MOORE STEPHENS

Volume 6 Issue 3 – December 2016

European Tax Brief

Tax

PRECISE. PROVEN. PERFORMANCE.

Editorial

Welcome to the latest issue of Moore Stephens *European Tax Brief*. This newsletter summarises important recent tax developments of international interest taking place in Europe and in other countries within the Moore Stephens European Region. If you would like more information on any of the items featured, or would like to discuss their implications for you or your business, please contact the person named under the item(s). The material discussed in this newsletter is meant to provide general information only and should not be acted upon without first obtaining professional advice tailored to your particular needs. *European Tax Brief* is published by Moore Stephens Europe Ltd in Brussels. If you have any comments or suggestions concerning European Tax Brief, please contact the Editor, Zigurds Kronbergs, at the MSEL Office by e-mail at zigurds.kronbergs@moorestephens-europe.com or by telephone on +32 (0)2 627 1832. We should like to take this opportunity to wish all our readers a happy festive season and a peaceful and prosperous New Year.

Inside

Croatia

Changes to VAT rates

Croatia has reduced Vat rates on several categories of supply by transferring them from the 25% standard rate to the 13% reduced rate. The supplies in question include:

- Electric power
- Child seats for cars
- Public waste collection
- Funeral caskets and urns

On the other hand, restaurant services and white sugar are now to be taxed at the standard rate and not the 15% reduced rate. These changes will take effect from 1 January 2017. A year later, on 1 January 2018, the VAT registration threshold will increase from HRK 230 000 to HRK 300 000.

A previous plan to reduce the standard rate to 24% and combine the two reduced rates (13% and 5%) into a single 12% rate has been postponed, however.

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European Union

EU relaunches consolidated corporate tax (CCCTB) proposal

The European Commission has relaunched its plan for a common consolidated corporate tax base (CCCTB) as part of an ambitious corporate-tax reform package, which also includes:

- A proposal for a Council Directive on a dispute-resolution mechanism for double-taxation disputes between Member States and
- A proposal to extend the rules against hybrid mismatches in the existing Anti-Tax Avoidance Directive to mismatches involving third countries

The CCCTB proposal was first put forward in 2011, after several years' work by Commission officials and tax experts. It aims to introduce a common method of computing a consolidated taxable profit for companies operating in two or more Member States. The profits would then be allocated among the relevant states using a formula including turnover, assets and employees.

Unlike the 2011 version, CCCTB Mark II would be mandatory for the largest multinational groups.

EU launches 'blacklist' procedure

The European Union has taken the first step towards producing a list of non-cooperative tax jurisdictions, to be completed by the end of 2017.

At its meeting on 8 November, the European Council (of Finance Ministers) agreed on the criteria for the upcoming 'blacklist' of non-cooperative tax jurisdictions. The blacklist forms part of the European Union's package to combat tax avoidance.

The first step consists of drawing up a 'scoreboard' of third-country jurisdictions assessed by neutral indicators: their economic ties with the European Union, their financial activity and stability factors. They were then attributed risk factors, such as their level of transparency and potential use of preferential tax régimes.

The Code of Conduct Group on Business Taxation is now charged with using the scoreboard for 'screening' those jurisdictions thought most likely to facilitate tax avoidance and evasion, subject to the agreement of EU finance ministers. The screening process will involve dialogue with the selected jurisdictions on good governance, transparency etc. The result of these dialogues will determine which jurisdictions are to be blacklisted.

Consultation and screening of jurisdictions considered to be at risk of appearing on the final list will begin early in 2017, with a view to publishing the definitive list by the end of that year.

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EU adopts cross-border VAT reform proposals

At its meeting on 8 November, the Council of the European Union adopted the following conclusions on improvements to the current rules on cross-border transactions:

- The VAT identification number should constitute an additional substantive condition in order to apply the exemption for an intra-Community supply of goods
- The European Commission is encouraged to propose uniform criteria, as well as legislative improvements, to determine with more certainty the VAT treatment of chain transactions, including triangular transactions
- Simplification of the current VAT rules for call-off stock and
- Creation of a common framework to determine the documentary evidence required to apply the exemption for intra-Community supplies
- The quality and reliability of data used in information exchange should be improved in order better to tackle VAT fraud

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EU Court to rule on Gibraltar & UK dispute over online gambling tax

See under Gibraltar.

New digital single-market package

The European Commission is proposing a reform of the VAT rules on e-commerce, to take effect in two stages, on 1 January 2018 and 1 January 2021.

The reform is intended to remove existing obstacles to cross-border e-commerce while making non-compliance more difficult and hence boosting Member States' tax revenues.

The main proposals are:

- Allowing e-publications to benefit from a reduced rate, in line with hard-copy publications, at the option of Member States. Currently, reduced rates must not be applied to e-publications
- Introducing an EU-wide MOSS threshold of EUR 10 000, so that suppliers making cross-border e-sales to private consumers would no longer be required to register via the Mini One-Stop Shop (MOSS) if their annual sales did not exceed that value. They would instead apply their own country's VAT rules
- Introducing a General One-Stop Shop (GOSS) for cross-border online sales of goods to private consumers, effective from 1 January 2021. Currently, only suppliers of cross-border e-services, telecoms and radio and TV broadcasting services can use the MOSS system to register centrally in one Member State rather than in every Member State into which they sell
- Abolishing the current exemption from import VAT of consignments worth less than EUR 22, which is open to abuse and fraud
- Enhancing coordination of cross-border VAT audits

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France

French 3% tax on corporate distributions held unconstitutional

The 3% tax on dividend distributions that has been imposed on French companies paying those distributions has been held to be contrary to the Constitution by the French Supreme Administrative Court (*Conseil d'Etat*). The ratio for the decision was that the exemption given for companies within a consolidated tax group was not available to companies in similar circumstances but not within a tax group, and was hence discriminatory.

The Court allowed the Government a breathing space until 1 January 2017 to determine how the law should be amended to give effect to its decision and make the necessary changes.

In the meantime, claims for repayment of tax by companies affected, so far as they relate to the 2014 tax year, should be made before 1 January 2017, at which point they become time-barred.

The compatibility of the tax with European law is currently before the European Court.

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Back to the drawing board for CbC reporting in France

In a surprise ruling, the French Constitutional Court (*Conseil constitutionnel*) has held that the new law requiring multinational groups with a turnover exceeding EUR 750 million to file publicly assessable country-by-country reports is unconstitutional and void from its inception. For such reports to be in the public domain, ruled the Court, infringed business freedom by making valuable information available to competitors.

It was only the requirement for the CbC report to be publicly available that the Court held to be unconstitutional, not the requirement to make CbC reports per se. Hence reports that remained confidential to the tax authorities would presumably be acceptable.

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Germany

Anti-Treaty (and anti-Directive) Shopping Rules on Inbound Investments challenged

German withholding taxes on outgoing dividends, interest and royalties paid to non-resident taxpayers, as provided under German domestic tax law, may be reduced to preferential rates foreseen in double tax treaties or even totally suppressed by operation of either of the respective EU Directives (Parent-Subsidiary or Interest and Royalty). The exemption or the refund, which is applicable depending on the circumstances of the case in question, is to be claimed in a comprehensive application to be directed to the competent Federal Central Tax Office, either before the payments are made (where the exemption procedure is available) or after the respective tax year has expired in which a withholding had to be effected (where the refund procedure applies).

In order to avoid 'treaty shopping' by taxpayers, in which shareholders who are resident in non-EU Member States or in countries which do not have a double tax treaty with Germany in force, "shop" into an exemption or refund of German tax by interposing structures without economic function and substance in a country eligible for the preferential rates (e.g. by interposing an intermediate EU-resident holding company), Germany introduced anti-avoidance rules in 1993 which have been significantly modified in 2007 and 2012.

Under these rules it is the responsibility of the claimant to prove that all the requirements for an exemption or refund are met, in particular that either

- The shares in the German company effecting the withholding are beneficially owned by taxpayers that would also be entitled to an exemption or refund if they held the shares directly or
- The claimant actively carries on a trade or other commercial business activities and disposes of adequate business facilities and human resources respectively.

The latter criterion is not met by a mere management of assets, e.g. the management of holdings in other enterprises. Although the German Federal Ministry of Finance has issued a comprehensive circular on the most relevant aspects and issues of the law, a significant number of questions remain unclear in detail or are effectively disputed.

The European Commission expressed serious concerns as to the compliance of the 2007 rules with EU law in a press release of 18 March 2010 (2007/4435).

These and other concerns under EU law are now also shared by the Local Tax Court of Cologne, which has referred the question of whether the German rules are compatible with EU law to the European Court of Justice.

Refund and exemption applications denied or at risk of being denied based on the anti-avoidance rules should therefore be held open with reference to the arguments raised by the court. Inbound investments into German companies by investors resident outside the European Union or in countries that do not have double tax treaties with Germany should still be carefully structured in line with the existing regulations.

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Gibraltar

EU Court to rule on Gibraltar & UK dispute over online gambling tax

The dispute between the Gibraltar Betting and Gaming Association, backed by the Gibraltar government, and HMRC, the UK tax authority, is to be heard by the Court of Justice of the European Union, to which the case has been referred by the High Court of Justice of England and Wales.

The dispute concerns the 15% tax recently levied by the United Kingdom on the operators of online gambling and betting sites with UK customers. Several of these operators are based in Gibraltar. They argue that the tax constitutes an unlawful restriction on the freedom to provide services guaranteed under European law.

The issue is complicated by the status of Gibraltar itself, which, while not a member of the European Union in its own right, is a British Overseas Territory and is a 'Special Member State territory' of the European Union: the question being therefore should Gibraltar and the United Kingdom be treated as a single Member State for this purpose. It is also complicated, of course, by the United Kingdom's impending secession from the European Union, which is now likely to take place no later than April 2019.

Any judgment in favour of Gibraltar would most likely be reversed by the United Kingdom once it is no longer bound, if that will indeed be the case, by the European treaties and European law.

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Hungary

Hungary's advertisement tax considered to be unlawful

The European Commission has concluded that Hungary's advertisement tax is in breach of EU State-Aid rules, on the ground that it grants a selective advantage to certain companies.

The tax is charged at progressive rates dependent on turnover and does not allow the deduction of losses brought forward.

If Hungary does not amend the tax to take account of these objections (it has done so once already, but not to the Commission's satisfaction), the Commission will bring a case against the country to the European Court.

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Ireland

Irish Budget makes modest tax cuts

A package of measures aimed mostly at reducing personal taxes was announced by Irish Minister of Finance Michael Noonan on 11 October.

The measures include an increase in capital acquisition tax thresholds and a reduction in the Universal Social Charge, a social security contribution, mostly benefiting those on low incomes. Also announced was a further reduction to 10% for capital gains on the disposal of qualifying assets under the entrepreneurs' relief scheme, for up to EUR 1 million of gains.

The Government is also looking to introduce a share-based incentive scheme for SMEs.

The Minister confirmed the Government's commitment to the 12.5% rate of corporate tax on trading income, while also committing to compliance with BEPS.

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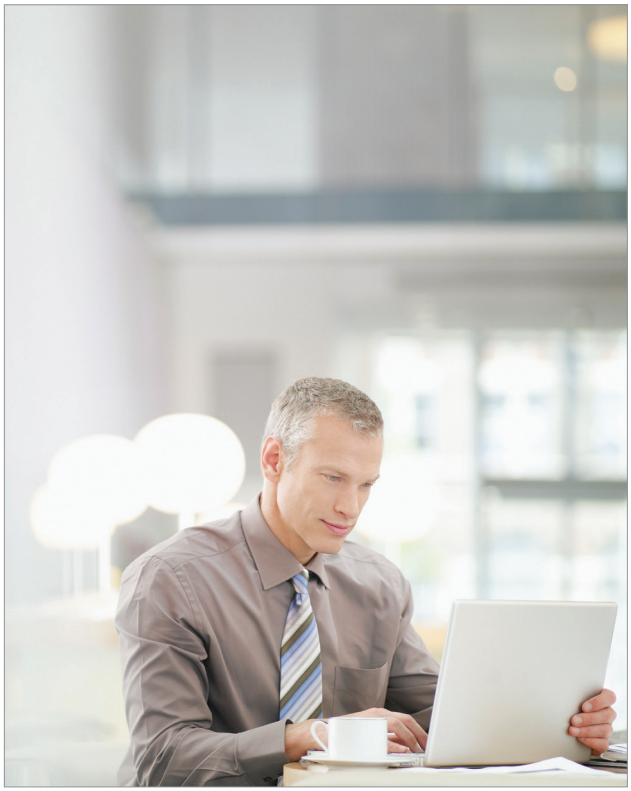

Malta

Malta to introduce group taxation for corporates

One of the package of fiscal measures presented on 17 October to the Maltese Parliament in the Government's Budget for 2017 was the introduction of tax consolidation for companies that are part of a corporate group.

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OECD

OECD publishes multilateral instrument

The Multilateral Instrument (MI), to which 103 jurisdictions are committed, has been finally agreed and published by the OECD.

Jurisdictions committed to the MI, the full title of which is the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, will use it to modify the text and the interpretation of the bilateral treaties that they have concluded amongst themselves, without the need to renegotiate each and every one.

The modifications cover issues such as hybrid mismatches, treaty abuse, the avoidance of permanent-establishment status, improving dispute resolution and arbitration.

A signing ceremony will be held in Paris in June 2017. Entry into force will take place three months after the fifth instrument of ratification, acceptance or approval has been lodged with the OECD.

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Portugal

Portuguese corporate surcharge (*derrama*) not in breach of the Constitution

The Portuguese Supreme Court has ruled against a challenge to the constitutional validity of the state surtax on the taxable income of companies.

The surtax (*derrama estadual*) is charged at one of three rates (3%, 5% and 7%) on taxable profits above EUR 1.5 million.

The Court rejected the challenge on all of the grounds that had been cited by the plaintiffs.

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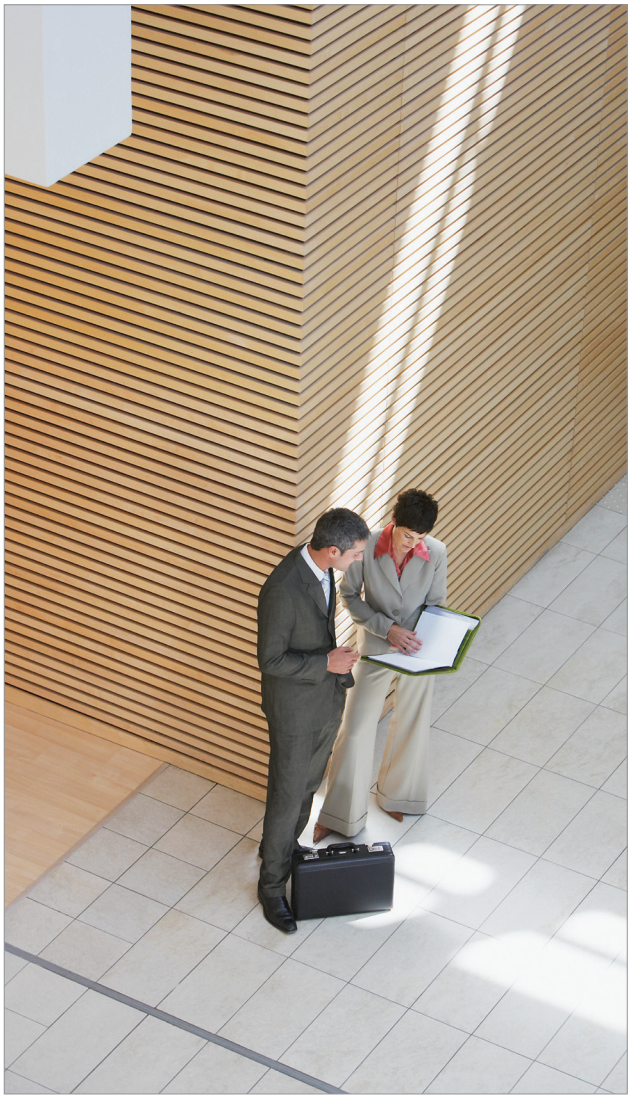

Slovenia

Slovenia increases CIT rate

Bucking a pretty powerful trend among developed nations in the last decade or so, Slovenia is to increase its rate of corporate income tax from 17% to 19% as from 1 January 2017.

The new increased rate is still below the average corporate tax rate in the European Union, however.

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United Kingdom

UK updates its APA guidance

HMRC, the United Kingdom's tax authority, has updated its guidance on securing advance pricing agreements (APAs), as contained in Statement of Practice 2(2010).

The new guidance (https://www.gov.uk/government/publications/statement-of-practice-2-2010) includes a reminder that the APA programme does not provide for:

- A ruling as to whether a permanent establishment in the United Kingdom exists or
- A determination on the applicability or otherwise of the diverted profits tax

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UK to proceed with end of permanent non-dom status

Permanent non-domicile status for UK-resident individuals is to end in April 2017, the UK Government has confirmed.

Confirmation that the changes, announced and consulted on by the Cameron government, would go ahead was given in the Autumn Statement (mini-Budget) presented by the new Chancellor of the Exchequer (Finance Minister), Philip Hammond on 23 November.

Individuals who are resident but not 'domiciled' in the United Kingdom have long enjoyed favourable tax treatment. For example, in return for the payment of an annual fee (from GBP 30 000 to GBP 90 000, depending on how long they have been resident in the country), they are taxed in respect of foreign income and gains only to the extent that that income or those gains are remitted to or enjoyed in the United Kingdom. Broadly speaking, a person has non-UK domicile if his or her long-term intention is to return to the jurisdiction whose domicile the person claims.

As from 6 April 2017, however, individuals who have been resident for at least 15 of the last 20 years will automatically be treated as if they were UK-domiciled for all tax purposes (currently, there is a broadly similar '16 out of 20' rule for the purposes of inheritance tax only).

As a consequence, all their worldwide income and gains will become liable to UK tax, and any future trusts they may settle outside the United Kingdom will no longer enjoy the exemptions currently available. A grandfathering clause will provide some protection to existing foreign trusts, but full details have not yet been published.

Individuals who were born in the United Kingdom with a UK domicile of origin but have subsequently established non-UK domicile before again becoming resident in the United Kingdom will also automatically be deemed UK-domiciled for tax purposes from the same date while they remain UK-resident, irrespective of how long they have been resident in the United Kingdom.

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UK confirms plan to impose restrictions on interest relief

The United Kingdom is to proceed with plans to introduce an overall cap on the deductibility of interest for the purposes of corporation tax, it was announced in the Autumn Statement, delivered on 23 November.

In any one taxable period, the maximum amount that may be deducted in respect of interest (whether paid to related parties or third parties) will be the higher of (a) 30% of UK EBITDA (taxable earnings before interest, tax, depreciation and amortisation) and (b) the worldwide group's ratio of net interest to accounts EBITDA.

The first GBP 2 million of net interest costs will not be restricted.

The legislation will be introduced in the Finance Bill 2017, and has already been published for consultation; it would apply from 1 April 2017.

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Currency table

For ease of comparison, we reproduce below exchange rates against the euro and the US dollar of the various currencies mentioned in this newsletter. The rates are quoted as at 22 December 2016, and are for illustrative purposes only.

Currency	Equivalent in euros (EUR)	Equivalent in US dollars (USD)
Croatian kuna (HRK)	0.1328	0.1387
Pound sterling (GBP)	1.1818	1.2345

Up-to-the-minute exchange rates can be obtained from a variety of free internet sources (e.g. http://www.oanda.com/currency/converter).

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