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Country Review : UNITED KINGDOM

UK : The UK – an attractive place to do business

The UK government has, over recent years, worked hard at making the UK an attractive location for business.

The recent Autumn Statement introduced a number of changes, some of the most significant of which were:

- **further reductions in the main rate of corporation tax; currently 24%, to 23% from 1 April 2013 and 21% from 1 April 2014; and**
- **a temporary (2 year) increase in the 100% tax allowance on capital spend on plant, machinery, fixtures, etc. to £250,000 from 1 January 2013.**

Recently there has been an emphasis on attracting innovation to the UK; the main focus being on relief for research and development and the introduction of a patent box regime.

Research & development (R&D)

R&D tax credits provide substantial tax incentives for qualifying expenditure on research and development. The tax benefits are different depending on the size of the company:

- for every £10,000 of qualifying expenditure incurred, small and medium sized companies can claim a deduction of £22,500 against taxable profits. Additionally, loss-making SMEs can choose either to increase the value of their losses carried forward against future profit, or to surrender the tax credits in return for a cash payment of £25 for every £100 of qualifying expenditure; and
- for large companies, the claim is 130% of expenditure and there is no ability to surrender their tax credits for a cash payment.

Qualifying research and development is likely to be applicable where the company is doing something new in a field of either science or technology where, at the outset, it is looking to resolve an uncertainty.

The additional relief is available on:

- R&D employment costs (salary, bonus, employers' national insurance, and employer's pension contribution);
- consumables used during the R&D process; and
- certain subcontracting costs (although relief is restricted on such costs).

For capital spend on R&D, e.g. plant, etc., a 100% allowance is available in addition to the £250,000 mentioned above.

Patent box regime

The patent box regime will tax corporate profits arising from designated UK or European patents at an effective rate of only 10%.

The new regime will start on 1 April 2013 with relief being phased in over 4 years. The relief is given by way of a deduction from profits, with the calculation designed to work alongside R&D reliefs.

The relief applies to profits arising from the sale of products and spare parts subject to a qualifying patent; patent royalties; patent infringement income and the sale of patents. There is also provision for relief based on notional royalties from process patents and services that utilise patents.

If the tests are met, the company calculates the proportion of profits arising from patent income using a formulaic approach that includes a deduction for a routine return, calculated at 10% on an adjusted cost basis and, potentially, a notional royalty adjustment to reflect a return on marketing assets. The calculation involves a number of steps but is relatively straight forward and the lower tax rate is worth the extra effort.

In our opinion, it is worth planning ahead on patents to make sure that relief is maximised, for example:

- ensure all possible products are held under patent;
- obtain patents in the UK or Europe;
- have UK companies acquire exclusive rights;
- review the impact of the relief and see what should/can be changed; and
- ensure companies holding patents qualify for the relief.

Entrepreneurs' relief and Enterprise Investment Scheme (EIS)

One final area worth mentioning is the tax position on UK resident business owner managers and investors. Entrepreneurs' relief can reduce the rate of tax on gains on sale of the business to 10% while reliefs under EIS mean that external investors may obtain an exemption from gains on exit and an income tax credit on subscription.

If you add the corporation tax incentives to the reliefs available for business owners and investors the UK's tax regime can look very attractive.

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FRANCE : Finance Law 2013 and modifying finance law for 2012

Most of the changes regarding businesses laws bring further restrictions to existing tax situations: deduction of certain financial expenses, use of tax losses and the tax exemption of gains from participation shares, etc. However, the introduction of the new tax credit for competitiveness and employment (CICE) and the tax credit for innovation expenses offer clear opportunities. Several changes to the VAT rules also deserve attention.

I. MEASURES AFFECTING BUSINESSES

1. Financial Expenses: New Restriction on the Tax Deduction for Big Sized Businesses

For financial years closed starting on 31 Dec. 2012, businesses incurring net financial expenses (excess of interest expenses over interest income) of EUR 3 million or more are allowed to deduct only 85% of their financial expenses and 75% starting in 2014. 15% or 25% of interest expense will therefore be non deductible for tax purposes.

For instance, a business that incurs net financial expenses totaling EUR 4 million in FY 2012 may deduct only EUR 3.4 million of interest expense and must add-back the balance of EUR 600,000 to its taxable base. The disallowed interest expenses will amount to EUR 1 million in 2014.

For the application of the new limitation to businesses that are part of a tax consolidated group, the EUR 3 million limit is assessed on a consolidated basis and the tax disallowance is calculated by the company heading the tax consolidated group.

The new general restriction does not replaces and shall be applied in conjunction with existing limitations on the tax deductibility of financial expenses (e.g. maximum interest rate paid to related parties, thin-caps rules, limitation on financial expenses in relation to the purchase of participation shares and specific limitation on financial expenses within a tax group).

With a threshold set at EUR 3 million of net financial expenses, the new limitation in its current format only targets businesses of a certain size. However, it can be anticipated that the EUR 3 million limit will be reduced over the next years and the scope of the limitation extended.

2. Temporary Exceptional Corporate Income Tax Surcharge Prorogated

Business with sales figures exceeding EUR 250 million are subject to a tax surcharge of 5% of their corporate income tax (CIT) liability which increases their cumulated tax burden to 35%.

This contribution that was meant to expire on 31 December 2013 has been prorogated for additional two years until 31 December 2015.

3. Participation Exemption Regime: Exempt Portion of Gain Further Reduced

Under the participation exemption regime, gains from the disposal of participation shares that have been held for two years are exempt from taxation but a portion of costs and expenses deemed incurred in relation to such participation are not tax deductible.

The Finance Law for 2013 increases the taxable cost portion to 12% of the gain (vs. 10%). In addition, the 12% tax base is assessed on the gross capital gain without consideration to the capital losses.

The new rule is applicable to financial years closed starting on 31 December 2012 and may therefore impact transactions that were implemented under the previous regime before the Finance Law for 2013 was enacted.

4. Use of Tax Losses: Minimum Taxable Base Increased

Under the Finance Law for 2013, tax losses carried forward from previous years may be used to offset existing profits within a limit corresponding to EUR 1 million **plus 50%** of the taxable profit in excess of EUR 1 million. The previous minimum tax base of 40% introduced in 2011 is abolished for financial years closed as of 31 December 2012.

In other words, profitable businesses with important carried forward tax losses are now subject to a minimum tax calculated on 50% of their 2012 taxable profit above EUR 1 million.

5. Changes to the R&D Tax Credit

Businesses carrying out R&D work may benefit from a tax credit corresponding to a percentage of their qualifying R&D expenses.

Starting in 2013, R&D tax credit will be available to all businesses at the standard and unique rate of 30%.

A specific tax credit is introduced for innovation expenses (development of prototypes and pilot equipment) which do not qualify as eligible expenses for the R&D tax credit.

This specific tax credit corresponds to 20% of eligible innovation expenses (depreciation costs, personnel, administration, patents and external costs) within a maximum limit of EUR 400,000. The tax credit may therefore not exceed EUR 80,000 .

This new tax credit is restricted to businesses with less than 250 employees and turnover and total assets not exceeding EUR 50 million and EUR 43 million respectively.

6. Tax Credit for Competitiveness and Employment (CICE)

To encourage French businesses in their efforts to remain competitive, the Government introduced a new tax credit (CICE) assessed on low and medium salaries.

The CICE is based on salaries not exceeding 2.5 times the minimum salary (i.e. EUR 42,906 on 1st January 2013). Salaries exceeding this limit are ignored for their full amount.

The CICE is calculated at the rate of **4%** of eligible salaries paid in 2013 and **6%** of salaries paid starting in 2014. The CICE will be used to reduce the income tax liability of the current year and the following three years. In case the CICE cannot be fully credited against the tax liability (e.g. for unprofitable businesses), the excess will be refunded.

The non-exhaustive list of actions that the CICE is meant to encourage includes efforts in the fields of investment, research, innovation, education, recruiting, prospecting new markets, etc. Those efforts appear less as measurable conditions than mere general objectives. How the appropriate use of the CICE will in practice be checked by the authorities remains unclear. However, the law clearly states that the CICE facility should not be used to increase the level of profit distributions and the level of remuneration paid to executives. The Government announced that it would impose high standards of ethics and governance on companies making use of the CICE.

The cost of this new tax credit has been estimated at approx. EUR 20 million for the State budget and will be covered by an increase of VAT rates starting in 2014 (see below).

7. Exit Tax on Transfer of Businesses out of France: Installment Payment for Relocation Within the EU or the EES

A transfer out of France of the place of management or a business is treated as a business cessation and entails among other tax consequences an immediate taxation of latent gains on the relocated tangible or intangible assets (exit tax).

For transfers within the European Union, the European Court of Justice ruled recently the levying an exit tax on the latent gains was acceptable but that imposing an immediate tax payment constituted a restriction to the freedom of establishment. [2]

To adapt French tax legislation to EU law, the possibility is now offered to settle the “exit tax” liability in 5 annual installments subject to certain filing requirements being met. On the occurrence of certain events (disposal of the assets, transfer to a non-EU or non EES country, etc.), the outstanding balance of the exit tax will be payable immediately.

8. VAT Changes

- **New French VAT Rates Starting in 2014**

Starting in 2014 France, the French VAT rates will change. The standard VAT rate will be increased to 20% (vs. 19.6%) and the intermediary rate to 10% (vs. 7%). The lowest rate will be reduced to 5% (vs. 5.5%).

The new rates will be applicable to goods and services for which the taxable moment occurs starting on 1st January 2014. Transitory rules exist for payments in 2013 for transactions for which the taxable moment will occur in 2014.

The VAT rate increase purports to finance the tax credit for competitiveness and employment (CICE).

- **French Import VAT: Deduction is not Subject to Payment**

The VAT payable upon importation of goods to France is now deductible, even when it has not yet been effectively paid.

The previous French tax practice that subjected the right to deduct import VAT to its prior payment was not in line with the Directive as interpreted by the ECJ. [3]

- **French VAT Registration Rules for Certain Non EU Businesses Relaxed**

Non EU-businesses subject to VAT in France are currently obliged to appoint a fiscal representative that personally takes responsibility for their VAT filing or payment obligations in France.

Starting on 31 December 2012, the obligation to appoint a fiscal representative is abolished for non EU enterprises established in a country with which France has signed a tax treaty covering the assistance for the collection of taxes. A list of eligible countries is the subject of an administrative decree still to be published.

Eligible foreign non-EU companies now have to register to VAT and directly accomplish their VAT obligations to the competent French tax office. Current VAT representation appointments can be terminated. If not terminated, the former VAT representative will be considered acting as agent in the name and on behalf of the foreign company and will not incur any personal financial liability in the future.

The law gives practical guidelines for the determination of the competent tax office.

The VAT registration rules for foreign companies established in non-eligible countries remain unchanged.

II. MEASURES AFFECTING INDIVIDUALS

The year-end budget laws regarding individuals pose EUR 20 million of new taxes on households as the second step of the five-year plan of the new French Government to reduce the State deficit is being implemented. These impact in particular dividend and interest income.

1. New Marginal Tax Rate Increased at 45%

The highest income tax rate has been raised to 45% (vs. 41%) with the creation of a new tax bracket applicable to net taxable income above EUR 150,000.

2. Exceptional Tax of 75% on Very High Income held to be Unconstitutional: What Next?

Pursuant to an electoral promise of the newly elected French President, the French Parliament had introduced an exceptional contribution of 18% applicable on the portion of individual activity income exceeding EUR 1 million. Added to other tax and social levies on activity income (45% standard income tax, 4% additional tax on income above EUR 500,000 or 1 million and 8% social tax withholdings), the new tax would have resulted in a total tax burden of 75% on income in excess of EUR 1 million.

The new tax was held to be contrary to the Constitution not because of its rate but because its application would have resulted in an unjustified differential tax treatment of individuals having the same situation. The tax was to be calculated on an individual basis without regard to the family situation of the taxpayer as is normally the case under French income tax rules.

The Government announced its intention to introduce a new tax that complies with the Constitution. Possible scenarios include reducing the rate of the new tax, having the new tax withheld at source by the payor and introducing the new tax without any time limitation.

3. Taxation of Financial Income

The taxation of passive financial income (dividend and interest) has been substantially increased as a result of the Government's intention to align the taxation of such income with the taxation of income from a professional activity. The possibility to elect for financial income to be subject to a final withholding of 34.5% for dividends and 39.5% for interest is abolished starting in 2013. Financial income will be subject to standard income tax (up to 45%) plus social taxes of 15.5%.

- **Taxation of Dividends**

Dividend income is now subject to standard income tax (up to 45%) on a reduced base corresponding to 60% of the dividend payment. Additional social taxes of 15.5% are assessed on 100% of the dividend amount without any base reduction.
Total tax on dividend averages 60.5% or 42.5% with the 40% base reduction.

On the payment of the dividend a tax of 21% will be withheld at source and will be credited against the income tax. Under certain conditions a relief from the withholding tax may be claimed.

The new taxation rule applies retroactively to dividend income received in 2012, except for dividend payments for which an option for the flat tax of 34.5% has been exercised and the tax paid in 2012.

- **Taxation of Interest**

Interest income is subject to standard income tax (up to 45%). The total tax on interest may therefore be as high as 60.5%, considering the additional social taxes of 15.5%.

On the payment of interest, a tax of 24% will be withheld at source and will be credited against the income tax ultimately due. When interest income does not exceed EUR 2 000, election for a final taxation at 24% (plus social taxes) is possible.

Interest payment to beneficiaries residing in non-cooperative states is subject to a tax withholding of 75% (vs. 50% previously).

4. Capital Gains from the Disposal of Shares and Securities

The taxation of capital gains generated in 2012 is retroactively increased to 24% (vs. 19%). With the social taxes of 15.5%, the total tax burden on 2012 capital gain has been retroactively increased to 39.5% (vs. 34.5%).

Starting in 2013, the average total tax rate on capital gains is 42.5% (shares held for at least 6 years). Capital gains are subject to standard income tax (up to 45%) after a base reduction of 20%, 30% or 40%, when the shares have been held for a minimum period of 2, 4 or 6 years. The base reduction is limited to the income tax calculation and does not cover additional social taxes of 15.5% assessed on the gain.

A reduced taxation at the rate of 19 % (34.5 % including social taxes) is applicable to “business owners” when certain conditions are met regarding the business conducted by the company, the percentage of shares held by the seller and the position of the seller in the company. The base reduction of 20% to 40% does not apply to the gain taxable under the business owner regime.

Several other adjustments are brought to the capital gain tax regime.

Subject to applicable tax treaties , non French tax residents are taxed at the rate of 45% on the gain from the disposal of a substantial participation (25%) in a French company.

5. New Tax on Gains from the Disposal of French Properties

A new tax withholding is imposed on gains from the disposal of French properties when the gain exceeds EUR 50,000. The new tax is calculated at progressive rates from 2% to 6% (portion of taxable gain above EUR 260,000). Taxable persons are French and non-French tax resident individuals owning French properties directly or through tax transparent entities. The tax will be paid under the same conditions as the standard income tax on capital gains.

6. Exit Tax

French tax residents relocating their tax residence abroad may be subject to an exit taxation on the latent gains from participation representing 1% or EUR 1,3 million. For relocation within the European Union, the exit tax is deferred until the occurrence of certain events.

The Budget laws bring several adjustments to the exit tax to take into account the changes to the taxation of capital gains:

- For tax relocation out of France between 28 September 2012 and 31 December 2012, the exit tax is calculated at the rate of 24% (vs. 19%), plus social taxes of 15.5%. An option for the taxation at the rate of 34.5% applicable to business owners is possible subject to the required conditions being met.

- With the taxation of capital to standard progressive income tax rates, the exit tax now corresponds to the excess of the (i) income tax liability assessed on an income base including latent capital gains and (ii) the income tax liability effectively payable upon relocation under standard conditions (i.e. on taxable base not including latent gains).

7. Taxation of Stock Options and Restricted Stock Units

Gains from employer equity incentive schemes (e.g. stock option or restricted stock plans) granted from 28 September 2012 onward are now subject to standard income tax and the previous fixed tax rates of 18%, 31% and 41% are abolished. Minimum holding period requirements that used to determine the tax and social treatment of gains are now irrelevant.

The tax treatment applicable to options granted prior to 28 September 2012 remains unchanged and will be subject to a tax and social liability ranging from 43.5% to 66.5%. The increase from 10% to 17.5% or 22.5% of the specific social tax was held to be contrary to the Constitution as it would have brought the tax burden on gains to up to 77%.

8. Share for Share Exchange: Immediate Capital Gain Taxation

Up to very recently, share for share exchange transactions could be structured in a tax neutral way as the share exchange was treated as a mere interim transaction and did not resulted in a gain recognition. This led to abusive tax structuring schemes under which taxpayers could indirectly dispose of their shares and use the sale proceeds without paying any tax on the capital gains.

To avoid such tax optimization schemes, the tax exemption has now been replaced by an immediate gain recognition and taxation with the possibility to claim a deferral of taxation when certain conditions are met . The immediate taxation applies to share for share exchange transaction where the taxpayer has the control over the company receiving the shares.

The taxpayer may however request that the taxation of the exchange gain is deferred until the future sale of the newly received shares or the exchanged shares. In addition, a relocation of tax residence out of France triggers the immediate payment of the deferred capital gain tax. The new tax regime is applicable retroactively to transactions implemented starting on 14 November 2012.

9. Wealth Tax:

Several changes to wealth tax are introduced starting in 2013:

- **Reinstatement of progressive Tax Rates**: The new wealth tax rates range from 0.5% for assets with a value above EUR 800,000 to 1.5% (asset value above EUR 10 million). The simplified wealth tax rates of 0.25% and 0.5% applicable starting in 2012 are abolished.

- **New ceiling rule**: the cumulated burden of wealth tax, income tax and social taxes may not exceed 75% of the worldwide income of the previous year, including tax exempt income. Any tax in excess of the ceiling will be deducted exclusively from the wealth tax liability. A deduction from the income tax or a refund is not possible.

- **Restriction of deductible liabilities**: only debt contracted to finance taxable assets are deductible from the wealth tax base. Debt in relation to exempt assets cannot be taken into consideration.

- **Filing obligations**: Individuals with taxable assets not exceeding EUR 2,570,000 are not required to file a specific wealth tax form and must include their taxable assets in their income tax declaration.

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- **Extended statute of limitation for undeclared foreign assets**: the statute of limitation for undeclared foreign financial assets is extended to 10 years.

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GERMANY : Business Tax Reform Act and Base Allowance for Individuals: Limited changes so far

Due to the fact that the German government does not have the majority in the senate and only limited compromises could be made with the opposition so far, the German Finance Bill for 2013 has been rejected. Besides the German Insurance Tax Act (please refer to N°1 2012 edition) only the Business Tax Reform Act and the increase of the base allowance for individuals have been approved. We outline below the most important tax provisions for individuals and businesses.

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1. Tax measures for Individuals

- **Income Tax**

Since 2010 the progressive income tax rates are up to 42 % (or 45 % above € 250.731). Only for 2013 the base allowance has been slightly increased to € 8.130.

2. Tax Measures Affecting Employees and indirectly Businesses starting 2014

- **Place of work of employees**

The place of work of an employee is relevant for the determination of the tax deductible expenses for the employee and thus for the taxation of the takeover of travel expenses by the employer. Since 2011 the German tax administration is generally accepting any determination of the regular place of work ("regelmäßige Arbeitsstätte") as the tax guidelines have been weakened by new case law from the German Federal Finance Court. An employee can have only one or none regular place of work. In the second case this is in general beneficiary for the employee and might be more expensive for the employer.

Starting January 2014 a new system is codified in the German Income Tax Act. Then, the first place of work ("erste Tätigkeitsstätte") will be any place of the employer, an associated company of the employer or a third party to whom the employer permanently assigns the employee. As permanently is deemed an assignment for the term of the employment contract or a term exceeding 48 months. Only one first place of work can exists, if it is not determined, the place of work being the closest to the domicile is deemed.

The additional meal allowance is changed in 2014 as well having only two lump sums of € 12 and € 24. Further details will be presented later this year.

- **(Corporate) Income Tax Loss Carry-Back**

The one-year loss carry-back is increased for losses made in 2013 and onwards. Instead of€ 511.500 the loss carry-back is increased for individuals and companies to € 1.000.000 (respectively for couples taxed jointly to € 2.000.000). A carry-back is (still) not possible in respect of trade tax.

3. Tax Measures Affecting Businesses

- **Tax groups**

German tax groups (Organschaft) are only tax effective if the formal legal requirements are fulfilled. If the profit & loss absorption agreement is not containing a loss takeover, a correction is of the agreement is possible until 31 December 2014 without denying the tax group.

In case that a tax group member has determined a wrong profit in the financial statements, this will not lead to invalid tax group, if the financial statements has been duly established or audited by a tax advisor or a certified auditor and the error is corrected at the next balance sheet date after the error has been notified by the tax administration

- **Dual loss consolidated rule**

The German Dual Consolidated Loss rule has been modified in order to be applicable. Please refer to our special "Focus" below.

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MALTA : Continuation of Companies

Global business is by definition internationally mobile. There may be a number of reasons such as regulatory, commercial, business environment, taxation, a shift in markets or improved logistics why a business may wish to move from one jurisdiction to another. It is normally a combination of such motivations.

Migrating or continuing a company from one jurisdiction to another is an efficient way of achieving this objective. The advantage of this procedure, over the setting up of a new entity, is that the company being continued retains its legal personality intact and therefore its legal title to assets and its obligations under contracts, for example, remain unchanged and do not require to be assigned.

It is fundamental that laws, regulating and allowing such a cross border movement of a company, are present in both the country of origin and the country of destination, for legal continuity to take place.
The relevant regulations in Malta are the Continuation of Companies Regulations (Subsidiary Legislation 386 of 2005).

PROCEDURE

Eligibility:

- A body corporate formed and incorporated or registered under the laws of an approved country or jurisdiction similar in nature to a company known under the laws of Malta;
- The authorised and issued share capital of the body corporate is of at least € 1,165;
- The company has at least one secretary who is a physical person.

Registration:

A number of board resolutions and documents need to accompany the registration of the company in Malta. A Provisional Certificate of Continuation is issued by the Maltese Registrar. The company has a six month period to provide evidence to the Registrar that the company has ceased to be registered in the country of origin. Upon the surrender to the Registrar of the Provisional Certificate of Continuation, the Registrar shall issue a Certificate of Continuation confirming that the company has been registered as continuing in Malta, as from the date of the provisional registration.

Special Provisions:

- Companies which are licensed in the foreign jurisdiction need to provide evidence of the consent of the authority under which they are licensed, that the said company can be registered as being continued in Malta;
- Special provisions apply to public companies which are to be continued in Malta;
- If the shares of the foreign company are held by a foreign nominee/trustee, the provisions of the Trusts and Trustees Act have to be abided by.

TAXATION

Malta applies a 35% Income Tax on company profits. The taxation paid by companies on their profits is considered to be a Withholding Tax at Source in so much as it relates to the taxation on profits underlying the payment of a dividend. This tax treatment allows the share holder to claim a tax refund from the Inland Revenue Department should such Tax at Source exceed the receiving share holder’s own tax liability.

HOLDING COMPANIES

The continuing of holding companies to Malta will bring with it the following benefits.

- Participation Exemption rules exempt from tax dividends received and capital gains relating to holdings equal to or greater than 10% - other conditions apply.
- Malta has signed more than 60 double taxation treaties.
- Malta is an EU member state and therefore qualifies under the EU parent-subsidiary and the EU royalties-interest directives.
- There are no withholding taxes in Malta on payments by a Maltese company of dividends, royalties and interest. This is a matter of domestic tax law.
- There are no thin capitalisation rules in Malta.
- Unilateral relief applies in the case of dividends that do not qualify under the participation exemption rules.
- Unilateral relief also applies on royalty or interest revenues.

TRADING COMPANIES

The continuing of trading companies to Malta will bring the following benefits.

- Tax deductibility of expenses is generally based on the commercial content of the transaction and the matching of expenses and revenues and not on black or white lists of countries.
- Malta trading companies are normally owned by Malta holding companies. In a scenario where the ultimate owners of the business are non Maltese resident and other conditions are met, the Malta holding company could apply for and receive a tax refund of 6/7ths of the Income tax paid on the profits underlying the dividend distribution received.

TAX RESIDENCE

Malta companies are considered to be tax resident on the basis of their being registered in Malta and the IRD will issue a tax residence certificate applicable under Malta’s double taxation treaties. In order to also satisfy internationally acceptable tax rules, however, it is important that the board of directors meets in Malta and key management functions are performed in Malta. Moreover the Malta companies need to have adequate resources of man power and premises in line with their activity. Guidance can be provided on these important matters.

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Country Review: ESTONIA

ESTONIA : The most significant changes that entered into force in Estonia on the 1st of January 2013 are related to the tax authority's investigation powers and value added tax. The new rules on value added tax change the place of supply of certain services and the requirements for invoices.

Additionally the excise duty of alcohol and tobacco has been raised.

As a third change the Parliament of the Republic of Estonia has exempted the residential land from land tax. Below is outlined the main changes in taxation having impact on both business and individuals.

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In 2013 several changes entered into force in the taxation field. This present overview highlights the changes act by act, starting from the most general and then moving on to more specific areas.

On an introductory note it should be mentioned, that the Estonian tax system is divided between state taxes and local taxes. State taxes are uniform throughout Estonia, but the local taxes (method of collection as well as the tax rates) may differ from one city to another.

Taxation Act

Firstly, two changes from end of 2012 will be mentioned. On 1st of December 2012 the amendments entered into force that changed the structure of the tax authorities. Prior to that change there were structural bodies of the Tax and Customs Board. Following this amendment, however, these bodies were eliminated and now there is one single tax authority – Estonian Tax and Customs Board (hereinafter the **Board**). Nonetheless there is still representation in the different regions in Estonia, simply they all form part of the Board.

As of 1st of December 2012 the Board may carry out the procedures in the offices of the Board that are located closest to the taxable person, unless agreed upon otherwise. It is also possible to provide oral explanations over a video conference (the Board has to have live feed).

End of 2012 also saw a change in the review of challenge procedure. If the challenge is dismissed, a judgment on the challenge shall be reasoned and contain an explanation concerning the procedure for further recourse. Up to that point, there was no such obligation.

Starting from 1st of January 2013 additional changes to the Taxation Act entered into force. The taxation act is supplemented with chapter 7^1 which regulates the powers of the Board. Currently, the Board has powers to carry out inspections if it suspects irregularities in the calculation of taxes. Up to now, the Board did not have the powers to carry out surveillance and conduct covert cooperation.

Starting from the 1st of January 2013 the Board may submit a request to the electronic communication provider in order to receive information regarding the necessary data for identifying the end user, except related to the actual fact of forwarding of messages. The Board may submit the request only upon the approval of the public prosecutor.

The Board may collect personal data in a covert manner **only with the written consent of the person.** The person shall be notified after such collection of data and the person, if he/she so requests, shall have the right to review the data collect.

Also the Board shall have the right to involve informants and use covert agents on the same grounds as the police and boarder guard. The head of the Board will give a written approval for the use of covert agents.

At this point in time, it should also be observed that there are some significant changes proposed and planned relating to the inspection powers of the Board. Currently, this amendment is still being discussed in the inter-ministerial level, but it is expected to be adopted during the second half of 2013.

Since this proposal is currently not in the Parliament, the present paper aims to provide only in general an overview of the changes. The changes relate to the notification of the taxable person by the Board and also the electronic delivery of administrative acts.
The proposed changes will also change the periods of limitations. The limitation period for assessment of taxes, in cases of intentional failure to withhold taxes is shortened to 5 years. The limitation period for the compulsory execution of claims is shortened to 5 years.

The proposal will significantly also affect the interest due to the taxable person. If the Board has extended the period of examination for refund, then the taxable person shall not receive the interest.

Once these changes enter into force a more in depth analysis can be conducted.

Income Tax Act

In general, in Estonia, the income tax rate is 21% of the taxable income. This percentage is set to change in 2015, when it will be lowered 20%.

The changes in the income tax relate mostly to the founded pensions; however, it should be noted that there are also other changes.

Income Tax Act § 13(3) is amended, and accordingly the representation fees of the members of the Government are not taxable with the income tax.

The remainder of changes in the legislation reflect the taxation rules regarding payments from the pension funds.

Value Added Tax Act

The changes of the value added tax (VAT) act also enter into force on the 1^{st} of January 2013: these changes relate to the determination of place of supply of services and the required data for the invoices.

First the place of supply of services with regard to VAT is updated. The place of supply of services is Estonia, if a person established in Estonia hires, leases or usufructs a means of transportation to a person that is not a taxable person within any Member States or who is not a third country person engaged in business. This provision would be applicable to situations where the person established in Estonia hires, leases or usufructs a means of transportation to a natural person.

The place of supply is Estonia also when the pleasure craft is leased, hired or usufruct by a natural person from a service provider established in Estonia (VAT Act § 10(2) p 6^1).

The place of supply is not Estonia in hiring, leasing or giving to usufruct a means of transportation or a pleasure craft, where the service provider is not established in Estonia (VAT Act § 10(4) p 4^2 and p 4^3).

The regulation regarding invoices will change also starting from 1^{st} of January 2013. Accordingly, if the place of supply is Estonia, the taxable person is obligated to issue an invoice. The invoice must be issued also in circumstances where the place of supply is in another Member State and the goods or services are taxable in that Member State. The taxable person does not need to issue an invoice, if the **recipient of the goods or services issues an invoice instead** (VAT Act § 37(1^1)**.**

In cases of intra-community supply or supply to a taxable person of another member state, the Estonian taxable person is under an obligation to issue an invoice upon shipping or **by the 15th of the month following the provision of services or making available of the goods** (VAT Act § 37(2^1)).

The changes also require in detail to specify the basis for taxation on the invoice. For example, if the recipient of the goods has to pay the VAT, the invoice needs to clearly specify “Reverse charge” (*in Estonian “pöördmaksustamine”)*. If the issuer is using the special regime available to travel agents, the invoice needs to be maker with “margin scheme – travel agents” (*in Estonian “kasuminormi maksustamise kord-reisibürood”).*

The markings described above may be substituted with other clearly understandable marking (VAT Act § 37(8^1)).

Social Tax Act

No significant changes will enter into force in 2013 regarding the social tax.

It should be observed, that the social tax is payable by the employer and the current tax rate is 33% from the taxable amount.

Alcohol, Tobacco, Fuel and Electricity Excise Duty

The excise duty rate on tobacco will change in 2013.

As of January 2013, th**e fixed rate is 47,63 euros** and the proportional rate is 33% of the maximum retail price of the cigarettes.

From 2013 the excise duty rates will be:

88 euros per one thousand cigarettes;
211 euros per one thousand cigars of cigarillos;
61 euros per one kilogram of the tobacco product.

Also the excise duty rate for alcohol will be raised in 2013.

Land Tax

In accordance with the Land Tax Act, the owner of the land has to pay land tax. The taxable rate may vary between 0,1 to 2,5 per cent of the taxable value of the land annually. The local governments will decide what will be the rate within their administrative territory. The Board is also the collector of this tax.

Starting from 1st of January 2013, the Estonian Parliament has granted a tax waiver to all the home owners. Residential land or profit-yielding land is exempt from land tax to the extent on 0,15 hectares in the cities, cities without municipal status, towns, small towns and areas designated densely populated areas. Outside such areas the exemption is applicable to 2,0 hectares of land.

In order to receive the tax exemption the person must be registered in the population registry as living in that land. The local government body will grant the tax exemption on the basis of the application of the applicant.

Local taxes

Additionally, in Estonia, there are local taxes which may affect doing business in Estonia.

In Tallinn, the city council has implemented the Advertising tax. Starting from 1st of January 2013, the rate of the advertising tax is 0,45 euros per calendar day for each square meter of the advertisement. As an example, if a company exhibits a 5 square meter advertisement for 10 days the payable tax is 22,50 euros (5×10×0,45).

It should be stressed that the local tax authorities have the same rights and powers as the state tax authorities. This means, that if the company does not pay local taxes, the local tax authority may carry out inspections and tax audits. Also interest of 0,06% per day is payable on the late payment of the taxes.

NOTE! Any tax arrears (state or local tax arrears) over 100 euros will be an obstacle when participating in public procurement.

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TAG TAX
EUROPEAN REPORT

Country Review: LATVIA

LATVIA : Parliament of the Republic of Latvia has made significant changes in taxation sphere, especially in regard to personal income tax, corporate income tax and value added tax. Most of the changes have been in force since January 1, 2013.

There are set new rules in the income tax area in order to make Latvia more attractive for holding companies, but offshore territories less attractive. In the area of value added tax the new law was passed in order to substitute old law which, was amended 35 times and accordingly became hard to apply.

Ministry of Economics has also announced its future top priorities: new incentives for investments and reduction of taxes applicable to employees.

Below are outlined only the most important changes, which effect business and individuals.

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1. Personal income tax

- **Reduction of personal income tax rate**

On January 1, 2013 the personal income tax flat rate was reduced by 1% and accordingly it is 24% now. The reduction of the flat rate was made under the amendments to the Law "On Personal Income Tax" passed by Latvian Parliament on May 24, 2012.

According to the priorities of Ministry of Economics personal income tax flat rate is considered to be reduced in 2013 to 24%; 2014 to 22% and in 2015 to 20 %.

- **Advance payments to employees – subject to personal income tax**

According to another amendment to the Law "On Personal Income Tax" passed by Latvian Parliament on November 15, 2012, starting from January 1, 2013 advanced payments to employees made by the employer will be treated as taxable income of employee, unless the employee has submitted to the employer expense documents, which prove that advance payment is used for work purposes. The expense documents have to be submitted within 90 days from the day, when the advance payment is transferred to the employee, but in case of business trip from the day, when the business trip ends.

The new regulation is applicable if the total amount of advance payment exceeds 285 EUR.

The Ministry of Finance stated that the amendment was passed in order to limit schemes used for tax evasion purposes.

- **Stock options to employees – no more subject to personal income tax**

Starting from January 1, 2013 the stock options granted to the employees within motivation scheme will not be subject to personal income tax, but specific rules must be fulfilled, for example:

- the stock option must granted for the period not less than 36 months;
- employment relations must exist during the whole above mentioned period of time.

- **New rules how to tax income earned in offshore**

As well on January 1, 2013 there shall be new rules in force in regard of taxation of income earned in offshore territories.

Up to January 1, 2013 the income earned in offshore becomes a subject to personal income tax when the money was actually received by Latvian tax resident (private person) from offshore. Now under the new rules the subject of personal income tax is respective part of profit, which is earned by offshore company, trust or other entity and due to Latvian tax resident (private person). The new rules are applicable in case when Latvian tax resident (private person) owns more than 25% of offshore company, trust or other entity. As well it must be noted that it is not relevant whether the due part is paid or not to Latvian tax resident (private person).

The new rules are also a part of government's strategy under which it is considered to limit tax evasion schemes and make less attractive offshores.

2. Corporate income tax

- **Advantages for holding companies**

On January 1, 2013 several new rules of the Law "On Corporate Income Tax", which were adopted by Latvian Parliament the on December 15, 2011, came into effect, but some of rules will come into effect later.

The idea of new rules is to set a regulation which promotes incorporation of holding companies in Latvia.

According to the new rules there are set following corporate income tax exempts:
- dividends paid to non-resident - effective since January 1, 2013;
- dividends received from non-residents - effective since January 1, 2013;
- interest paid to non-resident (related party or permanent establishment, which is a resident of other EU member state) – will be effective starting from July 1, 2013;
- royalties for intellectual property paid by Latvian company to non-resident (related party or permanent establishment, which is a resident of other EU member state) - will be effective starting from July 1, 2013.

In addition it must be noted that, starting from January 1, 2014 interest and royalties paid to any non-resident will not be a subject of corporate income tax.

The rules mentioned above are not applicable in case, when offshore company is beneficiary or payment is made by offshore company.

3. Value added tax

On January 1, 2013 the new law "On Value Added Tax" replaced the old Law "On Value Added Tax", which was passed in 1995 and was amended 34 times.

According to the information provided by government institutions there are no crucial changes in the new law, but most of changes are editorial, which specifies the rules of old law, as well application of new law must be easier than the old one. There are also some new rules included in the new law comparing to the old law, which are favourable for tax payers, for example:
- possibility to apply value added tax to transactions of used immovable property (previously it was not possible);
- tax payer is entitled not to correct input value added tax in case of property destruction or theft;
- the right for the buyer or service receiver to prepare the value added tax invoice himself.

In the new law there are also more precisely set rules for electronic invoices comparing to old law.

4. Taxes and duties

On January 1, 2013 new rules in the Law "On Taxes and Duties", which were adopted by the Parliament of Latvia on June 21, 2012, came into effect.

According to the new rules threshold for transactions in cash is reduced from 4269 EUR to 1423 EUR and upon reaching it the transaction must be declared to state revenue service.

As well the threshold, upon reaching of which it is not allowed to perform transactions in cash, was reduced from 14229 EUR to 7115 EUR.

5. Vehicles usage tax and company car tax

Starting from January 1, 2013 affiliates of foreign companies are entitled to pay Company car tax and accordingly usage of company car for private purposes by the employees of affiliate will not be subject to personal income tax.

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Country Review: LITHUANIA

LITHUANIA : Quite a few new important amendments of the laws of the Republic of Lithuania are in force as of 1 January 2013 and 1 March 2013. Most significant changes were made in regard to immovable property tax, personal income tax, land tax and excise duty – it has been raised for alcohol and tobacco. Additionally several new conventions on double taxation have been signed.

Furthermore the permission of the Council of the European Union to calculate reverse charge of VAT on acquisitions from enterprises in bankruptcy or restructuring has been extended.

The key new developments are presented in brief below.

Amendments to the Law on Land Tax came into force

No XI-1829 of 21 December 2011

Key amendments of the recast Law on Land Tax (hereinafter referred to as the Law) are as follows:

The land tax base shall be the taxable amount of land, i.e. the average market value of land determined based on land value maps; also, the value of land determined during the individual assessment of land.

In 2013-2016 tax periods the taxable amount of land shall be the value determined by deducting tax reliefs from the average market value or the individually assessed land value (Article 8(2) of the Law). The coefficient of 0.35 shall be applied when determining the agricultural land tax. This coefficient shall not be applied to abandoned agricultural areas. No coefficient has been established for land for other uses.

It should be noted that in 2013-2016 tax periods the tax on agricultural land shall not exceed (with certain exceptions) LTL 100 per 1 ha. Payers of land tax shall be both natural persons and legal entities as well as management companies of the collective investment undertaking.

Amendments to the Law have also expanded the list of entities and undertakings subject to land tax relief. Once the amendments come into force, the exemption from the land tax shall be granted to bankrupt enterprises and the Bank of Lithuania, as well as land in shared use located within the territory of recreational gardening communities; land tax exemption shall also be granted to land within the territory of archaeological, memorial, immovable cultural heritage objects included into the Register of Cultural Property, except for the land of built-on areas, roads and water bodies located within the said territories, and the land within the territory of immovable works of art, historical and architectural objects of cultural heritage included into the Register of Cultural Property and located in rural areas, also the land of ethnographical homesteads within the territory of ethnographical villages.

Amendments to the Law on Immovable Property Tax came into force

No XI-2178 of 29 June 2012

The range of the immovable property tax rate has been amended. Once the amendments come into force on 1 January 2013, the immovable property tax rate shall be 0.3-3% of the tax value of immovable property as of the tax period of 2013 (prior to the amendments the tax rate was 0.3-1 % of the tax value of immovable property), unless Article 6 of the Law on Immovable Property Tax provides otherwise. It should be noted that the immovable property tax rate shall be determined by municipalities.

It should be noted that Vilnius City Municipality has approved the following new land tax rates for 2013: 0.3% for residential land parcels, 0.4% for land used for commerce, industry and warehousing, and 3% for land that is not being utilised.
These amendments came into force on 1 January 2013.

Amendments to the Law on Personal Income Tax came into force

No XI-2412 of 13 November 2012

The adopted Law Amending the Law on Personal Income Tax supplements the list of non-taxable income. Once the amendments come into force, the following shall be exempt from the income tax: income not exceeding LTL 6,000 over the tax period received as the compensation for services provided by issuing a receipt, when the provision of such services is set forth by the Law on the Provision of Agricultural and Forestry Services by Issuing a Receipt (Article 17(55)).

Amendments were also made to provisions of Article 22 of the said Law, which now state that income received as the compensation for services provided by issuing a receipt, when the provision of such services is set forth by the Law on the Provision of Agricultural and Forestry Services by Issuing a Receipt, are classified as income of Class B that has to be declared, calculated and paid by the permanent resident himself/herself. Income tax should be calculated and paid on the amount exceeding the non-taxable income of LTL 6,000 over the tax period.

The said amendments are related to the provisions of the Law on the Provision of Agricultural and Forestry Services by Issuing a Receipt of the Republic of Lithuania effective as of 1 April 2013.

Amendments shall apply to the calculation of income and tax returns pertaining to tax periods as of 2013.

Amended Law on Excise Duty

No XII-80 of 20 December 2012

The Law Amending Articles 30, 31 and 37 of the Law on Excise Duty increased excise duty rates for cigarettes (from LTL 140 to LTL 148), cigars and cigarillos (from LTL 84 to LTL 88). These amendments shall come into force on 1 March 2013. Excise duty rates for diesel fuel have also been increased (from LTL 1,043 to LTL 1,140), effective as of 1 January 2013.

Amended Law on Value Added Tax

No XII-78 of 20 December 2012

The application of the reduced 9% rate of VAT to heat energy, heating of residential premises (including heat energy transmitted through the hot water supply system), hot water supplied to residential premises or cold water intended for the preparation of hot water, and heat energy consumed for heating of the said water, has been extended to 31 December 2013. The deadline for the application of the reduced 5% rate of VAT to pharmaceuticals and medical aids has also been extended, provided the cost of acquisition of such products is fully or partially reimbursed following the procedure prescribed by the Law on Health Insurance.

Amendments to the Law also supplemented the procedure of transferring a new building or structure with exemption from the VAT: the finished building or structure shall be considered as new for a period of 24 months following the perfection of its completion as provided by the law or following its material improvement.

These amendments came into force on 29 December 2012.

Extended permission to calculate reverse charge of VAT on acquisitions from enterprises in bankruptcy or restructuring

The permission of the Council of the European Union to calculate reverse charge of VAT on acquisitions from enterprises in bankruptcy or restructuring has been extended. By its decision, the Council of the European Union permitted Lithuania to continue the calculation of reserve charge of VAT on acquisitions from enterprises in bankruptcy or restructuring, with derogation from the provisions of Directive 2006/112/EC. It should be noted that the granted permission shall be valid from 1 January 2013 to 31 December 2015. It should be mentioned that the procedure of reverse charge of VAT shall no longer apply to timber. Pursuant to the precedence of the EU law, the Lithuanian law shall have to be harmonised with the decision of the Council of the European Union.

Amendments to the Law on Tax Administration came into force

No XI-2251 of 2 October 2012

The adopted Law Amending Article 39 of the Law on Tax Administration amended the list of entities to which information about the taxpayer may be disclosed. The recast Law states that the said information may be disclosed to criminal intelligence entities. This amendment has been made based on the new Law on

Criminal Intelligence.

This amendment came into force on 1 January 2013.

Conventions on double taxation have been signed with India and Mexico

On 1 January 2013, the Convention between the Government of the Republic of Lithuania and the Government of the Republic of India for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion, and the Convention between the Government of the Republic of Lithuania and the Government of the United States of Mexico for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion became effective.

Provisions of conventions for the avoidance of double taxation provide for the taxation of income received by permanent residents of Lithuania and Lithuanian entities from the said foreign states, also income received from Lithuania, and eliminate the double taxation of income received by Lithuanian residents from foreign states.

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Germany: Cross-border double dip

The concept of double dip using a US dual residency company being tax resident in the USA and Germany or a German partnership with non-German partners permits to deduct expenses in two tax jurisdiction at the same time. This application of this double-dip is now narrowed.

Tax Planning with Hybrid Entities

In a crossborder structuring, hybrid entities are often used in order to reduce the effective tax rate of a group. Besides the possibility to opt for a taxation as a transparent partnership or a corporation ("check the box" in the USA or "option" in France) the dual residency of an entity established abroad with management in Germany was used in order to deduct expenses in the country of establishment (depending on the tax treatment of the business income of a German partnership under national law) as well as in the country in which the trade business is performed.

In addition, the German concept of taxation of partnerships which includes income and expenses of the partners (deemed business property) provides similar tax planning opportunities.

In order to reduce double-dip opportunities as well as untaxed income, Germany codifies more and more rules for hybrid entities and/or income/expense. The one just adopted is as follows:

Dual loss consolidated rule

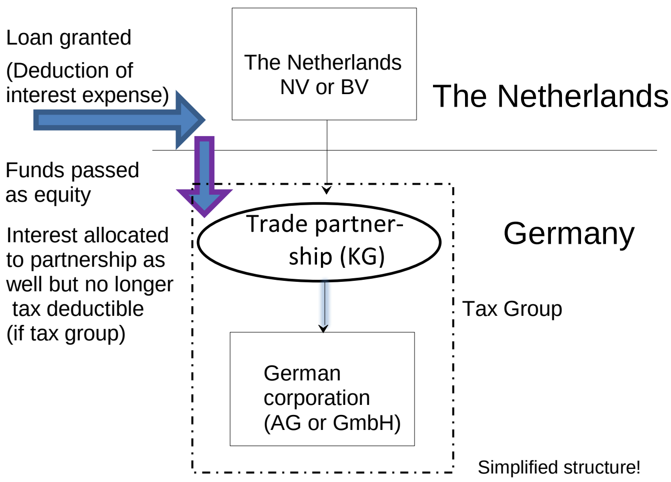
The German Dual Consolidated Loss rule had been misworded and was not effective. Now it has been modified in order to be applicable. According to the new regulation, negative income of a member of the tax group (Organschaft) will be disregarded to the extent that the negative income is considered for tax purposes in a foreign country at the level of the head of tax group, the controlled subsidiary or another person.

This new rule shall apply to all previous fiscal years which are not yet definitively assessed. However, it is disputable whether the retroactive application is in line with the German constitution.

The Dual Consolidated Loss rule is applicable if there is a tax group. It does not require a dual residency of the group members.

A simplified example:

In case of a partnership structure the foreign (Dutch) partner received a loan which was passed as equity for the share acquisition. The interest expense is deductible in the Netherlands and was entirely deductible in Germany as well (100% for corporate and 75% for trade tax purposes) as long as the expense is below the interest limitation (€ 3 Mio. threshold or up to 30% of the EBITDA):



Way out route

Going forward, an acquisition using a German tax group might not be the best tax efficient structuring. However, there are still ways to structure tax efficiently. Before setting up or amending structures like this we strongly recommend contacting your tax adviser.

The aforementioned only provides a brief explanation of the double-dip structures in Germany.

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