



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



### Focus on: the USA

#### US reissues list of boycott countries in restriction of US tax benefits

The list of countries that require cooperation with or participation with or in an international boycott as a condition of doing business has been reissued by the US Treasury Department on 1 July 2009. Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and the Republic of Yemen are the listed countries. Iraq is not included on the list but that its future status remained under review.

The listed countries are identified pursuant to Section 999 of the US Internal Revenue Code (IRC), which requires US taxpayers to file reports with the Treasury Department concerning operations in the boycotting countries. Such taxpayers incur adverse consequences under the IRC, including denial of (i) US foreign tax credits for taxes paid to those countries, and (ii) income inclusion under Subpart F of the IRC in the case of US shareholders of controlled foreign corporations that conduct operations in those countries.

### CHINA

#### Clarifications on deduction on fee charges and commissions

With Notice no. 29 of 2009, the Ministry of Finance and State Administration of Taxation set a limit on deduction of fee charges and commissions paid by enterprises in conducting businesses, as follows. Fees and commissions paid in connection with business operations are only allowable for deduction within the following limits:

- Insurance enterprises: 15% of the total amount of premiums of asset insurances and 10% of the total amount of premiums of life insurances. The refunds of the withdrawn insurances can be deducted in determining the total amount of the premiums of both insurances.
- Other enterprises: 5% of the amount of income agreed in the contract or service agreement concluded with a lawfully established agency or individual.

The Notice requires enterprises to conclude agency agreement or contract with a lawfully established agency or individual, and pay fee charges and commissions pursuant to the relevant government regulations. Fee charges and commissions are not deductible if:

- Paid in cash;
- Not paid via bank transfers;
- Paid to security agencies for sale of the equity securities issued by an enterprise;
- Paid as a bribe.

Fee charges and commissions included in the fixed assets or intangibles may be depreciated or amortized, but may not be deducted in the current accounting period. Paid fee charges and commissions may not reduce the total amount agreed in a contract or service agreement, and must be accurately entered in the book records.

### CZECH REPUBLIC

#### Income Tax Law amended

On 3 July 2009, the President signed into law an amendment to the Income Tax Law, which introduces the main following important changes to corporate and individual taxation. Under certain conditions, brand new tangible assets acquired in the period from 1 January 2009 to 30 June 2010 and included in Category 1 (e.g. computers) would be depreciated for 1 year (currently, 3 years).

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Assets carried in Category 2 (e.g. cars, trucks, aircrafts, optical and electrical equipment) can be depreciated for 2 years (currently, 5 years). The conditions for deductibility of financial lease payments in respect of assets in Category 1 and Category 2 will be adjusted and aligned with the above-mentioned depreciation periods.

With effect from 1 January 2010, the excess interest under the thin capitalization rules will not be reclassified as a dividend, if the recipient is resident in another EU Member State or a European Economic Area (EEA) country.

Individuals and companies residing in a EU Member States or EEA countries, producing income subject to a withholding tax in the Czech Republic (e.g. interest or royalties), can claim related tax-deductible expenses by filing a tax return in the Czech Republic. Consequently, the income derived by qualifying non-residents may be taxed on a net basis. The withholding tax can be credited and any overpayment will be refunded.

With effect from 1 January 2009, professional development costs incurred by employers are deductible without limitation, if such costs are relevant for their business activities. Any resulting in-kind benefits for employees are exempt.

## SWEDEN

### Law on APAs proposed

The draft bill presented by the Government on 4 June 2009, if approved, should endow Sweden with Advance Pricing Arrangements (APAs) with effect from 1 January 2010. At present, taxpayers cannot apply for APAs in Sweden, but, under certain conditions and to a certain extent, they can access the mutual agreement procedures provided for under Art. 25 of the OECD Model Tax Convention.

The draft Bill regulates APAs in respect of cross-border transactions between affiliated legal entities and appoints the Swedish Tax Agency as the competent authority for APAs. Upon receipt of the taxpayer's application, the said Authority will issue an APA on the basis of Art. 9 of the OECD Model Tax Convention.

The following conditions must apply:

- the applicant must be subject to tax under the Income Tax Act (Inkomstskattelagen);
- only bilateral or multilateral APAs would be issued, provided that there is a tax treaty in place with the other country concerned;
- the application could be filed in Swedish or English;
- pre-filing meetings would be possible;
- only significant transactions with a volume exceeding a certain threshold would be eligible for APAs;
- APAs could in certain cases be changed or withdrawn;
- the taxpayer should report to the STA any relevant changes over the duration of the APA;
- a fee would be charged upon the submission of the application; and
- the APA would cover up to 5 tax years.

The draft Bill would apply to resident companies and non-resident companies with a permanent establishment in Sweden, as well as partnerships and other similar bodies, provided that the partner is or will be liable to tax in Sweden.

## INTERNATIONAL MODELS

### Panama's limited liability company

The Limited Liability Company (*Sociedad de Responsabilidad Limitada*) (LLC) has been a part of the trade laws of Panama since 1966. Law no. 4 dated 9<sup>th</sup> January 2009 has given this type of company a new and much more flexible juridical background.

A LLC is constituted in a recorded private document or public deed filed at the Public Registry and may engage in any kind of licit activity, whether civil or commercial, and have a broad or limited object. In the charted the domicile of the LLC must be stated and may be located in Panama or elsewhere in the world.

The capital can be set up freely as no minimum or maximum capital is defined and must be paid in cash, goods or services.. The participations or quotas may be held in any currency.

The number of members, which must be no less than two, shall be fixed in the articles of incorporation. There is no maximum number of members and they may be legal entities or individuals of any nationality.

Having less than two members entails the dissolution of the company, unless another member is found.

A LLC is not subject to corporate taxation. Any upcoming liability income tax shall be borne by the members pro rata to their participation in the capital. Therefore, it is not the obligation of the LLC but of the members to pay income taxes whose source is Panama. Similar to the American LLC, this Panamanian vehicle is a “flow-through entity” and therefore is not subject to double taxation.

The new law allows a foreign Limited Liability Company to transfer its jurisdiction to Panama. In this case, it becomes a Panamanian LLC. Likewise, a Panamanian LLC may migrate to another jurisdiction.



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