



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

### ➔ Focus on: UNITED KINGDOM DTR for chargeable gains

HMRC announced a change in the way that they will grant credit relief for foreign tax suffered on chargeable gains. This applies to both capital gains tax and corporation tax on chargeable gains.

Currently, credit relief is restricted in the following cases:

- where the foreign tax is calculated by reference to a longer period of ownership than the period used for the UK tax calculation. This would often arise on the disposal of an asset that was acquired before 31 March 1982, where a rebasing has taken place in the UK, and the period of ownership, for UK tax purposes, is calculated from 31 March 1982 until the date of disposal; and
- where the amount of the gain charged in the UK is less than that charged in the other country.

With effect from 19 March 2010, there is no restriction on credit relief in the above situations. Where UK credit relief is claimed for foreign tax suffered on chargeable gains, the whole of the foreign tax will be allowable up to the amount of the UK tax on the gain. However, the gain charged in both countries must relate to the same disposal.

This change mirrors the practice in respect of income tax. For income tax, there is no credit relief restriction where the amount assessed in the UK is less than that assessed in the other country.

It is possible to amend tax returns that were submitted based on the old practice, provided the returns are still open, or within the window for amendment. In other cases, a claim may be made within the normal time limits. HMRC have however stated that, due to the short timeframe in which such claims must be made, they will accept late claims for 2004-05 and 2005-06, or accounting periods ending between 19 March 2004 and 29 June 2006. However, these should be claims for additional tax relief resulting from the above change, and should be made no later than 30 June 2010.

### GREECE

#### Parliament adopts urgent tax measures to combat financial crisis

On 5 March 2010, the parliament enacted a new law introducing urgent tax measures within the framework of an austerity plan primarily aimed at reducing the national deficit. The key points of the new law are as follows:

- Increase of the VAT rates from 19% to 21% (standard), and from 9% to 10% (reduced), effective as from 15 March 2010.
- Introduction of a new luxury tax on specific categories of products.
- Increase of excise duties on fuel, alcohol and cigarettes.
- Imposition of 1% extraordinary one-time contribution on individuals and members of the parliament with an income higher than EUR 100,000 in 2009.

It was also announced that in the forthcoming tax reform:

- The highest tax bracket and rate on individuals will be increased from EUR 75,000 to EUR 100,000, from 40% to 45%, respectively.
- The special tax on immovable property on companies owning immovable property located in Greece, or having a usufruct right on such property, will be increased from 3% to 15%.

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## RUSSIA

## Proposed amendments to transfer pricing

On 19 February 2010, State Duma, the lower chamber of Parliament, approved in the first reading a draft law amending transfer pricing rules. If adopted, the most of proposed amendments will take effect from 1 January 2011. The draft law envisages replacement of current Arts 20 and 40 of Tax Code by a new Section V-1. The details of the new provisions are summarized below.

The draft law expands the number of persons falling under the definition of related persons and includes:

- legal entities and/or individuals if they hold directly or indirectly more than 20% of participation rights in a company;
- a legal entity and members of its executive, management or supervisory body;
- legal entities and/or individuals holding more than 50% each in a chain of shareholding;
- founder of a foreign trust, trustee and beneficiaries, as well as a trustee and managed entities by the trustee; and
- parties to a transaction if one party and representative of the other one or representative of both parties are related, and this affects conditions of the transaction.

Controlled transactions are defined as:

- transactions conducted between related persons if (i) amount of the transaction exceeds RUR 1,000 million per year, or (ii) the object of the transaction are mineral resources, or (iii) at least one party to the transaction pays simplified tax;
- export-import operations with oil and oil products, iron, non-ferrous metals, precious metals and stones; and
- transactions with residents of countries included in the "black list" of low-tax jurisdictions.

Taxpayers and tax authorities may conclude advance pricing agreements (if enacted, this provision will have retroactive effect from 1 January 2010).

Transactions between taxpayers in the same consolidated group are not subject to transfer pricing rules. However, neither the draft law nor the current Tax Code gives the definition of the consolidated group.

The draft law allows the use of one of the traditional transaction methods, whichever is most suitable, that the OECD Transfer Pricing Guidelines refers to comparable uncontrolled price method, resale price method, resale processed product price method, cost plus method, profit split method, and transactional net margin method.

The listed methods may be applied according to the factual circumstances and conditions of controlled transactions.

The tax authorities may demand from parties to controlled transactions to provide documents that verify applied transfer prices if the amount of a controlled transaction reached the established threshold. The threshold for 2011 is RUR 100 million, with the subsequent gradual decrease to RUR 10 million in 2015.

In general, the set of verifying documents is similar to those which are used in international practice, in particular, in OECD Transfer Pricing Guidelines. The verifying documents must be available on 1 April of the year following the year when transactions were entered into.

## POLAND

## VAT Taxation of real estate sale

In Polish doctrine and jurisprudence there is a disaccord in reference to a problem of VAT taxation of sale of real estates. Quite common is an occurrence of dividing existing real estates into smaller lots and selling them as separate immovable. Then the problem arises if VAT should be imposed or not.

First it should be noticed what the term "taxable person" means. Taxable are only these activities, which fulfill both subjective and objective scope of taxation. These two attributes should occur simultaneously that implies that in reference to a particular activity a determined subject should act as a taxable person.

In accordance with art. 5 paragraph 1 of Goods and Services Tax Act, dated 11th March 2004, published Dz. U. 2004, No. 54, pos. 535, the goods and services tax shall be charged on supply of goods and services for a consideration in the territory of the country. Additionally, according to art. 2 point 6, land constitutes goods. Taxable persons are legal persons, organizational entities without legal personality and natural persons independently carrying out economic activity, referred to in art. 15 paragraph 2, whatever the purpose or results of that activity. Commercial activities shall comprise all activities of producers, traders and persons supplying services, including mining and agricultural activities, and activities of the professions, also when a transaction has been effected once in circumstances indicating an intention to perform it frequently. Utilization of goods or intangible assets for the purpose of obtaining income therefrom on a continuing basis shall also be considered economic activity.

Having the above in regard, in case of the sale of lots a taxable person is a subject, which during the sale, even if this transaction is effected once, acts independently as a trader. Worth stressing is that in case of trade this connection should appear already in a moment of purchase of an item. Supreme Administrative Court (NSA) pointed jurisdiction of European Tribunal of Justice, which defines trade as an activity of frequent acquisition of goods in order to sell them. Supreme Administrative Court in a verdict dated 29th October 2007, reference number: I FPS 3/07, published ONSAiWSA 2008, No. 1, pos. 8, p. 101), indicated that an intention of frequent performing of the activity should be revealed already in a moment of acquisition of goods, and not in a moment of sale. Lack of this intention excludes the opportunity of considering a particular subject as a VAT taxable person (verdict of Supreme Administrative Court dated 7th February 2008, reference number: I FSK 1818/07, published Legalis). In a opinion of Supreme Administrative Court, presented in a verdict dated 29th October 2007, acting beyond the scope of commercial activity occurs in a situation, when a object of sale constitutes private property of particular person, because it has been purchased for its own needs, and not for the needs of the commercial activity. Neither formal status of a particular subject, nor a circumstance that a particular activity has been done many times or only once, but with an intention of frequency, cannot decide about taxation of this activity without each time finding that in reference to the particular action this subject acted as a VAT taxable person.

In the analysis of this issue very important is also a circumstance, that in a particular case a subject has acquired the lots to its personal property and in connection with this purchase it has not deducted an input tax.

To sum up, it should be stressed that circumstance that a subject performs activities listed in art. 5, inter alia supply of goods for a consideration, is not an adequate reason to impose VAT, because this subject has to act as a taxable person, i.e. the subject performing independently a commercial activity in the meaning of the art. 15 paragraph 2.

## INTERNATIONAL MODELS

### UK Holding Companies

The location of a holding company is an important consideration in any international structure where there is a desire to minimise the tax charged on the income flow. Ideally, the company should be resident in a jurisdiction which:

- has a good double tax treaty network, thereby minimising withholding taxes on dividends received
- exempts dividend income from taxation;
- does not charge capital gains tax on the disposal of subsidiaries;
- does not impose withholding taxes on distributions from the holding company to its parent or shareholders;
- does not impose capital gains tax on profits arising from the sale of shares in the holding company by non-resident shareholders;
- does not impose capital duties on share capital;
- does not have a minimum paid up share capital.

The United Kingdom offers holding companies a very favourable investing environment, as they can benefit from all of the above.

In fact, the UK has the largest network of double tax treaties in the world. In most situations where a UK company owns more than 10% of the issued share capital of an overseas subsidiary, the rate of withholding tax is reduced to 5%. In addition, a UK holding company, which owns a subsidiary in any EU member State, can benefit from the EU Parent/Subsidiary Directive, thereby reducing withholding tax to zero when the requirements here established are met.

Small companies benefit from a full exemption from the taxation of foreign income dividends if these are received from a territory which has a double taxation agreement with the UK that contains a non-discrimination article. To that purpose, small companies are those with less than 50 employees that meet one or both of the financial criteria below:

- turnover less than €10 million
- balance sheet total of less than €10 million

Conversely, medium and large companies enjoy a full exemption from taxation of foreign dividends if the dividend falls into one of several classes of exempt dividend. The most relevant classes are:

- dividends paid by a company that is controlled by the UK recipient company;
- dividends paid in respect of ordinary share capital that is non redeemable;

- most portfolio dividends;
- dividends derived from transactions not designed to reduce tax.

There is no capital gains tax on disposals by a trading company or by a member of a trading group. This relates to the disposal of all or part of a substantial shareholding in another trading company, or the disposal of the holding company of a trading group or sub-group. The requirement of a substantial shareholding is considered to be met, whether a company has owned at least 10% of the ordinary shares in the company and to have held these for a continuous period of 12 months during the two years before disposal.

To qualify for this exemption, the investing company must still be a trading company or a member of a trading group immediately after the disposal. If it is no longer a trading company or member of a trading group, dissolution of the holding company should proceed immediately, in order to qualify for the exemption.

The UK does not charge capital gains tax on the sale of assets situated in the UK by non-residents. UK residents, instead, pay capital gains tax at a rate of 18%.

The UK does not impose withholding taxes on the distribution of dividends to shareholders or parent companies. This is the situation regardless of where in the world the shareholder is resident.

In the UK, there is no capital duty on paid up or issued share capital. Stamp duty at 0.5% is however payable on subsequent transfers.

There is no minimum paid up share capital for normal limited companies. The minimum issued share capital for a public company is £50,000, of which 25% must be paid up. Public companies are normally only used for substantial activities.



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