The International Tax Letter

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

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Land appreciation tax: administration and collection enhanced

The State Administration of Taxation (SAT) issued a Notice on 25 May 2010 (Guo Shui Fa [2010] No. 53) enhancing the administration and collection of land appreciation tax. According to the Notice, provisional assessment constitutes the basis of the administration of land appreciation tax. The provisional assessment must be coupled with the administration of real property and business tax, and the rate of provisional assessment must be commensurate with the "price development of real property" and the final tax due. Except for welfare housing, the rate of provisional assessment may not be less than 2% of (advance) sales of real property for the provinces of the eastern part of China, 1.5% for the provinces of the middle and north-eastern part, and 1% for the provinces of the western part. The State Council will define the geographic regions by a circular to be published.

Further, the Notice constrains the tax assessment on a deemed basis to cases prescribed by tax laws and regulations. If an assessment on a deemed basis is legal and appropriate, the deemed rate may in principle not be lower than 5%. (An assessment on a deemed basis is inappropriate if made simply to meet work targets.)

All the local tax authorities are ordered to submit the plan for land appreciation tax to determine, amongst others, concrete measures, audit targets and revenue targets for 2010 by the end of June 2010.

ITALY

Anti-evasion package

On 31 May 2010, Law Decree No. 78/2010 was approved by Italian government. It contains, inter alia, the following tax rules on real estate investment funds, transfer pricing documentation and non-resident companies. Unless otherwise provided, the Law Decree becomes effective from the date of its publication in the Official Gazette.

With reference to real estate investment funds, the Law Decree amended Art. 7, Para. 3 of the Legislative Decree 351/2001 abolishes the tax exemption on distributions from Italian real estate investment funds to non-resident investors that are resident for tax purposes in a white list country. Currently, according to domestic tax law, the distribution from Italian real estate investment funds should suffer the ordinary 20% withholding tax to be levied upon distribution.

In addition, the Law Decree provides that if the real estate investment funds do not have genuine diversity of ownership, the asset management company (*società di gestione del risparmio* - SGR) that manages the funds, must amend the regulations governing such funds in order to ensure that the requirement is met. Upon adjustment to this end, the Law Decree provides for a 5% substitute tax to be levied on the average net asset value of the funds computed based on the semester report of fiscal years 2007, 2008 and 2009. The resolution modifying the funds regulations must be passed within 30 days from the date in which the Law Decree enters into force. The substitute tax must be paid in 3 instalments: the first instalment of 40% must be paid by 31 March 2011, and the remaining two instalments of 30% each, by 31 March 2012 and 31 March 2013. Any affected SGRs that do not resolve to amend the funds regulations must wind up the relevant fund, in which case the substitute tax due is increased to 7%.

In addition, the Law Decree abolished the 1% substitute tax levied on private and family real estate funds.

As far as transfer pricing is concerned, in order to ensure consistency with the OECD Guidelines on Transfer Pricing, the Law Decree amended Legislative Decree No. 471/97 relating to penalties applicable in the case of tax assessments in transfer pricing matters. Specifically, the new provision states that the taxpayer should maintain, and be prepared to provide, documentation as to how its transfer prices were set. The Law Decree provides that, if, in case

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of a transfer pricing audit by the Italian Tax Authorities (ITA), the taxpayer has maintained the necessary transfer pricing documentation, the penalty (ranking from 100% to 200% of the higher tax that should have been applied on the adjusted prices) will not be charged. The duty is upon the taxpayer to notify the ITA that it has the relevant documentation.

Within 60 days from the entry into force of the Law Decree, the ITA must issue a regulation in this respect.

Finally and regarding non-resident companies, companies resident in an EU Member State other than Italy carrying on new business in Italy may opt for the applicability of tax rules available in a Member State other than Italy. The same applies to employees of that company. To this end, the non-resident company must submit to the ITA a request for an advance ruling. A Ministerial Decree will be issued providing detailed enactment provisions and regulations.

BRAZIL

New regulation on reporting outbound payments

Normative Instruction 1033/10 (NI 1033/10), published in the Official Gazette of 14 May 2010 (in force since the day of its publication in the official gazette, and effective as from 1 January 2010):

- consolidates the rules on withholding tax returns; and
- implements a new obligation for resident persons to declare outbound payments, regardless of whether or not subject to withholding taxes.

The outbound payments that fall within the scope of NI 1033/10 include (i.e. provided that they exceed BRL 17,215.08 in 2010):

- royalties and technical assistance fees;
- interest and commissions;
- interest on net equity;
- rents and leases; and
- profits and dividends.

The obligation must also be fulfilled by the following resident persons:

- individuals;
- private companies;
- state-owned legal entities;
- Brazilian branches and representative offices of non-resident entities;
- labour and business unions;
- notaries; and
- managers and brokers of investment funds.

All payments made in 2010 must be declared in the withholding tax return to be filed by the last business day of February 2011.

INTERNATIONAL MODELS

UK Qualifying Recognised Overseas Pension Schemes

New UK Pension Rules were introduced by the UK tax authorities on 6th April 2006, when the concept of Qualifying Recognised Overseas Pension Schemes (QROPS) was first introduced. The intention was to simplify the procedures for individuals leaving the UK to transfer their pension funds with them. The pension transfer does not need to be to the same jurisdiction where the individual lives or is moving to, outside of the UK. This transfer is available whether the individual has retired or not.

For a pension scheme outside the UK to accept the transfer of a UK pension, it must first meet specified conditions to be classified as a QROPS and then apply to the UK tax authorities to be recognised as such.

The benefits of transferring a pension to a QROPS are available to:

- Individuals who are planning to leave the UK in the near future;
- Individuals who have already left the UK.

QROPS status is essential as a transfer from a UK scheme to an overseas non-qualifying scheme is subject to UK Income Tax at 40%.

The majority of UK pension funds can be transferred into a QROPS, with the exception of:

- The State Pension.
- Benefits from within some UK group pension schemes (this should be checked with the pension provider).

The QROPS provider has to report to the UK tax authorities for a five year period after the individual has left the UK. During this period the scheme must be administered in accordance with UK pension rules. Any UK source income, such as bank interest or rental income, may still be liable to UK taxation, and the trustee will need to complete the relevant self assessment forms with respect to this income.

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