

CONTENTS

- EUROPEAN INTERMEDIATE HOLDING COMPANY LOCATIONS COMPARED 2
- LUMP-SUM TAXATION ABOLISHED IN ZURICH 4
- LUXEMBOURG STRENGTHENS ITS POSITION AS HOLDING COMPANY LOCATION 5
- G20: "THE ERA OF BANKING SECRECY IS OVER" 6
- THE OECD PROGRESS REPORT (INCLUDING THE "NAME AND SHAME" LIST) 7
- PROPOSED CHANGES TO AUSTRIAN PARTICIPATION EXEMPTION 8
- DUTCH CORPORATE INCOME TAX REDUCED 9
- COMPARISON OF THE MOST IMPORTANT EUROPEAN INTERMEDIATE HOLDING COMPANY LOCATIONS 10
- ITPS GROUP PROFILE 12

International Tax Planning Newsletter

Volume 11, Number 1, April 2009

The International Tax Planning Newsletter is a quarterly newsletter of Broers & MacDonald tax lawyers and The ITPS Group, an independent provider of international tax planning and structure services. It provides these services in the Netherlands, Curacao (the Netherlands Antilles), Aruba, the British Virgin Islands, Belgium, Luxembourg and Cyprus.

EUROPEAN INTERMEDIATE HOLDING COMPANY LOCATIONS COMPARED

For years there were two main intermediate holding company locations, the Netherlands and Luxembourg. Today, however there is no reason to limit the choice of an European intermediate holding company location to these countries. Comparable facilities for holding companies are offered by other countries, like Belgium, Cyprus, Spain and Switzerland. Below we will discuss the reason for choosing a location. Moreover a comparison is made between a number of locations. This endeavors to give you some insight into the basic tax rules for intermediate holding companies in the most important locations in Europe per 1 January 2009. On page 10 and 11 you will find an overview of the most important details of a number of holding company locations.

In choosing the favorable European intermediate holding company's location a number of elements should be considered. International tax planners often seem to forget that the use of an intermediate holding company for the ownership of shares in other, mostly foreign, countries has not always or necessarily been tax driven.

Not always or necessarily been tax driven

Often, the holding company is located in the home country of a business expanding to or in Europe. Perhaps set-up on an ad-hoc basis to keep pace with commercial developments as and when it happened. Another reason may be that since the company should hold a number of group assets, the company should be established in a politically stable country.

Different elements to be considered

In choosing the favorable intermediate holding company a number of tax and non-tax related elements should be considered. A decision can only be based on all facts and circumstances. Sound, commercial and practical reasons for introducing an European intermediate holding company may include:

- Alignments of the legal structure with the structure of the organization;
- Simplified procedures for corporate restructuring;
- A platform for future acquisitions;
- Streamlined management, administration and reporting;
- Facilitation of raising capital;
- More efficient treasury and financial risk management;
- Reduced domestic accounting and reporting requirements;
- Tax considerations.

International tax planners should remember that, no matter how important, tax is only one element to be considered. Business men however should not fail to appreciate the tax consequences. The decision, whether or not to establish an intermediate holding company, and if so in what jurisdiction,

will in general be largely influenced by tax considerations. The fiscal motive for establishing a holding company will to a great extent reinforce the commercial objectives. Increased tax efficiency will enable to optimize the companies profits.

Two main alternatives for years

For years it has been broadly accepted that there were two main alternatives:

1. The Netherlands company typically enjoying the participation exemption for dividend driven structures where treaty benefit was required;
2. The Luxembourg Soparfi for capital gain driven structures where treaty benefit was required.

The third alternative, the Luxembourg 1929 holding company, being appropriate where no treaty benefit was required, has been repealed by the end of 2006.

However there is no reason to limit the choice of an European intermediate holding company location to these countries. Comparable facilities for holding companies are offered by other countries, like Belgium, Cyprus, Spain and Switzerland. This list is not exhaustive. There are a number of countries, like Austria, Denmark, France, Germany, Hungary, Malta, Sweden and the U.K, which have introduced the same kind of facilities, although they are not considered to be the main players in this field.

The Netherlands and Luxembourg have strengthened their position

On the other hand the Netherlands and Luxembourg have strengthened their position. The introduction of the Dutch cooperative in international tax planning facilitated the reduction of the 8.3% Dutch dividend withholding tax on distribution by a Dutch company to its Netherlands Antilles parent - the so-called Dutch Sandwich - to nil, whereas Luxembourg has found tax efficient routes out of Europe via Gibraltar, Mauritius and Hong Kong.

Features of a preferred holding company location

The most important features of a preferred holding company locations are:

- Resident in a country with an extensive and appropriate treaty network and/or access to EU Directives, reducing the withholding taxes on dividends, interest and royalties from subsidiaries;
- Exemption from corporate income tax on dividends received;
- Exemptions from tax on capital gains realized on the sale of participations;
- Ruling practice;
- Stability, acceptance, confidence and professional infrastructure.

Other considerations may include anti-abuse and anti-treaty shopping and controlled foreign company rules, substance and operational alignment, the lack of thin capitalization rules, the absence of capital tax and stamp duty, accounting issues like consolidation and audit obligation, and the possibilities of functional currency and group taxation.

Reduction of withholding tax on dividends

Profits earned overseas in a multinational group will in general ultimately be distributed to the ultimate beneficial owner. This is often achieved through dividend payments. The major tax burden on dividend distributions is dividend withholding tax. Most countries impose withholding taxes.

Sometimes dividend withholding tax may be circumvented by using an unconventional legal entity that is not subject to this tax. That was the reason for international tax planners in the Netherlands to start using the Dutch cooperative as an intermediate holding company. The advantage of the cooperative is that it can benefit from the tax treaties the Netherlands has entered into and the Dutch participation exemption, while repatriations of profit are not subject to Dutch dividend withholding tax. Please review the Brush-up article in our previous newsletter.

The dividend withholding tax rates vary widely from country to country (no withholding tax in the UK, 28% in Denmark). As mentioned in this newsletter, Luxembourg has reduced the dividend withholding tax to 0% on dividends distributed to a parent company with which Luxembourg has signed a double tax treaty, such as Hong Kong.

Based on the EC Parent Subsidiary Directive, within the European Union dividends distributed by a qualifying subsidiary to a parent company are exempt from withholding tax, subject to satisfying specified conditions and to certain exceptions. This may be a reason not to choose a holding company outside the European Union. The exception to the rule is Switzerland, since the Swiss-EU Agreement of July 15, 2005 grants measures equivalent to those found in the EC Parent-Subsidiary Directive.

Outside the scope of the EC Parent-Subsidiary Directive the dividend withholding taxes may be reduced by way of favorable tax treaties. From the perspective of dividend withholding tax, this is where an international intermediate holding company may be of great importance. Normally a preferred holding company's location requires an extensive treaty network in order to minimize the withholding tax due.

In other states dividend withholding tax can be avoided by liquidating the intermediate holding company. In countries like Austria, Ireland, Luxembourg and Sweden the liquidation is regarded a disposal on which no withholding tax is due.

Dutch "cash-box" company

In the Netherlands, the 8.3% dividend withholding tax due on a final distribution to its parent company resident in the

Netherlands Antilles is typically reduced substantially by selling the shares of the Dutch company as a cash box to a financial institution. ITPS offers this kind of facility. In addition to the above, there are other ways to prevent dividend withholding tax such as by transferring the intermediate holding company to another country, setting up structures with highly leveraged subsidiaries in countries that do not impose a withholding tax on interest, etc.

Exemption of dividends and capital gains

Besides the minimization of withholding tax on both dividends to the intermediate holding company and dividends redistributed by the intermediate holding company, one of the most important features of a favorable intermediate holding company's location is the exemption of dividends received and capital gains realized on a disposal of shares.

In most intermediate holding company locations, a full exemption applies in respect of dividends received. An exception to the rule is Belgium, where 95% of qualifying dividends is deducted from the taxable base, and the UK and Ireland, where a credit system applies.

The intermediate holding company locations exempt a capital gain realized on the disposal of the subsidiary's shares, with the exception of the UK, which tax the gain at the normal rate conditions of 30%.

The important difference between the intermediate holding company locations is the conditions for the application of this tax facility. The conditions include:

1. The percentage that the subsidiary should be held by the intermediate holding company to benefit from the tax facility;
In the Netherlands and Spain generally a 5% ownership in the subsidiary's capital suffices, whereas in Austria and Luxembourg this is 10%;
2. The minimum period that the subsidiary should be held by the intermediate holding company to benefit from the tax facility;
In the Netherlands there is no minimum holding period whereas in Denmark there is holding period of 3 years for the exemption to apply regarding capital gains;
3. Restrictions on the activities or the tax treatment of the subsidiary;
4. The kind and legal form of parent and daughter companies;
5. Whether the subsidiary is subject to corporate income tax in its country of residence. Subject to certain conditions, the subsidiary of an intermediary holding company based in Denmark or Switzerland need not be subject to tax.

Ruling practice

When deciding to set-up a intermediate holding company, often a lot of money is involved. In such a case certainty is required. Therefore, it goes without saying that, these tax facilities are only advantageous, if they in fact will apply when a group has set-up a holding company in a certain jurisdiction. Therefore it is of the utmost importance that it is possible that either there will not be a discussion about the applicability of the tax facility, or that it is possible to negotiate an advance tax ruling with the tax authorities of the pertinent jurisdiction.

A ruling is an advance binding determination by the tax authority, in compliance with law and case law, of the taxable profit attributed to a transaction between companies.

In the Netherlands and Luxembourg the ruling practice has been institutionalized and a ruling in these locations should not take more than 8 weeks. In other holding company locations its not possible or very difficult to apply for an advance tax ruling. In Spain the tax authorities are willing to standard discussion about the determination of the tax base and even to grant a ruling, which is however not binding.

Stability, acceptance, confidence and professional infrastructure

As mentioned above, certainty is very important when choosing a intermediate holding company jurisdiction. Accordingly a group will not choose easily for a location that just has been introduced. An intermediate holding company location should be politically stable.

This is one of the reasons that the Netherlands is still preferred as a holding company location, being in existence since 1942, before Denmark, where the favorable tax facility was only introduced (overnight) at the end of 1998 and amended (overnight) two years later.

Furthermore there should be professional infrastructure, to facilitate the setting up and maintenance of the holding company. High quality services of (tax) lawyers, (chartered) accountants, notaries, trust offices and banks are a condition-sine-qua-non.

Summary

In choosing the favorable intermediate holding company a number of elements should be considered. No matter how important, tax is only one element to be considered. For years it has been broadly accepted that there were two main alternatives, the Netherlands company enjoying the participation exemption for dividend driven structures where treaty benefit was required, and the Luxembourg Soparfi for capital gain driven structures where treaty benefit was required. However, both the Netherlands and Luxembourg have strengthened their position, whereas comparable facilities for holding companies are offered by other countries.

The most important features of a preferred holding company locations are the availability of an extensive and appropriate treaty network, the exemption of dividends of qualifying subsidiaries and the exemption of capita gains realized on the sale of such a subsidiary, the ruling practice, and last but not least stability, acceptance, confidence and professional infrastructure.

LUMP-SUM TAXATION ABOLISHED IN ZURICH

On February 8, 2009, Zurich voters supported an initiative by political left - by a majority of only 53% - to abolish the special lump-sum tax regime (*Forfait fiscal* or *Pauschalbesteuerung*) in the canton of Zurich, Switzerland.

Behind the initiative was the Alternative List, a loose coalition of left-wing activists who considered the system an "unfair fiscal privilege" as well as contradictory to the tax regulations laid out in the country's constitution. They argue it is unjust to apply different legal standards, encourage tax evasion and contribute to raising property prices in affluent regions. They point out that wealthy Swiss citizens are not eligible for the same arrangement as they are taxed according to their income and wealth. Rich foreigners benefit from a flat rate, which allows savings of up to 90 per cent in comparison.

Expected to be effective from 1 January 2010

This surprise result obliges the cantonal authorities to change

cantonal tax laws. The new law is expected to enter into force from 1 January 2010.

The result will have a direct impact on the 137 individuals currently enjoying this special tax status in the canton of Zurich, as well as reducing the attractiveness of Zurich for foreign nationals from a tax perspective.

Lump-sum taxation for foreigners

Lump-sum taxation is a special Swiss tax status available to, mostly wealthy, foreign nationals who take up residence either for the first time or after an absence of at least 10 years, providing they do not perform any professional activity or employment in Switzerland. Currently some 4,000 foreign individuals benefit from this taxation in Switzerland, especially in the cantons of Vaud, Valais and Geneva. The overall tax rate depends on the city and canton and varies substantially between cantons and sometimes cities.

Resident aliens may opt for a lump-sum income taxation instead of the ordinary Swiss income and net wealth taxes under certain conditions. It applies at the federal and cantonal/municipal level. Individuals subject to lump-sum taxation qualify as Swiss domestic tax residents, but are taxed on their worldwide expenditure rather than on their income. The rationale being that the wealthier a person is and the more income a person derives, the higher the standard of life-style and cost of living tends to be.

The minimum living expenses are generally computed as five times the annual rent expense, or in case of a home-owner, the annual rental value of their home. To this lump sum tax base, the ordinary applicable tax rates (at federal, cantonal

and local level) are applied. However, the tax must not be lower than the ordinary income tax on certain Swiss-source and treaty protected income.

Consequences

While the Zurich vote will not have any direct impact on the taxpayers residing outside the canton of Zurich it can be expected that the result will open up the debate on tax breaks in other cantons, and perhaps again at the federal level. Up to now attempts on a nationwide level to abolish the lump-sum taxation have failed.

LUXEMBOURG STRENGTHENS ITS POSITION AS HOLDING COMPANY LOCATION

As mentioned in the cover article of this newsletter, Luxembourg has strengthened its position as an intermediary holding company location because certain favorable tax measures have been enacted effective 1 January 2009.

Capital duty abolished

First of all, the 0.5% capital duty on capital contributions to Luxembourg companies has been abolished.

In stead, a fixed registration duty of € 75 has been introduced on (i) the incorporation of Luxembourg companies, (ii) the amendment of the articles of incorporation of Luxembourg companies and (iii) the transfer of the seat of a company to Luxembourg. Moreover, a 0.5% registration duty and a 0.5% transcription duty has been introduced for contributions of real estate assets to Luxembourg companies in exchange of shares and a 6% registration duty and 1% transcription duty in other cases. An exemption is available for qualifying reorganizations.

Reduction of the combined corporate income tax rate to 28.59%

The 22% corporate income tax rate has been reduced to 21%. Combined with municipal business tax and applicable surcharge this has resulted in a reduction of the aggregate income tax rate applicable to a company located in Luxembourg City from 29.63% to 28.59%.

Exemption of dividend withholding tax paid to corporate shareholders in treaty countries

Previously, most treaties signed by Luxembourg provide for a reduced rate of withholding tax of generally 5% instead of the domestic withholding tax of 15%.

Under the new rules, the dividend withholding tax is reduced to 0% in case of distributions made to fully taxable companies residing in any State which have signed a double tax treaty with Luxembourg and to permanent establishments of such entities, if the parent company:

- Is subject to an effective tax rate of at least 10.5% and its tax base is determined following rules that are similar to those provided by Luxembourg.
- Either holds at least 10% of the shares of the Luxembourg entity or if the acquisition cost of the shares amounts to at least € 1,200,000 for a period of at least 12 months (or a commitment to hold it).

Accordingly, similar conditions to those applying to inbound dividends under the Luxembourg participation exemption should be satisfied.

Broadening of the favorable IP tax regime

On January 1, 2008, Luxembourg introduced a special tax regime for income from intellectual property ("IP"), i.e. from (i) copyrights on software; (ii) patents; (iii) trademarks; (iv) designs; and (v) models.

Based on this tax regime 80% of net income and net capital gains from intellectual property is exempt from corporate income tax. Consequently, taken into account the reduced corporate tax rates for 2009, the effective tax rate for such income is reduced from the general combined rate of 28.59% (Luxembourg City) to 5.71%.

The scope of the IP tax regime has been broadened as follows: a full exemption will apply with retroactive effect to January 1, 2008 for net wealth tax of 0.5% in relation with intellectual property eligible to the IP tax regime held by resident entities. As from 1 January 2009, the IP Regime will also apply to domain names.

Luxembourg has strengthened its position as an intermediary holding company location

It goes without saying that the above mentioned changes will strengthen the position of Luxembourg as an intermediary holding company location.

G20: "THE ERA OF BANKING SECRECY IS OVER"

On Thursday 2 April the G20 leaders released a communiqué on their goals, plans and promises to deal with the global economic crisis, the Global Plan on Recovery and Reform. Below we will elaborate on their action to strengthen regulation and supervision to reform the regulation of the financial sector as to tax havens and non-cooperative jurisdictions.

Global Plan on Recovery and Reform

They stated: "Major failures in the financial sector and in financial regulation and supervision were fundamental causes of the crisis. Confidence will not be restored until we rebuild trust in our financial system. We will take action to build a stronger, more globally consistent, supervisory and regulatory framework for the future financial sector, which will support sustainable global growth and serve the needs of business and citizens.

We each agree to ensure our domestic regulatory systems are strong. But we also agree to establish the much greater consistency and systematic cooperation between countries, and the framework of internationally agreed high standards, that a global financial system requires. Strengthened regulation and supervision must promote propriety, integrity and transparency; guard against risk across the financial system; dampen rather than amplify the financial and economic cycle; reduce reliance on inappropriately risky sources of financing; and discourage excessive risk-taking. Regulators and supervisors must protect consumers and investors, support market discipline, avoid adverse impacts on other countries, reduce the scope for regulatory arbitrage, support competition and dynamism, and keep pace with innovation in the marketplace."

Declaration on Strengthening the Financial System

The same day they also issued an annex to their Global Plan, the Declaration on Strengthening the Financial System, wherein they stress that they "have taken, and will continue to take, action to strengthen regulation and supervision to reform the regulation of the financial sector. Our principles are strengthening transparency and accountability, enhancing sound regulation, promoting integrity in financial markets and reinforcing international cooperation. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over."

Action against tax havens and non-cooperative jurisdictions

Amongst others they agreed to take action against non-cooperative jurisdictions, including tax havens. They call on all jurisdictions to adhere to the international standards in the prudential, tax, and Anti-Money Laundering and Combating the Financing of Terrorism areas, to adopt

the international standard for information exchange endorsed by the G20 in 2004 and reflected in the UN Model Tax Convention and encourage the swift implementation of the new commitments made by a number of jurisdictions as to the international standard for exchange of information in line with the OECD list of non-cooperative countries and territories.

Toolbox of effective counter measures

Moreover they stand ready to take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency. To this end they have agreed to develop a toolbox of effective counter measures for countries to consider, such as:

- Increased disclosure requirements on the part of taxpayers and financial institutions to report transactions involving non-cooperative jurisdictions;
- Withholding taxes in respect of a wide variety of payments;
- Denying deductions in respect of expense payments to payees resident in a non-cooperative jurisdiction;
- Reviewing tax treaty policy;
- Asking international institutions and regional development banks to review their investment policies; and,
- Giving extra weight to the principles of tax transparency and information exchange when designing bilateral aid programs.

They also agreed that consideration should be given to further options relating to financial relations with these jurisdictions. The G20 Finance Ministers will complete the implementation of these decisions.

The OECD Progress Report

Moreover they agreed that the Financial Action Task Force ("FATF") against money laundering of the OECD should revise and reinvigorate the review process for assessing compliance by jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism standards, using agreed evaluation reports where available. As mentioned in this newsletter, on 2 April 2009, the OECD issued a Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard.

The FATF will report to the next G20 Finance Ministers and Central Bank Governors' meeting on adoption and implementation by countries.

THE OECD PROGRESS REPORT (INCLUDING THE "NAME AND SHAME" LIST)

Internationally agreed standard on exchange of information for tax purposes

Following the G20 meeting and communiqué, wherein it was mentioned that the G20 leaders agreed to take sanctions against tax havens using the OECD list as its basis, the OECD Secretariat provided a detailed report on progress by financial centres around the world towards implementation of an internationally agreed standard on exchange of information for tax purposes on 2 April.

Without regard to a domestic tax interest requirement or bank secrecy for tax purposes

The internationally agreed standard, developed by OECD and non-OECD countries in the context of the OECD's Global Forum on Taxation and endorsed by G20 Finance Ministers in 2004 and by the UN Committee of Experts on International Co-operation in Tax Matters in October 2008, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.

The report consists of four parts:

1. Jurisdictions that have substantially implemented the internationally agreed tax standard (which looks like a "White" List):

Argentina	Australia
Barbados	Canada
China	Cyprus
Czech Republic	Denmark
Finland	France
Germany	Greece
Guernsey	Hungary
Iceland	Ireland
Isle of Man	Italy
Japan	Jersey
Korea	Malta
Mauritius	Mexico
Netherlands	New Zealand
Poland	Norway
Russian Federation	Portugal
Slovak Republic	Seychelles
Spain	South Africa
Turkey	Sweden
United Kingdom	United Arab Emirates
US Virgin Islands	United States

2. Tax havens that have committed to the internationally agreed tax standard but have not yet substantially implemented it (which looks like a "Grey" List):

Andorra	Anguilla
Antigua and Barbuda	Aruba
Bahamas	Bahrain
Belize	Bermuda
British Virgin Islands	Cayman Islands
Cook Islands	Costa Rica
Dominica	Gibraltar
Grenada	Liberia
Liechtenstein	Malaysia (Labuan)
Marshall Islands	Monaco
Montserrat	Nauru
Netherlands Antilles	Niue
Panama	Philippines
St Kitts and Nevis	San Marino
St Lucia	St Vincent & Grenadines
Turks and Caicos Islands	Uruguay
Vanuatu	

These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.

3. Other financial centres that have committed to the internationally agreed tax standard but have not yet substantially implemented it (which looks like a "Name and Shame" List):

Austria	Belgium
Brunei	Chile
Guatemala	Luxembourg
Singapore	Switzerland

Austria, Belgium, Luxembourg and Switzerland withdrew their reservations to Article 26 of the OECD Model Tax Convention, the legal basis for bilateral exchange of information for tax purposes. Belgium has already written to 48 countries to propose the conclusion of protocols to update Article 26 of their existing treaties. Austria, Luxembourg and Switzerland announced that they have started to write to their treaty partners to indicate that they are now willing to enter into renegotiations of their treaties to include the new Article 26.

4. Jurisdictions that have not committed to implement the internationally agreed tax standard (which looks like a "Black" List):

Costa Rica, Malaysia (Labuan), the Philippines and Uruguay were mentioned on the initial list. However, in the mean time, these four countries are no longer blacklisted as uncooperative tax havens after they bowed to pressure from the G20 and have committed themselves to the internationally agreed tax standard on exchange of information. Consequently they have been included in the Grey list.

Austria, Belgium, Luxembourg and Switzerland strongly criticized the OECD Progress Report

Austria, Belgium, Luxembourg and Switzerland have strongly criticized the decision of the OECD to place them on the list of financial centers that are not yet compliant with OECD tax cooperation rules.

"I find the treatment of certain states to be incomprehensible," said Luxembourg's prime minister and finance minister, Jean-Claude Juncker, describing the OECD document as a "rush job". The Luxembourg prime minister added that: "We will negotiate double-taxation agreements. When we do that, we will disappear from this list".

It was not "very pleasant to be on a list that also included tax havens," the Belgian Finance Minister Didier Reynders also

conveyed his disappointment over his country's inclusion. He added that Belgium also intended to be swiftly removed from the list once it had signed cooperation agreements with 12 countries.

Austria's finance minister, Josef Proell, said the OECD list on tax havens must be discussed further. "As a member of the OECD, I expect to be listened to and to be able to join in the discussion and to take a joint decision," said Mr Proell. "We have already given information in individual cases without legal steps being taken. We do not need, because of that [the G20 declaration], to tackle banking secrecy as it exists in Austria in our banking practice law," he added.

The Swiss finance ministry said: "President Hans-Rudolf Merz regrets this procedure. The list does not specify the criteria on the basis of which it was drawn up. Switzerland is not a tax haven. It always meets its obligations and is always ready to engage in dialogue. The fact that Switzerland as a founding member of the OECD was never included in the discussions on drawing up lists is particularly strange". Whatever these remarks, Switzerland decided last month to ease banking secrecy and fully adopt OECD tax standards. The government agreed to begin negotiations with the US and Japan on tax cooperation.

PROPOSED CHANGES TO AUSTRIAN PARTICIPATION EXEMPTION

Current international participation exemption regime/ foreign subsidiaries

Under the current international participation exemption in Austria any dividends received by an Austrian company from a foreign subsidiary and any capital gains realized on the alienation thereof are tax exempt in Austria if:

Conditions

1. The parent holds directly or indirectly at least 10% of the equity of the subsidiary;
2. The parent's minimum 10% shareholding is held for an uninterrupted period of 1 year;
3. The subsidiary company has a form listed in the Directive and is subject to a corporate income tax listed in the Directive with no possibility of opting for taxation or being exempt; and
4. The parent company is legally required to keep books and records under the Commercial Code or the parent company is a foreign company that qualifies as a resident of Austria for corporate income tax purposes.

Dividends and gains derived from subsidiaries resident outside the European Union are exempt under the same conditions if the subsidiary is comparable to a resident

company.

No CFC legislation, no thin cap and debt equity rules

There is no controlled foreign company legislation in Austria. Moreover, there does not exist any thin capitalization or debt equity rules, whereas interest is fully tax deductible and no withholding tax is levied on interest payment to foreign lenders.

Foreign capital losses

Capital losses of a foreign subsidiary are not deductible.

This limitation does not apply to losses upon liquidation or insolvency of the subsidiary resulting in an actual and definite loss of the capital invested in the foreign subsidiary. These deductible losses should be reduced by the distributions made by the subsidiary within 5 years prior to the liquidation or insolvency.

In addition capital gains and losses are taxable or deductible, as the case may be, if the parent company has, in the year of acquisition of the participation, exercised an option to have capital gains or losses and write-ups and write-down taxable or deductible, as the case may be.

Domestic subsidiaries

Dividends received by an Austrian company from a domestic subsidiary are tax exempt whereas capital gains realized on the alienation of the domestic company are taxable at the standard flat corporate tax of 25%. Financing costs effectively connected with the acquisition of the shares held are fully tax deductible.

Passive foreign subsidiaries

Under an anti-abuse rule, dividends received by an Austrian company from a foreign subsidiary and any capital gains realized on the alienation thereof are taxable in Austria, if the foreign source income of the foreign subsidiary has been subject to low taxation. In that case a foreign tax credit is granted (so-called Switch-over).

The anti-abuse law is applicable if at least two of the following conditions are fulfilled and the third one is closely met:

- The main part of the foreign subsidiary's business operations consists directly or indirectly in receiving interest income, income from the leasing of assets or the sale of shareholdings (passive income);
- The tax rates or the taxable base in the country where the non-resident subsidiary is resident are not comparable with Austrian taxation, which is the case if the foreign taxation is less than 15% of the taxable base determined by Austrian tax law, unless this has been caused by using special depreciation methods or carry-backs or carry-forwards of losses; and
- The Austrian parent company is predominantly directly or indirectly controlled by individuals resident in Austria.

Draft bill proposes changes to participation exemption regime

On 9 March last, the Austrian Ministry of Finance published a draft bill on the amendments of several tax laws (*Abgabenänderungsgesetz 2009*).

The most important proposal is the extension of the current international participation exemption to dividends from companies situated in countries in the European Union regardless of the percentage and the duration of shares being held. Therefore, subsidiaries in which the Austrian parent holds less than 10% (and/or) for less than in interpreted period of 1 year quality under the participation exemption.

The same will apply to dividends received from companies resident in a country in the European Economic Area, if an agreement on mutual assistance on the collection of taxes has been entered into between Austria and the pertinent country (at the moment Austria has only concluded such an agreement with Norway).

Dividends derived from companies situated in third countries outside the European Union and the European Economic Area remain subject to the requirements under the old participation exemption. Consequently, if the requirements of the percentage and the duration of shares being held are not met, these dividends would remain subject to the normal 25% tax.

Capital gains would remain exempt provided the 10% participation and one-year holding period requirements are met.

DUTCH CORPORATE INCOME TAX REDUCED

On 25 November 2008, the Dutch parliament approved with retroactive effect that for 2008 a 20% corporate income tax rate applies to taxable income up to € 275,000 and that a 25.5% rate applies for taxable income exceeding this amount.

For 2009 and 2010 a 20% corporate income tax rate will apply to taxable income up to € 200,000 and a 25.5% rate applies for taxable income exceeding this amount.

Comparison of the most important European intermediate holding company locations as at January 2009

↓ feature	jurisdiction →	Netherlands	United Kingdom	Belgium	Cyprus
Exemption of					
<i>Dividends</i>		yes	no (credit underlying tax)	yes (95%)	yes
<i>Capital gains</i>		yes	yes (trading companies)	yes (100%)	yes
<i>Passive income</i>		no (yes, if min. 10% effective tax rate)	no	yes	yes (provided subject to tax > 5%)
Conditions					
<i>Dividends</i>					
- minimum percentage held		5%	n/a	10% or € 1,2 million	1%
- minimum holding period		none	n/a	1 year or commitment	none
<i>Capital gains</i>					
- minimum percentage held		5%	10% (trading companies)	no	no
- minimum holding period		no	12 months	1 year	no
<i>Foreign subsidiary subject to tax</i>		no (unless it holds more than 50% portfolio assets)	n/a	yes (min. 15% effective tax rate if non-EU sub)	yes (over 5%)
Deductibility of					
- capital losses		no (unless in case of liquidation of subsidiary, under restrictions)	yes	no	yes
- interest		yes (thin capitalization rules apply)	yes	yes	yes
Other considerations					
<i>Debt-to-equity ratio</i>		yes (in practice 3:1)	yes (arm's length test, no fixed ratio)	1:1 // 7:1 (if financed by foreign director // by low tax co.)	no
<i>CFC / anti-avoidance rules</i>		no	yes	no	no
<i>Binding rulings</i>		yes	no	yes	yes
Corporate tax					
		25.5% (20% on first € 200,000)	30%	33.99% (including 3% additional crisis contribution; lowered by notional interest deduction: 3.5% of [capital+reserves+accumulated profits-subsidiaries])	10%
Other taxes					
<i>Capital tax</i>		no	no	no	no
<i>Transfer tax / stamp duty</i>		no (unless domestic real estate company)	0.5% (exemptions)	no (exemptions)	no (0.6% on interest of capital)
Withholding taxes					
<i>Dividends</i>					
- normal rate (reduction under DTT)		15%	no	25% (10% in case of redemption of shares)	no
- (lowest) non-EU treaty rate		0%	0%	0%	no
<i>Exemption to EU parent</i>		yes	yes	yes	yes
- level of participation		5%	n/a	20% (2005-2007) 15% (2007-2008) 10% (2009 onwards)	no
- minimum holding period		1 year or commitment	n/a	1 year (before or before and after dividend payment)	no
<i>Liquidation (unless EU or DTT)</i>		15%	n/a	10%	no
<i>Interest (unless DTT)</i>		no	20%	15% (exceptions)	no
<i>Royalty (unless DTT)</i>		no	20%	15% (of usually 85% of gross amount)	no
Treaty network					
- number of treaties		86	112	87	34 (42 countries)
- quality		excellent	excellent	good	good

Comparison of the most important European intermediate holding company locations as at January 2009

Luxembourg	Spain	Switzerland	← jurisdiction	↓ feature
yes	yes	yes		Exemption of Dividends
yes	yes	yes		Capital gains
no	no	no (federal) / yes (cantonal)		Passive income
10% or € 1,2 million	5% (or € 6 mln direct participation for ETVE)	20% or CHF 2 million		Conditions Dividends
1 year or commitment	1 year	no		- minimum percentage held
				- minimum holding period
10% or € 6 million	5% (or € 6 mln direct participation for ETVE)	20%		Capital gains
1 year or commitment	1 year	1 year		- minimum percentage held
				- minimum holding period
yes (min. 10% effective tax rate if non-EU sub, unless DTT)	yes	no		Foreign subsidiary subject to tax
yes	yes	yes		Deductibility of - capital losses
yes	yes	yes		- interest
no (in practice 6/1)	3:1 (except lender EU Member State)	6:1		Other considerations Debt-to-equity ratio
no	yes	no		CFC / anti-avoidance rules
yes	no	yes		Binding rulings
28.59%	30%	7.8% (No profit taxes at cantonal/communal level; 8.5% federal tax rate; taxes are tax deductible, effective tax rate 7.8%)		Corporate tax
no	1% (exemptions)	1% (exemptions)		Other taxes Capital tax
no	exempt (unless real estate co)	no (unless securities dealer co.)		Transfer tax / stamp duty
15% (0% to fully taxable parent in tax treaty country, subject to conditions)	0% (If the shareholders of an ETVE are resident a tax haven, dividends and liquidation distributions are subject to 18%)	35%		Withholding taxes Dividends
0%	0%	0%		- normal rate (reduction under DTT)
				- (lowest) non-EU treaty rate
yes	yes	yes		Exemption to EU parent
10% or € 1.2 million	20%	25%		- level of participation
1 year or commitment	1 year	2 years		- minimum holding period
no	yes	35%		Liquidation (unless EU or DTT)
no	15%	35%		Interest (unless DTT)
10/12%	25%	0%		Royalty (unless DTT)
51	55	60		Treaty network - number of treaties
good	good	good		- quality

ITPS GROUP PROFILE

Needs of clients

As business is becoming more international, organizations are seeking ways to minimize the incidence of taxation linked to it. On the other hand, organizations as well as individuals are seeking international ways to optimize their profits and to protect their assets. The increasing complexity of (tax) laws necessitates careful planning and consideration of the structure to be established and maintained. Customers require highly specialized professional services.

Mission

The purpose of ITPS is: doing the best the things that the customer values most. The focus is long term customer satisfaction.

The mission of the ITPS Group is to create value for its customers through the provision of professional services in the field of international tax planning and structure, designed to optimize the customer's after tax profits.

Services

The objective of ITPS is to meet customer needs for international tax planning and structure by rendering "total offering" services with the highest standards of professional and personal service combined with complete confidentiality.

This comprehensive offering comprises not only the advice for international tax planning (i.e. for legal and tax questions), but also implementation to establish and maintain structures.

These services include, but are not limited to:

- International tax planning;
- Company formation, registered office facility, management, accounting and tax compliance;
- Trust and foundation formation and administration;
- Licensing and sub-licensing of intellectual property rights.

The services ITPS does not provide, but which we are rendered by correspondents, include auditing, legal opinions, litigation and portfolio investment.

Clients

The client base of ITPS consists of prominent individuals, including sportsmen and artists, small to large companies, including other professional firms, but also multinational (stock quoted) companies.

Why you should use ITPS

The ITPS Group holds an unique position in each of these jurisdictions for the following reasons:

1. Market oriented (and not product oriented): ITPS focuses on meeting the needs of the clients;
2. Rendering international tax planning and structure (trust) services:

Tax planning and structure services are complementary. Planning is of no use if you do not structure it. Moreover you can not efficiently structure if you do not take the first step: plan the structure. Therefore, the services of ITPS are not restricted to trust services. Since ITPS has the combined skill and experience for more than ten years, high quality is ensured;

3. All included fixed fees for structure (trust) services: In each jurisdiction, tax structure services are charged at annual fixed fees, generally payable in quarterly installments in advance. Tax planning services are charged at an hourly rate;

4. One contact person is possible for several jurisdictions;

5. Independent:

There is no conflict of interest. ITPS works with all other skilled professionals and (financial) institutions as the client deems appropriate;

6. Personal contact and continuity:

ITPS focuses on long-term customer satisfaction, providing proactive, personal, attentive and competent services;

7. Regular meetings:

Customers and correspondents are visited on a regular basis (three to four times a year) to touch base and to discuss opportunities and problems that may have arisen, without a fee being charged;

8. Tax sparring and education:

ITPS strives to built up a (tax) sparring relationship with customers and correspondents in order to keep each other abreast in a fast changing environment. A quarterly newsletter on international tax planning, the International Tax Planning Newsletter, is sent to inform customers and correspondents on the changes in legislation;

ITPS (Netherlands) B.V.
**International Tax Planning and
Structure Services**
Alexanderstraat 23
2514 JM The Hague
The Netherlands
T: +31 70 36 40 900
F: +31 70 36 35 795

Broers & MacDonald
Tax Lawyers
Alexanderstraat 23
2514 JM The Hague
The Netherlands
T: +31 70 36 35 800
F: +31 70 36 35 795

Disclaimer:

The information contained in this newsletter has been compiled as accurately as possible. Nevertheless it cannot be warranted that it is free of errors or up-to-date. Broers & MacDonald and ITPS accept no responsibility for any errors, omissions or otherwise. Articles of this newsletter may be reproduced only if copied in full and with acknowledgment.