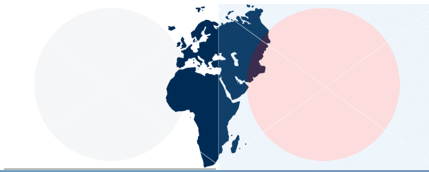


EMEA NEWSLETTER

Tenth Edition: Mar 2016

EMEA TAX NEWSLETTER

Inside this issue:

Welcome

Dear Friends and Colleagues,

As I am writing my first introduction to our EMEA Tax Newsletter, it seems that spring has finally reached even the colder parts of our region. With temperatures rising and the sun shining (at least occasionally here in Hamburg), it feels like everything is starting afresh and we are another step closer to a wonderful season that lies ahead. For our EMEA region, apart from new quarterly newsletters, this means particularly the much-awaited EMEA meeting in Vienna in June as well as the annual Tax Meeting later on in the year. Above all, I am sure it will bring many lively and ongoing dialogues and the sharing of information which I trust I am not the only one looking forward to!

The first edition of the newsletter in 2016 features articles from Italy, Romania, the UK, the Netherlands and Germany about recent changes in tax legislation and double taxation treaties. Many thanks to all who have volunteered to contribute articles to this edition, as well as to Tim Morris and Hayley Davies for managing it all. Please also do continue to contribute for future editions of this newsletter, so we can share knowledge and expertise amongst our members.

My fellow committee members and I look forward to meeting many of you at the conference in Vienna which is only two months away now. In the meantime, if there is anything we can do for you or if you have any queries or suggestions, we will be happy to discuss and assist, just let us know.

Last but not least, I would like to use this opportunity to say thank you to my predecessor Angelos Theodorou for his excellent work. Good to know that the International Tax Committee is now in his safe hands!

Petra Owen
EMEA Tax Committee Chair
E: Petra.Owen@hansapartner.de

Germany & The Netherlands Update

Real estate clause in new Double Taxation Treaty between Germany and the Netherlands to effect investors

A new tax treaty between Germany and the Netherlands has finally come into effect as of 1 January 2016, more than three years after the treaty was signed.

An important aspect of the new treaty is a real estate clause in the capital gains article that will affect German inbound real estate investors. Under the new regulation, capital gains derived from the disposal of shares in a real estate company may be taxed in the state in which the property is located rather than in the state of residence of the seller.

The new regulation effects German inbound real estate investors with a Dutch holding company as shareholder of a German GmbH which, in turn, owns real estate in Germany. While capital gains arising from the disposal of shares in the German GmbH previously were not taxable in Germany (and would even fall under the Dutch participation exemption), under the new treaty 5% (or even 100% in case of a short-term investment) of such gains may be subject to corporate income tax in Germany.

In terms of the real estate clause, the treaty between the Netherlands and Germany is different from the OECD model treaty and from any other German treaties. Details of the real estate clause provide that:

- it applies if the (real estate) company derives more than 75% of its value, directly or indirectly, from immovable property.
- Immovable assets on which the real estate-owning company or its shareholders carry on their business will not be included when determining the 75% threshold.

The right to taxation however remains with the country of residence if:

- the seller is stock-listed
- the seller owns less than 50% of the shares

Germany & The Netherlands (cont.)

in the real estate company prior to the first sale of shares

- capital gains arise due to a corporate restructure.

Due to ambiguous wording, at present it is unclear whether the immovable property has to be located in the same country as the real estate company. According to the German language version, the location of the property in the company's country of residence is irrelevant (e.g. property located in Austria), it is sufficient that the real estate company derives more than 75% of its value from immovable property, no matter where this is located. The Dutch language version, however, explicitly provides that the property has to be located in the country of residence of the real estate company. It remains to be seen whether the German version will be amended.

For any queries or concerns regarding the new treaty rules, please do not hesitate to contact us.

Nicola Ammon
Hansa Partner
Hamburg
E: Nicola.Ammon@hansapartner.de

Andre Buijsman
Flynth
Almere
E: Andre.Buijsman@flynth.nl

Italy—Stability law for 2016—Highlights

Corporate income tax

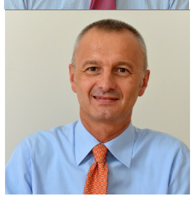
- Specific purchase of new plants, machinery, equipment and other tangible assets performed during the period October 15, 2015 – December 31, 2016 can benefit an extra depreciation rate – solely for corporate income tax purposes (IRES) – equal to 40%.
- It is possible – within next June 30, 2016 – to step up the value of participations held in unlisted companies on January 1, 2016 by paying a substitute tax equal to 8% of extra value as determined. An appraisal of a professional is requested in order to define the new value of participations.
- Effectively from the fiscal year following the ongoing one as at December 31, 2016, the standard rate for Corporate Income Tax (IRES) will be decreased from actual 27,5% to 24%.
- Effectively from the fiscal year following the ongoing one as at December 31, 2016, the reduced withholding tax applied to dividends to a domestic company and subject to Corporate Income Tax in another EU member state which foreseen an adequate exchange of information with our country, will drop down from actual 1,375% to 1,2%.

Value added Tax

- Standard and reduced VAT rate are not increased for year 2016.
- Assuming that the spending review actually in progress in Italy will not be able to generate expected budget resources, from January 1st 2017 the reduced tax rate will increase from actual 10% to future 13%. On the other hands the current standard VAT rate will increase from actual 22% to 24%. A further increase or standard tax rate to 25% is expected as well to take place starting from January 1st 2018.
- Supplies of publications identified by ISBN and / or ISSN code delivered in electronic way are subject to a reduced VAT rate equal to 4%.

Social security contribution

- Employers which decide to hire employees with no limitation period from January 1st 2016 to December 31st 2016 can benefit a 40% exemption with regard to related social security contribution, for 24 months maximum and with a cap equal to Euro 3.250,00 per year.



Marco Borioli and Giorgio Colombo
Borioli & Colombo Associati
Milan
T: +39 02 2900 5484
E: marco.borioli@borioli-colombo.it

E: giorgio.colombo@borioli-colombo.it

Perspective of Transfer Pricing Romania 2016

New tax legislation clarifies the approach of Transfer Pricing in Romania starting with 1st of January 2016:

- transaction thresholds,
- terms for preparing,
- content and deadline for requesting transfer pricing documentation
- related procedure for adjustment of transfer prices.

Order no. 442/2016 regarding the transfer pricing documentation and the procedure for the adjustment/estimation of transfer prices was issued by the President of the National Agency for Fiscal Administration and published in the Official Gazette no. 74 on 2nd of February 2016.

Annual mandatory transfer pricing documentation by large taxpayers carrying out transactions with related parties of a total annual value above certain thresholds has to be prepared on an annual basis within the legal deadline for submission of the annual corporate income tax returns. This will be applied as of 2016.

Annual transfer pricing documentation is required for companies cumulating the value of transactions with all related parties as follows:

Threshold, cumulative, excluding VAT	Type of transactions
EUR 200,000	Interest for financial services
EUR 250,000	Rendering of services
EUR 350,000	Acquisitions/sales of tangible or intangible assets

For this category of large tax payers, the transfer pricing documentation must be provided to the tax authorities within 10 days from request date, but not earlier than 10 days from deadline set for its preparation

Request of Transfer Pricing documentation:

It can be requested during a tax audit or out of the scope of the tax audit through a direct notification.

Preparation of transfer pricing documentation by other categories of tax payers is obligatory if the following threshold of cumulative values excluding VAT are exceeded:

Threshold, cumulative, excluding VAT	Type of transactions
EUR 50,000	Interest for financial services
EUR 50,000	Rendering of services
EUR 100,000	Acquisitions/sales of tangible or intangible assets

For this category of tax payers the deadline for prepare documentation is set by the authorities between 30 and 60 days, with possibility of a single extension of at most 30 days.

The transfer pricing documentation will not be requested for transactions documented with an Advance Pricing Agreement (APA).

Content of the transfer pricing documentation is significantly developed and extended compared with previous Order 222/2008 governing transfer pricing.

The amendments of OECD transfer pricing guidelines and OECD Action Plan on Base Erosion and Profit Shifting (BEPS) are implemented in Romanian actual legislation.

It is obligatory to be disclosed also the amount of payments and /or receipts associated with each transaction performed by the taxpayer towards each related party.

Adjustment of transfer pricing and related taxable basis will be done taking into consideration the median value of the arm's length range.

How this will affect companies?

The Companies should review all their transactions with related parties, start preparing and collecting all necessary information in order to be able to achieve complete transfer pricing documentation in due time for significant transactions.

For all transactions, especially in case of cross border transactions and those with related parties becomes crucial to document and sustain the economic substance and reality of transactions.

We consider challenging the substance of cross border transactions with related parties will be one of possible actions of tax authorities in the near future and therefore, the Companies should pay attention to preparation of related documentation appropriately.

How can we help?

Our team of professionals will gladly advise our clients to set the right business strategy, principles and policies for applying arm's length and complying with transfer pricing rules minimizing at the same time tax risks.

Iulia Lascau
EuroGlobal SEE Audit
Budapest
T: +39 02 2900 5484
E: iulia.lascau@euglobal.eu

UK VAT Changes

Wholesale telecommunications brought into anti-fraud provisions

Since 1 February 2016, the sale of wholesale telecommunications services in the UK has been subject to the reverse-charge mechanism for VAT. The new measure has been introduced in an attempt to prevent such transactions being used in 'missing trader fraud' which costs the UK government millions of pounds each year. Examples of wholesale telecommunications are defined as airtime carriers, network operators, message hubbing providers, SMS and voice aggregators.

Typically these services are purchased from another EU state at the zero-rate of VAT, and are then subject to a chain of sales in the UK by several companies. The companies involved in missing trader fraud then disappear without paying over any output tax, and having already claimed a VAT refund from HMRC. The whole series of sales and purchases can occur on the same day, making it very hard for HMRC to detect any fraud.

To combat this type of fraud, the sale of wholesale telecommunications is now subject to the domestic reverse charge, so that charging and accounting for the VAT on these transactions will be the responsibility of the customer. These arrangements have existed for some time for certain other goods, such as mobile phones, computer equipment and wholesale gas and electricity supplies.

The new measure was announced without prior warning, due to the anti-fraud purpose behind the legislation. For this reason, HMRC have announced that they will adopt a 'light-touch' when considering penalties for non-compliance, where businesses have made a reasonable effort to comply with the new rules.

Nevertheless, care must be taken to make clients aware if they are involved in this industry as many will not be aware of the surprise change in rules.

UK VAT changes for overseas businesses

A couple of further VAT changes were announced in the recent Budget (2016) that will potentially affect overseas businesses supplying goods to the UK.

The first strengthens HMRC's ability to insist that an overseas business has a UK VAT representative that is jointly and severally liable for the VAT debts of the business, in order to improve HMRC's ability to collect VAT where non-UK businesses make distance sales into the UK.

The second measure has been introduced to tackle the non-registration of overseas businesses making distance sales into the UK via online marketplaces. HMRC will now be able to hold the online marketplace jointly and severally liable for the VAT debts of the seller.

Whilst HMRC have announced that they only intend to use these new powers on the 'highest risk cases' in an effort to tackle repeated non-conformity, traders and online intermediaries both need to be fully aware of the new rules.

Tom Blenkinsop
Cassons
Manchester
E: tom.blenkinsop@cassons.co.uk

UK Tax Update

Personal Tax

Personal Savings Allowance

A new personal savings allowance is to be introduced. For a basic rate taxpayer, this will exempt from income tax the first £1,000 of otherwise taxable savings income, such as bank and building society interest. For a higher rate taxpayer, only the first £500 will be exempted, but the allowance will not be available to additional rate taxpayers (those with taxable income in excess of £150,000). However, at the same time, the deduction of basic rate tax at source from interest paid by banks and building society ceases, which could mean that more individuals will be obliged to complete tax returns in the future.

New Dividend Rate

In what could be seen as an assault on entrepreneurs carrying on their business activities through limited companies, the Chancellor is, broadly, increasing the rate of income tax and dividends received by individuals by 7.5%. To soften the blow, at least in his own mind, he is also introducing a new dividend tax allowance which means that the first £5,000 of all dividends received in a tax year will be exempt from tax. However, dividends in excess of this amount will be taxed at 7.5% for basic rate taxpayers (currently 0%), 32.5% for higher rate taxpayers (currently 25%) and 38.1% for top rate taxpayers (currently 30.11%).

Therefore, all individuals who receive significant dividends from their companies (or investment portfolios) after 6 April 2016, are likely to have significantly larger tax bills!

Individuals whose income is close to the £50,000 and £100,000 income thresholds, need to be careful as additional dividends at that level could cause the loss of child benefit and personal allowances, which may result in higher effective rates of tax. We will be happy to give bespoke advice on this issue.

Landlords

Landlords also appear to have attracted unwelcome attention from the Chancellor, as they continue to struggle in the wake of the property crash.

The Chancellor has announced that he will gradually dilute the long standing principle that full tax relief would be allowed for interest paid on money borrowed in con-

UK Tax Update (cont.)

nection with the rental business, most frequently to acquire the property itself.

From 6 April 2017, the Chancellor will phase in the restriction to basic rate of tax relief on interest, in a process to which the office of tax simplification appear to not to have been allowed any input! For the tax year 2017-18, 75% of the interest will be illegible for full tax relief but tax relief will be restricted to basic rate on the other 25%. For 2018-19, 50% of the interest will attract full relief with the remaining 50% being allowed basic rate only and for the following year only 25% of the interest will attract tax relief with 25% receiving basic rate relief until the year 2020/21 basic rate tax relief will only be applied to all of the interest.

The relief will be allowed by way of a credit against the taxpayers total income, but the credit can never exceed 20% of the rental profit for the year.

Wear & Tear Allowance

The long established system of allowing relief for the depreciation of furniture and furnishings with in a rental property, by deducting 10% of the gross rents, is to be abolished form 6 April 2016. Instead, the landlord will be able to claim the full cost of replacing furniture and furnishings in the tax year in which the expenditure is actually incurred, although not the original cost of furnishing the property for rental.

<u>Inheritance Tax</u>

The Family Home

From 6 April 2017 an additional inheritance tax allowance may be available in respect of an individual's main residence, which is inherited by one of more direct descendants. Again, the allowance is being phased in over 4 years, so that the additional relief is to be allowed as follows:

2017/2018	£100,000
2018/2019	£125,000
2019/2020	£150,000
2020/2021	£175,000

The above amounts are in addition to the nil rate band of £325,000 so by 2020/2021 a residence to the value of £500,000 could potentially be exempt from inheritance tax. Indeed, any unused amount of the exemption can be transferred to the surviving spouse, so that is may be possible that a property worth £1M could be exempt from inheritance tax on second death.

However, the relief will gradually be withdrawn for larger estates. For estates worth more than £2M the relief will be withdrawn by £1 for every £2 of the excess over £2M, so that where an individuals estate is worth more than £2.35M no relief is due.

<u>Employment and Business Tax</u>

Abolition of Dispensations

From 6 April 2016 the requirement to apply for a dispensation to avoid reporting tax deductible expenses and benefits provided to employees is to be abolished. Instead specific legislation is being introduced to exempt the types of expenses normally covered by the dispensations.

This is good news for employers, although in the absence of a dispensation, for the current year, 2015-16, all expenses and benefits provided to employees still need to be reported on form P11D .

Payroll Benefits

Following legislation introduced in the Finance Act 2015 it is possible from 6 April 2016 for employers to deducts tax on most benefits in kind through he payroll system. However, to be able to use the new system for 2016/17 employers must register online with HMRC by 6 April 2016.

Employers will still have to calculate the value of the benefits provided to their employees, divide this by the number of payments to be made in the tax year and add this notional amount to their employees' salary every week or month.

If they use the payrolling benefits in kind service (PBIK) employers will no longer be required to complete form P11D for their employees, although the payrolled amounts still need to be reported from P11D(b).

However, the new service cannot be used for benefits arising on the provision of vouchers and credit cards, living accommodation and interest free or low interest loans.

The Chancellor hopes that PBIK will result in a more efficient method of collecting tax on benefits in kind and will avoid the need for frequent changes to employees coding notices during the year. While it may reduce the workload of hard pressed HMRC offices by ensuring that the correct amount of tax is paid on the benefits to which the system applies during the year, it seems hardly less inconvenient to employers than the current system.

Annual Investment Allowance

The Chancellor made much of the "permanent increase in the initial investment allowance" from the £25,000, which has previously been announced, to £200,000 with effect from 1 January 2016. Whilst this still represents a reduction in the allowance from its pre 1 January 2016 level of £500,000, a reduction of £300,000 rather than £475,000 is to be welcomed.

The annual investment allowance affords full tax relief on expenditure on qualifying plant and machinery up to the limit. Expenditure in excess of the limit in will enter the main rate or special rate pool whereby relief will be allowed at the 18% or 8% rates respectively.

<u>Pensions</u>

Reduction in Relief for Pension Contributions

The standard annual allowance, the annual amount of pension contributions on which tax relief is available, for 2016/2017 is £40,000.

However, the allowance for high earners will be reduced to between 10,000 and £40,000 if they have both "adjusted income" of more than £150,000 and "net income" of more than £110,000.

"Adjusted income" is total income from all sources, including employer and employee pension contributions (except those made under the 'relief at source' basic) and "net income" is total income from all sources excluding pension contributions (unless paid under a salary sacrifice agreement, set up on or after 9 July 2015).

Where adjusted income and net income exceed the respective thresholds, the taxpayer's annual allowance will be reduced by £1 for every £2 of adjusted income in excess of £150,000. The maximum reduction is £30,000, which would result in an annual allowance of £10,000. The level of adjusted income at

UK Tax Update (cont.)

which the maximum reduction in the annual allowance is reached, is £210,000.

Therefore we would recommend that high earners review their pension contributions before 6 April 2016 with a view to maximizing the relief in the current year.

Reduction in the Lifetime Allowance (LTA)

The LTA is the maximum value that you are allowed in all UK tax approved pension funds. The threshold was introduced in 2006 at a level of £1.5M, increased to a maximum of £1.8M, and has been eroded since then. The current level is £1.25M but is reducing to £1M with effect from 6 April 2016. The Chancellor has promised that the LTA will be indexed linked from April 2018 in line with the Consumer Price index, though is remains to be seen whether this promise is fulfilled.

If you do not already have any of the existing forms of LTA protection, you should consider whether you need to apply for one of the new forms of 2016 protection, namely fixed protection, where the allowance will be £1.25M but you cannot continue to contribute or accrue benefits, or individuals protection for those whose pensions are valued at more than £1M at 5 April 2016.

Our experts at HM Wealth Management LLP will be happy to provide further advice.

Brendan McGuckin
Harbinson Mulholland
Belfast
E: bmcguckin@harbinson-mulholland.com

Contributing firms to this edition

Germany & The Netherlands: *Hansa Partner & Flynth — **http://www.hansapartner.de/** & **http://www.flynth.nl/***

Italy: *Borioli & Colombo Associati—**http://www.borioli-colombo.it/***

Romania: *EuroGlobal Audit & Advisory—**http://www.euglobal.eu/dev5/***

United Kingdom: *Cassons—**http://www.cassons.co.uk/***

United Kingdom: *Harbinson Mulholland—**https://www.harbinson-mulholland.com/***

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