



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



Focus on: Luxembourg

Finance Bill for 2009 and Bill on new tax measures submitted to Parliament



On 1 October 2008, the government submitted the Finance Bill for 2009 and a Bill on various new tax measures to Parliament, which are expected to be effective as of January 1st, 2009 if the Bills are timely adopted by the Parliament. The most relevant tax measures concerning companies are the following.

- **Tax rate.** Corporate income tax rate would be reduced from 22% to 21%. Considering the surcharge and municipal business tax the aggregate effective tax rate for Luxembourg City would become 28.59%.
- **Withholding tax exemption on outbound dividends.** Dividend payments from a Luxembourg company to a corporate entity established in countries with which Luxembourg has a tax treaty and which in their country of establishment are subject to a tax similar to the Luxembourg corporate income tax will benefit from participation exemption.
- **New wealth tax exemption for IP.** Luxembourg tax law provides certain exemption from net wealth tax, such as the exemption for the value of a substantial shareholding. The new regime adds an 80% exemption from corporate income tax for intellectual property (IP) and capital gains realised on the disposal of such property, with retroactive effect from January 1st, 2008. In addition, qualifying IP would become exempt from net wealth tax.
- **Fiscal neutrality for companies applying IFRS.** The Bill will ensure fiscal neutrality for companies opting to apply the IFRS.
- **Abolition of capital duty.** The draft budget provides that the capital duty would be abolished from 1 February 2009, and not from 1 January 2009 as earlier proposed.
- **Company cars.** The tax on company cars, other than buses and taxis, used for the transport of employees would no longer be deductible.

Opportunities for taxpayers: new opportunities for tax planning.

ISLE OF MAN

Tax information exchange

On September 29, 2008 the governments of the United Kingdom and the Isle of Man signed a new tax information exchange agreement and held to amend the provisions of the 1955 arrangement between each other for the avoidance of double taxation with respect to taxes on income, notably to add provisions on the taxation of income from pensions and a mutual agreement procedure.

The text will be laid as Schedules to a draft Order for consideration by the House of Commons. It will then also be available from the Stationery Office.

According to the Financial Secretary to the Treasury, the new tax information exchange agreement represents a significant step in their efforts to counter and prevent tax evasion and avoidance. The Government of Isle of Man's

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willingness to implement these high standards of transparency and exchange of information and to acknowledge their commitment is totally welcome.

In the Minister of State responsible for the Crown Dependencies' view, this agreement is an example of effective co-operation between the two jurisdictions.

The agreement is expected to enter into force as soon as both governments have completed the legislative procedures needed to give it effect.

JAPAN

Further discussion on foreign dividend exclusion system announced

The new Japanese Prime Minister, Taro Aso, announced that the government will have a further discussion on the revision of the tax rule relating to dividends that a Japanese parent company receives from its foreign subsidiaries. His plan includes the introduction of the foreign dividends exclusion system, which the Ministry of Economy, Trade and Industry proposed to introduce as part of the 2009 tax reform.

BULGARIA

Draft changes to Corporate Income Tax Law

On 7 October 2008, the Ministry of Finance announced draft amendments to the Corporate Income Tax Law, which should enter into force as of January 1st, 2009, under the approval by the Parliament. Among the mentioned amendments, the following must be underlined.

- **Capital gains exemption.** At present, capital gains on quoted shares realized on the Bulgarian Stock Exchange are exempt, while corresponding losses are not deductible. The exemption also applies to such capital gains realized by non-residents. The amendment would broaden the scope of the exemption (and the corresponding non-deduction) to transactions effected through the stock exchange of any EEA Member State.
- **Capital losses and exemption method.** Similar to the current limitation on losses of foreign permanent establishments, the proposal provides for a ban on foreign-source capital losses where a tax treaty provides for the exemption method for the elimination of double taxation on capital gains.
- **Donations.** The list of qualifying beneficiaries will be updated to include beneficiaries from the EEA. However, certain types of beneficiaries would be taken out of the list of qualifying beneficiaries.
- **Employment incentive.** The proposal provides for the abolition of the employment aid scheme for depressed regions.

INTERNATIONAL MODELS

The trust regime in Guernsey

Effective from March 2008, the Trusts Guernsey Law 2007 contributed to increase the good reputation of such jurisdiction, as it provides a modern statutory basis for trust management and introduces greater flexibility in a number of areas.

One of the most significant changes is the introduction of non-charitable purpose trusts. Previously, Guernsey Trust Law considered as a valid only trust with one or more beneficiaries, or those created for charitable purposes. Accordingly, if a trust had no identifiable beneficiary, unless it was created for a charitable purpose, it was invalid. The new law provides for the validity of non-charitable purpose trusts through enforceability. This is provided by the appointment of a person who can enforce the terms of the trust, an "enforcer". A trust formed for the purpose of

property ownership is valid. In addition non-charitable purpose trusts can be formed for both commercial and non-commercial reasons, including the holding of special purpose vehicles.

As far as duration is concerned, it must be pointed out that previously a 100 years limit for a Guernsey trust was set forth. Such a limit has been repealed and perpetuity is admitted. Subject to the terms of the trust, existing trusts may also be made perpetual. Where a high net worth family wishes to ensure that the benefits of a trust are preserved for many generations of descendants, advisers should carefully consider the use of a perpetual Guernsey trust.

In order to ensure asset protection, the new law confirms that no Guernsey trust can be rendered void due to the fact that it defeats a claim under foreign matrimonial, civil partnership or heirship laws. The new law also enhances the defence of a Guernsey trust against other types of attack based on foreign law or from foreign courts. It is recommended that as far as possible, assets are held in Guernsey to guard against a foreign court seizing property or assets from within its jurisdiction.

The period during which claims could be brought against a trustee were not previously very clear and could potentially be very long.

The limitation period for bringing actions for breach of trust is clarified as 3 years from the date that the claimant first became aware of the breach. Exceptions to this are in the case of minor and unborn beneficiaries. A maximum 18 year limitation period has been introduced from the date of the breach, for all matters other than trustee fraud.

The new law also provides for additional security for Trustees. In fact, previously directors of corporate trustees were personally liable for losses due to breach of trust and had to act as guarantors. A solution has been found with the new obligation for corporate trustees to be covered by professional indemnity insurance. In addition, all trustees and former trustees are automatically provided with a non-possessory lien over trust property as security against liability. Notably, the lien continues after the trustee retires, regardless of whether the assets are held by a successor trustee or a beneficiary.

A settlor is permitted to reserve certain powers to himself, or grant certain powers to another to retain a degree of control over the trust. This can also absolve trustees from any liability resulting from the valid exercise of such powers.



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