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### Focus on: Luxembourg

## European Commission takes steps against Luxembourg as regards transposition of the Savings Directive



The European Commission sent Luxembourg a reasoned opinion (which consists of the second stage of the infringement procedure under Art. 226 of the EC Treaty) requesting Luxembourg to amend its legislation which incorrectly transposes certain provisions of the Savings Directive 2003/48/EC.

The said reasoned opinion regards the incorrect application by Luxembourg of the Savings Directive which ensures that paying agents (banks, financial institutions, etc.) either report information about the identity of beneficial owners residing in another EU Member State and about interest income paid to these latter or levy a withholding tax at the moment of the payment.

According to the European Commission, Luxembourg legislation does not provide any exemption from withholding tax in situations other than those expressly provided by Art. 13 of the Savings Directive (the so-called "voluntary disclosure" procedure which allows the beneficial owner expressly to authorize the paying agent to report information to the tax authorities and the certificate procedure which ensures that withholding tax is not levied when the beneficial owner presents to his paying agent a certificate drawn up by his Member State of residence for tax purposes).

However, Luxembourg also gives an exemption from withholding tax to interest payments made to beneficial owners who benefit from the so-called "non-domiciled resident" status in their country of residence. This status is granted by some Member States to residents who are generally exempt from income tax in their state of residence or provided the interest payments, in the absence of a transfer to the state of residence ("remittance"), are not subject to tax in that state.

The Commission holds that the paying agent has the obligation to establish the residence of the beneficial owner on the basis of minimum standards, as provided by Art. 3(3) of the Savings Directive. Therefore, if the beneficial owner is a resident of another Member State in accordance with these standards, the Member State of the paying agent must ensure that the latter applies the Directive and, in the case of Luxembourg, that the paying agent levies a withholding tax on interest payments to such a beneficial owner.

Consequently, the Commission considers that Luxembourg legislation, at its current stage, is in breach of Articles. 2, 3, 10 and 11 of the Savings Directive.

If Luxemburg does not amend its legislation within 2 months, the matter may be referred to the European Court of Justice.

### POLAND

## Capital duty on certain transaction abolished

On 24 November 2008, the amendments to the Law on Tax on Civil Law Transactions were signed. They aim at adjusting the provisions of the said law in compliance with EC legislation and, more specifically, with the principle of a single taxation on capital raise. With the implementation of the provisions of Council Directive EC/2008/7 of 12 February 2008, which replaced Council Directive 69/335/EEC of 17 July 1969, according to Polish domestic legislation, starting

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from 1 January 2009 the following transactions will no longer be subject to capital duty (whose current tax rate is 0,5%):

- loans granted to the company by its shareholders/stockholders resulting in the increase of the company capital;
- restructuring transactions, such as mergers, divisions, exchange of shares and in-kind contribution of shares; and
- change of the company's articles of association resulting from the transfer of the registered office or effective place of management of the company from one EU Member State to another.

## TURKEY

### Withholding rates on capital gains for residents reduced to zero

By way of Decree No. 2008/14272, the Council of Ministers reduced the withholding tax rate on certain qualifying capital gains derived by resident individuals and companies from 10% to 0% with effect as of 14 November 2008. This zero-percent tax is final for resident individuals. For resident companies, however, such gains are subject to 20% corporate income tax levied by assessment with the annual tax return.

Under the Decree, the 10% tax withheld by banks, stock brokers and intermediary institutions on the capital gains derived by resident individuals and companies from the disposal of shares (except shares in security investment partnerships) of resident corporations acquired on or after 1 January 2006 is reduced to 0%. The withholding tax rate on such capital gains of non-residents was previously reduced to 0% by the Act 5527 on 7 July 2006.

For resident individuals and companies, the capital gains derived from the sale of government and private bonds issued on and after 1 January 2006, however, are still subject to the 10% withholding tax. Non-resident individuals and companies have been subject to a final withholding tax at 0% on such gains since 7 July 2006.

## UNITED STATES / LIECHTENSTEIN

### Tax information exchange agreement signed

The US Treasury Department announced the signature of an Agreement on Tax Cooperation and the Exchange of Information Relating to Taxes between Liechtenstein and the United States. The Agreement was signed on 8 December 2008 in Vaduz and was concluded both in English and in German.

The Agreement imposes the competent authorities of the two States to exchange information related to taxes upon request without regard to whether the requested party needs the information for its own tax purposes or whether the conduct being investigated would constitute a crime under its law. If the party that is requested to supply the information does not have the information within its possession, the Agreement requires that party to take all relevant information-gathering measures necessary to obtain the information and supply it to the other party. The Agreement also permits representatives of a contracting State to enter the territory of the other contracting State to interview persons and examine records with the consent of the authorities of the other State.

The Agreement specifies the information to be included in the requests such as the identity of the taxpayer and the time period under examination, but also the reasoning why the request is relevant to tax administration and enforcement. As well, a statement must be submitted that the requesting party has pursued all reasonable means in its own territory to obtain the information.

The Agreement provides for a mutual agreement procedure to carry out the purposes of the agreement as well as an article covering the possibility of declining a request and some restrictions on the scope of the obligation relating to commercial secrets. It must be underlined that the Agreement is intended to allow the United States to overcome Liechtenstein's bank secrecy laws in appropriate cases.

In addition, included in the Agreement's appendix and discussed in an accompanying press release issued by the US Department of the Treasury, the United States is extending Liechtenstein's treatment as an eligible Qualified Intermediary jurisdiction until 31 December 2009. According to the Treasury Department, the one-year extension is intended to provide Liechtenstein with time to enact the legislation necessary for full implementation of the Agreement, and if Liechtenstein fully implements it by the end of 2009, Liechtenstein's Qualifying Intermediary status will be renewed for the standard six-year term.

The Agreement will come into force once the two jurisdictions notify each other in writing that the internal procedures for its entrance into force are complete. It will have effect on requests made on or after the date of entry into force with regard to tax years beginning on or after 1 January 2009.

## INTERNATIONAL MODELS

### The International societies with restricted liability in Barbados

International societies with restricted liability (ISRLs), introduced in 1995 and amended in 2005, are a special vehicle for international investment which have the following main characteristics:

- Limited liability;
- A maximum of 50 years duration;
- The rights, power and privileges of an individual;
- Stipulation that the transfer of quotas (as the membership units are known) in a society will not confer on the transferee the right to become a member or participate in the management of the society without the consent of all the members in writing.



From a tax standpoint, ISRLs benefit from the following favourable regime:

- Income tax on profits and gains is charged on a sliding scale, from a maximum of 2.5% to a minimum 1%;
- Exemption from all withholding taxes;
- No capital gains tax or estate duty;
- Tax credit in respect of taxes paid abroad, insofar as it does not reduce tax payable in Barbados to a rate less than 1%;
- Complete freedom from exchange control;
- Books of accounts may be kept outside Barbados;
- No minimum capital of thin capitalisation rules;
- Bearer shares are permitted;
- Possibility to benefit from income and capital tax treaties;
- No duties or taxes are levied on imports of machineries, materials or other items required for the ISRL's business;
- No tax must be withheld by the ISRL on distributions made or on interest paid to non-resident, to international business companies, exempt insurance company, persons carrying on international financial services and other ISRLs.

To benefit from the above regime, an ISRL must previously obtain a licence from the Minister of Industry and International Business which will be granted subject to conditions the minister may impose. A fee must accompany the application and subsequently an annual fee will be payable.

In addition, the company cannot acquire or hold any land in Barbados or take deposits not permitted under the Financial Institution Act 1996.

ISRLs do not need to have any physical presence in Barbados, but must maintain a local registered agent and registered office.

Business may be transacted in Barbados only with other ISRLs, international business companies, persons carrying on international financial services and exempt insurance companies, unless the business transacted is for the purpose of acquiring goods and services essential for its ISRL business.

