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European Tax Brief

Tax

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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 quarterly 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 email at zigurds.kronbergs@moorestephens-europe.com or by telephone on +32 (0)2 627 1832.

Inside

Austria

Non-deductibility of excessive remuneration held to be lawful

Austria's Constitutional Court has held that the bar on deducting executive remuneration exceeding EUR 500 000 per annum for tax purposes, introduced in March last year, is lawful.

The issue had been referred to the Court by the Federal Tax Court, which had questioned the provision's compatibility with the constitution.

The bar applies to employers, whether corporate or unincorporated, paying such remuneration to directors and other executives in an employment relationship, or a relationship assimilable to an employment relationship with the employer.

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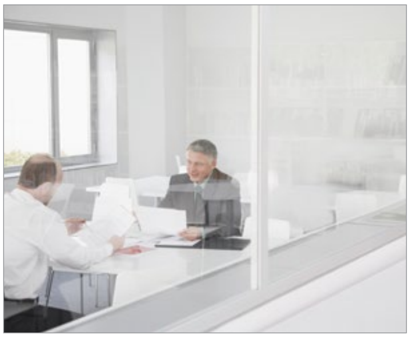

Belgium

Corporate company officers face VAT

As from 1 January 2016, Belgian legal entities acting as director, manager or liquidator of another company can no longer opt whether or not their remuneration will be subject to VAT. This marks an end of the existing administrative tolerance, as a result of European pressure.

The background

A legal entity is represented by its administrative organs. Such organs operate for the company and can make commitments in the name and for the account of the company. As organ of a legal entity, directors, managers and liquidators are in principle not liable to pay VAT, since they do not operate independently, but act under the responsibility of their immediate superior (e.g. the board of directors in a Belgian public limited-liability company). Indeed, they do not act independently in the sense of Article 9(1) of the VAT Directive (2006/112/EC).

Moreover, their remuneration is unilaterally (and thus not contractually) determined by the company for which they perform their mandate.

If a legal entity takes on a mandate as director, it can hardly be maintained that it does not operate independently. As a result, the remuneration for the performance of this mandate will in principle fall within the scope of the VAT under the Belgian VAT Code. However, for 'practical reasons', in the past, the Belgian VAT authorities accepted that such legal entities were not liable to charge VAT, if they opted not to do so and if there existed no other occasion that would cause a tax liability. For completeness' sake please note that some taxation offices did not follow this administrative tolerance.

In an additional administrative guideline, it was stipulated that the choice made was 'irrevocable' and that it needed to be the same for all mandates performed by the same legal entity.

Initially, it was the intention that the new rule would be applicable as from 1 January 2015. However, the Belgian tax authorities recognised that the application of this new rule would cause practical difficulties and problems of interpretation in several sectors. Since it would be difficult for the taxpayers concerned to comply with this new obligation in time, it was decided to defer the coming into force of the new rule to 1 January 2016.

The situation as from 2016

Under European pressure, however, it has now been decided that the administrative tolerance on the basis of which corporate office-holders could opt not to be liable to tax, will come to an end as from 1 January 2016. This is also the date which determines whether or not VAT is due.

For so-called *tantièmes*, the relevant date will be the one on which they are awarded by the general shareholders' meeting. If the award takes place in 2016, VAT will in any event be due, even if the accounting year in respect of which they are awarded ended in 2015 (as stated by the tax authorities). The foregoing will be applicable, unless the *tantième* can be qualified as a pure profit distribution (certainly if no activities have been performed). However, in practice, such a nuance will not be recognised by the VAT authorities.

The consequence is an increase of 21% in the cost for any company on behalf of which the mandate is performed and which cannot recover the VAT paid (e.g. an insurance company) or if and to the extent that the VAT cannot be recovered by a partially exempt company (e.g. a real-estate company that is liable to VAT).

Where the directorship or other office is exercised by an individual, of course, there is no change to the existing situation and no obligation (or indeed possibility) to register for VAT. For those persons, the rule that they operate as a 'dependent' organ of the company they represent is still applicable.

Conclusion

The tax authorities are currently investigating several problems of interpretation that were in the meantime reported to them and have decided to publish a more detailed administrative clarification for the sectors concerned handling such problems.

Alternatives

For companies affected adversely by the new rule, it will be absolutely key to search for alternatives. These could include the creation of a VAT group, falling below the registration threshold (i.e. where annual turnover does not exceed EUR 15 000) or the substitution of the company by an individual as office-holder.

Efficient measures taken in good time can limit the financial consequences for the coming years.

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Belgium's fairness tax referred to Europe

Belgium's corporate 'fairness tax' is to be referred to the Court of Justice of the European Union by that country's Constitutional Court.

The Constitutional Court wishes to know whether the European Court considers the tax to violate the right to freedom of establishment and/or the Parent-Subsidiary Directive.

Under the tax, a minimum 5.5% tax on dividends must be paid by companies other than small and medium-sized enterprises that distribute dividends in a taxable period in which their taxable base is reduced below zero by losses brought forward or the notional-interest deduction.

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Now Belgian rulings come under EU scrutiny

The latest set of national tax rules to be examined critically by the European Commission is Belgium's so-called 'excess profit' rulings.

Under this régime, Belgian companies that are members of a multinational group may seek a ruling from the Belgian tax authorities that allows them to claim a deduction for the 'excess profits' allegedly arising from their membership of the group.

The EU Commissioner for Competition, Margrethe Vestager, believes the rulings may constitute a form of state aid, which is unlawful under the EU treaty, as it allegedly favours one type of company (members of a multinational group) over others (those who are not), and has opened an investigation into the practice.

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European Union

Reduced VAT rate on e-books is unlawful

The Court of Justice of the European Union has ruled against Luxembourg's and France's policy of levying reduced rates of value-added tax (VAT) on electronic books, in *Commission v. France* (Case C-479/13) and *Commission v. Luxembourg* (Case C-502/13).

Since 1 January 2012, France has applied a reduced VAT rate of 5.5% on e-books and Luxembourg has levied a rate of 3%. The ruling concerns digital or electronic books, being books supplied, for consideration, by download or web streaming, from a website so that they can be viewed on a computer, a smart phone, electronic book reader, or other reading system.

The Court's main reasoning was that the VAT Directive (2006/112/EC, as amended) provides that the reduced rate may apply to the supply of books on all physical means of support. Whereas e-books require physical means of support in order to be read, what is supplied is the e-book, not also the support.

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Tax Transparency Package launched

The European Commission has launched a Tax Transparency Package. The central feature of the package is a call on Member States to provide each other with automatic quarterly reports of tax rulings they have given.

The package also includes:

- Possible new transparency requirements for multinationals
- Reviewing the Code of Conduct with a view to making it more effective
- Quantifying the scale of tax avoidance and evasion

It aims for any necessary legislation to be in place by 1 January 2016.

A second Action Plan will be announced before the summer. This will include a relaunch of the Common Consolidated Corporate Tax Base (CCCTB).

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European Parliament to inquire into tax rulings practices

The European Parliament has voted to set up a special committee of inquiry into tax-ruling practices in Member States, in the wake of the Luxembourg and other recent revelations.

The inquiry will run parallel to but entirely separately from the European Commission's own state-aid investigations into allegedly unfair rulings practices in several Member States.

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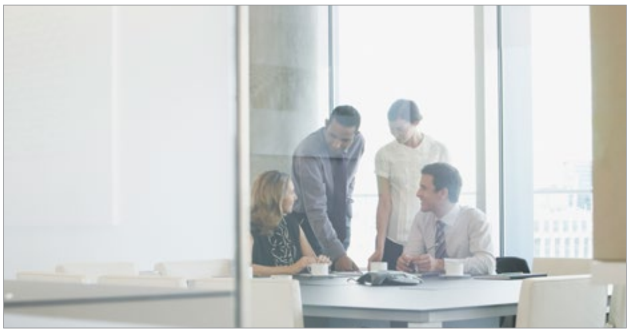

VAT borne by MOSS-registered persons to be refunded

The European Commission has published guidelines on the refund of VAT to taxable persons registered under the mini one-stop shop scheme (MOSS) for supplies of telecommunications, broadcasting or electronically delivered services to private customers.

Since 1 January 2015, such services supplied to private consumers in one EU Member State by taxable persons not established in that state are deemed to be supplied in that state and hence to be taxable supplies. Suppliers need only register in one such Member State and do so under the MOSS procedure.

The guidelines state that any deductible input VAT borne by the supplier in the MOSS state (the state of registration) should be refunded.

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EU takes Greece to court over inheritance tax

See under Greece.

France

Capital gains net for property-company shares extends to Luxembourg

Most real-estate professionals and tax advisers were aware that the tax exemption that used to apply to Luxembourg companies selling shares in a French property company was to be removed, but a new step in this connection has recently been taken.

An amendment to the France-Luxembourg tax treaty has introduced a new provision (Article 3(4)) under which gains from the alienation of stock, shares or other rights in a company, fiduciary estate or any other institution or entity more than 50% of whose assets consist of immovable property located in one State, or more than 50% of whose value is derived from such assets (held directly or indirectly through the interposition of one or several companies, fiduciary estates, institutions or entities) are taxable only in that State.

Such entities are referred to from now on as ‘property companies’ for the sake of simplicity.

Property assets that are used by a company for the purpose of its business

activity are not taken into account for the computation of the 50% ratio.

The right to tax capital gains realised upon the disposal of shares in property companies will therefore be exclusively allocated to the State where the property is located.

The scope of this amendment is restricted to the disposal of shares in property companies and does not include other specific provisions such as for instance distributions of French OPCIs (*Organismes de Placement Collectif Immobilier*), which are collective immovable-property investment vehicles.

The entry into force of this amendment will depend on how quick the ratification process will be. It could take several months to come to an end. Assuming the ratification process is ended by 31 December 2015 – which would appear unusually quick – the gains will be taxable in France as from 1 January 2016.

Luxembourg holding vehicles should therefore review their portfolios with significant embedded capital gains on shares in French property companies to assess whether a sale or restructuring would be recommended under certain conditions.

The scope of the amendment is limited to the taxation of capital gains from immovable property, and does not modify the taxation régime applicable to capital gains made on the sale of shares in other French companies, which remain tax-exempt in France.

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15.5% social security charge on non-residents' property income held to be unlawful

The Court of Justice of the European Union has ruled, in the *de Ruyter* case (C-623/13), that France is apparently in breach of European law in charging non-residents 15.5% generalised social security contributions on their gains and rental income derived from French immovable property, in addition to income tax. The charge was introduced on this income in 2012.

The Court's reasoning was that EU nationals contributing to the social security system in one EU Member State cannot be subject in another Member State (in this case, France) to levies (on either their employment income derived in France or on their income from French *situs* assets) which have a 'direct and sufficiently relevant' link to the French social security system.

This decision is contrary to an earlier (2012) decision of the French Constitutional Court.

Claims for refunds of the unlawfully levied tax should now be in order. The French tax authorities have announced that they will wait for the decision of the French Supreme Court (Conseil d'Etat) before deciding on the claims.

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Challenge to large-company surcharge overturned

France's Constitutional Court (*Conseil constitutionnel*) has struck down a challenge to the corporate tax surcharge on large companies.

Under the surcharge, companies with a turnover above EUR 250 million are liable to an additional 10.7% surcharge on their entire corporate tax liability. Where a company belongs to a group of companies, it is the turnover of the group that is taken into account when determining the threshold.

The taxpayers had argued that the fact that intra-group transactions were not excluded in determining the group's turnover was contrary to constitutional principles of equality before taxes and the ability to pay.

The Court, however, ruled that no constitutional principles had been breached, especially since in a tax group, it was solely the parent company that was liable for corporate tax (on the group's consolidated taxable income).

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Business defence against NCST dividend ban must be allowed

The French Constitutional Court (*Conseil constitutionnel*) has ruled that the denial of the participation exemption to dividends and gains derived from participations in companies located in the so-called Non-Cooperative States and Territories (specially designated tax-haven jurisdictions) is lawful.

The Court held that this provision breached neither the constitutional principle of equality before the law nor that of equality in the face of taxes and duties.

However, the Court (*Conseil d'Etat*) made an important caveat, namely that taxpayers affected must have the opportunity to prove that there was a genuine business reason for the holding and hence still qualify for the exemption. Inasmuch as the current rule does not give them such an opportunity, it is to that extent unconstitutional.

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Reduced VAT rate on e-books is unlawful

See under European Union.

France amends professional-income step-up rules

The French tax authorities have amended their rules on professional income derived abroad so as to avoid a 25% step-up in the taxable base in certain defined cases.

Under existing law, an individual carrying on a profession suffers an automatic 25% step-up in taxable profits unless he or she belongs to a so-called 'authorised management centre' (*centre de gestion agréé*). These are exclusively entities under French law, so professional income derived abroad automatically undergoes the 25% mark-up.

Under pressure from the European Commission, France has now amended the rules so that foreign accounting firms may apply to be recognised as authorised management centres in respect of professional income derived in another EU Member State or an EEA state with which France has an administrative assistance agreement, thereby avoiding the mark-up.

It remains to be seen whether this rule change will satisfy the Commission.

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Agreement reached on taxation at Basel-Mulhouse-Freiburg Airport

France and Switzerland have reached an agreement on the taxation of activities at the Basel-Mulhouse-Freiburg Euro airport. The airport lies wholly within French territory but is situated close to the Swiss and German borders and is divided into two separate customs areas – French and Swiss.

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Greece

EU takes Greece to court over inheritance tax

The European Commission is to refer Greece to the Court of Justice of the European Union in connection with its exemptions from inheritance tax for main residences.

Under Greek law, there is an exemption from inheritance tax for persons who inherit a main residence, provided that they do not already own another residence with a floor area beyond a prescribed size, but the exemption applies only to Greek or other EU nationals who are permanently resident in Greece.

Non-residents, whether or not they are Greek or other EU nationals, are not entitled to the exemption.

The Commission considers that this rule constitutes an infringement of the free movement of capital guaranteed by the Treaty on the Functioning of the European Union and the EEA Agreement.

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Ireland

Visiting TV and film artistes to face withholding tax

Ireland has introduced a 20% withholding tax on payments made directly or indirectly to non-resident artistes appearing in TV or film productions being shot in Ireland. The tax, known as Film Withholding Tax (FWT) came into effect on 10 January.

Artistes affected are those from outside the EEA and providing artistic services in Ireland in connection with a TV or cinematic production in respect of which the production company qualifies for the film tax credit.

Until now, Ireland has been one of the few European countries not to charge a withholding tax on visiting artists.

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Italy

Patent-box régime introduced

Italy has become the latest country to introduce a 'patent box' régime, under which income from intellectual property benefits from a favourable rate of taxation.

The régime applies from 1 January 2015. All patent-box régimes in the European Union are currently under investigation by the European Commission to ensure that they are in compliance with EU law and do not constitute unlawful State Aid.

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Luxembourg

3% VAT rate on e-books withdrawn

Following the European Court's judgment in Case C-502/13 that the imposition of a reduced rate of tax on e-books is incompatible with the VAT Directive (see under 'European Union' above), Luxembourg will cease to apply its 'super-reduced' rate of 3% on such books as from 1 May 2015.

However, given the new rules on electronically supplied services, this measure affects only private customers resident in Luxembourg. The place of supply for non-resident customers is their country of residence.

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Simplified company form to be introduced

Luxembourg is to introduce a new simplified form of limited-liability company. To be known as the *société à responsabilité limitée simplifieé*, this corporate form will be simple to incorporate and administer than the standard *société à responsabilité limitée (sàrl).*

What is more, its minimum (paid-up) share capital may be as low as EUR 1 whereas that of an sàrl is EUR 12 394.68. Only natural person(s) may establish a simplified sàrl and the company's object are limited to carrying on the professions subject to and regulated by a business permit.

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Netherlands

VAT rate on renovation of older buildings increased

The Netherlands is to abolish the reduced 6% VAT rate on the renovation, reconstruction or repair of dwellings more than two years old, with effect from 1 July 2015. From that date, the standard rate of VAT, 21%, will apply to such supplies.

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Netherlands 30% ruling upheld

The Court of Justice of the European Union has rejected a challenge to the Netherlands' 30% ruling, which allows certain expatriate workers in the Netherlands to claim a flat-rate deduction of 30% from taxable employment income by way of compensation for additional expatriation costs.

One of the conditions for application of the ruling is that the employee must not have previously lived in a place within 150 km of the Netherlands border for a certain period of time before coming to work in the Netherlands.

The conditions for applying the ruling, in particular the 150 km rule, were challenged in the courts for their compatibility with European law, and the question was referred to the European Court.

The European Court has now ruled (in the Sopora case, C-512/13) that the ruling is not in breach of European law unless the conditions lead to a systematic overcompensation of the additional expatriation costs actually incurred. Whether this is so is for the Netherlands courts to decide.

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Organisation for Economic Cooperation and Development

Mandatory-disclosure plans published

The OECD has published its latest discussion draft under the BEPS (Base Erosion and Profit Shifting) Action Plan.

Under the rubric of Action 12, the document calls for a standard mandatory-disclosure régime for the exchange of tax information among national tax authorities to be designed and implemented.

A public consultation on the document is to be held in Paris on 11 May.

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G20 gives its full backing to latest BEPS proposals

The OECD presented the latest developments in its BEPS (base erosion and profit shifting) Action Plan to the G20 Finance Ministers meeting in Istanbul on 9-10 February.

The OECD and the G20 have agreed on three key elements to carry forward implementation of the Action Plan:

- A mandate for negotiations on a multilateral instrument to facilitate treaty-based changes
- A package to implement country-by-country reporting by 2016
- Criteria for assessing the harmfulness or otherwise of intellectual property regimes

At that meeting, OECD Finance Ministers and Central Bank Governors reiterated their full support for the BEPS project and promised to 'finalise the deliverables' under the BEPS Action Plan by the end of 2015. They also urged all jurisdictions to comply fully with the Global Forum standards on information exchange and join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

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Poland

Thin-cap rules tightened

Poland has amended its thin capitalisation rules, reducing the 'safe-harbour' debt-equity ratio from 3:1 to 1:1. The way the ratio is calculated has also been changed, so that the equity denominator is now the borrower's equity as opposed to share capital. Various other amendments, which all took effect from 1 January 2015, have also been made. These include an extension of the rules to indirectly related parties.

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Portugal

Corporate tax reduced

With effect from 1 January, the main rate of corporate tax in Portugal was reduced from 23% to 21%.

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Russia

Changes to tax treatment of interest announced

Under new amendments to the Tax Code of the Russian Federation, the tax treatment of interest, both receivable and payable, has been modified.

The changes affect borrowings in roubles as well as in foreign currency, and both controlled and uncontrolled debt.

In particular, with retroactive effect from 1 July 2014, to the end of 2015, where there is controlled debt subject to thin capitalisation rules denominated in foreign currencies, the rouble equivalent is to be determined at an exchange rate capped at the Bank of Russia's rate for 1 July 2014. Furthermore, the calculation of equity for the purposes of the 3:1 debt-equity ratio is to include positive and negative foreign-exchange differences on foreign-currency receivables and payables (debtors and creditors).

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Tax deductions clarified

The Russian tax authorities have issued a letter clarifying what information needs to be included in a taxpayer's primary accounting documents for expenses to be tax-deductible.

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Switzerland

Switzerland and the EU to exchange information

The European Union and Switzerland have initialled a new agreement providing for automatic exchange of tax information on account holders. A broad range of information would be exchanged annually on a reciprocal basis, beginning with data collection in 2017 and information exchange in 2018.

The agreement will replace the more limited savings tax agreement of 2005, but may yet be subject to a referendum.

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Expatriates' tax deductions to be limited

A revised Ordinance, to take effect on 1 January 2016, restricts the scope of deductions (e.g. for housing costs, relocation costs, school fees etc) against income tax available to expatriates working in Switzerland and defines more narrowly the class of individuals qualifying for the special deductions.

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Agreement reached on taxation at Basel-Mulhouse-Freiburg Airport

See under France.

United Kingdom

Definition of UK residence extended for certain social security purposes

For the purposes of the bilateral social security agreements between the United Kingdom on the one hand and Australia, Canada and New Zealand on the other hand, residence in another EEA state or Switzerland will be treated for certain purposes as equivalent to residence in the United Kingdom, under secondary legislation taking effect from 1 April 2015.

The modifications principally affect the provisions under which persons who have previously been resident in Australia, Canada or New Zealand and are now resident in the United Kingdom are entitled to receive a UK state retirement pension subject to having made the necessary contributions in their previous state of residence and to certain other conditions. The pension is enhanced for individuals who are resident in the United Kingdom when they apply and who continue to be so resident.

Under the new rules, residence in any other EEA state or Switzerland will be treated as equivalent to UK residence for these purposes.

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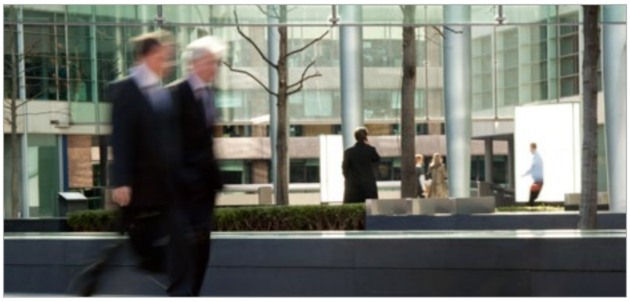

Avoidance-scheme promoters may face 'naming and shaming'

Promoters of tax-avoidance schemes who have been designated as 'high-risk' and non-compliant will be publicly named and will have to tell their clients they are being monitored, with effect from 27 March this year.

Under legislation introduced last year, but taking effect only now, promoters of schemes who are identified as 'high-risk' will be served conduct notices requiring them to 'change their behaviour'. If they fail to do so, they will be served with a 'monitoring notice' imposing yet tougher requirements. Consequences include public naming and the obligation to inform clients that they are being monitored.

Failure to comply with a monitoring notice may result in the imposition of a penalty of up to GBP 1 million.

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Stamp duty loophole on restructuring closed

A technical amendment to UK company law effective from 4 March withdraws the facility for target companies in a takeover to use a scheme of arrangement involving the cancellation of their shares. They will instead now have to use a contractual offer followed by a transfer of the securities.

An important tax consequence of the change is that the cancellation route avoided any charge to stamp duty or stamp duty reserve tax on shares at 0.5% of the value of the transaction, whereas the new route renders the transaction liable to duty.

The measure is expected to raise an extra GBP 285 million in tax for the UK Government over the next five years.

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Finance Bill rushed through Parliament

The United Kingdom's Finance Bill, which enacts a substantial majority of the tax legislation announced in the 2015 Budget and a number of previously announced measures, was published on 24 March, and completed all its stages in both Houses of Parliament in only two days, receiving Royal Assent, so as to become law as Finance Act 2015, on 26 March. Only a small number of proposals intended for immediate legislation were omitted from the Act.

This unprecedented haste, enacting 340 pages of tax law with virtually no scrutiny and hardly any debate, was considered expedient in order to complete matters before the dissolution of Parliament on 30 March, and had the support of the main opposition party.

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Diverted profits tax becomes law

The Finance Act 2015, incorporating the diverted profits tax and other tax measures, received Royal Assent, and thus became law, on 26 March, as mentioned in the previous article.

The diverted profits tax, charging a 25% tax, entirely separate from corporation tax, on profits deemed to be artificially diverted from the United Kingdom under the tests specified in the legislation, tok effect from 1 April 2015.

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Northern Ireland gets power to set its own corporation tax rate

Under the Corporation Tax (Northern Ireland) Act 2015, which received Royal Assent on 26 March, the Northern Ireland Assembly is given the power to set its own separate rate of corporation tax on "Northern Ireland profits" (as defined) of a company.

The Act is the successful culmination of years of campaigning by the Northern Ireland Executive and regional business community.

The legislation devolves corporation tax powers to the Northern Ireland Executive, so that Northern Ireland will be in the position to set a different rate of corporation tax in respect of certain trading profits to that in the rest of the United Kingdom.

It had long been argued that Northern Ireland suffered a detrimental economic effect due to sharing a land border with the Republic of Ireland, which offers one of the lowest mainstream corporation tax rates in the world. The phenomenon of the 'Celtic Tiger' and the continuance of Ireland as a headquarters base for many global firms (including, most notably, Apple and Google) through the economic crisis had not gone unnoticed. Against this backdrop, Northern Ireland businesses have felt that they could not compete on a local and global scale with their southern neighbours. The UK government recognised this and is hoping to equalise the position by affording the Northern Ireland Executive autonomy to set its own corporation tax rate.

The legislation distinguishes between small and medium-sized enterprises (SMEs) and large enterprises, with the former being able to apply the so-called 'Northern Ireland tax rate' to all of their profits provided that a substantial proportion of the company's employee time and costs arise in Northern Ireland. If the company does not meet the prescribed conditions, its profits will continue to be taxed at the main rate of UK corporation tax. The position differs for large enterprises, in that only profits attributable to a Northern Ireland trading presence will be able to qualify for the reduced Northern Ireland rate. In essence, the rules for large corporates apply the internationally recognised principles of attributing profits to permanent establishments.

Against the backdrop of the OECD's Base Erosion and Profit Shifting (BEPS) initiative, the rules appear to ensure the prevention of abuse by companies seeking to establish 'brass plates' in the province. Accordingly, only genuine trading profits arising in Northern Ireland will be afforded the special rate, and it is hoped that this will encourage foreign investment and the creation of new jobs. In addition, it is hoped that the reduced rate will enable smaller local firms to access a greater proportion of their profits for expansion.

In theory, under the Act, Northern Ireland could set a corporation tax rate of 0%, although it seems more likely that the rate will be set equal to that of the Republic of Ireland, i.e. 12.5%. Given the EU rules on State Aid, the Northern Ireland Executive will need to bear the full fiscal consequences of changes in tax revenues resulting from a new Northern Ireland corporation-tax rate. This means that Northern Ireland's block grant (an annual allowance provided by the UK Treasury) would be adjusted to reflect the fiscal costs of a reduction in the corporation-tax rate. Accordingly, the lower the rate set, the more the block grant will be reduced, and it is this that many of the strongest opponents of the devolved powers argue will expose Northern Ireland's economy to considerable risk.

Although the Act has been passed, the devolved powers will not take effect until April 2017. Accordingly, the Northern Ireland Executive should have sufficient time to get its affairs in order and hopefully ensure the smooth transition to a reduced rate of corporation tax. It remains to be seen whether the measures are implemented and, if so, how they will be applied. However, the dream of an 'Ulster Tiger' remains strong.

The main rate of corporation tax in the rest of the United Kingdom became 20% with effect from 1 April 2015.

Northern Ireland is part of the United Kingdom but has its own separate devolved Assembly, which legislates for domestic Northern Ireland matters. No other part of the United Kingdom has the power to set a separate rate of corporation tax.

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Swiss bank accounts in the spotlight

As the bank HSBC came under fire by the BBC (the British Broadcasting Corporation) and a national newspaper in the United Kingdom for allegedly helping wealthy clients evade tax on secret accounts at its Swiss private banking arm, the United Kingdom's tax authority, HMRC (itself criticised in some quarters for insufficiently vigorous prosecution of the offenders) updated its guidance on its voluntary disclosure programme for taxpayers with undeclared Swiss bank accounts.

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Cross-border group loss-relief legislation upheld

The Court of Justice of the European Union has dismissed the European Commission's suit alleging that the United Kingdom's current legislation on allowing losses sustained by foreign subsidiaries to be relieved against the UK parent company's profits (so as to be in compliance with the 2006 *Marks & Spencer* judgment) made it practically impossible to claim such relief.

It should be noted, however, that in its reasoning, the Court did not effectively overrule the *Marks & Spencer* decision, as the Advocate-General's Opinion in the case implied that it should.

The *Marks & Spencer* judgment thus remains good law and the relevant UK legislation is in compliance with it.

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UK reacts to Skandia VAT judgment

The UK tax authorities (HMRC) have published their reaction to the European Court's judgment in the Skandia case. Essentially, the Court ruled that supplies made by a US insurance company to its branch in Sweden were chargeable to VAT because the branch's membership of a Swedish VAT group made it a separate taxable person from its head office.

HMRC points out that under UK law, where a foreign company's UK branch becomes part of a UK VAT group, the whole entity and not just the UK branch becomes a member of the group and that therefore supplies made between one part of that entity and another are made within the same legal entity and will remain outside the scope of UK VAT.

However, where a UK company's foreign branch is a member of a VAT group in another EU Member State whose law is similar to Sweden's, supplies made between that branch and the 'head office' will be taxable transactions. This change of treatment will apply from 1 January 2016.

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Eclipse film partnership investors lose again

The Court of Appeal of England and Wales has rejected the appeal of investors in the Eclipse 35 tax-avoidance scheme. In so doing, it has upheld the judgment of two lower tribunals.

The Eclipse 35 partnership was marketed as a tax-efficient way in which high net-worth individuals could invest in the acquisition and exploitation of film rights. The investors, who include many celebrities, borrowed money on which they paid interest. The tax saving lay in claiming a tax deduction for the interest paid. However, such a deduction is available only if the partnership was carrying on a trade.

All courts to date have ruled that the partnership's activities did not amount to a trade, thus denying interest relief, but nevertheless the partnership's income remains taxable in the hands of the investor-partners.

The Eclipse 35 partnership was one of 31 similar marketed schemes. According to the UK tax authorities, over GBP 600 million of tax is at stake. This latest judgment makes it exceedingly likely that most if not all the schemes will fail. However, the taxpayers may still be able to appeal to the Supreme Court.

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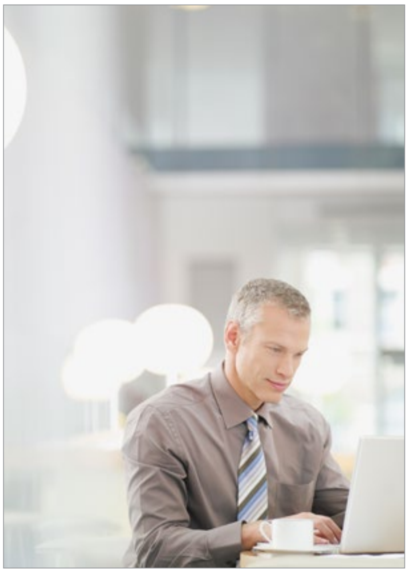

New rates of property acquisition tax in Scotland and elsewhere

On 1 April 2015, the new land and buildings transaction tax (LBTT) came into force in Scotland.

LBTT replaces the United Kingdom's stamp duty land tax (SDLT) for the acquisition of a chargeable interest in land situated in Scotland.

Meanwhile, on 6 December 2014, the UK Chancellor of the Exchequer announced that SDLT would be switching from a 'slab system' to a slice system similar to that in Scotland and set new rate bands for the reformed tax. The new SDLT charging system came into operation in the whole of the United Kingdom in December, but is no longer effective in Scotland.

The new rates for residential properties in Scotland are as shown in Table 1; the rates for residential property in the rest of the United Kingdom are reproduced in Table 2.

Table 1 Rates of LBTT on transfers of residential property in Scotland

Value of property acquired (GBP)	Rate of tax
First 145 000	0%
Next 105 000	2%
Next 75 000	5%
Next 425 000	10%
Balance over 750 000	12%

Table 2 Rates of SDLT on transfers of residential property in England, Wales and Northern Ireland

Value of property acquired (GBP)	Rate of tax
First 125 000	0%
Next 125 000	2%
Next 675 000	5%
Next 575 000	10%
Balance over 1 500 000	12%

Additional charges may be payable in England, Wales and Northern Ireland on the purchase of residential property via a corporate envelope.

The rates for transfers of commercial property are shown in Tables 3 (Scotland) and 4 (the rest of the United Kingdom).

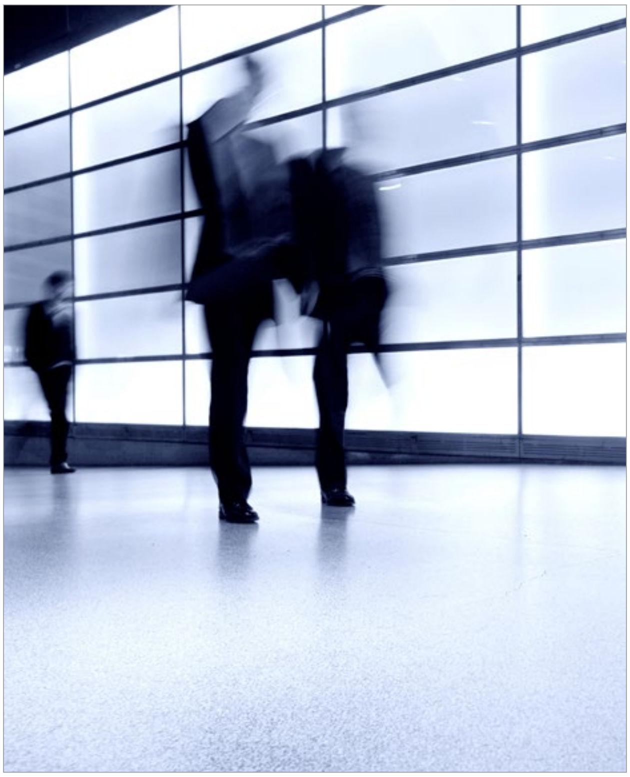

Table 3 Rates of LBTT on transfers of commercial property in Scotland

Value of property acquired (GBP)	Rate of tax
First 150 000	0%
Next 200 000	3%
Balance over 350 000	4.5%

Table 4 Rates of SDLT on transfers of commercial property in England, Wales and Northern Ireland

Value of property acquired (GBP)	Rate of tax
First 150 000	0%
First 150 000 where annual rent is 1000 or more	1%
Next 100 000	1%
Next 250 000	3%
Balance over 500 000	4%

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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 30 April 2015, and are for illustrative purposes only.

Currency	Equivalent in euros (EUR)	Equivalent in US dollars (USD)
Euro (EUR)	1.0000	1.1105
Pound sterling (GBP)	1.3893	1.5446

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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