



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

➔ Focus on: USA 2011 budget

President Obama has submitted his fiscal year 2011 budget to the US Congress. The budget includes proposals for tax increases for upper-income taxpayers, tax reforms and tax incentives for businesses, and tax reforms in the international area. The proposals are summarised in a Press Release issued by the US Treasury Department. Information is also provided in the so-called Green Book, which contains greater details on the proposals.

With respect to individual taxpayers, the proposals include:

- increasing the two highest tax rates from 33% and 35%, to 36% and 39.6%, respectively;
- reinstating the limitation on itemised deductions and the phase-out of personal exemptions for single taxpayers with income above USD 200,000 and married taxpayers with income above USD 250,000;
- limiting the tax-rate value of itemized deductions to 28% for taxpayers in the new 36% and 39.6% income tax brackets;
- increasing the tax rate on capital gains and dividends from the current rate of 15% to a new rate of 20% for single taxpayers with income above USD 200,000 and married taxpayers with income above USD 250,000; and
- permanently fixing the alternative minimum tax by adopting the 2009 exemption amounts, with adjustments for inflation in future years.

With respect to business taxpayers, the proposals include:

- taxation of carried interests by investment fund managers at ordinary income rates rather than capital gains rates;
- elimination of capital gains tax on qualified investments in small business stock;
- changing the 20% credit for research and experimentation (R&E) expenditures from a temporary measure to a permanent measure;
- expanding the 30% credit for eligible property used in qualifying advanced energy projects;
- extending from 2009 to 2010 the expensing amount for qualifying property placed in service by small businesses, i.e. an expensing amount of USD 250,000, with phase-out beginning for qualifying property above USD 800,000, and the continuation of off-the-shelf computer software as qualifying property;
- extending from 2009 to 2010 the 50% first-year bonus depreciation for qualified property;
- adopting the Financial Crisis Responsibility Fee proposed earlier for large banks and financial institutions; and
- repealing the last-in/first-out (LIFO) method of accounting for inventories and the lower-of-cost-or-market (LCM) method.

With respect to international taxpayers, the proposals include:

- deferring the deduction of interest expenses related to foreign-source deferred income;
- reforming the foreign tax credit by requiring the indirect (deemed paid) credit to be computed on a consolidated (pooled) basis;
- reforming the foreign tax credit by preventing the separation of foreign taxes from the associated foreign income (the issue in the Guardian Industries case);
- limiting income shifting to foreign jurisdictions by transfers of intangible property;
- limiting earnings stripping by expatriated entities (i.e. inverted US offshore entities);
- repealing the 80/20 company rule to prevent re-sourcing of dividends paid by US domestic corporations;
- reforming the source rules to prevent the avoidance of US dividend withholding taxes on equity swap transactions; and
- modifying the foreign tax credit rules for dual capacity taxpayers.

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IRELAND

New transfer pricing provisions

The Finance Bill for 2010 was published on 4 February 2010. The key aspects of the proposed transfer pricing regime are as follows:

- The legislation will cover domestic or international trading transactions entered into between associated entities.
- The commencement date is 1 January 2011.
- The regime will not apply to contracts or terms and conditions agreed before 1 July 2010.
- The legislation will require that covered transactions are entered into "at arm's length", and will apply to either overstated expenses or understated trading receipts.
- The principles in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations are to be applied when analysing when a transaction has been entered into "at arm's length".
- The rules will not apply to small or medium sized enterprises. To fall within the rules, the overall enterprise must have more than 250 employees and either turnover of greater than EUR 50 million or assets of greater than EUR 43 million. The size thresholds are to be applied on a global consolidated basis and the economic interests of controlling individual shareholders must be taken into account in applying the tests.
- The legislation contains provisions to allow an offsetting adjustment to related parties when a transfer pricing adjustment is applied to domestic transactions between associated parties that are both subject to Irish tax.
- No specific transfer pricing penalties are included within the legislation; hence, the standard interest and penalty provisions will apply.

ITALY

Tax amnesty extended to 30 April 2010

The tax amnesty for undeclared funds and assets held abroad as at 31 December 2008 is extended to 30 April 2010. The extension is granted by virtue of Law Decree No. 194 of 30 December 2009 (Decreto Milleproroghe).

Specifically, offshore income and assets can be repatriated under the scheme upon payment of:

- a 6% extraordinary tax, if the taxpayer applies between 30 December 2009 and 28 February 2010; and
- a 7% extraordinary tax, if the taxpayer applies between 1 March 2010 and 30 April 2010.

A Ministerial Circular, aimed at clarifying the tax amnesty measures, was issued on 29 January 2010. Below is a summary of the clarifications provided by the Circular:

- the Law Decree No. 194 entered into force on 30 December 2009, whilst the previous provision expired on 15 December 2009; thus repatriations made between 16 December 2009 and 29 December 2009 are invalid;
- income and assets already transferred to Italy on or after 1 January 2009 may not be regularized (i.e. only income and assets that are held abroad as at 31 December 2008, and that have not been declared to the Italian Tax Authorities may be regularized);
- in comparison with the general tax amnesty, the repatriation amnesty for income and assets held abroad does not generally prevent the Italian Tax Authorities from following the normal investigative processes;
- income and assets repatriated or regularized between 1 January 2010 and 30 April 2010 should not be reported in the RW section of the tax return for 2010 or 2011, as the case may be;
- all the formalities necessary to take advantage of the tax amnesty must be completed by 30 April 2010. However, if specific conditions are met, the formalities can be completed by 31 December 2010; and
- the form of declaration to be presented to the qualifying intermediaries (e.g. mainly banks) is that which was approved by the Italian Tax Authorities on 14 September 2009.

THE NETHERLANDS

Optional or obligatory interest box will not be introduced

On 10 February 2010, a report of the discussions of the Financial Committee of the parliament of 14 January 2010, on amendments of the corporate income tax with respect to multinationals, were published. Details are summarized below.

During the meeting, the State Secretary for Finance indicated that an optional or obligatory interest box would not be introduced. Furthermore, in the report indicated that the following measures to reduce excessive debt financing would be introduced in 2011:

- an interest deduction restrictions for loans granted to takeover holdings; and
- a restriction of the loss compensation possibilities of foreign branches.

As a result of the tax revenues obtained from the above measures, the corporate income tax rate may be reduced. In addition, it was announced that the desirability of the following measures will be investigated at a later stage:

- an earnings stripping measure;
- a restriction of the deduction for interest on loans to acquire participations; and
- a reduction of the dividend withholding tax.

INTERNATIONAL MODELS

UK Limited Liability Partnership

A United Kingdom Limited Liability Partnership (LLP) is a very popular vehicle for international commercial activity. It is a body corporate with legal personality that provides its members with limited liability, but at the same time it is fiscally transparent. The activity carried out by an LLP is treated as though carried out in partnership by its members.

The UK only taxes non-residents of the UK on their UK source income or profits associated with a UK permanent establishment. This means that where a UK LLP is engaged in a trade, profession or business, with a view to making a profit, does not have UK members and has no UK trade or permanent establishment or UK source income, the UK will have no taxing authority on the LLP or its members.

The members will, however, need to consider if they have a tax liability in their home jurisdiction(s).

Many UK LLPs are therefore formed to carry out non-UK business by companies in zero or low tax jurisdictions.

There is no minimum capital requirement for the formation of an LLP. An LLP must, however, have at least two members. The members may be corporate bodies and may be resident anywhere in the world. The members of the LLP have the power of management of the company.

The members of a LLP are obliged to prepare a balance sheet and profit and loss account for each financial year of the LLP. These accounts, together with a copy of the auditor's report (where applicable) must be delivered to the Registrar of Companies. The accounts will then be in the public domain and open to inspection.

LLPs that are regarded as small are exempt from an audit requirement. To qualify as a small LLP the LLP must have gross assets of not more than £3.26 million, and its turnover must not exceed £6.5 million. In addition, the LLP must not be part of a group where a public company is a member, or where the group is not defined as small.

It should be noted that even where an audit is not required, members are still required to prepare and file true and fair accounts.



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