

# WORLD WIDE TAX NEWS

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## UNITED KINGDOM

### STATUTORY UK RESIDENCE TEST PROPOSALS UNVEILED

**H**M Treasury and HM Revenue & Customs have published a consultation document setting out their proposals for a statutory test to determine UK residence for individuals. This will apply for income tax, capital gains tax and inheritance tax purposes, but not for national insurance purposes. It is intended that the statutory test will take effect from 6 April 2012. There is no transitional period and the current rules will still apply for all earlier tax years.

The test will consist of three parts:

#### PART A - CONCLUSIVE NON-RESIDENCE

An individual who meets any of the following three conditions will be conclusively non-resident:

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

For the purposes of the residence test a day's presence in the UK is one where the individual is in the UK at midnight.

#### PART B - CONCLUSIVE RESIDENCE

An individual who meets any of the following three conditions will be conclusively resident in the UK:

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

If an individual satisfies one of the conditions in both Part A and Part B, Part A will take precedence, and they will be treated as non-resident.

#### PART C - OTHER FACTORS

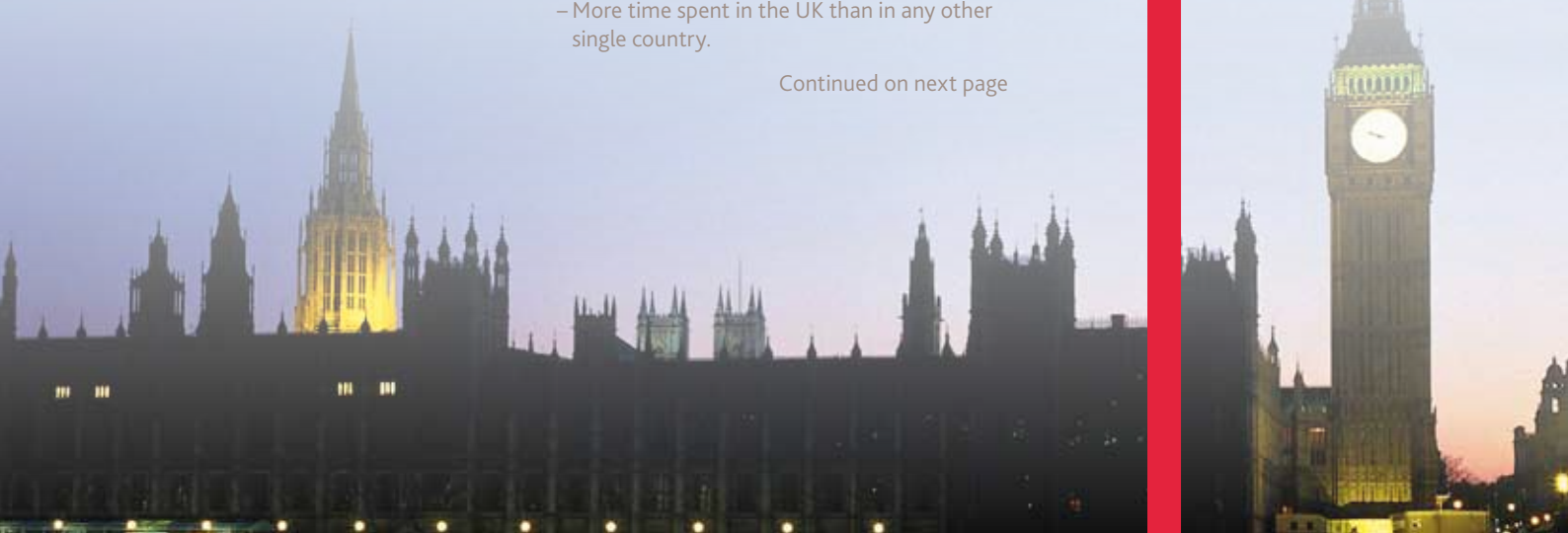
If an individual's residence position is not determined under Parts A and B, it will be determined by reference to the following UK connection factors:

- The presence of family in the UK;
- The availability of accommodation in the UK which is used during the tax year;
- Substantive (but not full time) work in the UK;
- Presence in the UK for more than 90 days in either of the previous two years; and
- More time spent in the UK than in any other single country.

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## EDITOR'S LETTER

Welcome to Issue 26 of *BDO World Wide Tax News*. This newsletter summarises recent tax developments of international interest across the world and includes a guide to the tax position for holding companies in many popular jurisdictions. 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. *BDO World Wide Tax News* is published quarterly by Brussels Worldwide Services BVBA in Brussels. If you have any comments or suggestions concerning *BDO World Wide Tax News*, please contact the Editor via the BDO International Executive Office by e-mail at [mderouane@bwsbrussels.com](mailto:mderouane@bwsbrussels.com) or by telephone on +32 (0)2 778 0130.

### UNITED KINGDOM (continued)

These factors will be taken into account in conjunction with the number of days spent in the UK in a tax year, with different tables applying for individuals arriving in and leaving the UK:

#### Arrivers (i.e. non-UK resident in all of the previous three tax years):

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

#### Leavers (i.e. UK-resident in one or more of the previous three tax years):

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

#### Points to note:

- For individuals who leave the UK to carry-out full time work abroad, the number of permitted working days in the UK each year without affecting non-resident status will be doubled to 20, with a working day being defined as one in which three or more hours' work is carried out.
- The test could open up opportunities for tax avoidance by short absences from the UK, so there will be a rule that certain types of investment income received during an individual's absence will continue to be taxable unless the non-residence lasts at least five tax years, in line with the current rules for capital gains. This would include dividends paid by closely controlled companies that reflect profits that have built up during a period of residence and which are then taken out during a short period of non-residence, but not normal types of regular investment income, such as bank interest or dividends from listed companies.
- Depending on the outcome of the consultation, the concept of ordinary residence will either be retained and put on a statutory basis, or it will be abolished for all tax purposes except overseas workday relief. The latter option would represent a considerable simplification and remove much uncertainty, but it would mean that a small number of individuals who are UK domiciled but not ordinarily resident would no longer be able to claim the remittance basis in respect of foreign investment income.

#### CONCLUSION

A statutory residence test is long overdue, and it will bring much-needed clarity and certainty. However, it should be noted that the current rules will continue to apply until 6 April 2012.



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# AUSTRALIA

## BUDGET HIGHLIGHTS

The Deputy Prime Minister and Treasurer presented the 2011 Federal Budget on 10 May 2011. This did not contain many major tax measures ahead of the October Tax Forum, at which tax reform is expected to feature prominently. In particular, there were no changes to the main tax rates and thresholds. We summarise the main Budget taxation measures below.

### INDIVIDUALS

There was little joy in the Budget for personal taxpayers, with a number of income tax benefits being removed or modified:

- The ability of minors (children under 18 years of age) to access the low income tax offset (LITO) to reduce tax payable on their unearned income, such as dividends, interest, rent, royalties and other income from property, will be removed, with effect from 1 July 2011. This measure significantly reduces the potential income tax benefit of parents investing in their children's names, and of making family trust distributions to minors.
- The dependent spouse tax offset (DSTO) for taxpayers with a dependent spouse born on or after 1 July 1971 is to be phased out. However, taxpayers with an invalid or permanently disabled spouse, supporting a carer, or people who are eligible for the zone, overseas forces and overseas civilian tax offsets will not be affected.
- A temporary flood and cyclone reconstruction levy is introduced from 1 July 2011 to contribute towards the cost of rebuilding flood and cyclone affected regions. This measure will apply only for the 2011/12 income year as follows:
  - Taxpayers with a taxable income in 2011/12 of AUD 50,000 or less will not pay the levy.
  - Taxpayers with taxable income between AUD 50,001 and AUD 100,000 will pay 0.5 per cent of their taxable income above AUD 50,000.
  - Taxpayers with taxable income over AUD 100,000 will pay 0.5 per cent of their taxable income between AUD 50,001 and AUD 100,000 and 1.0 per cent of their taxable income over AUD 100,000.

There are specific exemptions from the levy to anyone who:

- Received an Australian Government Disaster Recovery Payment (AGDRP) for a disaster event in 2010/11;
  - Is directly affected by a National Disaster Recovery and Relief Arrangements (NDRRA) declared disaster in 2010/11 and would have met the AGDRP criteria; or
  - Is a New Zealand non protected special category visa holder who received an ex gratia payment from the Australian Government in relation to a disaster that occurred in 2010/11.
- From 1 July 2011, the amount of the low income tax offset (LITO) that is delivered to low and middle income earners through their regular pay during the year will be increased from 50% to 70% of their total entitlements. The remaining 30% will still be paid as a lump sum, on assessment of income tax returns.
  - It will no longer be possible to claim deductions against all government assistance payments with effect from 1 July 2011.
  - The Medicare low-income thresholds will be increased to AUD 18,839 for individuals and AUD 31,789 for families, with effect from 1 July 2010. The additional amount of threshold for each dependent child or student will also increase to AUD 2,919. The threshold for single pensioners below Age Pension age will also be increased to AUD 30,439, with effect from 1 July 2010. This will ensure that pensioners below Age Pension age do not pay the Medicare levy when they do not have an income tax liability.
  - The current 'statutory formula' method for determining the taxable value of car fringe benefits will be replaced by a single rate of 20 per cent that applies regardless of the distance travelled. This reform will remove the current incentive for people to drive salary sacrificed and employer provided vehicles further to increase their tax concession. This reform will apply to new contracts entered into after 7:30pm (AEST) on 10 May 2011, and will be phased in over four years as shown below:

### COMPANIES

- There will be special tax rules to encourage private sector participation in infrastructure projects that have national significance. The changes will apply to exempt tax losses from such projects from the 'continuity of ownership' test and the 'same business' test, and also provide for an 'uplift' to the value of these losses at the government bond rate.
- Small businesses will be able to claim up to AUD 5,000 as an immediate deduction for motor vehicles, with effect for vehicles acquired from the 2012/13 income year. The remainder of the motor vehicle value will be pooled in the general small business pool (depreciated at 15 per cent in the first year and then 30 per cent).
- The Entrepreneurs Tax Offset will be abolished with effect from the 2012/13 income year.
- The 'continuity of ownership' test for the purpose of deducting prior year losses will be modified so that ownership does not need to be traced through certain superannuation entities. It will also remove technical deficiencies in the modified rules for widely held entities where:
  - An entity is interposed between certain stakeholders and the loss company in certain circumstances;
  - An interposed entity demerges;
  - An interposed foreign entity issues bearer depository receipts; or
  - A corporate change arising from the issue of new shares happens.
- The debt/equity tax rules will be amended to restrict the application of an integrity provision that deems an interest from an arrangement that funds a return through connected entities to be an equity interest under certain circumstances. Additionally, the integrity provision will not apply where the Commissioner considers that it would be unreasonable for the provision to apply. The amendments will apply from the commencement of the debt/equity tax rules (generally 1 July 2001).
- The time frame for the making of Taxation Of Financial Arrangements transitional elections will be extended.

Distance travelled during the FBT year (1 April – 31 March)	Statutory rate (multiplied by the cost of the car to determine a person's car fringe benefit)				
	Existing contracts	New contracts entered into after 7:30pm (AEST) on 10 May 2011			
		From 10 May 2011	From 1 April 2012	From 1 April 2013	From 1 April 2014
0 – 15,000 km	0.26	0.20	0.20	0.20	0.20
15,000 – 25,000 km	0.20	0.20	0.20	0.20	0.20
25,000 – 40,000 km	0.11	0.14	0.17	0.20	0.20
More than 40,000 km	0.07	0.10	0.13	0.17	0.20

**CAPITAL GAINS TAX**

– There will be some minor changes to the CGT rules, including:

- Amendments to the scrip for scrip roll-over provisions;
- Exemptions for incentives related to renewable resources and environmental preservation benefits;
- Extensions to the main residence exemption in relation to special disability trusts;
- Limiting the trading stock exception for super funds.

**TAX COMPLIANCE**

– The Government will strengthen the tax law to counter fraudulent phoenix activity, which involves a company intentionally accumulating debts to improve cash flow or wealth and then liquidating to avoid paying the debt. The business is then continued as another corporate entity, controlled by the same person or group and free of their liability. With effect from 1 July 2011:

- The director penalty regime will be extended to superannuation guarantee amounts, making directors personally liable for their company's failure to pay employee superannuation;

- The Australian Taxation Office (ATO) will be given the power to commence recovery against directors under the director penalty regime, without providing a 21 day grace period, for certain unpaid company liabilities that remain unreported after three months of becoming due; and
- In certain circumstances directors and associates of directors will be prevented from obtaining credits for withheld amounts in their individual tax returns where the company has failed to pay withheld amounts to the ATO.

- The Government will provide AUD 56.4 million over four years to the Australian Taxation Office (ATO) to address fraudulent tax refund claims.
- The Government will provide AUD 43.4 million over four years to the Australian Taxation Office (ATO) to allow it to monitor the accurate accounting of government grants and payments.
- The Government will require certain businesses to report annually on payments made to contractors in the building and construction industry, with effect from 1 July 2012.

**TRUST TAXATION – INTERIM CHANGES TO IMPROVE THE TAXATION OF TRUST INCOME**

Legislation will be introduced to:

- Enable the streaming of capital gains and franked distributions; and
- Target the use of low tax entities, especially exempt entities, to reduce the tax payable on the taxable income of a trust.

The measure will provide increased certainty and will reduce opportunities for taxpayers to manipulate their tax liabilities.

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# CHINA

## 20% DIVIDEND WITHHOLDING TAX FROM CHINA – WHY AND HOW DOES IT APPLY?

There is much confusion over the recent announcement by various H-share companies that they intend to withhold 20% tax on dividend payments from China. Here, we set out the background to the confusion, and the latest development.

### CIRCULAR GUO SHUI FA [1993] NO.45

The whole issue of 20% withholding tax on dividends arises due to the cancellation of Circular Guo Shui Fa [1993] No.45 on 4 January 2011, which stipulated that dividends paid by mainland Chinese companies to foreign individuals were temporarily exempt from individual income tax.

It is worth noting that as a result of this exemption individuals may choose to hold H-shares in their personal names rather than via a corporate vehicle, as corporate owners are still subject to 10% withholding tax. This 10% withholding tax rate for corporates has not changed.

### CIRCULAR CAI SHUI ZI [1994] NO.20

According to Circular Cai Shui Zi [1994] No.20 (still valid), dividends paid by foreign investment enterprises in China to foreign individuals are temporarily exempt from individual income tax. However, this does not cover H-share companies, which are purely domestic PRC enterprises without foreign investments. This point is important, as it means that the 20% withholding tax effectively only applies to H-shares; it would not apply in the case of owners of a wholly owned foreign enterprise or joint venture in China.

### INDIVIDUAL INCOME TAX LAW

Due to the cancellation of Guo Shui Fa [1993] No.45, and the fact that Circular Cai Shui Zi [1994] No.20 does not apply; H-share companies have to rely on Individual Income Tax law, which stipulates that dividends received from mainland Chinese companies are subject to 20% tax.

As a result, and in the absence of further clarification from the State Administration of Tax (SAT), some H-Share companies have chosen to withhold 20% on dividend payments to individuals.

### CHINA-HONG KONG DOUBLE TAX AGREEMENT (DTA)

According to the China-Hong Kong DTA, tax on dividends must not exceed 10%, so technically the rate of withholding tax on dividend payments to individuals who are residents of Hong Kong should be 10%. This is the same that would apply if the shares were owned by a corporate vehicle, assuming the shares owned by the corporate vehicle were less than 25% of the Chinese company. Therefore in theory it should make no difference for Hong Kong residents whether the shares are owned by individuals or corporates.

### OTHER RESIDENTS

For individual residents of other countries it will be necessary to consider the relevant DTA entered into with that other country and China.

### CLARIFICATION FROM THE SAT

On 4 July, the Hong Kong Financial Services and the Treasury Bureau stated that the Hong Kong Special Administrative Region Government had received a reply from the State Administration of Taxation (SAT) that clarified the arrangements concerning the tax payable to the Mainland for dividends paid by Mainland companies to individual investors in Hong Kong (the Reply).

The Reply clarified and confirmed the following main issues:

- 1. Withholding tax rate:** according to the China Hong Kong DTA, individual shareholders will in general be subject to a withholding tax rate of 10% on dividends received from Mainland non-foreign investment companies which are listed in Hong Kong.
- 2. Administrative procedures to claim the treaty benefit:** individual shareholders do not have to make any application for entitlement to the above-mentioned tax rate. This is very encouraging, as it will save a considerable administrative burden.
- 3. Individual shareholders from other countries:** individual shareholders who are residents of other countries, and whose home countries have reached an agreement with China on an applicable withholding tax rate higher or lower than 10%, will have to follow the bilateral tax agreement in paying tax in connection with dividends paid by Mainland companies listed in Hong Kong.

In conclusion, Hong Kong individual resident shareholders who receive dividends from H-share companies are able to enjoy treaty benefits and be subject to 10% withholding tax only.

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# INDIA

## TAX PAYABLE ON CAPITAL GAIN ON INDIRECT TRANSFER OF SHARES

The High Court has ruled that tax was due on a capital gain on an indirect transfer of shares in an Indian company. The shares were held and sold by an entity in Mauritius, which claimed the benefit of the India-Mauritius tax treaty. However, the Court ruled that the treaty was inapplicable, because the beneficial owner of the shares was a company in the USA.

The case in question was *Aditya Birla Nuvo Ltd., New Cingular Wireless Services Inc. and Tata Industries Ltd. v. DDIT and Union of India (Aditya Birla)*, and it concerned the sale of shares in an Indian joint venture company, Idea Cellular Ltd (ICL), by a Mauritius entity, AT & T Mauritius (AT & T), which was a "permitted transferee" under the terms of the joint venture agreement.

AT & T had been allotted 49% of the shares in ICL, but these were beneficially owned by a USA company, New Singular Wireless Services Inc (NCWS), as AT & T neither had the voting power nor right to dividend. NCWS decided to end its interest in the joint venture, and agreed to sell its interest to the other joint venture companies.

One of these companies, Aditya Birla Nuvo Ltd, (ABNL) purchased the ICL shares, and at the time, the Indian Revenue authority confirmed that zero withholding tax applied under the India-Mauritius tax treaty, as AT & T held a valid Mauritius tax residence certificate. The other joint venture company, Tata Industries Ltd (TIL) purchased the AT & T shares.

The Indian Revenue authority subsequently raised tax assessments on the sale, on the basis that the India-Mauritius tax treaty protection did not extend to the beneficial owner of the shares, NCWS, which was resident in the USA. The Court agreed, deciding that AT & T was effectively a nominee of NCWS, and ruled that tax on the sale was due from ABNL as a representative assessee, and from TIL as an assessee-in-default.

This ruling highlights the Indian Revenue authority's willingness to look into and challenge the substance of ownership structures in such cases although India does not have GAAR in its current Income tax Act.

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# MALAYSIA

## NEW RULINGS ON RESIDENCE STATUS OF COMPANIES AND INDIVIDUALS

On 16 May 2011 the Malaysian Inland Revenue Board (MIRB) issued two rulings on the determination of the residence status of companies and individuals. These are effective for the year of assessment 2011 onwards.

### COMPANIES, OTHER BODIES AND TRUSTS

#### Determination of residence status

The residence status of companies and other bodies is determined as follows:

	Resident in Malaysia
Hindu Joint Family	If the manager or karta is resident for that basis period
Companies or bodies of persons carrying on a business	
Subsidiary or a branch of a foreign company in Malaysia	If management and control of its affairs/ business is exercised in Malaysia at any time during the basis year
Any other company or bodies of persons (including investment holding companies)	
Trust bodies	If any trustee of the trust is a resident in that basis period. A trust body will NOT be regarded as a resident if: <ul style="list-style-type: none"> <li>• The trust was created outside Malaysia by a non-citizen;</li> <li>• Its income for that basis year is wholly derived from outside Malaysia;</li> <li>• The trust is administered for the whole of that basis year outside Malaysia; and</li> <li>• At least one-half of the number of the member trustees is not resident in Malaysia for that basis year</li> </ul>

#### Management and control

Management and control is the key factor in ascertaining the residence status of a company in Malaysia. The following are the salient points to note:

– Management and control refers to the controlling authority which determines the policies to be followed by the company;

- Management and control are considered to be exercised where the directors meet to conduct the company's business/affairs irrespective of where the company is incorporated;
- A company is resident in Malaysia for a basis year if at least one board of directors' meeting concerning the management and control of the company is held in Malaysia for that basis year;
- The location of the trading activities or the place of physical operations may NOT necessarily be the place of management and control;
- The appointment of local director(s) in Malaysia and residence status of the director(s) do NOT determine the residence status of a company;
- Control by the directors determines the management and control of a company. Control by the shareholders is NOT relevant.

#### Residence status to continue once established

Once it has been established that a company is resident in Malaysia for a given year of assessment, that company is considered to be resident in Malaysia for subsequent years of assessment until the contrary is proved.

#### Dual residence

Dual residence is avoided by the 'tie-breaker' residence article in double tax agreements (DTA) with Malaysia, i.e. the tie breaker test. The provisions of the tie breaker vary for each DTA.



### Documentation

When trading and management and control are exercised outside Malaysia but certain directors' meeting are held in Malaysia, the following documentation may assist in determining the company's residence status:

- a) Articles and Memorandum of Association:
  - to ascertain the registered address; and
  - if the articles do provide a place of management and control, whether the articles are being implemented;
- b) The company's letterhead;
- c) Minutes of directors' meetings and general meetings indicating the location of the meetings and what has transpired at these meetings.

### INDIVIDUALS

#### Determination of residence status

The residence status of an individual is determined by reference to the physical presence of that individual in Malaysia and NOT by the nationality or citizenship, as set out in Section 7 of the Income Tax Act 1967 (the Act) and as shown in the table below.

#### Malaysian citizens employed in the public service /statutory authority

Effective from the year of assessment 2009, new section 7(1B) of the Act was introduced to deem Malaysian citizens to be resident in Malaysia for the basis year if the individual:

- a) is employed in the public services or service of a statutory authority in Malaysia; and
- b) is not in Malaysia at any day in the basis year due to:
  1. having or exercising his employment outside Malaysia; or
  2. attending any course of study in any institution or professional body outside Malaysia which is fully sponsored by the employer.

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Section	Resident in Malaysia
7(1)(a)	<ul style="list-style-type: none"> <li>• If an individual is in Malaysia for <b>182 days or more</b> in a basis year</li> <li>• The period of stay does not have to be consecutive days</li> </ul>
7(1)(b)	<ul style="list-style-type: none"> <li>• If an individual is in Malaysia for <b>less than 182 days</b> in a basis year but the period is linked by or to another period of 182 or more consecutive days in Malaysia</li> <li>• Temporary absences (subject to the stipulated conditions) shall be allowed provided the individual must be in Malaysia immediately prior to and after that temporary absence</li> </ul>
7(1)(c)	<ul style="list-style-type: none"> <li>• If an individual is in Malaysia for <b>90 days or more</b> (need not be consecutive days) in a basis year; <b>and</b></li> <li>• That individual is either resident or was in Malaysia for a period(s) of 90 days or more in each of any 3 out of 4 immediately preceding basis years</li> </ul>
7(1)(d)	<ul style="list-style-type: none"> <li>• If an individual is <b>NOT in Malaysia or in Malaysia for a period of less than 90 days</b> in a basis year; <b>and</b></li> <li>• That individual is resident for the immediately following basis year and had been resident for 3 immediately preceding basis years</li> </ul>

# PAKISTAN

## 2011/12 BUDGET HIGHLIGHTS

The Minister of State for Finance presented the 2011/12 Budget on 3 June 2011. The Budget seeks to raise PKR 104 billion from new tax measures, but there are also increased tax exemptions for individuals and a reduction in the rate of sales tax.

The main proposals are as follows:

### INCOME TAX

- The annual exempt amount for both salaried and non-salaried taxpayers for income tax purposes will be increased from PKR 300,000 to PKR 350,000.
- The rate of tax deductible on cash withdrawals from banks will be reduced from 0.3% to 0.2%.
- The PKR 500,000 limit on the tax credit allowed to an eligible person for making contributions to an Approved Pension Fund will be removed.
- The tax credit on investments in shares will be restricted to resident persons, other than companies. The period for which shares must be held to avoid a claw back of the tax credit is to be decreased from 36 months to 12 months.
- This credit will also now be allowed in respect of life insurance premiums paid by a resident person to a life insurance company registered by the Securities and Exchange Commission of Pakistan, provided the person is deriving income from a salary or business. The credit will be increased from 10% to 15% of the person's taxable income, up to

a maximum of PKR 500,000, instead of the present limit of PKR 300,000.

- The existing threshold of PKR 500,000 for the filing of a wealth statement and reconciliation statement will be increased to PKR 1,000,000. The provisions apply to a resident person who is an individual, including a member of an Association of Persons. The withholding tax on profits earned on Government securities for taxpayers other than companies will be a final tax.
- The amount which can be withdrawn from a pension fund before withholding tax applies will be increased from 25% to 50%. The limit is for the accumulated balance at or after the retirement age.
- A tax credit equal to 100% of the tax payable will be available for a period of 5 years in respect of corporate industrial undertakings established with 100% equity financing on or after 1 July 2011. Existing companies can also benefit under this arrangement if the investment in BMR is 100% equity-financed on or after 1 July 2011.
- The tax rate on dividends received by a banking company from its Asset Management Company has been increased from 10% to 20%.
- The tax credit allowed to a public company in the year of its Stock Exchange listing will be increased from 5% to 15%.
- The carry forward period of unadjusted minimum tax will be increased from three to five years.

### SALES TAX

- The rate of sales tax will be reduced from 17% to 16%.
- The whole of the input tax paid on fixed asset acquisitions will be claimable immediately in the tax period in which it is paid.
- The sales tax exemptions on supplies/ imports of certain items such as surgical items, bricks, building blocks, computer software and agricultural implements will be withdrawn.

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# FRANCE

## TAX REFORM APPLICABLE TO INDIVIDUALS AND TRUSTS

**O**n 5 July 2011 Parliament voted in favour of a new tax reform, which came into force on 30 July 2011.

The reform introduces major changes to the tax regimes applicable to individuals and to foreign trusts. Here, we summarise the provisions that may concern non-residents of France

### WEALTH TAX

Reform of the wealth tax is one of the major aspects: the thresholds at which individuals become liable to this tax, and the applicable rates and bands, have been modified. This reform is to be implemented over two years.

#### For the year 2011:

An individual is liable to wealth tax where his/her net taxable assets as valued on 1 January 2011 exceed EUR 1,300,000. In this situation and for the year 2011, the rates remain unchanged in relation to previous years, and in particular, the EUR 800,000 threshold remains:

Brackets	Rates
Under EUR 800,000	0%
Between EUR 800,000 and EUR 1,310,000	0.55 %
Between EUR 1,310,000 and EUR 2,570,000	0.75 %
Between EUR 2,570,000 and EUR 4,040,000	1%
Between EUR 4,040,000 and EUR 7,710,000	1.3%
Between EUR 7,710,000 and EUR 16,790,000	1.65%
Above EUR 16,790,000	1.8%

The deadline for submitting a wealth tax return is exceptionally postponed to 30 September 2011.

#### From the year 2012:

An individual is liable to wealth tax where his/her net taxable assets as valued on 1 January exceed EUR 1,300,000. The applicable rates and bands will be as follows:

Net value of the taxable assets	Tax rates
Between EUR 1,300,000 and EUR 3,000,000	0.25% as from the first Euro
Above EUR 3,000,000	0.50% as from the first Euro

When the net value of his/her taxable assets is between EUR 1,300,000 and EUR 3,000,000, the taxpayer will just need to report the net value on his/her income tax return. When the net value is above EUR 3,000,000, the taxpayer will still have to file a wealth tax return specifying the list of his/her assets (before the end of June for residents and as a rule before 16 July or 1 September for non residents).

### WEALTH TAX AND NON TRADING PROPERTY COMPANIES (*SOCIÉTÉ CIVILE IMMOBILIÈRE OR SCI*)

Some non-residents use the popular SCI structure to organise their ownership of French real estate and thereby avoid the wealth tax.

Shareholders of a SCI can lend funds via a 'shareholder account' for the purchase and costs of a property. This 'shareholder account' reduces the value of the shares for wealth tax purposes at shareholder level. At the same time, the SCI's credit balance falls outside the scope of wealth tax applicable to non-residents, as it is deemed to be an investment made by a non-resident and therefore exempt from tax.

A provision has been enacted to discontinue this popular scheme. Debts due by an SCI to non-resident shareholders will no longer be deductible in computing the value of the shares as from 2012.



## DEATH INSURANCES

Death insurances benefit from a 'favourable' regime. They are not subject to common forced heirship rules and inheritance tax rules. Basically the tax regime was as follows:

Insurance contract concluded after 20 November 1991	Taxation
Premiums paid before the insured person is 70 years old	Lump sum taxation at 20 % (after an allowance of EUR 152,500 per beneficiary)
Premiums paid after the insured person is 70 years old	Ordinary inheritance tax rates after EUR 30,500

A common scheme consisted of taking out a French death insurance contract when the insured person was a non-resident of France. On death, the tax at 20% was not applicable even if the deceased was resident in France.

The taxation of death insurance has been modified as follows:

Insurance contract concluded after 20 November 1991	Taxation
Premiums paid before the insured person is 70 years old	Lump sum taxation at : - 20 % (after an allowance of EUR 152,500 per beneficiary) under EUR 902,838 - 25% above EUR 902,838
Premiums paid after the insured person is 70 years old	Ordinary inheritance tax rates after EUR 30,500

The rates at 20% or 25% are extended to insured persons who were non-residents of France at the time of signing the contract<sup>1</sup>.

### ESTABLISHMENT OF TAX RULES APPLICABLE TO TRUSTS

The French Tax Code provides no rules for the taxation of foreign trusts<sup>2</sup>. A trust is a legal concept which does not exist in French civil law (it is not possible to set up a trust in France).

The French tax authorities regard trusts as a way to escape taxation.

The reform introduces complex rules that are particularly unfavourable for the settlor or the beneficiaries. Trustees must fulfil certain requirements.

A tax guideline should comment on these new provisions.

– **Data communication:** When the settlor or at least one of the beneficiaries is a French tax resident or when an asset is located in France, trustees are required to provide the French tax authorities with the following information:

- The creation, amendments or the termination, as well as the terms and conditions, of the trust;
- The value on 1 January of the assets, rights and capitalised incomes of the trust.

If trustees do not provide this information, a penalty of at least EUR 10,000 or an amount equal to 5% of the assets, rights and capitalised income will be charged.

– **Wealth tax:** A specific provision has been introduced to make trusts liable to wealth tax. The net value of all assets, rights or capitalised income that make up a trust will be taxed at the rate of 0.5% at settlor level (or the beneficiary level if the settlor dies before the reform is ratified). Trustees are responsible for payment of the tax.

– **Inheritance tax:** Inheritance tax is due upon the death of the settlor (or the beneficiary if the settlor dies before the reform is enacted). If the ordinary progressive inheritance tax rates can be applied, they are applied according to the degree of relationship between the deceased and the heir provided that the assets, rights and capitalised incomes transferred to the heir can be clearly determined.

If the assets, rights, and capitalised incomes remain in the trust or the trust is located in a State on a tax blacklist, they are taxed at the highest applicable inheritance tax rate of 60% (or 45% if these assets, rights and capitalised income at the time of the death are globally transferred from the settlor to beneficiaries who are his/her descendants). In these cases, trustees are responsible for payment of the tax.

### 'EXIT TAX'

An 'Exit Tax' regime was already applicable until the end of 2004, when it was judged as contrary to EU rules. Parliament has enacted a new system designed to comply with EU rules, making a distinction between French residents transferring their domicile in the EU and others. This tax is applicable to individuals who have been residents of France for at least 6 out of the last 10 years.

Basically, latent capital gains on shares become taxable when the individual leaving France owns more than 1% of the share capital of a company, or if the value of his/her shareholding exceeds EUR 1.3 million.

Payment of the tax on latent capital gains is automatically deferred when residence is transferred within the EU. In other cases, the taxpayer can obtain a deferment provided that a tax representative and guarantees are offered (guarantees are not required for individuals leaving for professional reasons).

The tax is definitively due or the deferment is terminated when the shares are sold, reimbursed or cancelled. Any tax paid abroad on the gain is deductible.

The tax is reimbursed or cancelled if the taxpayer returns to France or if the shares are held for more than 8 years as from the departure date.

### VARIOUS: NEW COMPULSORY BONUS DUE TO EMPLOYEES

French companies with more than 50 employees have to pay them a bonus when the total amount of dividends paid to their shareholders in 2011 has increased compared to the average of the dividend amounts paid over the two previous tax years.

The amount of the bonus must be negotiated with unions and employees representatives within three months from the date of shareholders' resolution confirming the payment of dividends (in case of disagreement, the bonus is determined by the employer after the advice of the Work Council). The bonus is exempt from ordinary social security contributions up to EUR 1,200 per employee and per year. Unless a specific provision is voted, the bonus will be subject to income tax.

An employer who refuses to negotiate can be subject to a prison sentence of up to one year and a penalty of EUR 3,750.

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<sup>1</sup> This provision might be deemed to conflict with EU directive No. 2002/83/EC.

<sup>2</sup> French Tax Code only provides that income paid by the trust is subject to income tax for the amount received by the settlor or beneficiaries regardless of the type of income.

# ISRAEL

## TAX AMENDMENT – INTER-COMPANY FINANCE

The Israeli Parliament has approved an amendment to the Israeli Tax Ordinance ('the amendment') which determines the treatment of inter-company finance, including cross border finance, and provides further clarity to the various amendments and temporary provisions provided in the past for this issue:

In general, the Israeli Tax Ordinance ('ITO') determined that under certain conditions a loan upon which the interest charged is below the rate determined in relevant regulations, the difference will be deemed to be taxable income in the hands of the lender. The amendment now specifies that this refers to a loan whereby a special relationship exists between the contracting parties, and this is deemed to include, inter alia, where there is a 5% minimum direct or indirect holding of one contracting party in the other, or a third party in both contracting parties, in any of the controlling rights for at least one day during the tax year.

However, in March 2008 it was determined that this particular ITO determination will not apply to finance deemed an "international transaction" in accordance with the then newly implemented transfer pricing regulations in Israel – as the transfer pricing regulations would then apply. The amendment now regulates the conditions to allow for such inter-company finance to be provided without having to comply with local transfer pricing regulations.

Under the amendment, the Israeli transfer pricing regulations will not apply to inter-company finance under one of the following two scenarios:

1. An international inter-company loan that fulfils the following cumulative conditions:
  - a) The recipient is an entity (not an individual) under the control of the lender (determined as a 50% minimum direct or indirect holding, in any of the controlling rights for at least one day during the tax year).
  - b) The loan is provided either in New Israeli Shekels, in the local currency of the recipient, in US dollars or in Euros, and is not linked to any index and does not bear any interest or other return.
  - c) The loan cannot be repaid for a minimum period of 5 years.
  - d) The loan repayment is subordinate to all other liabilities and takes precedence only to dividend distributions upon liquidation.
2. A capital note or bond issued up to 5 August 2008 and subject to certain conditions.

The amendment, which also provides certain transitory instructions, now clarifies the correct tax treatment for international inter-company finance, which has been obscure until now.

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# JERSEY

## JERSEY LOOKS TO ATTRACT HNWIS WITH NEW TAX RULES

The Jersey government has approved a new tax law that makes Jersey a more attractive location for high net worth individuals (HNWIs).

The new regime, which came into effect for new applicants on 22 July 2011, applies to HNWIs who can demonstrate that they are able to pay Jersey income tax of at least JEP 125,000 per annum, and who meet certain other non-financial conditions – broadly, the impact on the Island's reputation if the HNWI moves to Jersey. Such individuals should be able to bring their business interests to the Island, and pay Jersey income tax on personal worldwide income, including income from Jersey business interests, at a marginal rate of 1% on income and profits above JEP 625,000 per annum. The first JEP 625,000 of income and profits and income will be taxable at 20%.

Any business brought to Jersey by the HNWI must meet certain business regulations, but this should not be a problem, especially if the business has a low 'footprint' and it encourages local well-remunerated employment opportunities.

As is currently the case, all Jersey residents – including HNWIs – who receive income from Jersey land and buildings will be subject to tax at 20% on that income stream regardless of how much is earned.

The new rules could be particularly advantageous to entrepreneurial HNWIs such as fund managers, who need to maintain day-to-day contact and control over their business interests. They can now manage these interests in Jersey – the same place where they live.

This is a significant improvement on the current tax law, which effectively discourages HNWIs from locating their business interests (and investments generally) in Jersey.

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# LUXEMBOURG

## BENEFICIAL TREATMENT OF EXPENSES FOR EXPATRIATES AND SPECIALISTS RECRUITED ABROAD

Since 31 December 2010, some expenses in relation to expatriates, when they are paid by the employer, constitute deductible operating expenses for the company but are not a taxable benefit in kind for the employee.

### ELIGIBLE EMPLOYEES

The employees to whom this regulation applies are:

– Expatriates from an international group temporarily seconded to Luxembourg. An international group means financially affiliated companies (direct or indirect ownership of at least 25%) based in Luxembourg and in at least 2 other countries; Employees recruited directly from abroad to carry out a temporary job in Luxembourg. This does not mean that a fixed-term contract must be concluded with such people. It is simply understood that the special tax treatment is limited in time.

In addition, the following conditions must be fulfilled:

1. The employee came to Luxembourg after 31 December 2010.
2. The employee is a resident taxpayer, i.e. based on domestic Luxembourg law, the employee must be resident in Luxembourg for tax purposes, i.e. he/she has a flat or a house in Luxembourg (and not in a neighbouring country). The fact that, for the purposes of a tax treaty, the taxpayer might be considered a resident of the other country (e.g. because he/she has kept his/her family home abroad and his/her spouse and children have remained there), is not an issue because that person is and remains a resident taxpayer under domestic Luxembourg law. The regulation can therefore be applied to a person who has received a non-resident tax card.
3. He/she should not have been resident for tax purposes in Luxembourg during the 5 tax years prior to the one when he/she started working in Luxembourg.
4. He/she should not have received professional income taxable in Luxembourg during the 5 tax years prior to the one when he/she started working in Luxembourg. (Any directors' fees paid by a Luxembourg company are Luxembourg professional income. Consequently, the new measures will not be applicable to an expatriate who was, for example, a director of a Luxembourg SICAV and whose function was remunerated. If the amount of the directors' fees was very small, the tax office could agree to the granting of the benefit of the regulations. The same would apply where the director had to reimburse directors' fees to his/her employer.)

5. As far as his/her professional skills are concerned, the employee is required to:
  - a) Hold a higher education degree and have in-depth technical knowledge. Compliance with this condition can be shown by means of the person's detailed CV; or
  - b) Have at least 5 years' specialised professional experience in the Luxembourg company's sector of activity or in a sector that the company wants to develop.
6. The employee must carry out the professional activity as his/her main activity.
7. The employee's fixed monthly remuneration payable by the Luxembourg company must be at least equal to the maximum of the social security ceiling, which is currently EUR 8,787.81 (at the index 719.84). The fixed monthly remuneration to be taken into account is the remuneration before any cash benefit or benefit in kind (including company car, etc.)
8. The employee must not replace (an) other employee(s) to whom the regulations do not apply.
9. The employee must bring a significant economic contribution or contribute to the creation of new economic activities with high added value in Luxembourg and he/she must use his/her knowledge and expertise for the benefit of the staff of the local company for the purpose of activities sustainable in Luxembourg.

### ADDITIONAL CONDITIONS FOR THE EMPLOYEE'S SECONDMENT (EXPATRIATES)

1. The employee must have worked in the group for at least 5 years or have acquired at least 5 years' professional experience in the relevant sector.
2. During the period of secondment, the expatriate must remain an employee of the home company. Even if a priori the home company could have been set up in Luxembourg (for a "foreign expatriate"), in view of the conditions below, that does not seem possible.
3. The temporary posting in Luxembourg must be accompanied by a right of return to the seconding company at the end of the period of secondment. This is a right and not an obligation. When the expatriate was already seconded before his/her posting in Luxembourg, we understand that a right of return to the country from where the person originates is acceptable. There may be a right of return to more than one country.
4. There must be a secondment agreement between the home company and the Luxembourg company.

### ADDITIONAL CONDITIONS FOR THE RECRUITMENT OF A SPECIALIST FROM ABROAD

1. The employee must have acquired in-depth specialisation in a sector or a profession which encounters recruitment difficulties in Luxembourg. This difficulty may be proved, for example, by the fact that the ADEM (Luxembourg Employment Office) has not proposed a candidate. Also, the Tax Administration is aware of the difficulty of recruitment in some sectors.
2. If the company has been based in Luxembourg for at least 10 years, the number of highly qualified employees cannot exceed 10% of the total workforce (full-time jobs). Specialists considered are only those to whom the tax regulation provided for by the circular are applied.

### EMPLOYEES EXCLUDED FROM THE REGULATIONS

Employees made available by a temporary employment agency or employees working in Luxembourg as part of a labour leasing (within the meaning of employment law) are not eligible.

### LUXEMBOURG COMPANIES ELIGIBLE

Luxembourg companies can only benefit from these measures if they employ or commit to employ, in the medium term, at least 20 employees working full-time in Luxembourg. Two people working half-time are equivalent to one person working full-time.

### SOCIAL SECURITY CONTRIBUTIONS

Since an employee is only eligible if his/her fixed monthly remuneration (before the relevant benefits) reaches or exceeds the contributory ceiling, the non-taxable benefits in kind are not subject to social security.

### DURATION OF THE TAX REGULATIONS

The regulations apply for a maximum of 5 tax years after the one in which the employee starts working in Luxembourg. Beyond that, the posting in Luxembourg is no longer considered to be temporary. The regulations also end if one of the conditions for benefiting from them ceases to be met.

<sup>3</sup> These expenses are deductible for the Luxembourg employer but constitute a taxable benefit in kind for the employee or future employee.

## NON-TAXABLE BENEFITS

The expenses paid by the employer which do not constitute a taxable benefit in kind for the employee are shown in the table below.

If the employer provides a dwelling for an "eligible" employee, art. 104 of the Luxembourg income tax does not apply so no benefit in kind is taken into account. However, the other customary benefits in kind (company car, luncheon vouchers or canteen, interest subsidy payment, etc.) are taxable for the highly qualified employee.

## PROCEDURE

To benefit from the tax regulations, the employer must file an application to the Tax

Office RTS no later than 2 months after the eligible employee starts working for that employer. The employer must provide all of the information needed for the employee's case to be accepted. The relevant tax office is responsible for checking the validity of the application of the tax regulation and the amount of the eligible expenses. In some cases, it may be advisable to submit an initial file within the 2-month deadline and then to supplement it at a later date (when the missing information is known or the missing documents are received). The employer must send the list of the persons to whom the tax regulation is applied to the relevant tax office no later than 31 January of each year. The list

has to indicate the persons benefiting from the tax treatment as at 1 January.

## CONCLUSION

The regulations allow the employer's cost of some highly qualified employees who will be coming to Luxembourg to be substantially reduced. The employee may, in some cases, also benefit from them. This new regulation, combined with other existing regulations, increase the attraction of Luxembourg as a location.

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	Eligible expenses	Ineligible expenses <sup>3</sup>	Limit to not taking account of a benefit in kind (for eligible expenses)
Moving to Luxembourg	Travel expenses of the employee and his/her household	Travel expenses searching for accommodation in Luxembourg	No
	Accommodation expenses during the journey	Sale costs or costs of cancelling the lease on the previous residence	
	Removal expenses		
Costs for fitting out the accommodation in Luxembourg	Purchase of furniture and electrical household appliances		No
Travel costs following special circumstances	Travel expenses for the birth, marriage or death of a family member	Accommodation expenses during the travel	No
Final return to the employee's original country at the end of the assignment	Travel expenses of the employee and his/her household	When, at the end of the assignment, the person is sent, as an expatriate, to another country, the "return" expenses are not eligible since they should be paid for by the new country to which he/she is being sent	No
	Accommodation expenses during the journey		
	Removal expenses		
Accommodation expenses in Luxembourg if the employee keeps his/her existing regular residence in his/her home country (i.e. he/she keeps it available for his/her use)	Rent, heating, gas, electricity, water, lift and associated taxes and duties	Maintenance and cleaning expenses (Luxembourg and foreign residence)	Benefit in kind taxable insofar as it exceeds EUR 50,000 p.a. or 30% of the annual fixed remuneration  If married or living with his/her partner: absolute amount = EUR 80,000 instead of EUR 50,000
Accommodation expenses in Luxembourg if the employee does not keep his/her existing regular residence in his/her home country (including if the dwelling is rented out)	Cost of accommodation differential, i.e. increase in the accommodation expenses between Luxembourg and the original country	Accommodation expenses (except for the additional cost compared to the original country)	
Travel expenses between Luxembourg and home country	Travel expenses for one return trip p.a. for the whole household	Accommodation expenses locally	
Taxation equalisation	Tax equalisation (tax burden differential between Luxembourg and home country)		
School fees	School fees relating to the children of the employee, spouse or partner moving with the parent(s). Limited to primary and secondary education. The school does not have to be in Luxembourg.	Tuition fees for university studies	No
	Miscellaneous expenses associated with the move	Expenses for the differential in the cost of living and miscellaneous expenses associated with the move	Taxable fixed monthly allowance insofar as it exceeds 8% of the fixed monthly remuneration or EUR 1,500. If spouse or partner has followed, lives in the same place and does not carry out a professional activity: limit is doubled (16% / EUR 3,000).

# PORTUGAL

## NEW EXTRAORDINARY TAX

As part of an austerity package which also includes public spending cuts, the Government has announced an extraordinary personal tax that will apply for 2011.

### SURTAX ON PERSONAL INCOME

For the year 2011 there will be a surtax of 3.5% on personal income in excess of the minimum wage, including capital gains, but not interest or dividend income. Controversially, this is retrospective to 1 January 2011, and payment of the one-off tax will be due in 2012 after taxpayers submit their tax returns.

For taxpayers in receipt of employment or pension income, part of this tax will be collected by way of a 50% withholding tax on their income in December 2011 in excess of the minimum wage, after tax and social protection contributions. The amount withheld will be deducted from the amount payable in respect of the 3.5% surtax.

The surtax will also apply to the special tax regime for non-habitual residents, effectively raising their flat-rate tax from 20% to 23.5% for 2011. However, non-residents will not be affected.

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# RUSSIA

## VAT CHANGES

Several significant VAT changes will come into effect on 1 October 2011. These will affect the way in which VAT is charged, calculated and administered, for many different types of businesses. We summarise the main changes below.

### INPUT VAT RECOVERY BY TAXPAYERS WHO MAKE VATABLE AND EXEMPT SUPPLIES

Businesses which make both VATable and exempt supplies will be able to recover input VAT on all costs relating to the exempt supplies, provided that these do not exceed 5% of the costs in relation to all supplies. At present, it is unclear whether such recovery is limited to production costs.

### PLACE OF SUPPLY OF OFFSHORE SERVICES

The place of supply for the following services carried out on the continental shelf or in the exclusive economic zone will be the territory of the Russian Federation:

- The exploration, extraction, treatment and transportation of raw hydrocarbons; and
- The creation of artificial islands, installations and structures as well as other properties and maintenance and other capital works in relation to such objects.

This change will bring these services inside the scope of VAT, which will enable businesses engaged in these activities to recover VAT input tax on goods and services supplied to them, which they cannot do at present.

### ZERO-RATED SALES AND ADJUSTMENT OF INPUT TAX RECOVERY

Where goods and services in respect of which input tax has been recovered are subsequently used to make zero-rated supplies, the input tax deduction will have to be reversed in the period in which the zero-rated goods or services are despatched or performed. The input tax can finally be claimed when the tax base for the zero-rated transaction is determined – i.e., on completion of the documentation in support of the zero-rating. This could particularly affect businesses with export sales.

### FOREIGN CURRENCY CONVERSION

Where the value of a transaction is specified in a foreign currency, but payment is to be made in Russian Roubles, the value for VAT purposes will be determined using the Russian Central Bank exchange rate on the day on which the goods or services are despatched or performed. No VAT adjustment is to be made on payment, and any difference arising on payment will be a taxable receipt or deductible expense for corporate income tax purposes.

### CORRECTIVE INVOICES

Where the value of a transaction changes after an invoice has been issued, the supplier will be able to issue a corrective VAT invoice, which must show the price of the goods or services, and the applicable VAT, before and after the correction.

If the price has increased, the supplier must account for this in the original VAT period, submitting an amended VAT return if necessary. The customer can recover the additional VAT up to three years after the date of issue of the corrective invoice.

If the price has decreased, the supplier can make an output VAT adjustment up to three years after the date of issue of the corrective invoice. The customer must make an input VAT adjustment in the VAT period in which the corrective invoice was received.

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# SWITZERLAND

## NEW LEGISLATION ON FOREIGN NATIONALS AND STOCK OPTIONS

### LUMP-SUM TAXATION

**A** Federal Council bill proposes to raise taxes for Swiss-resident foreign nationals who do not work in the country:

- The bill envisages raising the assessment basis for foreigners with their own home to seven times (previously five times) the living costs.
- The assessment basis for other foreigners is to be raised to three times (previously twice) the cost of board and lodging.

In addition, a "minimum taxable income" is to be defined. While the Federal Council has set a limit of CHF 400,000 of taxable income, the cantons are at liberty to choose the amount.

### STOCK OPTIONS

Around six years ago, the Federal Council submitted a proposal to reform the taxation of employee participation schemes (options/shares). In December 2010, the reform finally went through Parliament. That it took so long is mainly due to the problems surrounding the whole issue of taxing employee options.

An option entitles its holder to purchase a share at a pre-defined price during a certain period of time. The recipient benefits from a certain leverage effect, because if the price of the underlying share increases by say, 10%, the value of the call option will rise by a multiple of this figure. As personal capital gains are tax-free in Switzerland, the difference between the option's allocation and exercise values is

essentially tax-free, provided that, in the case of employee options, the stock was valued at the time of allocation. Putting a specific value on such options is often a tricky matter for the tax authorities, especially when restriction periods apply to the shares as well.

For this reason, the Federal Council is proposing to change the system. In future, options whose values are difficult to determine, i.e. restricted or unlisted shares, will not be subject to taxation until they are actually exercised, not when they are first allocated. The change has now been approved by both the National Council and the Council of States. There will be no tax rebates for options whose share price rises between the time of allocation and exercise, as they are unfounded in terms of fiscal logic. Whether or not the change in the system will ultimately lead to a rise or fall in the tax payable on options depends on share price fluctuations, the restriction periods of the options, and swings in the share price between the allocation and exercise of the option.

The change in the system of taxing employee options has forced companies to make a whole variety of adjustments. A particular problem is the treatment of internationally mobile employees. The change in the system means that in the future, even employee options featuring unlisted or restricted shares will not be taxed when they are first allocated but only when they are exercised. In some cases, however, the time between an option being received and it being exercised can be as much

as ten years. Restricted periods of between two and five years are the norm, but even after this period has expired, it can take up to five years or more before the option is exercised.

In the case of international companies, therefore, the question is what to do with those employees who relocate abroad in the period between receiving an option and exercising it. In accordance with the new Swiss law, which complies with the OECD standard, a form of pro-rata taxation would apply in this case, as the tax-payers were not resident in Switzerland for the whole period between receipt and exercising of the option.

The problem - especially with small and medium-sized enterprises - is how to accurately monitor the residence and tax status of internationally mobile employees as there are many such cases. When an employee decides to exercise options received in Switzerland while resident abroad, the Swiss employer who initially granted the option is obliged to collect withholding tax. The withholding tax rate for federal direct tax is 11.5%. The cantons are at liberty to choose their own rate.

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# ARGENTINA

## SUPREME COURT APPROVES TAX SET-OFF

The Supreme Court has ruled (in the *Rectificaciones Rivadavia SA* case) that a company could set a VAT credit balance against tax which it owed as agent for its foreign shareholders.

The tax liability in question was the Personal Assets Tax (PAT) due in respect of dividends paid to the company's foreign shareholders. The company was liable to pay this tax, and it argued that it was entitled to settle the liability by means of a credit balance on its VAT account.

The National Tax Authority (NTA) objected, on the grounds that the shareholders were the persons who were subject to the PAT, which was only payable by the company in its capacity as an agent, whereas the VAT credit balance was owed to the company in its capacity as a taxpayer in its own right. The NTA therefore considered that it was not appropriate to set off the company's VAT credit against a liability of its shareholders, as the tax regulations only permit a set-off where debit and credit balances belong to the same subject.

However, the Supreme Court, apart from one dissenting Judge, focused on the fact that the obligation to pay the PAT fell on the company, which was therefore entitled to settle the liability by means of its VAT credit balance.

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# EGYPT

## INCOME TAX ON PROFITS INCREASED, BUT PROPOSED CAPITAL GAINS TAX SHELVED

The Egyptian Government has increased the rate of income tax on profits of over EGP 10 million made by individuals and companies from 20% to 25% with effect from 1 July 2011. This increase was implemented as one of the measures aimed at reducing the 2011/12 fiscal deficit. The rate of tax on profits of up to EGP 10 million remains at 20%.

For individual taxpayers, there was a proposal to increase the annual exempt amount (personal allowance) in respect of wages and salaries from EGP 4,000 to EGP 7,000. However, this had not been approved, nor implemented yet.

The sales tax on tobacco and cigarettes has been increased from 40% to 50%.

It had been proposed to introduce a new capital gains tax, which would have applied to revaluations of assets in mergers and acquisitions, and profit distributions to shareholders. Following protests by investors at the Egyptian Stock Exchange, in addition to a lot of opposition from prominent business associations/federations and chambers of commerce, the government shelved the proposals.

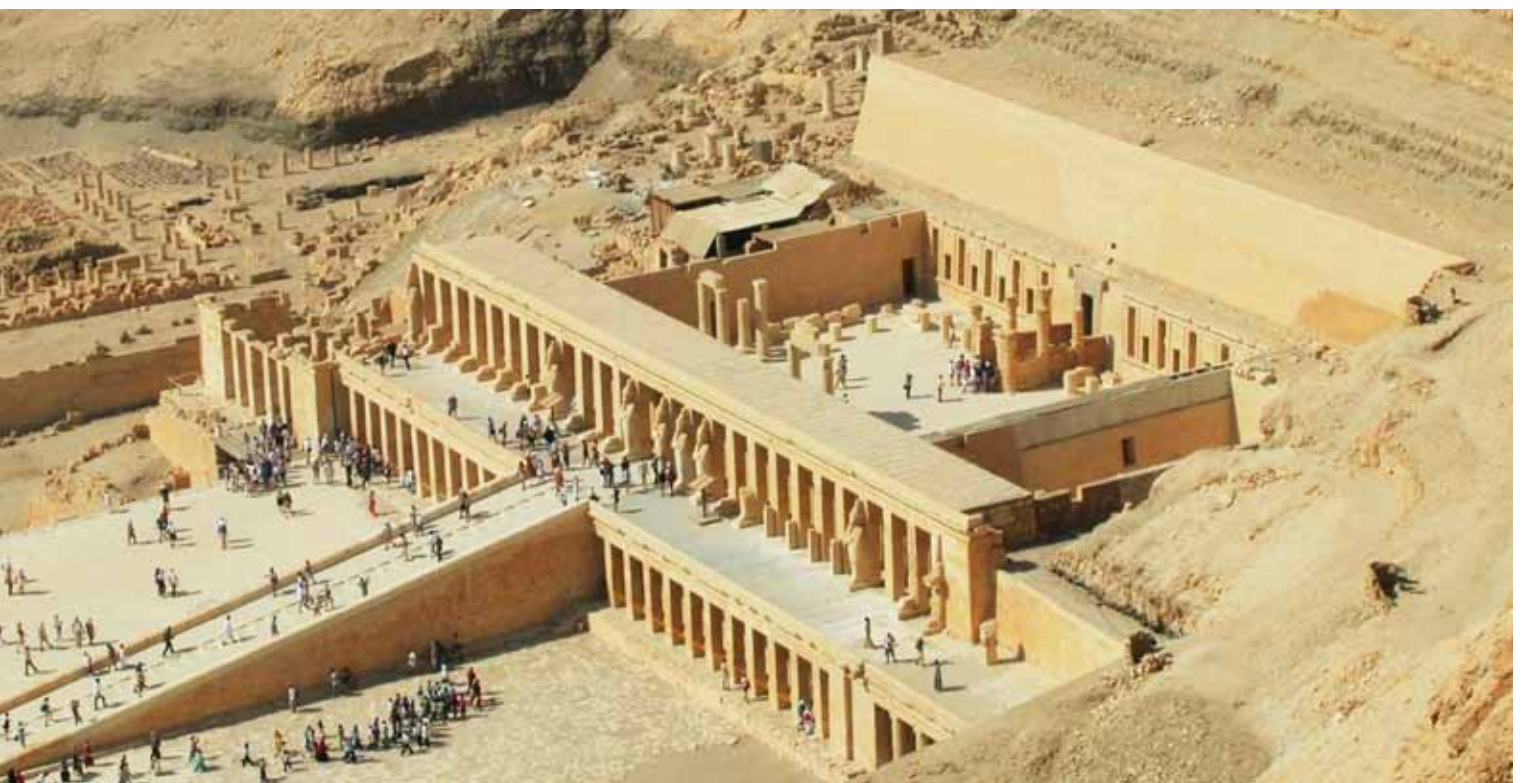
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# UNITED STATES OF AMERICA

## TREASURY AND INTERNAL REVENUE SERVICE ISSUE ADDITIONAL GUIDANCE ON FATCA

The Treasury Department and the Internal Revenue Service have issued substantial additional guidance (Notice 2011-34) regarding the implementation of the Foreign Account Tax Compliance Act ('FATCA') as it applies to foreign financial institutions.

### INTRODUCTION

FATCA, which was enacted as part of the Hiring Incentives to Restore Employment ('HIRE') Act, became law on 18 March 2010, and will be effective on 1 January 2013. Congress passed FATCA in order to help Treasury identify United States residents who invest offshore and thereby to enhance and enforce compliance with their tax obligations. To achieve this goal, FATCA created new Internal Revenue Code sections which will require 'foreign financial institutions' ('FFIs') to withhold 30% from certain payments and meet substantial disclosure obligations to avoid such withholding. The requirements that FATCA imposes will apply in addition to those already in place under the current withholding regime. For example, the FATCA requirements will apply even to FFIs that are treated as qualified intermediaries.

Notably, FATCA broadly defines the term FFI to include not only traditional institutions such as banks, but also hedge funds and private equity funds. Further, as stated, FATCA imposes significant information reporting requirements on those FFIs that, in order to avoid the 30% withholding rule, enter into an agreement with the Service to provide information about the FFI's United States accounts.

Finally, FATCA makes other changes including:

1. establishing an extended statute of limitations for certain offshore income;
2. expanding the passive foreign investment company reporting rules;
3. repealing certain rules relating to bearer bonds; and
4. implementing rules for dividend-equivalent payments under swaps that are treated as dividends for United States withholding tax purposes.

The following summarises some of the key provisions of FATCA that govern the obligations of FFIs regarding withholdable payments.

### FATCA'S GENERAL RULE

The general rule under FATCA applies when an FFI receives a 'withholdable payment' and the FFI has not entered into an agreement with the Treasury (an 'FFI Agreement') to provide information about its United States accounts. In this situation, the withholding agent must deduct and withhold 30% from the payment. The general rule thus turns on the respective definitions of the terms 'FFI' and 'withholdable payment'.

### FOREIGN FINANCIAL INSTITUTION Included entities

FATCA defines an FFI as any 'financial institution' that is a foreign entity. It broadly defines the term financial institution to include any entity which is in the banking business or holds financial assets for the account of others as a substantial portion of its business, e.g., brokers, dealers and clearing organisations.

Additionally, a financial institution includes hedge funds and private equity funds. Specifically, the Service has defined a financial institution to include a foreign entity that is engaged, or holds itself out as being engaged, primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest (including a future, forward contract, or option) in the foregoing. This provision is meant to include hedge funds and private equity funds (among others).

The Notice further provides that this category of financial institutions generally includes, but is not limited to, mutual funds (or their foreign equivalent), funds of funds (and other similar investments), exchange-traded funds, hedge funds, private equity and venture capital funds, other managed funds, commodity pools, and other investment vehicles.

The Service has also provided that the term 'business' differs from the term 'trade or business'. Specifically, otherwise isolated transactions may cause an entity to be engaged primarily in the business of investing, reinvesting, or trading in securities, depending upon the facts.

### Excluded entities

Treasury and the Service intend to issue regulations that will exclude four types of entities from the definition of a financial institution that would otherwise qualify as FFIs because they primarily engage in investing, reinvesting, or trading in securities.

The regulations will classify these entities as non-financial foreign entities ('NFFEs') and will exempt them from withholding from payments that they beneficially own. The first group of NFFEs is comprised of certain holding companies of a subsidiary or a group of subsidiaries that primarily engage in a trade or business other than that of a financial institution. This group of NFFEs, however, will not include investment funds, such as private equity funds, venture capital funds, leveraged buyout funds, or any investment vehicle having a purpose to acquire or to start up companies and then to hold these companies for an investment purpose for a limited time.

The second group of NFFEs is comprised of certain start-up companies. These companies invest capital into assets with the intent to operate a business that is not a financial institution and that is not yet an operating business. Regulations will exclude these companies from the definition of an FFI for the first 24 months after their organisation.

The third group of NFFEs is comprised of non-financial entities that are liquidating or emerging from reorganisation or bankruptcy. The final group is comprised of hedging/financing centers of a non-financial group.

### NFFEs

Although the regulations will exempt from withholding the NFFEs just discussed, as a general rule, FATCA requires NFFEs receiving withholdable payments that they beneficially own to disclose their substantial United States owners or to certify that they do not have any substantial United States owners. An NFFE that fails to do so will be subject to 30% United States withholding tax on all withholdable payments, e.g., as if it were a non-compliant FFI.

### Additional Points About FFIs

Treasury and the Service also intend to exclude from the definition of an FFI insurance companies that issue insurance contracts without a cash value. They do not, however, intend to exclude:

1. Insurance companies that issue contracts that combine insurance protection and an investment component;
2. FFIs that receive withholdable payments solely through their United States branches; and
3. CFCs that qualify as FFIs.

## WITHHOLDABLE PAYMENTS

If an entity is an FFI, FATCA's general rule requires the FFI to withhold 30% from any withholdable payments, which include interest, dividends, and other United States source payments traditionally subject to United States withholding tax. Withholdable payments also include the gross proceeds from the sale or other disposition of United States stocks, bonds, or other debt instruments. Withholdable payments do not include income effectively connected with the conduct of a United States trade or business. To avoid having the general rule apply, an FFI must enter into an FFI Agreement. Because the consequence of not doing so will require the FFI to withhold, FATCA provides a strong incentive for FFIs to enter into FFI Agreements.

## FFI AGREEMENTS

The Service has not yet released a draft FFI Agreement. FATCA, however, provides general provisions that govern what must be included in an FFI Agreement. The key point about FFI Agreements is that they require FFIs to discover and report information to the Service about accounts that United States persons have at the FFI, known as the FFI's 'United States accounts'. This rule thus requires a definition of the term 'United States account' and specifies what information the FFI must provide to the Service about its United States accounts.

## UNITED STATES ACCOUNTS

FATCA defines a United States account as any 'financial account' that is owned by 'specified United States persons' or 'United States owned foreign entities'. A financial account includes depository accounts at the FFI, custodial accounts that the FFI maintains, and equity or debt interests in an FFI (other than interests that are regularly traded on an established securities market). There are exceptions to the definition of a United States account for accounts that natural persons hold and that are less than USD 50,000.

## Specified United States persons and United States owned foreign entities

The term 'specified United States persons' means any United States person. However, FATCA excludes certain persons from this definition and thus limits the definition of a United States account. Specifically, the term 'specified United States persons' does not include:

1. Corporations whose stock is regularly traded on an established market;
2. Corporations that are members of 'expanded affiliated groups' (generally, affiliated groups defined by using 50% instead of 80% under the section 1504 definition);
3. Banks;
4. Exempt organisations;
5. Real estate investment trusts;
6. Regulated investment companies (mutual funds); and
7. Certain trusts.

The term 'United States owned foreign entity' means any foreign entity that has at least one 'substantial United States owner'. Regarding corporations, a substantial United States owner is generally a United States person that owns more than 10% of the stock of the corporation. Regarding partnerships, a substantial United States owner is generally a United States person that owns more than 10% of the profits or capital interests of the partnership.

As noted above, the definition of a financial institution includes entities that are primarily engaged in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or other interests (which includes hedge funds and private equity funds). If any of these United States entities owns any amount of stock or any amount of a partnership interest in a United States owned foreign entity, the Service will consider its ownership to be substantial and it will therefore be treated as a substantial United States owner.

## Information about United States accounts

Under an FFI Agreement, if an FFI holds United States accounts, it must report information to the Service about each such account. The information that the FFI must report generally includes:

1. The name, address, and taxpayer identification number of each account holder;
2. The account number;
3. The account balance; and
4. The gross receipts and gross withdrawals from the account.

Further, if foreign law prevents reporting this or other information that an FFI must report, the FFI must attempt to obtain a waiver from the holder of the account and, if a waiver is not obtained, the FFI must close the account.

## IDENTIFICATION OF UNITED STATES ACCOUNTS

The guidance that the Service has issued specifies the procedures that an FFI must follow to identify its United States accounts, accounts of recalcitrant account holders, and accounts that are other than United States accounts. The guidance further discusses the documentation that an FFI may rely upon in implementing these procedures and the yearly certification that the FFI must provide to the Service regarding the FFI's completion of the procedures.

## PASSTHRU PAYMENTS

An FFI Agreement may also require an FFI to deduct and withhold a tax equal to 30% of any 'passthru payment' made to a 'recalcitrant account holder' (an account holder that fails to produce required information) or to a non-participating FFI (an FFI that does not comply with FATCA). A passthru payment is any withholdable payment or any payment to the extent that it is attributable to a withholdable payment. Alternatively, if certain conditions are met, an FFI may elect to allow counterparties to withhold the portion of any withholdable payments to it that are allocable to the recalcitrant account holder or to the noncompliant FFI.

The Service has responded to comments regarding the definition of a passthru payment and, specifically, how to determine whether a payment is attributable to a withholdable payment. Treasury and the Service intend to issue regulations that will define a passthru payment as a payment that an FFI makes to the extent that the payment is a withholdable payment plus the amount that is not a withholdable payment multiplied by a percentage that is generally based on the FFI's total assets and United States assets.

This definition rests on one of the purposes of the passthru payment rule. i.e., to encourage FFIs to enter into FFI Agreements if the FFI holds investments that produce payments that are attributable to withholdable payments even if the FFI does not directly hold assets that produce withholdable payments. Otherwise, a participating FFI could be used as a 'blocker' that would permit non-participating FFIs to invest indirectly in United States assets without entering into an FFI Agreement.

## INVESTMENT VEHICLES

Treasury and the Service intend to issue guidance that would deem certain collective investment vehicles and other investment funds as presumptively meeting the FFI Agreement requirement. Generally, under this guidance:

1. All holders of the fund must be FFIs that have complied with the FFI Agreement requirement;
2. The fund must prohibit persons who have not complied with the FFI Agreement requirement from obtaining an interest in the fund; and
3. The fund must certify and publish its 'passthu payment percentage' as required. Treasury and the Service are also considering whether to deem other entities as having met the FFI Agreement requirement, including foreign entities all of the interests of which are regularly traded on an established securities market, e.g., exchange traded funds.

## ADDITIONAL COMMENTS ABOUT REPORTING

Generally, an FFI must report the required information to the Treasury annually. As an alternative, an FFI can elect to report as a United States financial institution to avoid the annual reporting requirement and the passthru payment withholding requirements. In addition, Treasury and the Service are considering a centralised compliance option for certain funds that are associated with a common asset manager or other agent.

## PREPARATION

FATCA does not become effective until 1 January 2013. However, FATCA imposes complex compliance obligations. For example, for its corporate and partnership account holders, an FFI will have to determine whether United States persons own more than 10% of the stock of the corporation or more than 10% of the interests in the partnership. As such, an FFI should now consider what compliance procedures and processes it will need to implement to make these and other determinations.

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# HOLDING COMPANIES TABLE

This table provides a brief guide to the tax position for holding companies in many popular jurisdictions, as at 1 January 2011

FACTOR	AUSTRALIA	AUSTRIA	BELGIUM	CYPRUS	DENMARK	GERMANY	IRELAND	ITALY	LUXEMBOURG	MALTA	NETHERLANDS	SINGAPORE	SPAIN	SWEDEN	SWITZERLAND	UK
Treatment of dividends	Exempt	Exempt (1)	95% Exempt (2)	Exempt (3)	Exempt (4)	95% Exempt	Taxable (5)	95% Exempt (6)	Exempt (7)	Exempt (8)	Exempt (9)	Exempt (10)	Exempt (11)	Exempt	Exempt	Exempt (12)
Minimum holding for dividends	10%	10%	10% or EUR 2.5m	None	10%	None	5%	None	10% or cost of acquisition EUR 1.2m	10% (14)	5%	None	5% or cost of acquisition EUR 6m	None (15)	10% or CHF 1m	None
Treatment of capital gains	Reduced or Exempt (16)	Exempt (17), (1)	Exempt	Exempt (18)	Exempt	95% Exempt	Exempt (19)	95% Exempt (20)	Exempt (21), (7)	Exempt (22), (8)	Exempt (23), (9)	Exempt	Exempt (24), (11)	Exempt	Exempt	Exempt (25)
Minimum holding for gains	10%	10%	None	None	10%	None	5% (26), (13)	None	10% or cost of acquisition EUR 6m	None	5%	None	5% or cost of acquisition EUR 6m	None (27), (15)	10% (27a)	10%
Minimum ownership period	12 months (Divs) (28)	1 year (29)	1 year (Divs)	None	None	None	1 year	1 year	1 year	None (30)	None	None	1 year	None (31)	1 yr (Gains)	1 yr (Gains)
Must subsidiary be active (32)	Yes (33)	Yes	No	No (34), (3)	No	No	Yes (35), (19)	Yes	No	No	No (36)	No	Yes (37)	No	No	Yes for gains
Must subsidiary be liable to tax	No	No (38), (1)	Yes (39)	No (40), (3)	No	No	No	No	Yes (41), (7)	No (42), (8)	No (43), (9)	No	Yes (44)	Yes	No	No
CT Rate	30%	25%	33.99% (45)	10%	25%	15.825% (46)	12.5% (47)	31.4% (48)	28.80% (49)	35% (50)	25.5% (51)	17% (52)	30% (53)	26.3%	7.8% (54)	28% (55)
Normal WHT on dividends paid (56)	0%/30% (57)	25%	25% (57a)	0%	0% (58)	26.375% (59)	0% (60)	27%	15% (61)	None (61a)	15% (62)	None	0% (63)	0% (64)	35% (65)	None
Normal WHT on liquidation distributions (66)	0%/30% (67), (57)	No	10%	0%	0%/28% (68)	26.375% (69), (59)	No	27%	No	None	15% (70), (62)	None	0% (71), (63)	0%	35% (72), (65)	None
Interest deduction (73)	Yes	Yes (78)	Yes	No	Yes (74)	Yes	Yes (75)	Yes	Yes (76)	Yes (77)	Yes (78)	Yes (79)	Yes	Yes	Yes	Yes (80)
Debt/equity restrictions etc. (81)	3:1 (82)	No	7:1 (83)	No	4:1 (84)	Yes (85)	No	Yes (87)	85:15 (88)	No	3:1 (89)	No	3:1 (90)	None	6:1 (91)	Yes (92)
CFC rules (93)	Yes (94)	No	No (95)	No	Yes	Yes (96)	No	Yes	No	No	No (95)	No	Yes (97)	Yes (98)	No	Yes (99)
Binding pre-transaction rulings (100)	Yes	Sometimes	Yes	Sometimes	Yes	No	No	Sometimes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Sometimes (101)
Other taxes	None	1% CD	None	Defence Tax 10-15% (102) 0.6% CD	None	TT app. 15%	None	None	NWTC 0.5% (103)	None	None	None	None	No	1% CD, 0.15% - 0.3% STT (104), 0.001% - 0.4% NWT (105)	SD 0.5%
Treaty network	Good	Excellent	Excellent	Good	Excellent	Excellent	Good	Excellent	Good	Good	Excellent	Good	Excellent	Excellent	Excellent	Excellent

**Abbreviations**  
 CD: Capital duty  
 CFC: Controlled foreign company  
 CT: Corporation tax  
 EBITDA: Earnings before interest, tax, depreciation and amortisation  
 NWT: Net worth tax  
 SD: Stamp duty  
 STT: Share transfer tax  
 TTT: Trade tax  
 WHT: Withholding tax

# HOLDING COMPANIES TABLE

## As at 1 January 2011

### Footnotes

- Treatment of dividends**
- Exemption inapplicable if foreign sub's income mainly passive, and tax rate less than 15%. Also, if dividend deductible in payer's jurisdiction.
  - Certain anti-avoidance rules may apply - see Note 39. 100% (instead of 95% exemption arguable per EC Treaty).
  - Exemption inapplicable if more than 50% of foreign sub's income from investment activities, and tax rate less than 5%. Exception for holding co with active sub's - see Note 102 re Defence Tax.
  - Exemption only applies if (a) Danish holding co directly or indirectly exercises decisive influence over sub, or (b) sub is EU, EEA, or treaty-partner resident, or (c) sub tax-consolidated with Danish partner. In principle, taxed at 25% with foreign tax credit. However, option to be taxed at 12.5% where div sourced (a) at least 75% from trading activity of treaty-partner resident foreign sub, and (b) where consolidated value of group's trading assets not less than 75% of all its assets.
  - Exemption inapplicable (a) if foreign sub resident in black-list jurisdiction, or (b) div received deductible in payer's jurisdiction.
  - Exemption inapplicable to non-EU sub liable for tax at less than 10.5%. Recapture rules re expenses etc.
  - Divs qualifying for participation exemptions not taxable. Divs taxed at subsidiary level do not attract further tax. Untaxed divs taxable with credit for double tax relief.
  - Shareholding in subs qualifies if not held as a portfolio investment. Alternatively, sub qualifies, which holds 50% or more of business related assets and/or real estate. Shareholding in sub also qualifies if sub subject to reasonable tax on its profits.
  - Exempt provided foreign jurisdiction taxes income from which divs declared. (Exceptions in certain cases).
  - Exempt provided sub has commercial activity and is subject to tax similar to Spanish tax. If resident in tax haven, exemption inapplicable unless EU resident for economic purposes and with commercial activity.
  - Subject to anti-avoidance rules, including that dividends not deductible in payer's jurisdiction.

**Minimum holding for dividends**

- Refers to minimum shareholding for dividend treatment.
- Or (a) holding cost in excess of €1,165,000, or (b) majority control, voting, or pre-emption rights.
- 10% holding requirement for shares held in listed companies.

**Treatment of capital gains**

- Reduced (and potentially exempt) to extent subsidiary owns underlying business assets to extent of 90%.
- See Note 1. Also, gains on sale of shares in Austrian co's are taxable.
- Exemption inapplicable to gains on shares in co's owning Cyprus real estate.
- Basic 25% tax rate. However, gains exempt when arising on disposal of shares in an EU sub, or co resident in treaty-partner jurisdiction, provided sub exists wholly or mainly to carry on a trade; or is member of trading group and shares held for at least 12 months continuous period.
- Exemption inapplicable if foreign sub resident in black-list jurisdiction.
- See Note 7. Also, exempt gain can result in recapture of interest etc deductions - Note 76.
- See Note 8.
- See Note 11.
- See Note 11. Also, gains on sale of shares in Spanish co's are taxable.
- Exemption applies to disposal of shares in trading or trading group.

**Minimum holding for gains**

- See Note 13.
- See Note 15.
- Less than 10% in some cases

**Minimum ownership period**

- Re gains, continuous period of at least 12 months in 2 years pre-disposal.
- No minimum ownership period for divs from Austrian co's.
- But minimum holding period of 183 days under certain conditions.
- 1 year ownership period required for shares held in listed co's.

**Must subsidiary be active?**

- Broadly, whether sub carries on active trade or business.
- Value of foreign business assets in sub as percentage of total asset value determines level of reduction. "Active" foreign business assets include those used in course of sub's business, goodwill and shares, but exclude assets such as financial instruments and cash.
- See Note 3.
- See Note 19.
- See Note 9. Sub must not hold more than 50% portfolio assets.
- But some passive activities permitted; e.g., financing foreign entities, exploiting intangibles.

**Must subsidiary be liable to tax**

- See Note 1.
- Sub must be liable to similar tax to Belgian CIT. Minimum 15% tax condition must be met, but inapplicable to co's resident in EU. Divs and gains from certain types of co, such as financing, treasury, investment co's etc resident in jurisdiction without similar tax base, are not exempt.
- See Note 3.
- See Note 7.
- See Note 8.
- See Note 9.
- Liability to tax deemed satisfied where sub resident in treaty partner country with exchange of information article.

**CT rate**

- 30% + 3% additional crisis contribution.
- 15% + 5.5% solidarity surcharge. Additionally, Trade Tax of approximately 15% is payable.
- 12.5% applies to trading income. 25% to investment income.
- Corporate tax rate 22.05% (including 5% tax deductible solidarity surcharge). Plus, 6.75% non-deductible municipal tax is increasing tax rate to 28.80% in Luxembourg City. Note that as from 1 January 2011 a minimum corporate income tax charge of €1,500 applies to holding companies if financial assets/securities or cash exceed 90% of their balance sheet.
- When it pays tax can be refunded to qualifying shareholders of holding co of 35% tax dividends.
- First EUR 200,000 taxable at 20%. Excess profits taxable at 25.5%.
- 75% of first SGD 10,000 and 50% of next SGD 200,000 tax-exempt.
- Small co's with group turnover below EUR 10m taxed at 25% on first EUR 300,000.
- Excludes tax at cantoned / communal level. 8.5% federal tax deductible, so effective rate of 7.8%.
- 21% if profits below €21,000; €300,000 to €1.5m - intermediate rates. Profits of associated co's taken into account.

**Normal WHT on dividends paid**

- Assumed paid to corporate shareholder. Frequently 0% under Parent/Subsidiary Directive (including Switzerland), and substantially reduced under tax treaty. Assumes anti-avoidance rules will not deny treaty withholding rate.
- 30% only in exceptional cases.
- 0% where dividend recipient resident in treaty partner country with exchange of information and treaty conditions broadly similar to Parent/Sub Directive.
- 28% where recipient not parent co resident in EU, EEA, or treaty-partner country.

- 25% + 5.5% solidarity surcharge. But non-resident refunded 10% = 15.825%.
- Standard rate 20%. No WHT on divs paid to (a) non-Irish persons who are not co's and are resident in EU State or in treaty-partner jurisdiction; or (b) non-resident co's ultimately controlled by EU or treaty-partner resident; (c) non-resident co's, principal class of shares of whose 75% parent are substantially and regularly traded on recognised stock exchange in EU state or in treaty-partner jurisdiction; (d) co's resident in EU state or treaty-partner jurisdiction and not controlled by Irish residents; and (e) non-resident co's wholly owned by two or more co's, each of whose principal class of shares is substantially and regularly traded on one or more stock exchanges approved by Minister of Finance.
- 0% where dividend recipient resident in treaty partner country and is liable to tax at 10.5%. Some other exemptions.
- In fact, dividend payment can attract tax refund - Note 50.
- In addition to EU parent, 0% when paid to EU corporate shareholder owning at least 5% of Dutch holding co's shares.
- 0% applies provided Spanish holding co has ETVE status. Otherwise 19%, subject to Parent/Subsidiary Directive or treaty reduction.
- 0% provided foreign parent subject to effective tax rate similar to Sweden (10% - 15%). Otherwise 30% withholding tax subject to treaty.
- In addition to treaty reduction, 0% under Parent/Sub Directive.

**Normal WHT on liquidation distributions**

- Normally excluding return of paid-in capital.
- See Note 57.
- Liquidation distributions taxable if recipient company is (a) not resident in treaty-partner jurisdiction and either owns more than 15% of Danish co's shares directly or is related to group by indirect ownership, or (b) resident in EEA or treaty-partner jurisdiction and owns less than 15% of shares in Danish co. But, no tax if liquidation proceeds distributed in year when deregistration from Commerce and Companies Agency takes place.
- See Note 62.
- See Note 69.
- See Note 63.
- See Note 65.

**Interest deduction**

- Refers to interest payable on Holding Co's borrowings to acquire Sub. Interest on related party borrowings restricted to arm's length rate. See 81 et seq below re debt/equity etc restrictions.
- Denied in specific circumstances.
- Strict conditions to be satisfied. Anti-avoidance rules apply. 76. To extent interest paid exceeds exempt income. Recaptured to extent of exempt gains.
- Refer to Note 73, but no debt/equity restrictions
- Anti-avoidance measures may deny deduction.
- Interest only deductible to extent dividend income taxable, which is comparatively rare - Note 10.

- But subject to anti-avoidance rules; e.g., anti-harbourage, dual deductions in some cases.

**Debt/equity restrictions etc**

- In addition to debt/equity, restrictions may also be based on Debt Cap and EBITDA - see below. Normally, but not always, restrictions apply only to interest payable to connected persons.
- 3:1 depends on nature of lender and tests applied. De minimis exemption and safe harbour.
- 7:1 only where paid to persons taxed at low rate or exempt. 1:1 ratio re loans from individual directors.
- Additionally, interest limited by reference to EBITDA and Asset Values.
- If net interest expense EUR 3m or more, deduction limited to 30% tax-adjusted EBITDA. Interest barrier inapplicable if German co's ratio of equity to assets equal or higher than same ratio for worldwide group (2% shortfall acceptable). Special rules for German tax groups.
- Not used.
- 30% EBITDA, based on profits in consolidated tax return.
- No statutory rule but 85:15 generally applied in practice for shareholding activities.
- 3:1 ratio may be exceeded to extent of debt/equity ratio of the whole group. Interest paid to third parties fully deductible unless certain guarantees or securities are provided by group companies. Interest paid to group co's only limited as far as it exceeds interest received from group co's.
- Inapplicable to interest paid to EU companies.
- For finance and holding companies.
- For administration (incl. 8:6:97). Safe harbour debt/equity ratio is 6:1.
- Based on connected party transfer pricing rules. Additionally, for large groups, Worldwide Debt Cap restriction applies to disallow excess of intergroup finance costs over Worldwide group finance costs on external borrowing.

**CFC rules**

- For EU holding companies, review whether Cadbury-Schweppes decision may make CFC rules inapplicable to EU/EEA subs.
- Specific rules apply only to passive subsidiaries.
- Specific rules apply to CFCs which have broadly same effect as CFC.
- Inapplicable if EU/EEA resident CFC conducts genuine economic activity.
- Foreign sub may carry out genuine passive activities; e.g., financing for foreign entities, exploiting intangibles. EUBus excluded unless in low-tax jurisdiction in accordance with anti-avoidance economic reasons.
- Exemptions include royalty income, White List countries, and real estate.
- Economic activities in EU/EEA.
- Exemptions include EU/EEA CFC.

**Binding pre-transaction rulings**

- Advance pricing agreements may also be available.
- Re inbound investments of £250m or more.

**Other taxes**

- Non-exempt dividends subject to 15% Defence Tax. Interest on fixed deposits subject to 10% Defence Tax. Both exempt from corporation tax.
- Holdings in qualifying subs, and foreign PE assets exempt from Net Worth Tax. Foreign real estate also exempt based on treaty.
- Payable on disposal of securities if the company holds more than CHF 10m in securities. For intercompany transactions exemptions may apply.
- Rate varies per canton and commune.



## CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 19 August 2011.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Euro (EUR)	1.00000	1.43758
Australian dollar (AUD)	0.72764	1.04614
Egyptian pound (EGP)	0.11531	0.16579
Jersey pound (JEP)	1.14913	1.65661
Pakistan rupee (PKR)	0.00793	0.01141
Swiss franc (CHF)	0.87769	1.26183
US dollar (USD)	0.69555	1.00000



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