose voluntary self disclosure while the UK clients can choose between the Lichtenstein Disclosure Facility (LDF) to regularise untaxed assets and voluntary self disclosure (the LDF being the more attractive option of the two).

Recent reactions to the agreements in the press:

There are some German politicians who are concerned that the negotiated rate for the regularisation of the past of the Swiss/German Tax Agreement is too “attractive” for German taxpayers who have undeclared assets in Switzerland and therefore ask for renegotiation of the agreement. Furthermore also the European Union has raised concerns as the Tax Agreements seemingly undermine EU Policy on information exchange and transparency from the Commission’s point of view. In addition there is concern that the Final Withholding Tax for the future will be levied on interest payments which are already in scope of the bilateral agreement between Switzerland and the EU regarding interest payment backup withholding (in the case of the German agreement the final withholding levied would be lower than the agreed EU backup withholding rate of 35%).

UK

Gaines-Coopers loses Supreme Court appeal on tax residence

On 19 October 2011 the UK Supreme Court has found in favour of HMRC and rejected appeals of three taxpayers (Gaines-Cooper, Robert Davies and Michael James) that they should be considered non-resident for UK tax purposes.

The dispute has centred around interpretation of IR20 (“Residents and Non-Residents – Liability to Tax in the United Kingdom”), which served as authority’s guidance on what constitutes “residence” and “ordinary residence” for the UK income and capital gains tax purposes.

To briefly recap the background, the case concerned two sets of appellants who had both sought to leave the UK and subsequently claimed that they were not resident in the UK for tax purposes.

The judgement issued on 19 October 2011 set out that HMRC guidance was purely guidance and its application depended on the facts of each individual case. In terms of residence, the underlying principle that the law has established is that it must be shown that there has been a distinct break in the pattern of the taxpayer’s life in the UK. This will be a question of fact to be evaluated on a case by case basis as to whether an individual actually alters his life’s pattern as a result of leaving the UK.

Lord Wilson in his Judgement commented that on considering IR20, the sophisticated taxpayer would be informed that they would need to:

- a) “leave” the UK in a more profound sense than that of travel, namely permanently or indefinitely or for full-time employment;
- b) Do more than take up residence abroad;
- c) Relinquish his “usual residence” in the UK;
- d) Make sure that any return to the UK were no more than “visits”; and
- e) Make sure that any property retained in the UK for his use was required for the purpose only of visits rather than a place of residence.

In summary this suggests that a distinct break is required to be evaluated on the facts. It is, therefore, important to be able to demonstrate a distinct break from the UK by changing the pattern of your life.

We hoped that the current confusion following the Gaines-Coopers Supreme Court judgement would be clarified from 6 April 2012. However, the introduction of the proposed statutory residence test is delayed for a year to 2013. As a result, we will now have a further period of uncertainty and individual’s residency being subject to HMRC interpretation.

Update on the UK – Swiss Tax Agreement

Further to our last October newsletter UK-Swiss Agreement has been published on 6 October 2011 following approval by ministers. The Agreement allows for closer co-operation between UK and Switzerland, and provides for both an historic levy on

Swiss funds held by UK resident individuals of up to 34% of the balance in an account as at 31 December 2010 and withholding tax (WHT) of up to 48% from 2013.

The full text tells us for the first time who will be covered by this agreement. The obligation to account for the levy and to perform other functions will fall on “**Swiss paying agents**” i.e. Swiss banks and other financial concerns, including Swiss based investment houses and Swiss based individuals handling investments for others in the normal course of their business, any corporate entity, permanent establishment or partnership that pays dividends or interest over CHF 1 million per year.

“**Relevant persons**” are defined as UK resident individuals who are account holders or the beneficial owner of assets in such accounts or who are known to the Swiss bank as having beneficial interests in the assets held in the name of a “domiciliary company” i.e. an entity such as a company or trust, following usual “Know Your Client” procedures or who hold such an interest in an insurance product wrapper or through an account in the name of another individual.

UK residents are defined as those having informed the bank that their principal private residence is in the UK or are UK passport holders (unless in this case, they can demonstrate through a tax residence certificate that they are not UK resident).

There are two important restrictions on the definition of “relevant persons”. Firstly, trading, manufacturing or other commercial enterprises are excluded from being domiciliary companies. Secondly, if it is not possible in the context of a discretionary trust to allocate the beneficial ownership of underlying assets to a UK resident individual then they are excluded.

Where assets are held jointly or in some form of collective investment, all assets are allocated to the known relevant person or persons, unless all the other beneficiaries can be identified.

For the purposes of the WHT a recipient of income or gains that is not otherwise a relevant person may be treated by the bank as a relevant person.

Non domiciled individuals are those individuals who have been certified as such by a recognised lawyer, accountant or tax

adviser and who have filed tax returns in the UK claiming the remittance basis for 2010/11 and 2011/12 and who have paid the remittance basis charge.

“**Relevant assets**” are all cash accounts, bankable assets, all shares and stocks, options debts and forward contracts, and all other financial or structured products, but not including real property, chattels and assets held in safe deposit boxes.

We will update you on further development in this area in the next editions of the Private Wealth Services European Newsletter.

Chancellor’s Autumn Statement

The Chancellor delivered a “steady as she goes” Statement on 29 November 2011, containing very little that hadn’t already been announced.

The Autumn Statement normally outlines expected changes to be legislated on in the nearest future.

Corporate taxes

Positive measures for business include the reform of international corporate taxation, which we will hear more on in the near future. The flagship measure is to make the tax system more attractive for international businesses and attached to international entrepreneurs to be headquartered in the UK and the final elements of this are eagerly awaited.

It is also clear that the Chancellor is making earnest endeavours to encourage investment and growth in UK business. The proposed measures include in particular:

- Capital allowances: Enterprise Zones in six assisted areas will qualify for enhanced capital allowances. In these areas, 100%

allowances will be available for plant and machinery investment incurred between April 2012 and March 2017.

- Small business rate relief holiday: The Government will extend the small business rate relief holiday for a further six months from 1 October 2012.
- Business rate deferral scheme 2012-13: The Government will give businesses the opportunity to defer 60% of the increase in their 2012-13 business rate bills as a result of the Retail Prices Index up-rating, to be repaid equally across the following two years.
- Bank Levy rate: The full rate of the Bank Levy will be set at 0.088% from 1 January 2012.

But no radical proposals to date and some big reforms in the tax system still seem a long way off. The Chancellor did not take the opportunity to lower corporate tax, or indicate he was planning to do so.

Personal tax and welfare

In the personal tax field, recent years have seen tax rises for individuals and employers, and there was no significant attempt to reduce or re-balance this, although the Chancellor did refer once again to his desire to integrate income tax & NIC. However some changes have been introduced.

- The annual exempt amount for capital gains tax will be frozen at GBP 10,600 for 2012-13.
- Taxation of non-domiciliary – no significant changes has been announced.

The only relevant point of interest here is that after several years of significant trailing of changes to the non domiciled regime it was

pleasing to see nothing new for a change.

Controlled Foreign Companies

On 6 December 2011 the draft legislation has been published. It overhauls current UK CFC regime and introduces a whole new approach to dealing with the overseas subsidiaries of UK Companies for the tax purposes.

The draft legislation introduces entirely new concept of gateway test. The intention is that the gateway test would filter the majority of overseas subsidiaries out of the scope of the CFC rules, such that only companies failing the gateway test would be required to consider the detailed rules and exemptions.

It also introduces safe harbours which are intended to offer companies a more straightforward means of exempting overseas profits even where gateway is failed. The Government also reaffirmed its intention to introduce a new low rate finance company exemption, which allows UK-based businesses to lend to overseas subsidiaries with a low rate of 5.75% by 2014.

Where the above mentioned exemptions do not apply, there are still specific exemptions available.

We are still, however, in a period of consultation, which closes on 10 February 2012. There are various details that are still under consideration and there is a real possibility of further improvements before the final changes are enacted.

Reform of the UK CFC would increase UK’s tax competitiveness and make the UK a more attractive holding company location for foreign investors. We will update you on further development in this area in the next edition of the Private Wealth Services European Newsletter.

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