



International news and analysis to help you in your international tax strategy.



Focus on: Bulgaria

Proposal for exemption of inbound and outbound tax on dividends to/from EEA companies and other entities



On 19 June 2008 the Council of Ministers approved a proposal that, whether approved by the Parliament, should change the current tax treatment of inbound and outbound dividends to/from companies and other entities resident in the EEA starting from 1 January 2009.

The current legislation provides an exemption from withholding tax and corporate income tax only for domestic dividends and for those falling within the scope of application of the Parent-Subsidiary Directive 90/435/EEC. The European Commission initiated an infringement procedure regarding the treatment of international dividends, the taxation of which is considered to be discriminatory under EC law.

The proposal provides for the abolition of the chapter implementing the Directive with the relevant annexes, and introduces rules for inbound and outbound dividends to/from companies and other entities resident in the EEA, which are identical to the rules for domestic dividends.

Accordingly, no withholding tax would be levied on outbound dividends distributed to companies and other entities, which are resident in other EEA states. Inbound dividends from such companies and other entities would be exempt from corporate income tax in the hands of the resident corporate shareholders. No additional conditions are in place.

Opportunities for taxpayers: new opportunities for tax planning.

JERSEY

Zero-ten regime – Guidelines for Non-Resident Landlord

On 23 June 2008, the Income Tax Office issued some guidelines regarding the deduction of tax in respect of rental income from immovable property owned by non-resident landlords.

The zero-ten regime should come into full effect as of 1 January 2009 and a withholding requirement will be levied in respect of income from property subject to tax under Schedule A. Unless certain conditions are met, the agent managing the property on behalf of the tenant, or in case there is no such agent, the tenant himself, must deduct tax at the standard rate of 20% before paying the rent to the non-resident landlord.

Payment may be made without deduction of tax if:

- the rent is exempt from tax under art. 115, or
- the non-resident landlord has complied fully, consistently, and in a timely manner, with all the requirements of the Income Tax Law, and can provide his agent (or tenant, as the case may be) with a good compliance certificate; or;
- (in the case of tenants only) if the rent paid to the non-resident landlord is less than GBP 2,500 per annum, or as reduced proportionately in the case of a tenancy for less than a year.

Agents are consequently required to register with the Income Tax Office, with effect from 1 July 2008. In any event, agents must register within 30 days of 1 January 2009. A person who becomes an agent after that date must register within 30 days of becoming an agent.

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In addition to deducting tax, agents will be required to make quarterly and annual returns to the Controller of Income Tax. They must also pay the tax withheld within 30 days of the end of each specified quarter. Failure to comply will attract criminal sanctions in the form of fines.

A tenancy agreement purporting to provide for the payment of rent without deduction shall be void to the extent of that provision. The same applies to a provision for an agent to account, without deduction of income tax, for rent received in contravention of the law.

FRANCE

Retroactive extension of capital gains participation exemption to EU and EEA countries

In 2007 the participation exemption previously applicable only to dividends was extended to capital gains deriving from the sale of participation shares. Under the participation exemption, 95% of the gains derived from the disposal of qualifying shares is exempt from tax and the remaining 5%, deemed to correspond to the expenses incurred with respect to the participation, is taxable in the normal manner.

In a Guideline of 4 April 2008 (4 B-1-08), the French Tax Administration indicated that the participation exemption on qualifying capital gains is extended retroactively to parent companies having their effective management and control in another EU Member State or European Economic Area (EEA) country with which France has concluded a tax treaty comprising an administrative assistance clause.

The extension effectively results in the application of a flat rate of 1.67% (being 5% of the gain taxable at the rate of 33.33%) to qualifying capital gains. Obviously, this extension of the capital gains exemption is operative only where the relevant tax treaty attributes to France the right to tax capital gains on shares in French companies. In order to qualify for the participation exemption on the gains, the non-resident parent company must satisfy the following conditions:

- the company previously paid capital gains in France;
- the company is subject to corporate income tax in its state of residence without being exempt;
- the company must have sold the participation in a fiscal year beginning on or after 1 January 2006; and
- it must have held the shares directly or indirectly for at least 2 years before the sale.

Generally, the exemption is available through a claim for refund of excess tax to be lodged with the relevant tax office. The extension of the exemption to qualifying EU and EEA residents will operate retroactively to 1 January 2006. Qualifying parent companies may claim a refund of the excess tax levied in 2006 as the difference between the tax actually paid and 8% of the gain (the tax rate applied to gains during 2006). For 2007, the claim for refund shall be calculated as the difference between the tax actually paid and 1.67%.

On another matter, the Guideline withdraws the right for a foreign tax credit for foreign-source capital gains realized by French residents, when such gains qualify for the participation exemption in France. The foreign tax on such capital gains was creditable against the French corporate tax on the same gain, provided a tax treaty so establishes. The Guideline indicates, however, the foreign tax may be deducted as an expense in calculating the taxable 5% portion of the gain. Hence, a French company which acquired foreign participation shares for 30, disposes of those for 100 and bears 10 in foreign tax, will be taxable in France on 3 (being $5\% \times [100 - (30 + 10)]$).

INTERNATIONAL MODELS

The Cypriot Special Contribution for Defence

Special contribution for defence is a tax imposed by Cyprus on income earned only by tax residents at the following tax rates:

	Individuals %	Legal entities %
Dividend income from Cyprus resident companies	15	0
Dividend income from non-Cyprus resident companies	15	0 (under certain conditions)
Interest income arising from the ordinary activities or closely related to the ordinary activities of the business	0	0
Other interest	10	10
Rental income (reduced by 25%)	3	3
Profits of semi government organisations	N/A	3

Dividend income from abroad is exempt from the Contribution provided that the company receiving the dividend owns at least 1% of the company paying the dividend. This exemption does not apply if:

- more than 50% of the paying company's activities result directly or indirectly in investment income, and
- the foreign tax is significantly lower than the tax rate payable in Cyprus.

In the case where the total income of an individual (including interest) does not exceed EUR 11.960 in a taxable year, then the rate is reduced to 3%. Special contribution for defence on rental income and trading profits is payable in 6 months intervals on 30th June and 31st December each year.

In the case of interest and dividends received gross any defence due is payable at the end of the month following the month in which they were received.

Dividends received from companies net of 20% withholding tax under the legislation that was in force up to 31st December 2002, and not distributed as dividends up to 31st December 2002, can be distributed within six years from the date of their receipt without any further tax deductions. Foreign taxes paid can also be credited against the defence tax liability.

If a Cyprus resident company does not distributed a dividend within two years from the end of the tax year, then:

- 70% of accounting profits (after some adjustments) are deemed to have been distributed;
- 15% special contribution for defence is imposed on deemed dividend distribution applicable to shareholders who are residents of Cyprus;
- Deemed distribution is reduced with payments of actual dividends which have already been paid during the two years from the profits of the relevant year.

When the actual dividend is paid after the deemed dividend distribution, then special contribution for defence is imposed only on the additional dividend paid.

