The ITPS Group

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LUXEMBOURG HOLDING COMPANIES REMOVED FROM BRAZILIAN GREY LIST

By Executive Declaratory Act ADE 3/11 (*Ato Declaratório Executivo RFB 3/11*), published in the Official Gazette of 28 March 2011, the Brazilian Federal Revenue Department removed with immediate effect Luxembourg Holding Companies from the list of privileged tax regimes.

The first country to be effectively excluded

The Brazilian list of privileged tax regimes, the so-called "Grey List", was introduced by Normative Instruction 1037/10 of 7 June 2010. Since its publication, various countries have taken the opportunity laid down in Normative Instruction 1045/10 of 23 June 2010 to challenge their listing by filing a formal claim with the Brazilian tax authorities. Although in some cases the claims have resulted in a temporary suspension of the listing, Luxembourg was the first jurisdiction to effectively be excluded from the list.

The Luxembourg authorities had requested the removal from the list because the 1929 Holding Company Regime was abolished in Luxembourg by law of 22 December 2006 and the transitory period, during which under certain conditions these companies where still allowed, expired on 31 December 2010, therefore leaving no justification for any specific reference to Luxembourg holding companies in the list.

Luxembourg Soparfi not considered as a privileged tax regime

The removal leads to the understanding that since inception it was the intention of the Brazilian tax authorities to cover only the tax exempt Luxembourg 1929 Holding Company and not the normally taxable Luxembourg Holding Company, often referred to as a "*Société de participations financières*", abbreviated as "Soparfi" and therefore the Soparfi was never, for the past and now certainly for the future, considered as a privileged tax regime by the Brazilian tax authorities.

Tax consequences of the removal of Luxembourg from the Brazilian Grey List

The consequences of Luxembourg's removal from the Brazilian privileged tax regime list can be summarized as follows:

1. Brazilian borrowers paying interest on loans to affiliated Luxembourg holding companies benefit from the higher capitalization limit, i.e. a debt/equity ratio of 2/1 (instead of a debt/equity ratio of 0.30/1) and
2. Payments made to Luxembourg holding companies are no longer subject to stricter rules for transfer pricing and corporate tax deduction purposes.

Tax planning and structure opportunities

The removal creates a possibility for tax planning and structure opportunities between Brazil and Luxembourg and will enhance the use of Luxembourg as a premier location to base an intermediate holding company for both inbound and outbound investments.

This is further reinforced by the fact that, again, Luxembourg sees the effects of this Grey List revoked and not merely suspended as for other jurisdictions. Note that some jurisdictions have even not been suspended from the Grey List and that there are still a number of jurisdictions mentioned on the so-called "Black List".

Background and tax consequences of the Black List and the Grey List

The concept of tax haven jurisdictions was introduced by the Brazilian tax authorities in 2002. By way of Normative Ruling No. 188/02 of 6 August 2002, the Brazilian Federal Revenue Department considered a jurisdiction as a nil or low tax haven if:

Nil or low tax jurisdiction

1. the pertinent jurisdiction does not tax income; or
2. taxes income at a maximum rate lower than 20%.

Moreover, they introduced a list of countries and locations defined as tax haven jurisdictions for Brazilian tax purposes. The list, which included 53 jurisdictions, was exhaustive, only the countries and locations mentioned on the list were deemed to be tax haven jurisdictions, i.e. they were black-listed.

The Black List

It included the following jurisdictions: American Samoa, Andorra, Anguilla , Antigua and Barbuda, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Campione D'Italia, Cayman Islands, Channel Islands (Jersey, Guernsey, Alderney and Sark), Cook Islands, Costa Rica, Cyprus, Djibouti, Dominica, Gibraltar, Grenada, Hong Kong, Isle of Man, Lebanon, Labuan, Liberia, Liechtenstein, Macau, Madeira Islands, Maldives, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Oman, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and The Grenadines, San Marino, Seychelles, Singapore, Tonga, Turks and Caicos Islands, United Arab Emirates, U.S. Virgin Islands, Vanuatu and Western Samoa. Please note below the update of the list in 2010 by Normative Instruction No. 1037/10.

Non-resident entities formed in jurisdictions that were not blacklisted by the Brazilian tax authorities generally

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escaped scrutiny as "low taxed entities" even if the entity was resident in a nil or low tax jurisdiction.

Tax favourable jurisdiction

In June 2008, the Brazilian government passed Law 11727/08 that became effective on 1 January 2009, which expanded the definition of a nil or low tax jurisdiction, as mentioned above, to a country or location, whose laws do not allow access to shareholding composition, ownership of investments, or identity of the beneficial owner of earnings attributed to non-residents.

Jurisdictions that met the conditions of the expanded definition were called tax favourable jurisdictions, but no updated black list was published.

Privileged tax regime

Moreover, Law 11727/08 introduced the concept of a privileged tax regime for transfer pricing purposes. Again without listing jurisdictions, the Brazilian tax authorities highlighted the features which would qualify a tax regime as a privileged tax regime, i.e. jurisdictions which:

1. Do no levy income tax or an income tax lower than 20%;
2. Provide tax benefits for non-resident shareholders (individual or legal entity) (i) without requiring substantial economic activity in the respective country or location or (ii) conditioned to the absence of substantial economic activity in the respective country or location;
3. Do not tax worldwide income, i.e. income generated outside of its territories, or tax at a maximum rate lower than 20% and
4. Do not disclose information on the identification of corporate entities, of owners of assets and rights, or of parties of economic transactions.

After the introduction of Law 11727/08 there was some speculation as to whether the Brazilian tax authorities would attempt to adopt the same definition of tax haven jurisdiction for all Brazilian tax purposes, without taking into consideration the different concepts of "nil or low tax jurisdiction", "tax favourable jurisdiction" and "privileged tax regime".

Normative Instruction No. 1037/10 of 7 June 2010

The matter was clarified by the Brazilian tax authorities by way of issuance of Normative Instruction 1037/10 on 7 June 2010, which expanded the 2002 Black List of jurisdictions considered tax havens and introduced a new list of regimes designated as privileged tax regimes, the so-called Grey List.

Updated Black List

The Normative Instruction did not address the concepts of nil or low tax jurisdiction and tax favourable jurisdiction. It almost entirely reproduced the concept of a tax favourable jurisdiction, i.e. jurisdictions that:

1. impose no income tax or
2. levy such tax at a maximum rate lower than 20%; or
3. do not disclose information on the formal or economic ownership of corporate entities.

The original tax haven black list dating from 2002 was updated and the new list designates 65 jurisdictions as tax havens for Brazilian tax purposes. Fourteen jurisdictions were added to the ones first designated in Normative Instruction 188/2002: Ascension Island, Brunei, French Polynesia, Kiribati, Norfolk Island, Qeshm Island, the Pitcairn Islands, Saint Helena, Saint Kitts and Nevis, Saint Pierre and Miquelon, the Solomon Islands, Swaziland, Switzerland and Tristan da Cunha.

Luxemburg, i.e. the Luxembourg 1929 Holding Company regime, as well as Malta were removed from the former blacklist and placed on the new privileged-regime list, the Grey List.

Although Regulation No. 1037/2010 does not expressly state so, the new Black List appeared to be exhaustive and jurisdictions not included therein should not be considered as tax havens or privileged tax regimes for Brazilian tax purposes. This conclusion is consistent with the previous approach adopted by the tax authorities on such matter.

Tax implications of the Black List

The listing of a jurisdiction on the Brazilian Black List has the following tax implications:

- An increased income tax withholding tax rate from 15% to 25% on capital gains and cross border payments of service fees, royalties and interests, including interest on net equity;
- Potential non deductibility for the Brazilian entity making the payment if (i) the beneficiaries of the payment are not properly identified; (ii) there is no evidence of the operational capacity of the foreign entity and (iii) there is no supporting documentation of the payment and effective receipt of the goods, rights or services by the Brazilian payer;
- A lower debt-equity ratio of 0.3 to 1 (instead of 2 to 1) for thin capitalization purposes;
- Mandatory transfer pricing requirements and documentation;
- No access to the tax benefits generally available to foreign investors in the Brazilian financial and capital markets under Brazilian Central Bank resolution 2689. Unlike other foreign investors that are subject to either zero or reduced rates, investors in so-called tax havens are taxed at rates ranging from 15% to 22.5%;

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- No access to the tax benefits generally available to the income distributions from Brazilian domiciled private equity funds.

Grey List of privileged tax regimes

Moreover, Normative Instruction 1,037/10 of 7 June 2010 introduced a new list of regimes designated as privileged tax regimes as defined by Law 11,727/08 (see above), the so-called Grey List.

The following regimes were deemed privileged tax regimes:

1. Holding companies incorporated under Luxembourg law.
2. "Sociedades Financeiras de Inversão (Safis)" incorporated under the laws of Uruguay.
3. Holding companies incorporate under the laws of Denmark.
4. Holding companies incorporated under the laws of the Netherlands.
5. International trading companies incorporated under the laws of Iceland.
6. Offshore companies incorporated under the laws of Hungary.
7. Limited liability companies (LLC) incorporated under U.S. state law and owned by non-residents and not subject to federal income tax (e.g., Delaware and Nevada).
8. "Entidad de Tenencia de Valores Extranjeros (E.T.V.Es.)" incorporated under the laws of Spain
9. International Trading Companies (ITC) and International Holding Companies (IHC) incorporated under the laws of Malta.

Normative Instruction 1,045/10 of 23 June 2010 amended Normative Instruction 1,037/10 providing that the Danish and Dutch holding companies would only be considered as benefiting from a privileged tax regime if they do not have a "substantial economic activity". Prior to this amendment, all Danish and Dutch holding companies, irrespective of their level of economic activity, were listed as companies benefiting from a privileged tax regime.

It should be noted that the Brazilian tax system does not provide for a test or specific criteria to determine whether a company has substantial economic activity or not. Major factors that are normally considered when determining business purpose include the presence of local business operations, a local management team and a proper location for engagement in business activities.

Tax implications of the Grey List

The listing of a jurisdiction on the Brazilian Grey List has the following tax implications:

- Potential non-deductibility for the Brazilian entity making the payment if (i) the beneficiaries of the payment are not properly identified; (ii) there is no evidence of the operational capacity of the foreign entity and (iii) there is no supporting documentation of the payment and effective receipt of the goods, rights or services by the Brazilian payer;
- A lower debt-equity ratio (0.3 to 1 instead of 2 to 1) for thin capitalization purposes;
- Mandatory transfer pricing requirements and documentation.

As mentioned above, Normative Instruction 1045/10 of 23 June 2010 introduced the possibility for countries on the Black or Grey List to challenge their listing by filing a formal request for a review of the classification with the Brazilian tax authorities.

Switzerland, Spain and the Netherlands temporarily removed

Normative Acts 10/2010 and 11/2010, published in the Official Gazette of 25 June 2010 and effective as from that date, based on Art. 2 of Normative Instruction 1045, gave suspensive effect to the listing of Switzerland as a low-tax jurisdiction on the Black List and of Dutch holding companies on the Grey List.

Executive Declaratory Act 22/2010 (*Ato Declaratório Executivo* 22/2010), published in the Official Gazette of 2 December 2010 and effective as from that date, gave suspensive effect to the listing of the Spanish Foreign Participation Holding Companies (*Entidad de Tenencia de Valores Extranjeros – ETVE*) on the Grey List.

Luxembourg actually removed

While the final decisions on the requests from Switzerland, the Netherlands and Spain remain pending with the Brazilian authorities and until such decision is publicized will respectively not be treated as a low tax jurisdiction and as a preferential tax regime, Luxembourg is the first jurisdiction to actually be removed from the list altogether.

Luxembourg, premier location to base an intermediate holding company

The removal by way of Executive Declaratory Act ADE 3/11 creates a possibility for tax planning and structure opportunities between these two countries and will enhance the use of Luxembourg as a premier location to base an intermediate holding company for both inbound and outbound investments. ■

PROPOSAL FOR INTRODUCTION OF A UK STATUTORY RESIDENCE TEST

Consultation document

Friday 17th June saw the release in the United Kingdom of the two much anticipated consultation documents, namely the consultation over the introduction of a statutory residence test and then also a separate consultation on some changes to the taxation regime for non-doms. In this article we will discuss the proposal for introduction of a UK statutory residence test. In a separate article in this newsletter we will elaborate on proposed changes to the tax regime for non-doms.

Consultation period until 9 September 2011

Although the proposed changes are not due to come into effect until 6 April 2012, these changes are important news for anyone considering a change in residence status, or anyone living in the UK but domiciled abroad. The consultation period will run until 9 September 2011 so the hope would be that we have some draft legislation to consider prior to the start of the next tax year.

Current residence rules

Under the current residence rules, the circumstances in which individuals are treated as UK resident for tax purposes include where they:

- spend 183 days or more in the UK in any tax year;
- come to the UK with the intention of living there permanently or to work in the UK for an extended period, or with no particular end date;
- come to the UK temporarily and spend 91days or more per year in the UK on average over a four-year period;
- come to the UK for a purpose, such as employment, that will mean that they remain in the UK for at least two years (whether or not, in a particular year, they spend 183 days or more in the UK); or
- usually live in the UK and go abroad for short periods, for example on business trips or holidays.

Whether an individual is resident in the UK is not solely dependent on the amount of time that they spend in the UK. The nature and quality of an individual's connections with the UK are important factors in determining whether they are resident in the UK. For example, family, accommodation, and economic interests can be relevant.

How this creates uncertainty

While for many people it is clear whether they are resident in the UK, for others this is not the case. This is because some of the key concepts within the rules are not defined. For example, no certainty exists over the concept of coming to the UK temporarily. While some will clearly be in the UK on a temporary basis – for example a foreign tourist on a short holiday in the UK – for many others the answer can be less clear cut.

There is particular difficulty about the extent to which an individual can make and retain connections with the UK and still be considered to be non-resident. This affects those who visit the UK and gradually build up connections, such as employment, business, accommodation and social ties. There are no clear rules to indicate the point at which these connections are sufficiently strong to constitute being in the UK permanently or otherwise to make an individual resident.

Decisions in court cases have indicated the connections that may be considered relevant to residence status but this does not provide certainty on whether these connections apply in all cases, what weighting should be given to different factors or precisely how they influence residence status.

Proposed New Statutory Residence Test

The new statutory residence test as drafted should be welcomed for the clarity that it will at least give to individuals coming to or leaving the UK. The test breaks down into three parts, namely:

Part A – individuals meeting this test will "definitely" be regarded as non-UK resident;
Part B – individuals meeting this test will "definitely" be regarded as UK resident;
Part C – in effect this is a more detailed test, to apply where Parts A or B do not already give the answer.

An early draft of the residence test (which in fact never hit the statute books) included a matrix style test of "connecting factors" to the UK vs. day counts in the UK. It now seems that this matrix has largely found its way into the proposed new statutory test in the format of "part C" of the test.

Effectively, the matrix looks at how many connecting factors an individual has in the UK, and weighs the number of these up as against the number of days spent in the UK, to then produce the answer as to whether the individual is UK resident or not.

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Part A – Definitely non-UK resident
This part of the test will conclusively determine that an individual is not resident in the UK for a tax year if they fall under any of the following conditions, namely they:

- were not resident in the UK in all of the previous three tax years and they are present in the UK for fewer than 45 days in the current tax year; or
- were resident in the UK in one or more of the previous three tax years and they are present in the UK for fewer than 10 days in the current tax year; or
- leave the UK to carry out full-time work abroad, provided they are present in the UK for fewer than 90 days in the tax year and no more than 20 days are spent working in the UK in the tax year.

Part B – Definitely UK resident
Provided Part A of the test does not apply, an individual will be conclusively resident for the tax year under Part B if they meet any of the following conditions, namely they:

- are present in the UK for 183 days or more in a tax year; or
- have only one home and that home is in the UK (or have two or more homes and all of these are in the UK); or
- carry out full-time work in the UK.

An individual who does not meet any of the conditions in Part B would not necessarily be non-resident; instead they would need to consider Part C of the test. In cases where an individual satisfies a condition in both Part A and Part B, the individual would be non-resident.

Part C – Matrix Test
This element of the residence test is the more complex part, which seeks to weigh up the number of connecting factors that an individual has with the UK, as against the number of days they spend in the UK, to then give an outcome as to whether or not the individual is UK resident. There are 5 such connecting factors, which may be listed as follows:

- Family – the individual's spouse or civil partner or common law equivalent (provided the individual is not separated from them) or minor children are resident in the UK;
- Accommodation – the individual has accessible accommodation in the UK and makes use of it during the tax year (subject to exclusions for some types of accommodation);
- Substantive work in the UK – the individual does substantive work in the UK (but does not work in the UK full-time);
- UK presence in previous year – the individual spent 90 days or more in the UK in either of the previous two tax years;
- More time in the UK than in other countries – the individual spends more days in the UK in the tax year than in any other single country.

The way these connection factors are combined with days spent in the UK to determine residence status is as follows:

For individuals arriving into the UK:

Days spent in UK	Impact of connection factors on residence status
Fewer than 45 days	Always non-resident
45 – 89 days	Resident if individual has 4 factors (otherwise not resident)
90 – 119 days	Resident if individual has 3 factors or more (otherwise not resident)
120 – 182 days	Resident if individual has 2 factors or more (otherwise not resident)
183 days or more	Always resident

For individuals leaving the UK:

Days spent in UK	Impact of connection factors on residence status
Fewer than 10 days	Always non-resident
10 - 44 days	Resident if individual has 4 factors (otherwise not resident)
45 – 89 days	Resident if individual has 3 factors or more (otherwise not resident)
90 – 119 days	Resident if individual has 2 factors or more (otherwise not resident)
120 – 182 days	Resident if individual has 1 factors or more (otherwise not resident)
183 days or more	Always resident

Split Year Treatment
Normally, an individual is either resident or not for the whole of a tax year. However, by concession, HM Revenue & Customs (HMRC), the UK tax authorities, are able to "split" a tax year, such that an individual who comes to the UK or leaves the UK part way through a tax year will be regarded as resident only from when they came to/ left the UK.

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HMRC propose to remove this concession, but to (partially) replace this by introducing a statutory split year basis. The proposal is for the new rules to treat a tax year as being split into periods of residence and non-residence if a person:

- becomes resident in the UK by virtue of their only home being in the UK;
- becomes resident by starting full-time employment in the UK;
- establishes their only home in a country outside the UK and becomes tax resident in that country and does not come back to the UK in that tax year;
- loses UK residence by virtue of working full-time abroad; or
- returns to the UK following a period of working full-time abroad.

HMRC have stated that a tax year will not be treated as split where an individual's residence status changes due to changes in the number of connection factors under Part C, such as the arrival or departure of their family.

Anti-avoidance

HMRC are mindful that the new statutory residence rules could be in effect used against them to enable an individual to become non-UK resident for a very short period for time, realise income in that year (on which no UK tax is paid) and then return to the UK. HMRC therefore intend to introduce anti avoidance legislation for income tax purposes, which would work very much along the same lines as legislation already in place for capital gains tax purposes, such that in effect if an individual is non-resident for less than a 5 year period, income during that period can be taxed upon their return to the UK.

HMRC are particularly mindful that they wish this anti-avoidance legislation to apply to dividends paid by closely controlled companies that reflect profits that have built up during a period of residence and which are then taken out during a short period of non-residence. However, the rule is not intended to apply to all types of income that are received when a person is non-resident (e.g. employment income from when working abroad/ regular investment income, etc).

Ordinary Residence

As well as discussing a statutory definition of residence, the consultation document also goes on to talk about the concept of ordinary residence.

Current rules

Ordinary residence for tax purposes is a separate concept from tax residence but it also has a bearing on an individual's tax liability. As with tax residence, there is currently no statutory definition of ordinary residence and this creates uncertainty.

The word 'ordinary' indicates that residence in the UK is typical. If an individual has always lived in the UK, they are ordinarily resident in the UK for tax purposes. When an individual comes to the UK, they do not have to intend to remain in the UK permanently or indefinitely in order to be ordinarily resident in the UK. It is enough that the individual's residence has all the following attributes:

- Their presence in the UK has a settled purpose. This purpose might be for only a limited period but has enough continuity to be properly described as settled. Business, employment and family can all provide a settled purpose but this list is not exhaustive;
- Their presence in the UK forms part of the regular and habitual mode of their life for the time being. This can include temporary absences from the UK. For example, if an individual comes to live in the UK for three years or more, then they will clearly have established a regular and habitual mode of life here from the start; and
- They have come to the UK voluntarily. The fact that they chose to come to the UK at the request of their employer rather than seek another job does not make their presence here involuntary.

Individuals are treated as ordinarily resident if they usually live in the UK (or intend to do so), or come to the UK regularly and these visits average 91 days or more per tax year. The pattern of presence, both in the UK and overseas, is an important factor when deciding whether an individual is ordinarily resident. Reasons for being in, coming to, or leaving the UK as well as lifestyle and habits all have to be taken into account.

Ordinary residence and UK tax liability

Ordinary residence is relevant to an individual's UK tax liability in two main ways. Individuals who are not ordinarily resident in the UK:

1. can claim the remittance basis of taxation for foreign investment income. This offers beneficial treatment as they are only liable to UK tax on their foreign investment income if it is remitted to the UK. Some individuals have access to the remittance basis on foreign investment income purely because they are not ordinarily resident and despite being UK domiciled; and
2. are entitled to the remittance basis on income from foreign employment duties where the income is paid by a UK employer and hence is UK-source. This is known as "overseas workday relief".[1] In these circumstances the employer typically pays the employee for all employment duties (UK and non-UK) under a single contract.

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In addition, certain tax liabilities, for example capital gains tax, can apply if a person is not resident in the UK but is ordinarily resident.

Case for reforming ordinary residence

The rules on ordinary residence are uncertain, complicated and subjective. Frequently this requires an assessment of an individual's stated intention when ascertaining their ordinary residence status. It is therefore not surprising that ordinary residence cases have become increasingly prone to litigation.

Recent developments in case law have emphasised the similarity between the tests for residence and ordinary residence. In addition, many people see the differentiation between residence and ordinary residence as archaic and confusing. It adds further layers of complexity, particularly given the subjective nature of ordinary residence, on what it means to be liable to tax in the UK and this can act to reduce the attractiveness of the UK as a place to spend time, live and work. The UK is very unusual in having three separate status tests – residence, ordinary residence and domicile – to determine tax liability.

In addition, the practical effects of being not ordinarily resident are limited. Only a very few people claim the remittance basis solely on the basis of being not ordinarily resident. The situations where capital gains tax is charged on an individual who is not resident but ordinarily resident are very rare.

Therefore, HMRC believes there is a good case for fundamentally re-examining and reforming the concept of ordinary residence.

The consultation document does not, however, offer up a statutory definition of ordinary residence, and indeed it says that HMRC do not see that it is possible to provide such a statutory definition.

However, HMRC do seek to cut down the possibilities for individuals to be regarded as not ordinarily resident. In particular, there are proposals that:

1. Individuals who are resident in the UK should also be treated as ordinarily resident unless they have been non-resident in the UK in all of the previous five tax years.
2. The status of being not ordinarily resident should be available in the tax year in which the individual arrives in the UK and for a maximum of two full tax years following the tax year of arrival.
3. It should not be possible for those who are coming to the UK permanently to be not ordinarily resident. Therefore, notwithstanding the individual's residence status in the previous five years, there will be exclusions from being not ordinarily resident if the individual:
   A. is resident in the UK on the basis that their only home is in the UK; or
   B. has more than one home and all of their homes are in the UK.

HMRC also suggests introducing a new provision that individuals had to be non-dom to be not ordinarily resident (at the moment it is possible to be resident, domiciled, but not ordinarily resident).

It might even be the case that HMRC abolish the relevance of ordinary residence for most tax purposes.

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PROPOSED CHANGES TO THE TAX REGIME FOR UK NON-DOMS

Consultation period until 9 September 2011

As mentioned above, 17 June 2011 saw the release of another much anticipated consultation document, namely the consultation on some changes to the taxation regime for U.K. non-doms. Also here, the consultation period will run until 9 September 2011 and thus some draft legislation is expected prior to the start of the next tax year.

Proposed Changes to the Taxation Regime for Non-Doms

After the April 2008 changes to the taxation regime for non-doms, many U.K. non-doms may read the headline "proposed changes to the taxation regime for non-doms" with fear. However, in fact, the changes now proposed are very much for the better. As indicated in the Budget 2011, the proposals are as follows:

Increase of the Remittance Basis Charge to GBP 50,000

The remittance basis charge will be increased from GBP 30,000 to GBP 50,000 for non-domiciled individuals who claim the remittance basis in a tax year and who have been UK resident in 12 or more of the 14 years prior to the year of claim. →

Relief for Inward Investment

HM Revenue & Customs (HMRC), the UK tax authorities, have acknowledged that the remittance basis rules (as amended in 2008) can actively discourage non-doms from bringing their income or capital gains to the UK and undermine potential sources of inward investment.

The new rules are to be designed to enable non-doms to remit funds to the UK without these being taxable, if they are to be used for investment in the following types of business (to be known as "qualifying businesses"):

1. Businesses carrying out trading activity;
2. Businesses undertaking the development or letting of commercial property.

Note that investments in holding companies of the above two types of companies should also be able to qualify for the relief, provided the holding company is UK resident or has a permanent establishment in the UK.

Excluded activities

Excluded from these definitions, though, will be the following activities:

1. Holding and letting residential property (although businesses that build and develop residential property would be permitted, provided they fell within the definition of trading activity; it is also proposed to allow investment in certain types of residential property such as nursing homes and hospitals where a commercial trade is carried on).
2. Leasing: where the leasing of tangible moveable property (such as yachts, cars, furniture, pictures) or the provision of personal services (such as nannies, cooks, chauffeurs) is a part of the activities of the business.

Stipulations to qualify

Stipulations to qualify for this new relief will include in particular that:

- The investment must be in a company (though the company need not necessarily be a UK company; non-UK resident company may also qualify, provided they have a permanent establishment in the UK).
- The investment can be in shares or by way of loan capital.
- There will be no restriction on individuals remitting overseas income or capital gains which are held in investment vehicles or trusts for the purpose of this relief.
- Overseas income or capital gains remitted for investment in a qualifying business must be taken out of the UK when the investment is disposed of, within two weeks of the individual receiving the money generated by the disposal of the investment.
- There will be provisions to prevent the value of the investment leaking out to the individual either directly through payments or loans which are not arms-length or through transactions designed to pass value to the individual.
- There will be provisions to prevent non-domiciles buying a pre-existing business from themselves by selling it to a new company funded by income remitted from overseas.

The Government is also considering whether the new incentive should also apply to investment in companies listed on a recognised stock exchange and companies quoted on exchange-regulated markets, such as AIM (the Alternative Investment Market) of the London Stock Exchange and PLUS quoted of the PLUS Markets Group.

Although there will be a need for some disclosure on the taxpayer's return in order to qualify for this relief, in fact the proposals seem fairly light in this regard. The proposal is only to request basic information related directly to the business investment incentive, i.e.:

- whether they had remitted income or capital gains to the UK for investment in a qualifying business;
- how much they had remitted for this purpose; and
- in what businesses they had invested.

Technical Simplifications

Proposals have also been made to introduce welcome technical simplifications, as follows:

1. Nominated income – at present, the "nominated income" rules are complex and in practice most non-doms simply nominate a very small sum. The new rules will make it easier for non-doms to do this by providing that individuals can remit the first GBP 10 of income or capital gains which they nominate free of tax and without becoming subject to the identification rules.
2. Foreign currency bank accounts - all sums within an individual's personal foreign currency bank accounts will be removed from the scope of CGT. This would apply to non-domiciled and domiciled individuals alike.
3. Taxation of assets remitted to and sold in the UK - under the current remittance basis rules, most assets purchased overseas using foreign income or capital gains are normally liable to tax when they are brought to the UK, though limited exceptions apply under the exempt asset rules (including in particular works of art for public display). However, these exemptions are not available where the asset in question is sold in the UK and, as a result, if it is sold the individual will be liable to UK tax on the initial cost of the asset in question. This rule is to be relaxed where such items are sold in the UK provided the funds

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are then taken back out of the UK within 2 weeks

4. Statement of Practice 1/09 – this is a practice that assists in the tax calculations for employees who work cross border and are resident but not ordinarily resident in the UK by easing the application of the mixed fund rules. This practice is to be put onto a statutory footing.

No other substantive changes to non-doms taxation for the remainder of this Parliament

To provide stability and certainty, the Chancellor also announced at Budget 2011 that, following these reforms, there will be no other substantive changes to the taxation of non-domiciles for the remainder of this Parliament.

The above is of course only a summary of two very detailed consultation documents. Although the final cut of the legislation will not be known for some time yet, it would be wise to start considering now, how this legislation may apply to you in the future. ■

BRUSH UP: VAT ON LEASING OF MALTESE REGISTERED YACHTS MAY BE REDUCED TO 5.4%

This brush-up will elaborate about the Maltese VAT treatment of yacht leasing arrangements which may reduce the VAT rate on the lease and possible acquisition of a yacht to 5.4% of the original price of the yacht.

Guidelines of 24 November 2005

On 24 November 2005, the Maltese VAT Department published a set of Guidelines on the VAT treatment of yacht leasing arrangements entered into by Maltese companies to third parties.

The Guidelines relate to a leasing agreement with respect to a yacht, entered into between a Maltese company and a lessee, which may be either a company or an individual, whether resident in Malta or not.

Leasing agreement of a yacht

A leasing agreement of a yacht is an agreement whereby the owner of a boat, the *lessor*, contracts the use of the boat to the person who leases the boat, the *lessee*, in return for a consideration.

In addition, at the end of the lease period, the lessee may opt to purchase the boat at a percentage of the original price. The final purchase is strictly an option which may be exercised at the end of the lease for a separate consideration.

Treatment of the leasing agreement for VAT purposes in Malta

Since the leasing activities are considered to be business activities for VAT purposes in Malta, i.e. a supply of services deemed to be rendered in Malta, the Maltese lessor company has the right to deduct any input VAT incurred on the purchase of the yacht.

However, in a typical VAT leasing arrangement a Maltese company purchases a yacht from a European Union (EU) supplier, which, due to EU VAT laws, has a zero VAT impact.

The monthly lease payments are in principle subject to the standard 18% VAT rate in Malta. But VAT is payable only on that portion of the lease during which the yacht is in EU territorial waters.

Due to Malta's proximity to non-EU territorial waters, it is deemed that the yacht will be used partly in EU territorial waters and partly outside EU territorial waters. Since it is very difficult to determine with precision the time the yacht has spent in EU territorial waters, the Maltese VAT Department has issued its own "deemed" length of stay in EU territorial waters.

The Guidelines indicate that this percentage will be determined according to the length of the yacht and its means of propulsion (power or sailing) as mentioned in the table on page 11.

For example, a sailing or motor boat that is over 24 meters in length is deemed to be used for 30% of the time in EU territorial waters and for 70% outside of EU territorial waters. Consequently, the lessor should charge 18% Maltese VAT only on 30% of the lease payments (whilst no VAT would be charged on 70% of the lease payments as they are considered in relation to the time spent outside EU territorial waters), resulting in an effective Maltese tax rate of 5.4% and thus a tax saving of 12.6%.

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Type of yacht	% of lease in EU and thus subject to VAT	Computation of VAT (effective VAT rate)	Effective Maltese VAT	VAT saving
Sailing boats or motor boats over 24 metres in length	30%	30% of consideration x 18%	5.4%	12.6%
Sailing boats between 20.01 to 24 metres in length	40%	40% of consideration x 18%	7.2%	10.8%
Motor boats between 16.01 to 24 metres in length	40%	40% of consideration x 18%	7.2%	10.8%
Sailing boats between 10.01 to 20 metres in length	50%	50% of consideration x 18%	9%	8%
Motor boats between 12.01 to 16 metres in length	50%	50% of consideration x 18%	9%	8%
Sailing boats up to 10 metres in length	60%	60% of consideration x 18%	10.8%	7.2%
Motor boats between 7.51 to 12 metres in length (if registered in the commercial register)	60%	60% of consideration x 18%	10.8%	7.2%
Motor boats up to 7.5 metres in length (if registered in the commercial register)	90%	90% of consideration x 18%	16.2%	1.8%
Craft permitted to sail in protected waters only	100%	100% of consideration x 18%	18%	0%

Conditions for the VAT treatment to apply

In order for the VAT treatment to apply the following conditions should be met:

- The boat must come to Malta at the beginning and the end of the lease agreement.
- A leasing agreement shall be entered into between a Maltese company and any Maltese or foreign person or company.
- The leasing agreement must provide that an upfront payment shall be made by the lessee to the lessor amounting to 50% of the value of the yacht.
- The remaining lease payments shall be payable every month and the lease agreement shall not exceed a maximum of 36 months.
- The lessor would be expected to make a profit from the leasing agreement over and above the value of the boat of at least 5%.
- If the lessee opts to purchase the vessel at the end of the lease, the purchase price should not be less than 1% of the original value of the vessel.
- Prior approval shall be sought in writing from the Commissioner of VAT who must confirm the value of the yacht as well as the applicable percentage on which VAT is charged according to the table shown above.

Please note that it is not required for the yacht to be registered under the Maltese flag.

VAT paid certificate

If the lessee opts to purchase the yacht and the end of the lease and all VAT is paid to the Maltese VAT authorities, an official VAT Paid Certificate would be issued. This certificate is essential for the free circulation of the vessel in EU waters, particularly given the noticeable tightening by VAT authorities in EU ports in recent months.

Income tax issues

The profits realised by the Maltese lessor company are subject to corporate tax in Malta at 35%. Upon a distribution of dividends by the Maltese lessor company to its shareholder(s), the latter qualify for a refund of 6/7th (or 30%) of the tax paid by the company on the distributed profits, resulting in an effective tax burden of 5%. ■

SWITZERLAND IS STRENGTHENING ITS POSITION AS HOLDING COMPANY LOCATION

Switzerland is continuously strengthening its position as a location to base an intermediate holding company by way of tax reforms.

Corporate Tax Reform I

The aim of the so-called "Corporate Tax Reform I", which was implemented in the late nineties, was to boost Switzerland as a competitive international holding location by, among other things, easing the taxation of holding structures and abolishing tax on equity at federal level.

Corporate Tax Reform II

"Corporate Tax Reform II", which was adopted by the Swiss public on 24 February 2008 and is being implemented, is focused on further improving the tax position of domestic small- and medium-size companies and their shareholders.

The measures of the Corporate Tax Reform II that entered into force on 1 January 2011 include:

- Introduction of the capital contribution principle, i.e. tax exemption for the distribution to shareholders of paid-in surplus capital (share premium) which was paid in after 31 December 1996;
- Improvement of the participation exemption; the threshold for participations qualifying for the participation exemption is reduced to 10% or a market value of CHF 1 million (from 20% or CHF 2 million, respectively).

Introduction of the capital contribution principle

One of the significant features of the corporate tax reform II is the introduction of the capital contribution principle, which replaced the nominal value principle.

In accordance with latter principle, until the end of 2010 only the nominal paid-in capital of a Swiss company could be re-paid to the shareholders without Swiss withholding tax and income tax. Repayment of other capital contributions was subject to withholding at company level and income tax at shareholders' level. Income tax is only applicable in case of Swiss resident shareholders; participation exemption or partial exemption may apply under certain conditions).

As per 1 January 2011, all capital contributions, capital surplus and cash payments to the reserves made by former or current shareholders after 31 December 1996 may be repaid to the shareholders exempt from Swiss withholding tax at the company's level and income tax at the shareholder's level. Accordingly, the repayment to shareholders of capital contributions made after 31 December 1996 will be dealt with in the same way as the repayment of nominal paid-in capital.

From 1 January 2011 Swiss companies should account for capital surplus paid-in after 1 January 1997 in their balance sheet ending during 2011 as "capital contribution reserves", a sub-account of the legal reserves account, and report them to the Swiss tax authorities within 30 days after the shareholders' meeting wherein the pertinent financial statements are approved. It should be noted that once operating losses are set off against capital contribution reserves, such reserves are lost irrevocably.

The introduction of the capital contribution principle is particularly interesting for foreign shareholders of Swiss legal entities, who benefit from the exemption of withholding tax on repayments of any capital contribution.

Improvement of the participation exemption

Besides the introduction of the capital contribution principle, an important change is the improvement of the participation exemption by way of reduction of the threshold for participations qualifying for the participation exemption to 10% (previously 20%) or a market value of CHF 1 million (previously CHF 2 million).

Swiss holding companies can fully reclaim VAT

Another improvement of Switzerland to base an intermediate holding company is the introduction of provisions in the Value Added Tax Act 2010, which consider the acquisition, holding and sale of investments as a business activity. This Act was introduced in connection with the implementation of the 2010 European VAT Package Switzerland and entered into force on 1 January 2010.

Consequently, Swiss holding companies are now considered to be taxpayers for value added tax (VAT) purposes and thus can, in most cases, fully deduct any Swiss input VAT payable. Compared to other jurisdictions this is a significant advantage.

Corporate Tax Reform III

Finally, in late autumn 2008, the Swiss government announced another major tax reform, the "Corporate Tax Reform III", with the aim of eliminating unnecessary tax burdens and to further strengthen Switzerland's position as an attractive business location in an evermore competitive and demanding international environment.

As is clear from the above, Switzerland is reinforcing its position as a location to base an intermediate holding company. ■

BELGIAN BILL ON VARIOUS LEGAL AMENDMENTS ON CORPORATE TAX ADOPTED

On 31 March 2011, Bill No. 53/1208/001 concerning various legal amendments was adopted by the Belgian Upper House.

Measures apply retroactively from 1 January 2011

The tax measures mainly relate to adjustments following infringement procedures started by the European Commission.

The measures, which apply retroactively from 1 January 2011, include the following:

1. Participation exemption

Under the participation exemption, a Belgian company may deduct 95% of dividends received from other Belgian companies and companies resident in other EU Member States when calculating its taxable profits.

The remaining 5% is taxable at an effective rate of 33.99% (the general 33% tax rate plus the surcharge of 3%). Where a company has insufficient taxable profits for the full 95% to be deducted, the excess deductible amount may be carried forward. Liquidation bonuses received in the context of a cross-border merger are 100% deductible.

Dividends Received Deduction extended to EEA companies

This treatment is now extended to dividends received from subsidiaries resident in EEA Member States outside the European Union, i.e. Iceland, Liechtenstein and Norway.

Requirements

Prior to 1 January 2011, to qualify for the dividends received deduction (or "DRD"), the following provisions should be met:

1. The shareholder must at least hold 10% of the share capital of the subsidiary or the subsidiary must have an acquisition value of at least EUR 2.5 million;
2. The subsidiary should be subject to tax;
3. The shareholder should have continuously held full ownership for an uninterrupted period of one year; and
4. The shares of the subsidiary must be accounted for as fixed assets.

Fixed assets accounting requirement abolished

Requirement 4., that the shares qualifying for the 95% DRD must be a fixed financial asset, was abolished because it is held to be incompatible with the EU Parent-Subsidiary Directive by the European Commission.

2. Transfer of legal seat

The exemption that applies in the event of the transfer of a registered office of a Belgian company to another European Union Member State will be extended (from the European Company, "SE" or the European Cooperative, "SCE") to all companies established in Belgium.

3. Dividend withholding tax for investment companies

The reduced 15% withholding tax applicable to dividends distributed by Belgian investment companies or by Belgian companies that are majority-held by individuals and that are quoted on an exchange or of which part of the capital is contributed by a Belgian private equity investment company (PRIVAK/PRICAF) is extended to investment companies or companies in the EEA respectively as well as to private equity investment companies in the EEA. ■

DECLARATION OF NO OBJECTION FOR INCORPORATION DUTCH COMPANIES ABOLISHED

On 9 June 2010 the Upper House of the Dutch parliament approved the "Bill amending, among other things, Book 2 of the Dutch Civil Code and the Companies (Documentation) Act".

Effective from 1 July 2011

Consequently, as from 1 July 2011 a declaration of no objection for the incorporation and the amendment of the articles of association of a private limited liability company ("*Besloten Vennootschap or B.V.*"), a public limited company ("*Naamloze Vennootschap or N.V.*") or a European Company ("*Societas Europaea or S.E.")* in the Netherlands is no longer required.

System of preventive monitoring ineffective

The reason for the abolishment of this preventive supervision was explained by the Ministry of Justice as follows:

"In practice, the existing supervision does not work well. The supervision is linked to a number of formal acts (incorporation or amendment to the articles of association), but the abuse may actually take place during the practice of the business or other activities. Moreover, preventive supervision cannot adequately address the use of straw men without negative antecedents. The current supervision ... is therefore ineffective while placing an administrative burden on companies with share capital."

New system of continuous monitoring

The new law aims to improve the measures for preventing and combating abuse of legal entities by introducing a new system of continuous monitoring of the legal entity during its existence.

Moreover, the law intends to facilitate investigation and prosecution of offences which have been committed by a legal entity.

Scope of monitoring extended to other legal entities

The scope of the monitoring will not be restricted to B.V.'s, N.V.'s and S.E.'s, but will be extended to cover legal entities, such as foundations ("*stichtingen"*), associations with full legal authority (formal associations) ("*verenigingen met volledige rechtsbevoegdheid"*), cooperations ("*coöperaties"*), mutual insurance associations ("*onderlinge waarborgmaatschappijen"*), European Cooperative Societies (SCEs) and European Economic Interest Groups (EESV), provided that they have their statutory seat in the Netherlands.

To the extent possible, monitoring will be based on digital information already available to the government in certain databases, such as the Trade Register and the Municipal Personal Records Database.

In addition, the Ministry of Security and Justice will obtain data from the tax authorities, the Judicial Information Service, the Central Insolvency Register and the National Police Services Agency.

This tightened monitoring will be performed using risk profiles and automated risk reports that can be followed up by investigation and prosecution. Quality control will be established through enforcement covenants and enforcement partnership between supervisory and enforcement agencies aimed at combating abuse. ■

TAX TREATY DEVELOPMENTS

Please find on the next page an overview of a number of tax treaties for the avoidance of double taxation as well as protocols to these treaties that have become effective recently or will become so shortly.

The applicable maximum withholding tax rates under these tax treaties are mentioned. Moreover, if any, the tax treaties that have been terminated recently are also mentioned.

The list does not mean to be exhaustive. Kindly, also check the notes below. Moreover, always check the wording of the pertinent tax treaty and protocol, if any, as there may be special conditions, including but not limited to ultimate beneficial ownership requirements, for the pertinent rate to be applicable.

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Tax treaties between	*Signed*	*Enters/ entered into force on*	*Will become effective/ became effective on*	*Maximum rates of withholding tax*				
				Dividends			*Interest*	*Royalties*
				Gen-eral (portfoli o)	*Minimum % for special rate*	*Special rate (participation dividends)*		
Barbados – Panama	21 June 2010	18 February 2011	1 January 2012		25	5	7.5/ 5	7.5/ 0
Belarus – Slovenia	6 October 2010	31 May 2011	1 January 2012	5			5	5
Canada – Turkey	14 July 2009	4 May 2011	1 January 2012	20	10	15	15	10
Cyprus – Italy (Protocol)	4 June 2009	23 November 2010	23 November 2010	n/a			n/a	n/a
China (People's Rep.) – Turk-menistan	13 December 2009	30 May 2010	1 January 2011	10	25	5	10	10
France – Bahrain (Protocol)	7 May 2009	1 February 2011	1 December 2010	n/a			n/a	n/a
France – Kenya	4 December 2007	1 November 2010	1 January 2011	10			12	10
Greece – Azerbaijan	16 February 2009		1 January 2011	8			8	8
Greece – Tunisia	14 May 2007	29 September 2010	1 January 2011	35			7	7
Hong Kong – Liechtenstein	12 August 2010	16 March 2011	1 January 2012 (LI)/ 1 April 2012 (HK)	0			0	3
Hungary – Armenia	9 November 2009	26 October 2010	1 January 2011	10	25	5	10/ 5/ 0 *1)	
Indonesia – Iran *2)	30 April 2004		1 January 2011	7			10	12
Ireland – Singapore	28 October 2010	8 April 2011	1 January 2011	0			5	5
Ireland – South Africa	17 March 2010			10	10	5		
Kazakhstan – Malaysia	26 June 2006	27 May 2010	*3)	10			10	10 *4)
Kazakhstan – Slovak Republic	21 March 2007	28 July 2010	1 January 2011	10			10	10 *4)
Liechtenstein – San Marino	23 September 2009	19 January 2011	1 January 2012	5	10	0 *5)	0	0
Norway – Turkey	15 January 2011	15 June 2011	1 January 2012	15	20	5	15	10
Spain – Albania (Protocol)	2 July 2010	4 May 2011	4 May 2011	10	10/ 75 *6)	5/ 0	6	0
Spain – Kazakhstan *7)	2 July 2009	18 August 2011	18 August 2011	15	10	5	10	10
Spain – Pakistan *7)	2 June 2010	18 May 2011	18 May 2011	10		7.5 / 5 *8)	10	7.5 *9)
Spain – Panama *7/ 10)	7 October 2010	25 July 2011	25 July 2011	10	40	5 / 0 *7)	5	5 *11)
Uzbekistan and Oman	30 March 2009	20 June 2009	1 January 2010	7			7	10

↓

*1) 10% on interest in general, but 5% if interest is paid in connection with a loan or a credit of whatever kind granted by a bank; 0% if paid to or in connection with a loan or a credit guaranteed or insured by the other state, the central bank, and other special governmental institutions.

*2) In accordance with Circular Letter SE-33/PJ/2011 of the Indonesian tax office of 20 May 2011, the reduced treaty withholding tax rates pertaining to dividends, interest and royalties do not apply where the recipient of the income is not the beneficial owner, in which case the Indonesian domestic withholding tax rate of 20% applies.

*3) The treaty generally applies in Kazakhstan from 1 January 2011 for withholding taxes and from 1 January 2012 for other taxes. In Malaysia, it applies from 1 January 2010 for petroleum income tax and from 1 January 2011 for other taxes.

*4) Technical fees which include payments to a person other than an employee for any services of a technical, managerial or consultancy nature will be taxed by withholding tax at the rate of 10%.

*6) The maximum rates of dividend withholding tax are: ● 10% on dividends in general; ● 5% if the beneficial owner is a company (other than a partnership) holding directly at least 10% of the capital of the company paying the dividends; and ● 0% if the beneficial owner is a company (other than a partnership) holding directly at least 75% of the capital of the company paying the dividends.

Under the protocol, the benefits of the treaty may be denied since both states are entitled to apply their domestic anti-abuse provisions; the treaty does not prevent the states from applying their domestic controlled foreign company (CFC) rules; the dividends, interest and royalties articles do not apply where the principal objective, or one of the principal objectives, of any person related to the creation or transfer of rights generating this type of income is to obtain advantages from these provisions of the treaty.

*7) Under the protocol, a limitation of benefits clause is introduced according to which: both States are entitled to apply their domestic anti-abuse provisions; the treaty benefits are only granted to the beneficial owner of income received; and the dividends, interest and royalties articles do not apply if the dividends, loans or rights to the royalties are created with the main purpose of, or have as one of their main purposes, the obtaining of treaty benefits.

*8) The maximum rates of dividend withholding tax are: ● 10% on dividends in general; ● 7.5% if the beneficial owner is a company which has directly hold for a 6 month period at least 25% of the capital with voting power of the company paying the dividends; and ● 5% if the beneficial owner is a company which has directly hold for a 6 month period at least 50% of the capital with voting power of the company paying the dividends.

*9) 10% for service fees (managerial and technical).

*10) Gains derived by a resident of a state from the alienation of shares or comparable interest in a company resident of the other state, who has held more than 10% of the vote, value or capital stock in such company for less than a 12-month period prior to such alienation, may be taxed in the source state.

The protocol also contains an exchange of information provision which provides, upon request, for the exchange of information that is foreseen relevant to the administration and enforcement of the domestic tax laws of the contracting parties, including information foreseen relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

*11) Professional services, consulting services, industrial commercial advice, technical or management services or similar services are subject to maximum rate at source of 7.5% of the gross amount. ■

TAX RATE DEVELOPMENTS

Every quarter the International Tax Planning Newsletter provides an update of tax rate developments. The update only provides highlights and does not mean to be exhaustive.

Ukraine – reduction of corporate tax

The corporate income tax rate was reduced from 25% to 23% on 1 April 2011. The 23% rate will apply until 31 December 2011 and will then be further reduced to 21% for 2012, 19% for 2013 and 16% as from 1 January 2014.

Spain - transition period of the EU Interest and Royalties Directive expired

The transition period of the EU Interest and Royalties Directive under which Spain was not required to grant an exemption for qualifying royalty payments made to made to an associated company resident in another Member State but instead was permitted to impose a 10% withholding tax, expired on 30 June 2011.

Consequently, from that date royalties paid by a Spanish entity to an associated entity resident in another EU Member State or in Switzerland will not be subject to withholding tax in Spain.

South Africa – introduction of a dividend tax

According to the 2011-2012 Budget, presented by the Minister of Finance on 23 February 2011, the corporate tax rate will remain unchanged at 28% and the secondary tax on companies rate will remain at 10%. However, as from 1 April 2012, a 10% dividend tax will replace the secondary tax on companies.

United Kingdom – main rate of corporation tax reduced

The main rate of corporation tax of 28% was reduced to 26% effective 1 April 2011. ■

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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 it's 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.

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;
9. An excellent network:
Since ITPS is not part of an international network, it has built up a network of highly skilled professionals to work with.