Private Banking - European Tax Newsletter

PRICEWATERHOUSECOOPERS

Tax aspects are an important element of private banking services. Over the last months, we have observed a greater connection in this respect. The clear trend towards transparency and increasing disclosure requirements has reinforced the need of Private Banks to position themselves on the following tax dimensions:

- **issue of tax reports to private clients providing a classification of income;**
- **product suitability for non domestic clients from a tax perspective**
- **strengthening or creating estate planning/tax engineering departments;**
- **education of the Customer Relationship Managers on the general tax environment of their clients.**

In this context, providing valuable investment advice for high net wealth individuals (HNWI) is more and more challenging. Especially, when it comes to tax aspects, it is vital to stay continuously updated. The tax practice of PricewaterhouseCoopers observed an increasing demand for tax services for HNWI. These are very often relating to international aspects due to the fact that the country of residence of the investor and the country, where investments are located are not the same. Most queries involve the countries, which are part of this first edition of the Private Banking Newsletter; however, the geographic focus may vary from one edition to the next.

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Belgium
Country specific Private Banking News

Subject to the suspicion of mechanism of tax fraud and other specific exceptions, the Belgian tax authorities are in general not authorized to request financial institutions for information in order to tax their clients.

On September 9, 2009 Belgium was struck off the “grey list” because the country signed more than 12 protocols with other treaty countries to exchange banking information related to direct taxation. Belgian banking information could be exchanged in case of tax fraud in the future upon specific request of the other treaty country. As at January 11, 2010 Belgium has already signed more than 20 protocols.

Further, with respect to the European Savings Directive, Belgium recently abolished its European withholding tax for interest payments done towards individuals resident in other EU Member States or associated territories (e.g. Guernsey, Jersey, Isle of Man, Anguilla, Montserrat and Aruba). For interest payments as of January 1, 2010, Belgium will apply the system of automatic exchange of information. Interest payments by Belgian financial institutions to certain foreign entities (e.g. trusts) will under certain conditions also fall under the system of automatic exchange of information.

France
Country specific Private Banking News

The Social Security Financial Law for 2010 notably provides for:

- the application of a 4% tax “forfait social” (which is an employer social contribution assessed on remunerations that are exempt from social security contributions) to director’s fees;
- the doubling of the specific employer social contribution on “top up pension plan” and the creation of an additional 30% employer contribution on pensions exceeding a certain threshold;
- the creation of a 30% employee contributions assessed on carried interests which do not qualify for the capital gain regime;
- Social surtaxes on capital gains as from the first euro; and
- Social surtaxes on income arising from a life insurance contract at the death of the insured person where such income was exempt from social surtaxes during the insured’s lifetime.

The Financial Bill for 2010 notably provides for:

- a change in the tax shield calculation: (i) net dividends (instead of gross dividends) where an option for the final withholding tax has been made and (ii) deficit and capital losses of previous years will be now added to the income for comparison purposes;
- limitation of the global tax benefits derived from specific tax regimes; and
- a heavier taxation on French income paid to residents of “Non-cooperative States” (the list of these States has not been published yet) or on foreign income received from such States.

News on insurance life contracts:

- According to a recent case law, the holder of a Multiple support life insurance contract (i.e. a euro-linked and units-linked life insurance contract) does not have to take into account any income arising from this contract for the tax shield calculation; and
- According to recent administrative guidelines, the value of a “euro diversified” insurance life contract has to be

included in the wealth taxable basis of its holder, even in the presence of a temporary non-selling provision.

Other news:
The French tax administration has announced an extension of the Voluntary Disclosure Procedure. The modalities thereof are not yet issued.

Germany
Country specific Private Banking News

A flat tax system has been introduced in Germany as of January 1, 2009. This system implemented a withholding tax of 25% plus solidarity surcharge of 5.5% thereof which is levied on almost any capital income deriving from securities, warranties, loans, stocks, etc (including capital gains on the sale of equity or non equity securities). Contrary to the past, under the new system it is extremely difficult to achieve a tax-free income at the level of a private investor being resident in Germany. Especially investments in equity products became less attractive from a tax point of view since not only capital gains but also distributed dividends became subject to the new flat tax system. So in this legislative context for private investors the focus for future investments will lay more on products which grant a tax deferral and postpone taxation to a future period. On the other hand, it may become attractive to structure income from other sources (e g rental income deriving from real estate) into investment fund vehicles in order to qualify the profits as investment income with application of the lower flat tax rate (25% plus solidarity surcharge). Solutions structuring real estate at an investment fund´s level became rather attractive.

Italy
Country specific Private Banking News

The major event regarding Italy has been the extension of the tax amnesty originally set to end on December 15, 2010. The amnesty has been extended to April 30, 2010, with only a mild increase in rates: the original 5% rises to 6% until February 28, 2010, and to 7% between March 1, 2010 and the final deadline of April 30, 2010. Data collected up to December 31, 2009 shows that around 95 billion Euros have repatriated, and a further 40-50 billion Euros are expected between January and April 2010. The repatriation of capital has, however, been accompanied by an extension of the statute of limitations for capital kept abroad that is not included in the Italian taxpayer's income return. Stricter laws against money laundering that will most likely entail further and more complex procedures for identifying sources of capital are also presently under discussion. Finally, the possibility to step up the value of lands and shareholdings of unlisted companies by means of payment of a tax ranging between 2% and 4% of the entire "new" value is allowed up to October 31, 2010.

Luxembourg
Country specific Private Banking News

In the context of recent political discussions, a strong trend towards transparency in tax matters has evolved. As a consequence, there is an evolution from off-shore structures to on-shore transparent solutions. Even though Luxembourg was not considered a tax haven, it was accused of a lack of transparency in tax matters. As a result, Luxembourg committed to comply with international standards and recently signed 23 exchange of information protocols. The banking secrecy will however be maintained and will only be suspended in case of suspicion of tax fraud. Moreover, Luxembourg has recently indicated its willingness to agree on the enactment of the proposal to improve mutual assistance in the recovery of taxes (COM/2009/28)

Spain
Country specific Private Banking News

Claiming tax paid in violation of Community Law
Spain, like other European countries, is currently involved in several on-going proceedings with the European Commission on the grounds of discriminatory treatment in the taxation of several entities, resulting in tax being inappropriately paid to local treasuries. This means that it may be possible for EU individuals having a discriminatory treatment in Spain to recover tax inappropriately paid and in some cases, the related late- payment interest. For example, EU Individuals obtaining rental income in Spain taxed at gross basis instead of at net basis, deducting expenses necessary for obtaining that rental income, or Individuals selling real estate in Spain before 2007.

Switzerland
Country specific Private Banking News

The Swiss Federal Council presented in December 2009 its report on "Strategic directions for Switzerland's financial market policy". The report outlines various strategic measures with the aim to reinforce the leading position of the Swiss financial marketplace, as well as its business attractiveness and international competitiveness. The report contains a whole series of measures out of which three concerning the tax framework should be pointed out as particularly relevant for the private banking sector.

In order to preserve the integrity of the Swiss financial sector and to protect the Swiss banking secrecy it was proposed to introduce a final tax at source on bank deposits of foreign clients in discharge of the clients tax obligations to the respective tax authorities abroad. Furthermore, the Federal Council is

considering measures that enhance fiscal honesty of foreign bank clients (e.g. introduction of a self-declaration). The final withholding tax on cross-border investment income, as well as the measures to promote fiscal honesty would be implemented by bilateral agreements.
Another measure, aiming to improve competitiveness with respect to other countries, would be the abolition of the transfer stamp tax, currently due on transactions in certain securities. This abolition, which would result in tax free dealings in securities, would potentially be introduced via a gradual phasing-out of transfer stamp tax duties.

UK
Country specific Private Banking News

The Liechtenstein Disclosure Facility ("LDF")
An agreement signed between the UK and Liechtenstein Governments requires 'financial intermediaries' in Liechtenstein to be satisfied that their UK customers have been declaring their Liechtenstein investments to HMRC. HMRC announced the launch of a Liechtenstein specific disclosure facility off the back of this agreement.
The LDF gives an opportunity to disclose only ten years' tax liabilities, rather than the normal twenty, with a fixed 10% penalty, the option of a standard 40% tax rate and a guarantee of no prosecution to:

- those who are holding funds or assets in Liechtenstein, e.g. bank accounts, investments or trusts, and
- these assets which have UK tax liabilities that have not been declared to HMRC (UK tax authorities).

This facility may apply to clients not only with Liechtenstein assets but with assets in any other overseas jurisdictions.

Capital gains tax reclaim by settlors of offshore trusts
Settlors of offshore trusts have a unique opportunity to reclaim capital gains tax under section 86 of Taxation of Chargeable Gains Act 1992 (TCGA 1992). This applies for the settlors who are EU nationals who would have been UK resident where they have been charged on s86 gains on an offshore trust established prior to March 1991.
Please note that offshore trusts established after March 1991 and which came within the charge to s86 TCGA 1992 due to "tainting" after Finance Act 2008 may also be able to make a claim.
It is possible to submit error or mistake claims in the UK High Court for the last 6 years and protective claims should be submitted for 2003/04 by January 31, 2010; for 2004/05 by 1 April 2010; and for 2005/06 by 5 April 2010.

A new change to perpetuity and accumulation periods for UK trusts
Trusts executed after April 6, 2010 will have a perpetuity period of 125 years, as opposed to the current maximum fixed period of 80 years. The accumulation period, currently limited to 21 years, will also be increased to the whole of the trust period, so potentially 125 years. This will avoid the situation whereby income must be distributed to inappropriate or immature beneficiaries, rather than accumulated with capital. A shorter perpetuity and accumulation period can still be chosen if a client wishes. Trusts already in existence will not have the periods changed.
The extension of the perpetuity and accumulation periods for UK trusts may make the UK a more favourable trust jurisdiction than previously for some clients. However, this will depend on numerous factors, e.g. residence.

Introduction of the 50% income tax rate
The increased rate is effective from April 6, 2010 and applies to the income over £150,000. The high earners and the wealthiest individuals should consider how they might mitigate the tax charges and plan accordingly. There are a number of planning opportunities available for UK taxpayers, though most of the arrangements need to be done before April 6, 2010. To maximise the benefits it is highly recommended that individuals assess their exposure to tax in the UK, review remittance planning, etc.

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