ALLIANCE OF INDEPENDENT FIRMS

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INDEX

Inflation in some South American countries

We know that investing in countries with high inflation is a big risk, because the original budgets are severely affected by this increase and in cases where the exchange rate and inflation are not directly related, losses may occur, causing the entire project to fail. Therefore it is important to note the table above, which shows the inflation indicator (Inflation: sustained increase in the general price level over a period of time), which warrants a brief analysis to take into account this indicator as an important guideline in making financial decisions.

In the first place, we can see that average inflation over the last 11 years in the analysed countries does not exceed the digit, except in the case of Venezuela, which is on 21% average. This indicates that in terms of inflation, all the countries surveyed have managed to stabilize this indicator; however, with Venezuela it seems to get worse and unlike the other countries, the tendency is getting worse. It seems that the management of exchange rates, production problems and public administration, have created this situation and made it endemic, which at the time of publishing, does not show any signs of improving.

By countries, the table shows that countries which performed better include Chile, Peru and the USA, which show average inflation indicators below 5% over the last 11 years, demonstrating that they maintain constant price levels and have changed very slightly over the last decade. This allows us to conclude that the long-term investment projections can be very reliable and also, that the local economies are stable.

In the second place, we find Mexico, Brazil and Colombia, which are below 7% average. This situation reflects the remarkable improvement in the control of inflation and especially how this has performed in recent years, which most certainly will place this group of countries in the same category as the countries mentioned in the preceding paragraph, driving the same type of investment expectations in the medium and long term.

Argentina and Uruguay show a similar situation and indicators are around the 8.5% mark, a situation that is not alarming, but not entirely good, because of intermittent fluctuations concluding that there is still work to be done to control inflation. Due to this, it is important to adjust calculations when it comes to projecting from medium to the long term.

Finally, in the case of Venezuela, the situation is much removed from that reported by other countries and unfortunately, things look like they will get worse. So, with an average of 21% and an inflation rate reported in 2009 of 25%, we see that it is very difficult to project activities in the short, medium or long term, and besides the economy also demonstrates a trend to deteriorate with the respective consequences for any project that this entails.

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Corporate Taxation 2010

The German government has implemented its crash program aimed at mitigating the financial crisis as part of the so-called “Growth Acceleration Act” as of the beginning of the year 2010. The most important changes regarding the corporate income taxation are as follows:

In order to improve the rules restricting loss utilization the restructuring clause which has been introduced with a time limit shall now be applicable without any further time limit. In addition, the reorganization of companies is facilitated and an exception to the restrictions on the utilization of losses in an amount of the hidden reserves of the respective company has been stipulated.

The exempt threshold of the thin capitalization rules has been increased from €1 million to €3 million. This new increased exempt threshold does provide substantial additional flexibility.

Companies which are part of a consolidated group and which exceed the exempt threshold still only can escape from the thin capitalization rules under the equity test, which now provides a level of tolerance increased from 1% to 2% . Furthermore, there is a new option to carry forward unused EBITDA-potential in future fiscal years - but the new rules do provide for a time limitation of such carry forward.

Based on the new rules of the real estate transfer tax law the reorganization of groups will be facilitated with the result that several reorganisations will not cause real estate transfer tax anymore.

Further expectations to the legislator in 2010:

The legislator should focus to establish an internationally competitive corporate tax system. As started with the above mentioned improvements of the Growth Acceleration Act the rules regarding loss utilization should not include any restrictions in order to support companies to overcome the financial crisis. To avoid double taxation and to implement a cross-border taxation of business profits taking into consideration the decisions of the European Court of Justice and the Federal Fiscal Court (BFH) is a further challenge for the legislator.

Tax Administration:

Fiscal unity – group taxation for corporation and trade tax purposes: It is decided by the Federal Ministry of Finance that the amendments to Sec. 301 of the German Stock Corporation Act (SCA) by the Accounting Law Reform Act (BilMoG) in principle have no implications on the requirements under which consolidated group taxation will apply. The stipulation by the Ministry of Finance provides legal certainty for existing profit and loss pooling agreements, as they do not need to be amended according to the current wording of Sec. 301 sent. 1 SCA. On the other hand the requirements of the German tax authorities regarding the case of a fiscal consolidation with limited liability companies (Gesellschaften mit beschränkter Haftung – GmbHs) are as follows: It is required that the group parent undertakes to assume the subsidiary’s losses in accordance with Sec. 302 SCA and that profit and loss pooling agreements with such entities explicitly refer to Sec. 302 SCA.

Therefore it´s necessary to verify that existing profit and loss pooling agreements comply with the strict requirements set by the tax administration in context of the group parent’s loss assumption obligation according to Sec. 302 SCA. In new profit and loss pooling agreements with limited liability companies as subsidiaries, a separate clause should be included to the effect that the group parent shall assume the losses of the subsidiary in accordance with the provisions of Sec. 302 SCA in its entirety and as amended from time to time.

News from the court

Cross-border transfer of a business

The BFH ruled that the transfer of a business from Germany into another country is not to be qualified as a termination of the business for tax purposes which generally results in a disclosure and taxation of the hidden reserves of the respective business. Up to now, the Court had qualified such transfer as a termination of the business for tax purposes if, as a result of the transfer of the business, under an applicable double tax treaty Germany lost its right to tax profits generated by the transferred business and thus lost its right to tax hidden reserves accumulated in Germany. According to the new ruling, taxes cannot be levied on the cross-border transfer of the business for lack of statutory basis and for necessity of such taxation. As the owner of the business remains (at least) subject to limited tax liability with regard to the hidden reserves accumulated until the cross-border transfer of the business even if he moves to another country, Germany does not lose its right to tax those hidden reserves. The Court held that this is true irrespective of whether the respective establishment still exists in its country of origin when the hidden reserves are realized. Also, the Court held that practical difficulties accessing the realization of the hidden reserves from the perspective of the German taxation do not bar this conclusion.

Based on the new jurisdiction of the Court, the owner of a business is generally able to transfer the business into another country in a tax-neutral manner. However, those hidden reserves might be taxed twice if the other country does not attribute the hidden reserves accumulated in Germany to the German taxation.

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United Kingdom: Circumstances in which overseas businesses might be obliged to register for UK VAT

A business might only be required to consider the burden of corporation or income taxes in the country of its incorporation or residence. However, in principle a tax on transactions, the rules for VAT are by no means as straightforward. For example, a business might be located outside the UK - either on paper, or in the physical establishment of office or personnel – but may still have VAT obligations in the UK if it is regarded as undertaking operations there or provides goods or services to a UK recipient. This might in turn give rise to a requirement to be registered for UK VAT. Failure to register and account for VAT when compelled to do so may not simply result in the business incurring irrecoverable UK VAT. Instead, the business may be accountable for UK VAT on its income deemed by the UK tax authority HM Revenue & Customs ("HMRC") to have been generated within the UK, and potentially to severe financial penalties for failing to meet those obligations.

UK VAT legislation, along with the national VAT legislation of other EU member states, is drawn directly from umbrella EU VAT legislation, the EC Council Directives, and the same point of reference, commonly known as the 'place of supply' or POS is used in each EU country when determining where a business is deemed to be undertaken. The POS can generally be pinpointed once you have isolated a) what it is you are doing (i.e. are you providing goods or services to your customer, and if the latter, the nature of those services), and b) for whom you are doing it (i.e. is your customer in business, and if so, are they also VAT registered).

We will now explore some of the instances in which a non-UK business might find itself required to register and account for UK VAT.

Importing goods into the UK

A popular arrangement in international trade is for a customer to take on the responsibility of dealing with VAT and duties due when receiving goods in the country in which they are established. This arrangement is convenient from a VAT perspective to both seller and purchaser, since where any VAT is payable to the receiving tax authority, the recipient will be in a position to reclaim the VAT on its VAT return and will also often have taken advantage of a facility to defer such payment.

From a UK perspective, UK import VAT is payable on the inward shipment of any goods ordinarily subject to VAT in the UK which have directly originated from a location outside the European Union ("EU"). Where goods have instead been shipped from elsewhere in the EU, the recipient is required to make an adjustment for acquisition tax (which may or may not be reclaimable on their VAT return depending on the how the the acquired goods will be used).

However, there are situations where the supplier may be obliged to VAT register in the UK and charge UK VAT on its supply of goods, in particular where:

1. The supplier is holding the goods in the UK but outside of a customs suspensive arrangement.
2. The supplier has agreed to deliver the goods directly to the recipient's premises and is legally responsible for them whilst they are travelling within the UK.

3. “Distance Selling”- e.g. mail order transactions: the supplier is established in the EU, is responsible for delivery directly to the recipient(s) and its UK recipient(s) not in business for VAT purposes. The supplier is required to register and account for UK VAT if the value of its UK supplies exceeds £70,000.
4. The provision of goods is instead under the VAT rules regarded as a supply of services (e.g. cross-border contract leasing, or energy utilities).
5. Movements of goods between an EU branch and a UK branch of the same legal entity.
6. Neither supplier nor recipient is presently UK VAT registered (although in this situation it may be the customer which is obliged to apply for UK VAT, even if it does not have any establishment there and does not physically handle the goods at any point in their journey).

Providing services to UK recipients
The POS rules become more convoluted when services are being provided. With effect from 1st January 2010, the EC Council Directives were recast so that the default POS for business to business (“b2b”) transactions is now where the recipient of the services belongs, the primary purpose of the move being the minimisation of tax avoidance by shifting the tax burden onto the customer. Although cross border business to consumer (“b2c”) transactions remain normally subject to VAT in the country where the supplier belongs, matters are complicated by the addition of ‘use and enjoyment’ rules in specified circumstances.

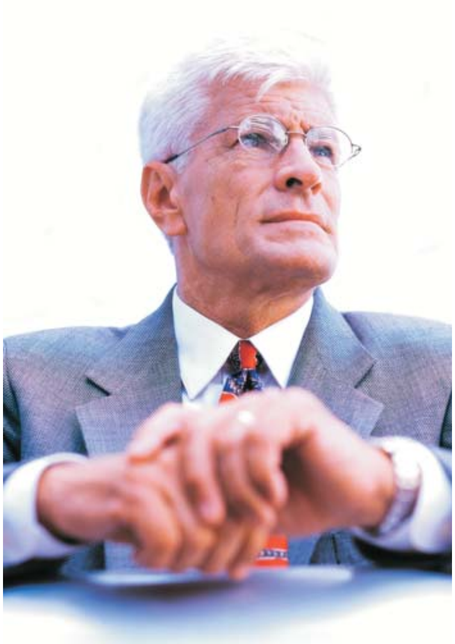
Notwithstanding the above, there remain instances where a non-UK business might find itself deemed to be providing services in the UK and therefore liable to register for UK VAT:

1. The services are of a type deemed to be ‘supplied where performed’ and they are performed in the UK. Examples include holding conferences and exhibitions, live theatrical and sporting events;
2. The services are of a type deemed to be ‘directly related to land’. Examples include the activities of land and estate agents, surveyors and civil engineers.
3. The services comprise the cross border hire of motor vehicles where those vehicles are used in the UK by consumers;
4. Certain services provided to non-business consumers which are ‘used and enjoyed in the UK’. Examples include telecommunications and broadcasting services, plus certain electronically-supplied services, such as web-hosting, distance learning, and bespoke computer software.

The VAT implications become even more complex in chain transactions involving agents and intermediaries, especially where all parties belong in different countries.

Services received in the UK

A non-UK business might trigger a liability to UK VAT registration simply by receiving services in the UK from another non-UK business if those services are deemed under the rules to be provided where the recipient belongs. If the value of such services exceeds the UK VAT registration threshold (presently £70,000), the recipient will be required to register for VAT here and account for VAT on that value under the reverse charge procedure. This would be the case even if the overseas business were only making VAT exempt supplies in the UK and therefore unable to reclaim the reverse charge VAT.



In the UK, the likelihood of a requirement to VAT register in this manner is greater than in some other EU countries due to the fact that the UK rules serve to extend reverse charge accounting to all services received from overseas suppliers.

In summary, when it comes to VAT there is one simple rule to remember, that in a closed system such as the EU, if a good or service normally attracts VAT in a domestic transaction, there will be a requirement for VAT to be due at every stage in a cross-border supply chain. It is therefore extremely important for all businesses involved in international transactions to seek expert advice at an early stage in their planning processes in order to ensure that they are aware of their potential VAT compliance responsibilities in the supply chain and maximise the VAT efficiency of their transactions.

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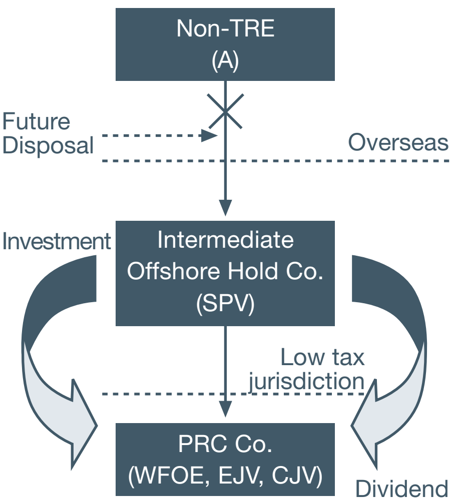
Offshore Equity Transactions subject to China Tax

On 10th December 2009, the State Administration of Taxation (SAT) issued Circular Guoshuihan [2009] No.698 (Circular 698) addressing tax issues for equity transfers by Non-China Tax Resident Enterprises (Non-TREs). The circular is effective retrospectively to 1st January 2008. This article elaborates on Circular 698 and focuses on the issues arising from "indirect equity transfer" undertaken by Non-TREs outside China.

Indirect Holding Structure

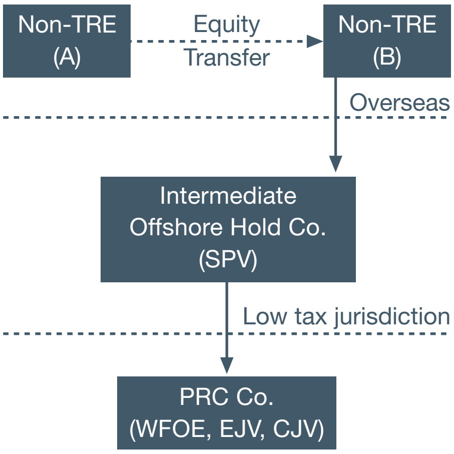
It is common for foreign investors in China to use a Special Purpose Vehicle (SPV) as an intermediate holding company for their investments in China. Normally, the SPV is established in a jurisdiction that has a favorable tax treaty with China. As such, the SPV may benefit from preferential withholding tax rates under the tax treaty on dividend and other passive incomes. For example, the tax treaty with Hong Kong reduces the withholding tax rate on dividends from 10% to 5%. Second, if the foreign investor wants to dispose of the investment in China, it may sell the shares of the SPV without paying income tax in China on the capital gain from the sale. Typically, the jurisdiction where the SPV is established will also exempt the capital gain from local taxation or levy tax at a low rate. A typical indirect holding structure is illustrated as follows:



Indirect Holding Structure

Indirect Equity Transfer (Offshore Equity Transaction)

A typical indirect equity transfer is as follows:



Indirect Equity Transfer

Since such transactions are purely undertaken outside China, there were no PRC tax implications for such transactions before Circular 698 came into effect.

Highlights of Circular 698

■ Circular 698 covers the income arising form the sale of the equity interest of a resident enterprise by Non-TRE (i.e. an indirect equity transfer), excluding sale of the equity interest on a public securities market.

■ In the event the withholding agent fails to fulfill its withholding obligations with respect to the equity transfer, the Non-TRE will be required to file and pay the related Corporate Income Tax within seven days after the date of the equity transfer as stipulated in the equity transfer contract or agreement.

■ Gain on the equity transfer will be calculated based on the difference between the consideration for the transfer and the cost of the equity interest, and any undistributed profits and reserves of the PRC resident enterprise being transferred should not be deducted from the consideration for capital gain calculation purpose.

■ The cost of the equity interest will be the original purchase price paid for the equity interest or the amount invested in the PRC resident enterprise.

■ In case of an indirect equity transfer, if the SPV is located in a foreign tax jurisdiction with the following profiles:

- The effective tax rate of the jurisdiction is less than 12.5%; OR
- That jurisdiction does not tax foreign-sourced income of its tax resident enterprises.

The following information, relating to the offshore equity transaction, is required to be submitted by Non-TRE(A) to the China tax authorities within 30 days upon the transfer:

1. The equity transfer contract or agreement;
2. Details of the relationships between the Non-TRE(A) and SPV on funds, management, procurement and marketing;
3. The SPV's production, management, personnel, finance and property conditions etc;
4. The relationship between the SPV and PRC Co. on funds, management, procurement and marketing;
5. The proof of a reasonable business purpose for setting up the SPV by the Non-TRE(A);
6. Any other relevant information required by the taxation authority.

■ By applying the "substance-over-form" principle, China tax authorities may disregard the existence of an offshore intermediary holding company if it lacks business objectives and was established for the purpose of avoiding tax.

■ China tax authorities may adjust the price for the equity transfer for China tax purpose in case the transfer is conducted between related parties and the transfer price is taken as not on arm's length basis.

■ In case the equity transfer meets the

definition of Special Restructuring as stipulated in Circular Caishui (2009) No. 59 (Circular 59), the special tax treatments for Special Restructuring apply upon approval of tax authorities at provincial levels. Although Circular 59 is talking about direct transfer, the special tax treatments and the corresponding requirements would apply in case of indirect transfer as set out in Circular 698. As such, we have reviewed a typical cross-border corporate restructuring and its China tax treatments based on Circular 59 in Appendix I.

LehmanBrown Observations

Circular 698 is one of the steps taken by the Chinese tax authorities in tackling various tax avoidance arrangements and transactions. Circular 698 will have a significant impact on many foreign investors that use offshore holding companies to invest in China.

As mentioned above, according to the "substance-over-form" principle, the Chinese tax authorities shall have the power to re-characterise the nature of the indirect equity transfer and deny the existence of the SPV if it lacks a business objective and was established for the purpose of avoiding tax, although practically how this could be implemented is to be seen. For instance, if a US company owns a Netherlands company, which in turn uses a holding company in Hong Kong to own a factory in China, and the US company sold the Netherlands company, how practically can the Chinese authorities trace back to Netherlands the gain, especially if the Netherlands-based company has other operations underneath it.

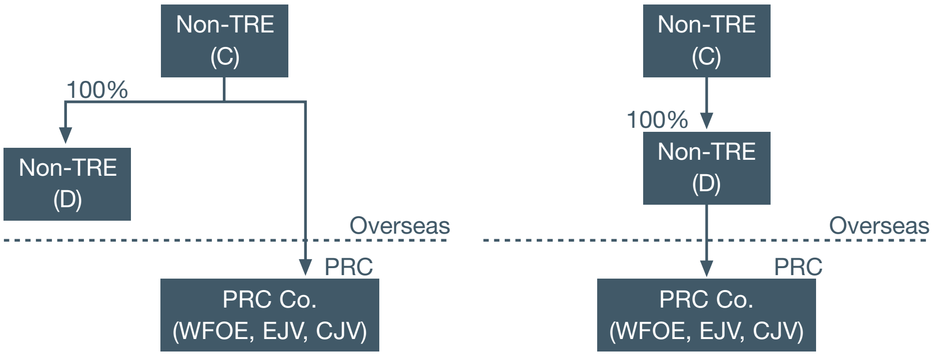
If a straight SPC situation and the transaction happens at SPV level, then it is more straight forward where the SPV would be in effect disregarded, the indirect transfer would effectively be treated as Non-TRE(A) transferring the PRC Co.'s equity, and thus the equity transfer gain is derived from China source, which should be subject to China tax. Even though in theory it appears more straight forward, in practice there are also complications, for instance, what if the holding company owns intellectual property or assets, then the value of the transaction would need to be clearly split between China-related and non-China related.

It is advisable for the enterprises that have conducted equity transfer in 2008 and 2009 to assess the associated tax risks and prepare for the potential challenges from the China tax authorities. Furthermore, multinational companies may consider seeking professional advisories on reorganising the holding structure of their China investments in light of the issuance of Circular 698.

APPENDIX I

Cross-border corporate restructuring

Circular 698 does not specifically address the equity transfer taking place in group restructuring but just briefly refers it to another circular Caishui (2009) No. 59 (Circular 59) jointly issued by the China State Administration of Taxation and the Ministry of Finance. Hereby we would simply review the typical cross-border corporate restructuring and its China tax treatment.



Pre-restructuring **Post-restructuring**

If all the following requirements are met, then the capital gain tax could be deferred:

- Non-TRE (C) ('Transferor") transfers the equity interest in a PRC Co. to Non-TRE (D) ("Transferee"), which is 100% directly owned by the Transferor;
- The withholding tax burden on the capital gains arising from subsequent transfer of the equity interest involved shall not change as a result of the restructuring;
- The Transferor shall commit in writing not to sell the equity interest in the Transferee within 3 years after the transfer;
- The restructuring has reasonable commercial grounds and its main purpose is not for tax reduction, avoidance or postponement of tax payment;
- In an equity acquisition, the equity acquired should not be less than 75% of the total equity of the enterprise being acquired; in an asset acquisition, the assets acquired should not be less than 75% of the total assets of the enterprise that sells the assets;
- There should be no change to the original business activities within 12 consecutive months after the restructuring; and

The deal consideration should mainly comprise of equity, i.e. equity consideration should exceed 85% of the total consideration.

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Tax Benefits for Business Corporations that Acquire Real Properties for leasing

One of the tax benefits in the Mexican Tax Law is one for the Business Corporations who lease real estate.

In order to understand this tax benefit is important to say that according to the Mexican Federal Fiscal Code any contribution to a legal entity or association is considered as a transfer of good with its tax consequences.

However, with this tax benefit the contributions of real estate to a legal entity will be considered as a transfer of good for the shareholders, but only when one of the following situations appears:

1. When the shareholders sell the shares of said business corporation.

2. When the legal entity (Business Corporation) sells the contributed properties.

The gain obtained by the shareholders will be updated from the month in which it was obtained until the month in which it is include in gross income

The other tax benefits of these Business Corporations are:

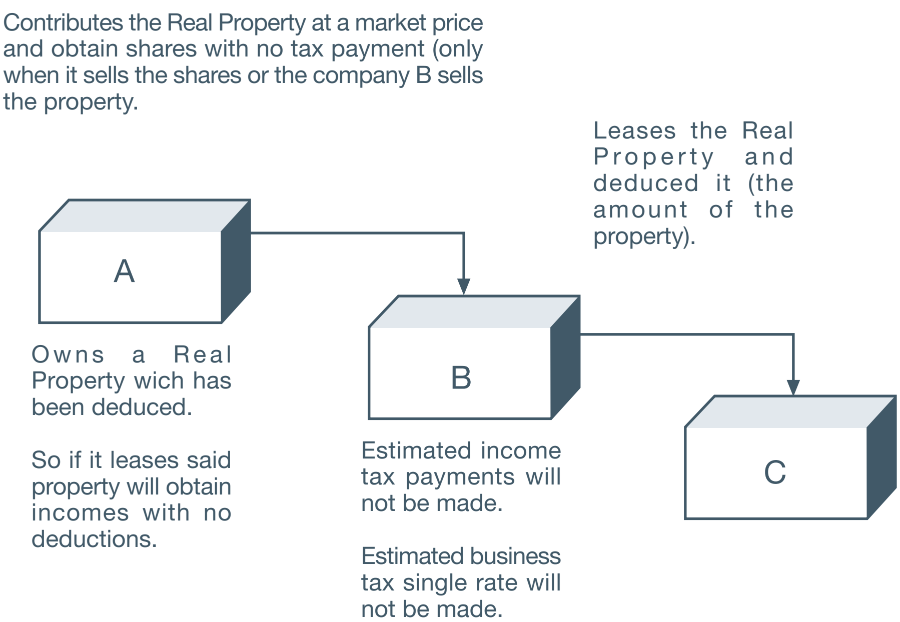
1. Estimated income tax payments will not be made

2. Estimated business tax single rate will not be made

How to obtain the tax benefits

Any Business Corporation with lease activity can obtain these benefits by informing to the tax authority its application.

The aforementioned benefits can be show in the following example:



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Special Tax Regime for Organisations Engaging in Residential Property leasing

1. Scope of Application. Requirements

■ Corporate purpose

Any company wishing to apply for and enjoy special tax conditions must list its primary corporate purpose, although not necessarily exclusively, as residential property leasing in Spain. These properties may have been purchased, built or promoted by the company in question.

The corporate purpose is compatible with other additional activities (provision of real estate services or rental of non-residential properties) and with the transfer of the leased properties once the minimum 7 year period has elapsed, during which time said properties must be leased or on offer for leasing.

■ Leasehold properties

- The number of properties leased or on offer for leasing must, at all times, be greater than or equal to 10, without any upward limitation on the number.
- The term “residential lease” shall be interpreted pursuant to the definition as outlined in the Spanish Urban Leases Act (Ley de Arrendamientos Urbanos) (article 2.1 of Law 29/1994 LAU) in force.
- The total floor space of each residential property must not exceed 135 square metres (135m²).
- These properties must be leased or on offer for leasing for a minimum period of seven years.

■ Accounting

Real estate development and leasing activities must be dealt with separately and recorded for accounting purposes individually for each leasehold or property, complete with the necessary breakdown as required in order to demonstrate the income corresponding to each residential property, premises, or independent registered property which the aforementioned may be divided into.

■ Additional activities

In the case of organisations that engage in additional activities to those listed as its primary corporate activity of residential property leasing, (e.g. provision of real estate services or rental of non-residential properties), a minimum of 55% of its income during the tax period are entitled to tax deduction provided under this tax regime.

2. Application for the option of Special Tax Regime

In order to apply for the Special Tax Regime option, the interested party must firstly notify the Tax Authorities of this wish, and the regime becomes applicable as of the same tax period ending subsequent to notification and the subsequent tax periods, for as long as the regime is not revoked by the company.

3. Tax benefits of Special Tax Regime

85% tax discount of the portion of the total tax payable corresponding to income derived from residential property lease which meet the required criteria for special tax regime application, reaching a tax discount of 90% in the case of income derived from residential leasing of properties for individuals with a disability, in which construction work to adapt the property have been carried out and which carry the required certificate furnished by the competent authority.

Proceeds received must be calculated for each individual residential property and is comprised of total income obtained less expenses directly related to perceiving said income and the portion of overheads which correspond proportionally to said income.

In the event that the leased residential property has been purchased by way of a financial lease agreement, adjustments derived from the application of the aforementioned special tax regime are not taken into consideration when calculating income perceived. In other words, neither positive nor negative adjustments made to the organization's taxable income will be included in the figure for income received.

4. Tax regime applicable to shareholders: dividends perceived and transfer of these companies

Shareholders classified as legal persons or body corporate must differentiate between dividends arising from income received or from other sources. In this way, these legal entities are entitled to apply for 50% tax relief for double taxation for the total taxable income derived from dividends received, regardless of the shareholder's stake in the company. Dividends distributed charged to profit derived from other sources which have not been subject to tax discount are entitled to tax relief of 50% or 100%, depending on general tax regulations.

The same goes for capital gains derived through the disposal of equity stakes in companies which have applied this special tax regime.

Shareholders classified as natural persons are not entitled to a deduction for double taxation.

5. Value Added Tax (IVA)

Residential property acquired by companies applying the special tax regime are subject to a reduced rate of 4%, whenever income derived from its subsequent leasing is subject to 85% or 90% discount on corporate tax rate, for which the buyer must notify the seller of this circumstance prior to payment for the transaction.

6. Compatibility with other special tax regimes

Application of this special tax regime is compatible with the tax consolidation system but not so with tax incentives afforded to smaller companies, where such companies may choose to apply one system or another.

The tax regime for companies engaging in residential leasing business is compatible with the system for mergers, demergers, transfer of assets and of share swaps, and therefore, if a company had opted to apply a residential leasing tax regime and at a later date should participate in any of the aforementioned operations, the company would benefit from said operations and subrogate the application of the regime as long as the requirements for its application are satisfactorily met.

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The authorities of San Marino, agree to share fiscal information with the Italian administration

A green light to automatic information-sharing between San Marino and Italy has been turned on with timing and ways that will not make a radical change to the economic system of "The Cliff" already stressed by the tax shield and the international crisis.

San Marino, which has recently stipulated 24 fiscal agreements with European and Extra-European countries, has also introduced new legislative regulations in order to provide greater clarity concerning relationships with Italy. The first step has been the recent stipulation of the double taxation agreement with Italy, and the next stage will be the upgrade of this agreement taking into consideration all the requests coming from Rome. Economic authorities in both Republics have planned meetings in order to remove San Marino from the Italian black list by July 1, 2010.

But, what are the Italian requests and strategies? As recently stated by the Italian Economy Minister Giulio Tremonti, "The best way to define and create good fiscal relationships between San Marino and the Italian Republic is the preliminary definition of common fiscal and legislative targets". Only after setting up a hard starting block, which basically aims to bring about an end to Bank Secrecy, can a European model be developed.

All these proposals will bring about a rapid normalization of the relationships between the two states, the removal of San Marino from the blacklist, and then the signature of an official double taxation agreement.

Finally, it is important to bear in mind that this entire process will allow Italian entrepreneurs to operate in a Legislative/regulatory framework, also in view of the internationalisation of San Marino's Economy.

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ALLIANCE OF INDEPENDENT FIRMS

The new Cyprus Tonnage Tax Scheme Added benefits to the Merchant Shipping Community

Cyprus today is considered as an ideal centre for the establishment of ship owning and ship management companies. Mainly due to its strategic geographical position and good infrastructure, Cyprus is favoured for international shipping. Currently, Cyprus is ranked among the top ten most competitive shipping centres worldwide in terms of cost. The maritime industry is among the largest of the European Union while Cyprus is the biggest third party ship management centre in the EU. Despite the need to preserve the favourable merchant shipping regime under Cypriot legislation, the need for the revision of the Cypriot legislation arose as to comply with the European Union's guidelines on State aid to maritime transports.

Accordingly, the new tax regime, as pre-approved by the Cypriot Council of Ministers, obtained the green light by the European Commission on March 24. Respectively, the draft bill was unanimously approved by the Plenary Session of the Cypriot House of Representatives on 29 April 2010. The Cypriot Tonnage Tax Scheme aims to contribute towards the enhancement of the competitiveness of the Cypriot Merchant Shipping industry, by the adoption and implementation of motives for a wide range of shipping activities, while preserving compliance with the European acquis communautaire.

The new tax regime deviates from the Cypriot Income Tax Legislation by the introduction of a more competitive tonnage tax scheme. Accordingly, qualifying ship owners, qualifying ship charterers and qualifying ship managers are subject to tonnage tax, which is calculated based on the net tonnage of the vessels that they possess, charter or manage respectively.

In line with the above, qualifying ship owners are the owner of a Cyprus registered vessel, conditional upon the fact that such vessel qualifies as a qualifying ship and is engaged in qualifying shipping activities; the owner of a community vessel who has opted to be subject to tonnage tax, conditional upon the fact that such ship owner is a tax resident of Cyprus and the vessel is engaged in qualifying shipping activities; and the owner of a fleet of EU and non-EU registered vessels who has opted to be subject to tonnage tax, conditional upon the fact that such ship owner is a tax resident of Cyprus and the vessel is engaged in qualifying shipping activities.

Notwithstanding the above, a ship charterer is any legal person engaged in the chartering of vessels belonging to third parties in order to perform maritime transfers, who, among others, charters vessels by way of a bareboat, demise, time charter and so on. Cyprus tax residency and chartering of qualifying vessels engaged in qualifying shipping activities are among the preconditions for a ship charterer to qualify under the tonnage tax regime irrespective of whether such charterer charters Cyprus or EU registered vessels or a fleet of EU and non-EU registered vessels. Moreover, eligibility for the application of the tonnage tax system is also conditional upon complying with the fact that the tonnage of the ships chartered out may not exceed 75% of the total net tonnage of all ships chartered for more than three consecutive tax years. A 90% requirement is imposed where the ships chartered are EU registered and their ship management is exercised from the EU. It should be noted that charterers opting to be taxed under the tonnage tax system, must remain in the system for a period of at least 10 years.

A ship manager is any legal person rendering ship management services, whereby such services include crew management and/or technical management services. Respectively, such ship managers may qualify for the tonnage tax system if a number of preconditions are established, some of which are identified hereunder. Accordingly, the ship manager must be a Cyprus Tax resident rendering its services to qualifying vessels of any flag. Notwithstanding the above, the ship manager must maintain a fully fledged office in the Republic and employ qualified personnel (51% of which must be EU residents). Equally, the application of the tonnage tax regime is dependent upon the fact that at least 2/3 of the total tonnage of the qualifying vessels under management must be exercised from the territory of a Member State, irrespective of whether such ship management is exercised in the form of in-house management or is assigned to other ship management companies. Furthermore, from a tonnage perspective, at least 60% of the vessels under management must be, among others, EU registered and flagged. A qualified ship manager will be liable to 25% of the rate imposed to ship owners and ship charterers.

Furthermore, qualifying ships are the seagoing vessels, which have been certified under the applicable international or national rules and regulations and are registered in the ship register of any state, being a member of the International Maritime Organisation and the International Labour Organisation, which is recognized by Cyprus. A list of non-qualifying vessels is also provided for under the Law.

Qualifying shipping activities include any commercial business or activity which constitutes maritime transport, crew management or technical management of qualifying vessels. In line with the above, maritime transport, by definition, is limited to the carriage of goods and passengers, and includes ancillary services, including but not limited to hotel and catering services, entertainment activities, on board retail activities exercised on a qualifying vessel, and so forth. Activities such as towage, dredging and underwater wiring are also included.

Further to the above, all qualifying parties under the Cypriot Tonnage Tax Scheme, may also enjoy an income tax exemption on dividend income and interest income deriving from qualifying shipping activities, as well as for gains deriving from the alienation of ships.

This revised legislation obtained the prior approval of the European Commission for a 10 year period, on the grounds of state aid to the shipping industry and it complies with the EU regulations. This approval is considered as the most important accomplishment in the shipping area since the establishment of Cyprus. Despite the fact that the revised legislation provides for a more competitive tonnage tax regime, it expressly limits its scope of application to qualifying vessels and activities. Accordingly, nondesignated vessels and/or shipping activities are subject to tax under the ordinary corporate income tax rate of 10%.

In addition to the modernised tax scheme, it is worth mentioning that Cyprus offers a lot of advantages to the shipping industry such as a full exemption from exchange control restrictions for non residents, no taxes on the crew salaries, no stamp duties on mortgage documents, strategic geographic location which makes it easier to contact business, easy accessibility, non discriminating legal system and others.

Such beneficial developments in the area of merchant shipping are expected to increase Cyprus's shipping industry activities as well as the number of ships and shipping companies registered in Cyprus.

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Thin capitalization rules in Argentina - the current situation for companies controlled by foreign companies

This point is intended to reflect the current income tax regime in Argentina, in relation to the rules of 'thin capitalization´. The phenomenon of under-capitalization in companies is attributable to the fact that interest payments to third parties for financial loans can be deducted as an expense in income tax, while the same does not exist if the business assets are financed using net assets. Under this system and for reasons of tax planning, schemes have prospered over time which, taking advantage of income tax retention rates on small financial interest pursuant to the application of conventions designed to avoid double taxation signed between Argentina and other foreign countries, companies were established in some of these countries which financed their subsidiaries in Argentina. This gives rise to a situation where the figure for total liabilities of the Argentinean company in relation to that of the foreign company is completely disproportionate to the company's strict net worth. In this way, the business group benefits from the differential generated between the deductions of interest paid at 35% on the levy of income tax in the Argentina based company and the deduction applied when paying the same to the foreign company, at rates ranging between 12% and 15% depending on the creditor's country of residence.

This situation, perceived by the Tax Administration, led to reforms in income tax law and its regulation in order to limit the excessive use of "thin capitalization" to avoid tax. They operated from the enactment of Law 25,063, for fiscal years ended 31/12/1998, and later underwent a major change in the Law 25 784 (on 22/10/03), and Decree 916/2004 (of 23/07/2004).

We will describe the current system of "thin capitalization rules".

Cases included

Borrowing by local companies (not banks) from creditors who are foreign affiliated companies (not banks), residing in a country with which the Republic of Argentina has signed an agreement to avoid double taxation in the tax profits, and providing the effective withholding rate for interest paid to beneficiaries residing in those countries is lower than 35% (general rate applicable to interest payments to foreign creditors other than banks). The following foreign countries currently have this situation: Germany, France, Austria, Italy, Spain, Canada, Finland, Great Britain and Northern Ireland, Sweden, Denmark, Belgium, Holland, Australia, Norway, and Russia.

Furthermore, as a condition to be verified that the financial liabilities (non-commercial, not for services) with those creditors, measured at the end of the financial year of the local company must exceed two (2) times its net assets at that date.

Impact

If both the aforementioned conditions are given, then the financial interests are not deductible in determining income tax of the local company, in proportion to financial liabilities generated in excess of twice net assets, both measured at closing date of the fiscal year, and having the character of dividends to the beneficiary, this means that there is no specific type of restraint on them when they are paid.

With the following numerical example will be more easily limit the deductibility of interest in the local business:

Example:

Financial liabilities to foreign related company: U $ S 50,000.-
Local Business Net Assets: U $ S 12,000.-
Creditor financial interests linked accrued in the year: U $ S 5,000.-

Calculation of surplus
Limit (200% of the P. Net): 24,000.-
Liabilities over: 50,000-24,000 = 26,000
Proportion of liabilities over: 26,000 / 50,000 = 0.52

Interest is not deductible
5,000 X 0.52 = 2,600.-
That is, U $ S 2,600 will not be deductible in determining the income tax of the local company, and are treated as dividends to creditors abroad, so that your payment will be free of withholding tax.

Subjects excluded

Companies whose principal purpose is the provision of leased assets, under Law 25 248, and only as a secondary purpose performed exclusively financial activities were excluded from the application of these thin capitalization rules.

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