

# Private Banking European Tax Newsletter



This year-end edition is dedicated to upcoming tax reforms in various European countries, which will be effective as from 2011. As in our previous editions, the trend towards more transparency and the fight against tax evasion is still high on the agenda. Yet we also see some negotiations aiming at a settlement of non declared income via a withholding tax at source but without relieving the banking secrecy. The outcome of these bilateral negotiations will probably only become concrete during the next months, but will be highly dependent on the EU Commission's overall strategy.

We also see that based on recent developments in various European countries, such as Belgium, the Luxembourg investment vehicles are raising an increased interest from foreign investors.

As regards the Luxembourg private banking sector, the expected consolidation phase has not really started. The 2011 Luxembourg M&A transactions are likely to relate to small and medium size wealth managers and banks.

We hope you will enjoy reading this Newsletter.

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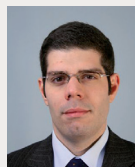
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## ***Exchange of information - raising the veil of confusion***

We see that the various European developments lead to much confusion in respect of a possible automatic exchange of information, that individual account holders could face in the future. Therefore, the following update will try to clarify the current situation.

The “Fiscal package” discussed each month during ECOFIN Council meetings contains in particular the following schemes:

### ***EU Savings Directive***

- Principle: automatic exchange of information between competent authorities of different EU Member States in case of cross border interest payments;
- 25 countries already apply the automatic exchange of information;
- Exception: during a transitional period, Luxembourg is allowed to levy a withholding tax on interest payments (35% as from July 2011);
- The transitional period shall end when USA, Liechtenstein, Switzerland, Monaco, Andorra and San Marino will agree with the EU to exchange information upon request/automatically (unanimity of the EU member states is required for signing agreements);
- No agreement has been signed yet with those foreign countries, therefore no automatic exchange of information can apply.

### ***EU Directive for administrative cooperation in the recovery of taxes***

- The Directive covers all taxes and duties and introduces compulsory spontaneous exchange of information, also when the information is held by banks;
- The Directive notably allows officials of one country to actively participate in administrative enquiries on the territory of another country.

### ***Proposal of EU Directive for administrative cooperation in the field of taxation***

- Initial scope: proposal to ensure an administrative cooperation and a mutual assistance in the assessment of taxes on income and capital by covering all taxes and duties levied by Member State and their administrative subdivisions (as well as social security contributions);
- Exchange of information has to be organized either upon request or as automatic or spontaneous exchange according to the particular case;
- Latest discussions (ECOFIN Council dated 7 December 2010):
  - The current exchange of information upon request which is organized by bilateral tax treaties will be extended between all EU member states as from 1 January 2013 (transposition in national law) and will cover income as from 1 January 2011.
  - Each member state must organize an automatic exchange of information, covering three categories of income at a first stage. It must be implemented between 1 January 2015 and 1 July 2017. Luxembourg will apply it to salary and pension income first and then, to director fees.
  - As from 1 July 2017, the opportunity to extend the automatic exchange of information to other categories of income will be considered.

### ***Switzerland: project “Rubik”***

Please refer to our country news from Switzerland.

## Belgium

### *Supplementary municipal tax on foreign sourced movable income*

Belgian individual taxpayers must declare their taxable income, including movable income (interest, dividends, etc.), in their annual income tax return, on which a supplementary tax is levied by the municipal authorities.

However, these taxpayers are not required to include in their annual tax return the movable income for which Belgian withholding tax has already been levied and paid to the Belgian tax authorities. Consequently, no supplementary municipal charges are levied on this movable income.

In the case of foreign movable income, a withholding tax is only levied if a Belgian financial intermediary intervenes in the payment of the movable income. If no Belgian financial intermediary intervenes, the Belgian individual taxpayers are required to declare the movable income in their annual tax return, and supplementary municipal charges will be levied on it.

On 1 July 2010, the European Court of Justice (ECJ) determined that this supplementary municipal tax on foreign sourced movable income was an infringement to the free movement of capital.

As a result of the ECJ's decision, the Belgian tax authorities recently published a Circular commenting on the taxability of interest and dividend payments arising from investments made in another Member State and not paid through a Belgian intermediary.

The Circular provides that the supplementary municipal tax should no longer be levied on dividends and interest (as defined under Belgian tax law) arising from those investments.

For those who have suffered such supplementary municipal taxes in the past, it is possible to file a claim with the Belgian tax authorities within the applicable statute of limitations to recover the amount suffered.

### *The European Savings Directive and the Belgian tax on savings*

#### **The "asset test" to be reduced from 40% to 25%**

At present, an investment fund must invest more than 40% of its assets directly or indirectly in debt claims to fall under the scope of the European Savings Tax Directive

or the Belgian tax on savings (reported through article 19bis of the Belgian Income Tax Code (ITC)). This is the so-called "asset test."

As from 1 January 2011, the asset test used to define a reportable investment fund under the European Savings Directive will decrease from 40% to 25%, meaning that investment funds that are currently out of scope of the Directive (i.e., UCITS whose assets are invested between 25% and 40% in interest-yielding products) will then be in scope. This amendment of the scope of the Directive is provided for by the Directive as it currently stands and does not depend on the adoption of the revised version of the Directive.

The question arises whether this amendment at European level will impact the Belgian tax on savings given that article 19bis of the Belgian ITC is widely inspired from the European Savings Directive. By derogation of the exemption on capital gains realized upon redemption or liquidation of funds, article 19bis ITC foresees a 15% withholding tax on income generated upon the redemption of some fund units, in cases where the asset test is met and a Belgian paying agent is involved. Individual investors do not need to declare their taxable income in their annual tax declaration, where taxes have been withheld under article 19bis ITC. As nothing is foreseen in the Belgian tax legislation in this respect, the scope of application of the Belgian tax on savings should remain unchanged unless article 19bis is amended accordingly.

#### **The end of the grandfathering clause**

To avoid disrupting the markets, the European Savings Directive included a grandfathering clause relative to a transition period for certain negotiable debt securities.

This clause aims at excluding from the scope of the Directive, until 31 December 2010, negotiable debt securities:

- issued before 1 March 2001 or for which the initial issue prospectus was approved before this date by the competent authorities of the EU or a third country, and
- provided that no new issuance occurs as from 1 March 2002.

This means that as from 1 January 2011, such negotiable debt securities will be in scope of the European Savings Directive.

Here also, the question arises whether the same would apply for the Belgian tax on

savings. Although the answer is not as clear-cut as for the "asset test", arguments exist to defend that the grandfathering clause should still apply with respect to the Belgian tax on savings.

### *Recent ruling regarding a Luxembourg SICAR*

A recent ruling decision from the Belgian Ruling Commission confirmed the Belgian tax treatment applicable to dividend distributions made by a Luxembourg SICAR to Belgian investors. The SICAR is an entity dedicated to private equity or venture capital investments.

#### **Brief overview of the concerned situation**

The main questions raised to the Belgian Ruling Commission were the following:

- Could the dividends distributed by the SICAR to Belgian resident companies benefit from the special regime of the Dividends-Received Deduction regime ("régime RDT" or "DRD regime"), according to which, under certain conditions, dividends are only taxable up to 5% of the dividend received;
- Could the dividends distributed to Belgian individual residents benefit from the reduced tax rate for movable income (i.e., 15% instead of 25%); and
- Would the capital gain upon redemption and upon liquidation be tax-exempt?

In the case at hand, the SICAR shares would be subscribed partially by the founders and partially by third party investors, including Belgian companies and Belgian individual residents. Investments made by the SICAR would primarily consist of the acquisition of participations. The profits generated by these investments, and in particular the capital gains obtained from the transfer of participations, would be distributed to the shareholders in the short term.

#### **Decision**

The Belgian Ruling Commission accepted that dividend distributions made by the SICAR to Belgian resident companies may benefit from the DRD regime provided that certain conditions are met, which is very interesting as it is the first time that a regulated foreign fund qualifies as a so-called "DRD SICAV" (i.e., a fund allowing its investors to benefit from the DRD regime). However, logically, this regime should not apply to dividend distributions derived from interest or non qualifying shareholdings.

Surprisingly, the decision states that this distribution may benefit from the reduced 15% WHT rate applicable on dividends and, just as importantly, from the exemption

of the capital gain upon redemption or liquidation (given the fact that the SICAR at hand qualifies as an investment company in the sense of the Belgian Income Tax Code).

## Finland

### *A brief update on the tax treatment of distributions made by a Luxembourg SICAV*

In accordance with recent case law, distributions by a Luxembourg SICAV should be regarded as dividends for Finnish tax purposes under certain conditions.

This is a significant development, as distributions by a SICAV and other investment funds in a corporate form have previously been regarded as «investment fund distributions» which have been fully taxable (i.e., subject to corporate tax for corporate investors and capital income tax for individuals). In light of the new case law, distributions by a SICAV could be partially or even fully tax exempt for a Finnish company (e.g., a personal holding company of a Finnish investor) and, for a Finnish individual, only partially subject to capital income tax and possibly earned income tax under a certain formula. The same treatment is likely applicable to distributions from all investment funds in a corporate form.

Taking into account the potential tax exemptions on dividend distributions from foreign corporate investment funds, the recent case law can enable attractive investment structures for Finnish corporate investors. On the other hand, this treatment may cause certain tax disadvantages for Finnish individual investors.

## France

### *Main corporate and personal income tax implications of the French Draft 2011 Finance Bill*

On 29 September 2010, the French Government published the Draft 2011 Finance Bill. At this stage, both chambers of the French parliament are discussing the Bill and it remains a work-in-progress. Further changes may be made before the final text becomes final.

The proposed measures encompass corporate and personal income tax.

#### 1) Concerning corporate income tax

In respect of corporate income tax, the main change concerns the parent-subsidiary regime.

Currently, dividends received by a French company from a qualifying subsidiary are 95% exempt from corporate income tax. To

date, it has been possible to cap the taxable amount of the dividend with reference to the costs and charges incurred by the parent company.

The Draft 2011 Finance Bill eliminates this “cap” mechanism so that 5% of any dividend received by a parent company from its subsidiary will be taxable.

This provision is expected to apply to fiscal years ending as from 31 December 2010.

#### 2) Concerning personal income tax

Regarding personal taxation, the Draft 2011 Finance Bill and the Draft 2011 Social Security Bill provide for an increase in personal income and capital gains tax rates and social surtaxes:

- An increase of 1% in the highest rate of income tax, from 40 to 41%. This provision will apply to income earned in 2010.
- An increase of 1% in the rate of tax levied at source on dividends and interest on fixed rate investment products, from 18% (30.1% with social surtaxes) to 19% (31.3% with social surtaxes). This provision should apply to income earned as from 2011.
- An increase in the rates that currently apply to capital gains arising on the disposal of shares and securities and those arising on the disposal of real estate from 18% (30.1% with social surtaxes) to 19% (31.3% with social surtaxes). This provision should apply to capital gains earned as from 2011.

Please note that social surtaxes should also be increased by 0.2% (from 12.1% to 12.3%). This provision should apply to income and capital gains arising on the disposal of shares received in 2010 and to capital gains arising on the disposal of real estate received in 2011.

#### **Tax rates applicable in 2011 for 2010 personal income tax will be the following:**

Band of income (€)	Rate on band (%)
Up to 5,963	0.00%
5,963 to 11,896	5.50%
11,896 to 26,420	14.00%
26,420 to 70,830	30.00%
Over 70,830	41.00%

Moreover, capital gains arising on the disposal of shares and securities will now be taxable regardless of the value of the disposal. This will apply to transfers occurring on or after 1 January 2011. Furthermore, capital losses realised will also become reportable regardless of the amount of the sales proceeds.

The Draft 2011 Finance Bill also includes a

provision concerning revenues of the Euro compartment of life insurance contracts which will now be taxed at 12.1% on its annual book value, and will no longer be deferred until the maturity of the contract. This provision should apply as from 1 May 2011.

The Draft 2011 Finance Bill also provides for an increase of the employee / employer social contributions applicable to stock-options. Employer contributions would be increased from 10% to 14% and employee contributions from 2.5% to 8%. There is a pending debate as to whether this increase should also apply to free share awards.

Finally, the system of income and wealth tax reliefs currently available in respect of investments in SMEs is reviewed and will only apply to SMEs suffering from real financing difficulties.

## Luxembourg

### *Zoom on Luxembourg Private Banking Transactions*

The Luxembourg Private Banking industry has entered a turbulence zone for the last two years in the wake of the continued restructuring of the financial industry. Recent M&A activity in the industry is a direct effect of this. However, the anticipated high level of transactions in the Luxembourg market has yet failed to materialize.

Since the beginning of 2009, 3 banks changed hands, 2 private banking activities were sold and one wealth manager changed shareholders twice. The first wave of transactions can be qualified as “distressed sales,” with the best example in Luxembourg being the sale of Sal Oppenheim to Deutsche Bank, which was announced in October 2009. Although not a pure private bank, the buy-out of Fortis by BNP Paribas in May 2009 also constituted an important transaction in the private banking arena.

The second wave of transactions has been motivated by the liquidity needs of distressed owners who benefited from state-aids, which the EU demanded to be paid off within short time periods. Forced to find cash, KBC announced the sale of KBL European Private Bankers to Hinduja Group in May 2010 for a consideration of Euro 1.35 billion. The tax and political environment also played a role in the decisions of foreign banks to divest of their private banking businesses in Luxembourg. This was evidenced by the sale of WestLB International and the private banking operations of LBBW to DekaBank, announced in September 2010 and August 2010, respectively.

The next wave we foresee in the short-

term will be the consolidation of small and medium sized wealth managers and private banks that suffer from increased regulatory demands and political constraints, resulting in difficulties acquiring new money, increasing costs and falling margins. We have also seen an increasing interest from groups of private and institutional investors from Russia, Eastern Europe, Middle East and Latin America to gain a foothold in Luxembourg. We expect these buyers to be attracted to small private banks. Another trend we have observed is for offshore specialist private banks to move onshore, using acquisitions to accelerate implementation. We believe Luxembourg private banks will follow this trend.

In terms of prices, our analysis shows that buyers are no longer willing to pay the prices that could be demanded previously. Diverging expectations on price between potential buyers and sellers is one reason that could explain the rather low volume of transactions over the past two years. The goodwill/AuM paid decreased in the past two years to the 1.0% to 2.0% range compared to an average 2.0% to 3.0% before the financial crisis. The principal reason for this price change lies in the uncertainty related to the loyalty of existing clientele and the ability to acquire new clients for Luxembourg private banks and wealth managers as a direct result of regulatory and tax changes.

## Netherlands

### Dutch Tax Package 2011

On 21 September 2010 - Budget Day in the Netherlands - the Dutch Government made public the 2011 Tax Package. The plans presented reflect the Dutch government's policy to stimulate and accommodate entrepreneurship.

As both the House of Representatives and the Senate must approve these plans, significant changes could still occur. Most proposals included in the 2011 Tax Package are set to take effect on 1 January 2011.

### Corporate income tax: reduction of top rate and abolition of intermediate rate

The 2011 Tax Package proposes to cut the highest rate of corporate income tax from 25.5% to 25%. This rate will be applied to taxable profit exceeding €200,000. If the taxable profit is less than €200,000, a rate of 20% will be applicable. The intermediate rate of 23% for profits between € 40,000 and € 200,000, which was made inoperative for fiscal years 2009 and 2010, will definitively be abolished.

### Real estate transfer tax: qualification of 'real estate entity'

Under certain conditions, the acquisition of shares in a real estate entity is taxed with real estate transfer tax. To discourage (artificial) arrangements in which the qualification of 'real estate entity' is avoided, an entity whose assets consist of more than 50% immovable property and at least 30% immovable assets in the Netherlands will qualify as a deemed real estate entity ('asset test'). For the 50% test, non-Dutch real estate must be taken into account as immovable assets. This change constitutes a significant broadening of the RETT base compared to the existing regime based on a threshold of 70% of the assets consisting of Dutch immovable property.

### Reference date box 3

The value of the assets and liabilities is currently determined based on the average value on 1 January and 31 December of every year. As from 1 January 2011 there will be only one reference date per year (i.e., 1 January).

## Norway

### How to determine the calculation basis for the net wealth tax

In Norway, individual tax payers are subject to net wealth tax. The tax rate is approximately 1.1 % of net value.

With respect to the value of shares in non listed companies, the Norwegian Tax Act states that the shares shall be valued as the proportional part of the limited company's total tax value, per 1 January of the year before the assessment year. For the income year 2010 this will mean 1 January 2010. If the value of the company has been reduced during 2010, this means that the tax payer will be subject to wealth tax based on the higher value from January 2010.

There is one exception to this rule. If the share capital in the company has been changed by a capital increase or a capital reduction during the income year, the value per 1 January in the assessment year (2011) shall be used. Accordingly, the basis for the wealth tax will be more correct and the tax payer will pay a lower wealth tax.

If individual shareholders (not corporate), in position to pay net wealth tax, have experienced a reduction of the value of their shares during 2010, we advise the shareholder to consider a change in the share capital of the company to obtain a more correct basis for and a lower wealth tax. The change in the share capital must be registered in the Register of Business Enterprises before year end and not be of symbolic value.

## Russia

### New Protocol to Russia/Cyprus Tax Treaty

The Protocol to the Double Tax Treaty between Russia and Cyprus was signed in Nicosia on 7 October 2010 during Russian president Medvedev's official visit to Cyprus. Formal ratification is expected to happen before the end of 2010 so that the Protocol could come into effect on 1 January 2011.

As a result, the government of Russia is expected to announce the removal of Cyprus from the Russian "Black List," upon entry into force of the Protocol. As from the effective date of the removal from the black list, dividends received by Russian shareholders from eligible equity participations in Cypriot subsidiaries will be eligible for the Russian participation exemption.

Arguably the most important provision of the Protocol relates to taxation of capital gains from disposal of shares of companies which derive a substantial part of their value (more than 50%) from immovable property. Under the Protocol, such gains may be taxed in the country where the immovable property is situated. This change is in line with the OECD Model Tax treaty. The following aspects of this change should be noted:

- It will come into effect four years after the date the Protocol will come into force (i.e. it is expected to be applicable from 2015);
- The exclusive taxing right will remain with the country of residence of the seller if:
  - the disposal qualifies as a corporate reorganization; or
  - the disposed shares are listed on a recognized stock exchange; or
  - the seller is a pension fund, provident fund or the government of either of the two countries; and
  - the Russian Federation has undertaken that, by the time this provision will come into force, it will have adopted similar provisions in its tax treaties with all States which are regarded as main investors in the Russian Federation.

Other provisions of the Protocol are summarized below.

- Uncertainty with respect to taxation of distributions from mutual funds and similar vehicles was eliminated: distributions from such vehicles (other than vehicles primarily investing in immovable property) will be subject to the normal withholding tax rates applying to dividends (i.e., 5%/10%).

- The new definition of interest is substantially aligned with the OECD Model Tax treaty. In addition, any interest reclassified by the Russian tax authorities as dividends (e.g., due to Russian thin capitalization rules) will be subject to the withholding tax rates for dividends.
- Articles “Exchange of information” and “Mutual Assistance procedures” have been revised in line with the OECD Model Tax Treaty and reflect the changes that have already been introduced in the Cypriot tax legislation since 2008.
- The article on “Assistance in Collection” has also been aligned to the OECD Model Tax Treaty; however, the new provisions will come into effect only upon the introduction by Cyprus of the necessary legal framework.
- Limitation of benefits was introduced, however, it has a very limited scope: the limitation applies only in cases where a company claiming treaty benefits is a tax resident of Russia or Cyprus but is not registered in either of the two states.
- It has been clarified that income received through a real estate investment fund or a similar vehicle may be subject to tax in the country where the immovable property is situated.
- Minor changes to the definition of Permanent Establishment and to the existing “tie-breaker” clause in relation to residency.

### **Draft legislation on methods for determination of market and notional prices of securities and derivatives**

Under the Russian tax code, the material benefit received by individuals from acquisition of securities and derivatives at below-market prices represents their taxable income. In addition, losses from the disposal of marketable securities by individuals may reduce their taxable income (in accordance with the procedure established by the Tax code) provided that the price of disposal stays within the stipulated range of market price fluctuations. The procedure for determination of the notional price of securities and derivatives, the market price of securities and the range of its fluctuations is to be established by the Federal Financial Markets Service (FFMS), as agreed with the Ministry of Finance. Until recently, there was no clarifications/guidance from FFMS in this respect.

Now FFMS has published draft orders containing such methodology. The draft orders must now undergo an independent

anti-corruption expert appraisal, after which the orders may well be officially issued and take effect from 2011. Please note that the final versions of the orders may differ from the published drafts.

The provisions of the draft orders essentially come down to the following:

- The orders establish three basic approaches for determining prices of securities and derivatives based on:
  1. Current market prices for securities and derivatives;
  2. Theoretical prices calculated under the rules established by the orders; and
  3. Prices determined by independent valuation.
- The priority method is to use current market prices for securities and derivatives.
- The orders outline methods for calculation of market prices and the formulas for calculation of theoretical prices.

### **Departure tax returns for individuals**

Russian Tax Code stipulates that foreign nationals leaving Russia permanently are obliged to file a tax return (departure tax return) one month prior to their permanent departure from Russia. The associated tax is payable no later than 15 days after submitting the return.

To date, the filing of departure tax returns has largely been treated as a voluntary exercise by individual taxpayers and employers who, in general, preferred to adhere to the standard deadline for annual tax returns (30 April). This is primarily attributable to the fact that the tax authorities have not been active in enforcing this rule and also to practical difficulties associated with the preparation of departure tax returns.

The tax authorities are now turning their attention to this issue with an increased number of queries. No official, written commentary has been provided; however, it seems that the tax authorities are not going to continue to pay lip service to this requirement. In addition to taking advantage of information received from employers under the provisions of the Federal law on the legal status of foreign nationals in the Russian Federation, the tax authorities have indicated that they are formulating methods of verifying the timeliness of departure tax return filings. Late filing penalties and late payment interest being assessed in relation to these returns is a real possibility.

The logical conclusion is that individual taxpayers and employers should urgently review their procedures for departing

expatriates and consider the filing of at least «preliminary» departure tax returns for expatriates who have left or are going to leave Russia permanently in 2010. In addition, revised tax returns need to be submitted as soon as final and accurate compensation data is available.

### **Employment of highly qualified specialists**

A new favorable migration regime for foreign nationals deployed to work in Russia as highly qualified specialists (HQS) has been recently introduced in Russia. In accordance with a new law (Federal Law No.86-FZ of 19 May 2010, “the Law”) a HQS shall be defined as a foreign national whose annual remuneration shall not be less than 2 million rubles (approximately USD 60,000 / EURO 53,000).

Generally the Law significantly simplifies the procedure of employment of foreign nationals in case they are HQS, in particular:

- the employer of HQS shall be exempt from the obligation to obtain any quota for such specialists;
- the employer shall have a right to employ foreign HQS without employment permit (e.g., a special permission from the immigration authorities);
- the employer shall have a right to appraise the qualification of HQS on its own and it will not be required to provide to the migration service any education certificates confirming the qualification of such foreign specialists.

HQS will also enjoy a favorable tax regime. Under this regime, income of non-resident HQS is taxed at 13%, instead of 30% applicable to the same income of those nonresidents who do not qualify as HQS.

One of requirements of this regime is registration of HQSs with the Russian tax authorities. However, employers in Moscow have been facing uncertainty around where they should register their HQSs: to Inter-regional Tax Inspectorate #47 (where the majority of foreign nationals registered in Moscow file their tax returns) or the local Tax Inspectorates.

Following practical discussions with the tax authorities, PwC Russia has received formal confirmation from the Federal Tax Service in Moscow stating that the correct place of tax registration of HQSs should follow the place of official registration for immigration purposes (usually, this will be the employer’s address). Registration will, therefore, fall under the remit of the local Tax Inspectorates.

## Switzerland

### *“Cash instead of Data” (Rubik concept)*

On 25 October 2010, Switzerland signed a declaration of intention on the initiation of negotiations concerning tax issues with the United Kingdom. Two days later, Switzerland signed a comparable declaration with Germany. These declarations set out guidelines with the aim to solve the conflict regarding the protection of the Swiss bank secrecy and tax evasion.

The countries consider a solution which respects the protection of bank client privacy on the one hand, but also guarantees that Switzerland will expand the availability of administrative assistance for cross-border tax claims.

The solution, the details of which are still to be clarified during the negotiations, covers the following main points:

- Regularization of the past: Regularization of untaxed existing assets already held in Swiss banks on an anonymous basis with the help of Swiss banks by applying a one-off tax.
- Final withholding tax for the future: Introduction of a flat rate withholding tax on future income in case Swiss banking clients want to preserve their privacy. The final withholding tax will be applied by Swiss banks on income items taxable in accordance with the laws and regulations of Germany and the United Kingdom, which, for example, includes a taxation of capital gains. The withholding tax is a tax at source, which will relieve the investor from any tax obligations in his home country.
- Administrative assistance: To ensure compliance with the new tax, the Swiss government has agreed to expand the availability of administrative assistance in accordance with the OECD standard. This envisages that the respective authorities will have the ability to make requests using the name of the client without being required to include the name of the financial institution.
- Further elements: The involved parties intend to tackle the issue of market access for Swiss financial institutions in Germany and the United Kingdom. The package also includes measures to decriminalize banks and their staff.

Important items such as the rate of the withholding tax still need to be negotiated and agreed between the countries. It is expected that the rate of the withholding tax should in principal be comparable to the tax rates in the respective countries. The negotiations are expected to begin in early 2011.

## United Kingdom

### *New initiatives to combat offshore tax evasion and avoidance*

The Chief Secretary of the Treasury, Danny Alexander, has announced plans to spend around £900m over the next four years on specific projects aimed at countering non-compliance with UK tax legislation. The Treasury hopes that by 2014-2015 this investment will bring an additional £7bn in tax revenues per year.

The additional funding will be used in part to focus on offshore tax evasion and avoidance, including the following specific measures:

- Creation of a new dedicated team of investigators to crack down on offshore tax evasion – these additional investigators are likely to make use of the information which HMRC has obtained from financial institutions in recent years about customers with offshore bank accounts, as well as information obtained under the tax information exchange agreements with other countries.
- A five-fold increase in criminal prosecutions to act as a deterrent to tax evasion – it is likely that there will be an increasing risk of a criminal rather than a civil investigation where HMRC suspects tax evasion.
- A much tougher stance on evasion and avoidance by those liable for a 50% tax – HMRC will be focusing its recourses on individuals with high earnings, the segment of individuals with the highest revenue contribution potential.

It is apparent that individuals with undeclared offshore income or assets will face an increased pressure as a result of the proposed measures. In such circumstances, it is recommended that these individuals start considering options available to straighten up their tax affairs now. One possible solution for them is to take advantage of the Liechtenstein Disclosure Facility (‘LDF’), which offers very generous settlement terms and can be used by holders of accounts in any offshore jurisdiction - not just Liechtenstein (see an update on the LDF below). To benefit from the LDF, UK residents should have a financial intermediary within Liechtenstein, even if this is created solely to allow use of the LDF.

### *The UK and Switzerland to negotiate withholding tax on interest earned on Swiss bank accounts*

On 25 October 2010, the Governments of UK and Switzerland started formal negotiations on a new agreement to tax interest income earned by UK citizens on Swiss bank accounts.

To achieve a balance between the Swiss desire to keep its banking secrecy rules and the UK’s right to tax UK holders of Swiss accounts, it is proposed that a withholding tax will be imposed by the Swiss authorities and handed over to the UK authorities, whilst the identity of account holders will remain undisclosed. The rate of the withholding tax has not been agreed yet; however, according to various press releases, it is likely to be in the range from 40% to 50%. There are also discussions on potential charges for interest earned on Swiss bank accounts for the past 5-10 years and exchange of information on suspected tax evaders.

As the negotiations are at an early stage, the details of the final agreement with Switzerland are far from clear. Nevertheless, the UK officials have already announced that they expect the agreement with Switzerland to yield substantial and immediate tax revenues.

The negotiations between the UK and Switzerland are likely to encourage many affected UK individuals to regularize their tax affairs, possibly by using the LDF (see an update below).

### *Update on the “Liechtenstein Disclosure Facility”*

The LDF was launched on 1 September 2009. Recently disclosed figures have revealed that by 30 September 2010 there were 876 taxpayers who used the LDF to make voluntary disclosure of unpaid tax liabilities. HMRC has announced that it is pleased by the level of voluntary disclosures and expects an increase in disclosures once the Memorandum of Understanding on the LDF becomes a law in Liechtenstein.

The key features of LDF are widely known:

- Tax assessed only from 6 April 1999;
- Tax-geared penalty of only 10%;
- Guarantee of non-prosecution; and
- Can be used by individuals already under enquiry.

The very generous settlement terms offered by the LDF mean that it can be a cost-effective solution for many UK individuals with undeclared offshore income and assets.

PwC is acting for a significant number of individuals making disclosures to HMRC under the LDF at different stages of the process, including several where HMRC has agreed the disclosure and matters are now successfully settled. Please contact your PwC contact if you are interested in obtaining further information about the LDF.

## Private Banking country experts

For further information, please contact the PwC Private Banking experts:

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