Corporate Tax Alliance

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Germany portfolio dividends again subject to trade tax from March 2013

by Volker Streu

In a surprise legislation Germany introduces a general "at least 10% ownership requirement" to apply the dividend exemption system for corporate shareholders. The change to Sec. 8b Corporate Tax Act is effective for distributions after February 28, 2013. Such dividends will be subject to corporate tax in the hands of a foreign investor as treaties and the parent subsidiary directive usually allow the taxation the country of source.

After the ECJ had declared the taxation of portfolio dividends received by EU investors as discriminatory the government suggests a refund of withholding tax for shareholdings of EU resident companies that were below 10%. In opposite, the opposition -that holds the majority in the Upper House- proposed the abolition of the participation exemption for portfolio dividends at all. While many other legislative measures failed either in the Bundestag or in the Upper House this change was agreed though it is not even a compromise.

All dividends paid to shareholders with a less than 10% shareholding are subject to corporate income tax at an effective rate of 15.825% (including the solidarity surcharge), thereby eliminating the discrimination with respect to nonresident corporate minority shareholders.

The 10% ownership test will apply on a stand-alone basis, i.e. direct and indirect ownership chains cannot be counted together. Where a shareholding is held via a partnership, the shareholding is attributed to the partners based on their stake in the partnership and the attributed shareholding is deemed to be held directly by the partners.

"The 10% ownership test will apply on a stand-alone basis, i.e. direct and indirect ownership chains cannot be counted together"

The new rule does not repeal the 95% participation exemption for capital gains, which is still available to resident and non-resident corporate shareholders regardless of the holding percentage or holding period.

Refunds for dividends received between 2009 and February 2013 by foreign corporate shareholders, holding less than 10% can now be filed with the Federal Tax Office. The foreign shareholder must present proof that it received a dividend, as well as a residence certificate and a certificate issued by the foreign tax authorities evidencing that the German withholding tax could not be credited or deducted in the recipient's state of residence.

Source: *World Tax Advisor* by *Marcus Roth, Andreas Maywald, and Alexander Linn, 22 March 2013* at *http://newsletters.usdbriefs.com/2013/Tax/WTA/130322_1.html*

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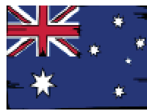
Australian tax laws amendment bill 2013

by Philip Price



Further to Treasury's exposure draft released in mid-November, the Government has now introduced into Parliament stage two of the transfer pricing reforms, the Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013. This Bill contains both stage two of the transfer pricing reform project, and the new general anti-avoidance provisions. These measures combined present the Commissioner with substantially increased powers at a time of falling tax revenue. The anti-avoidance provisions are discussed in detail in our Tax Update: Anti-Avoidance Rules.

The proposed transfer pricing changes in the Bill largely reflect those announced in the November exposure draft (and our alert Tax Update: Transfer Pricing – Stage 2 of Australia's Transfer Pricing Reforms) with a few differences. The main aspects of the Bill are as follows:

> "taxpayers will need to examine and document all the conditions surrounding each transaction or transactions to ensure each one is reflective of arm's length dealings"

- The arm's length principle will be interpreted to achieve consistency with the arm's length principle endorsed by the OECD. This requires an examination of the "economic contribution of the entity", rather than just an examination of the arm's length pricing of transactions.

- The Bill provides the Commissioner with an ability to retrospectively reconstruct transactions. The circumstances in which this power can be used however, are more restrictive than contained in the exposure draft.

- An amendment period limitation will be introduced for transfer pricing adjustments. The time limit will be seven years from the date of assessment, shortened from the eight years proposed in the exposure draft, and the current unlimited period.

- Documentation will not be mandatory, however entities who fail to keep documentation in accordance with the regulations will not be able to argue. They have a reasonably arguable position and may expose themselves to greater penalties.

- That a withholding tax advantage could be specifically the basis for receiving a transfer pricing benefit.

- The proposed rules will apply to both treaty and non-treaty country residents, and new provisions will be introduced which apply the rules in the same manner to both Trusts and Partnerships.

- The currently existing provisions in Division 13 will be repealed, and Subdivision 815-A will become largely redundant.

- The new legislation is proposed to take effect for income years beginning on or after the earlier of 1 July 2013 or the date the legislation receives royal assent.

The Bill, together with the prevailing political and international environment will require taxpayers to reconsider their transfer pricing position and their exposure to potential risks. The key areas of interest and action for taxpayers are as follows:

Arm's Length Principle

Taxpayers will be required to assess the 'economic contribution' of their Australian subsidiaries, and ensure it is reflective of the economic contribution of an independent entity in order to comply with the arm's length principle. In order to undertake this comparison, taxpayers will need to examine and document all the conditions surrounding each transaction or transactions to ensure each one is reflective of arm's length dealings. The actual substance of the conditions will be the critical factor, with the legal form being disregarded when not consistent with the substance. For those taxpayers operating through a permanent establishment (PE), the allocation of profits will be assessed on an arm's length profit amount, being the profit the PE would be expected to make if it was a standalone

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Continued from page 2 >> independent entity. Importantly, deductions will be limited to actual expenditure of the PE in line with the ATO's long standing position.

The new legislation comes at a time when Australia and the OECD are comprehensively reviewing their approach to the taxation of PEs. There is a developing concern amongst the OECD member nations who face an eroding tax base. In part, this is due to the increased value attributable to IP, and the ease with which transactions are now conducted across borders. As a result, matters pertaining to the attribution of profits and transfer pricing are high on the agenda.

The approach in the Bill is at odds with the 'Authorised OECD Approach' ("AOA"), which assesses the profit of a PE as if it was a functionally separate entity. This permits internal deductions, which the current Australian approach does not. With a Board of Taxation review currently considering whether Australia should adopt the AOA, further fundamental change could be in store.

For more information on this topic:
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The outline of the new Libyan tax law No. 7 2010

by Tariq Almontaser

The outline of The New Libyan Tax law No. 7, which has come into force from 28-01-2010:

1. Annual tax reports should be delivered for individual activities at a date not after the end of March in the year later, while the deadline for the companies is the end of April.

2. All due taxes related to individual activities until the end of 2009 are completely exempted. In addition, there will be no penalties for the previous undelivered tax reports unless they have not paid within six months from the date of this law coming into force (it means 28-07-2010).

3. The tax of the income resulting from work and the like (salary tax):

    - Exemptions related to the social status have been raised to 150 LYD monthly for a bachelor and 200 Monthly LYD for married people without dependent children. Taxpayers with children have an extra exemption depending on the number of children, worth 25 LYD monthly for each child.

    - The monthly tax rate has been reduced to be deducted within a monthly proportional tax as the following:
      -The first 1000 LYD: 5%
      -In exceed thereof: 10%

    - The new law also exempts the remuneration taken at the end of the job as per the contract.

4. The tax rate for corporation activities has been decreased to 20% of the net profit as a flat tax instead of the previous proportional tax exceeding 40%.

5. Punishments and penalties

    - Anyone (companies, individuals etc.) without a regular accounting booking system (handled manually) should be subject to a penalty of up to 50,000 LYD. This law also includes companies preventing tax officers or auditors from doing their job by concealing information or failing to provide the required information to the tax authority.

    - 10,000 LYD is the maximum penalty that should be imposed on anyone (companies, individuals etc.) not paying the due taxes on a time or in case of any assistance in that.

    - Any kind of misreporting regardless of the subject related to; the corresponding penalty, which is imposed, must not exceed four times the actual tax.

    - The penalty should not be less than three times the actual tax which is charged to any one (companies, individuals etc.) not depositing the deducted tax that they are responsible for; such as salaries tax.

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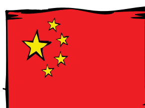
Expansion of VAT reform

by Michael Zheng



Foreword

Premier Li Keqiang has recently hosted the State Council meeting, and has announced that the VAT pilot reform (changing from levying Business Tax ("BT") to Value-added Tax ("VAT")) will be further expanded to other provinces and industries.

Expansion Scope

-Expansion - Regions

From August 1, 2013, the VAT pilot reform of transportation and certain modern service sectors (the detailed scope can be referred to the Shanghai VAT pilot reform regulations) will be expanded to the whole nation. Such VAT pilot reform was started in Shanghai from January 1, 2012 (then expanded to other 10 provinces/cities by batches from August 1, 2012). Currently, these industries are subject to VAT in certain provinces/cities, while in other provinces/cities they are subject to BT. Such fact affects the balancing among different regions and leads to the tax "concentration effect". It is also inconvenient for the operation and management of certain enterprise groups. If such VAT reform is expanded to the whole nation according to Premier Li's announcement, it will be helpful to achieve consistent tax treatment.

-Expansion - Industries

- Production of movies and TV products, and their broadcasting and publishing will be included into the VAT reform scope.
- Railway transportation, postal, telecom and communication sections will be included into the VAT reform scope at an "appropriate" time.
- China will try to complete the VAT reform for all industries and regions by the end of 2015.

Issues to be Clarified

Overall speaking, the detailed implementation rules on the above need to be published by the tax and other authorities. Particularly:

- It is anticipated that the detailed rules about the VAT reform on transportation and certain modern service sectors will be similar to the Shanghai VAT reform regulations.
- The VAT reform rules on production of movies and TV products, and their broadcasting and publishing need to be clarified, especially on the applicable VAT rates. It is anticipated that such VAT rate will likely be 6%.
- There is considerable uncertainty about "at an appropriate time", railway transportation, postal, telecom and communication sections will be included into the VAT reform scope, including detailed sectors, VAT rates, regions, etc. For reference, construction and installation sectors were widely expected to be included in the VAT reform scope last year. However, due to the difficulties to balance the VAT input credit and effective tax rates, they have not been included so far.

Possible Impact on Your Enterprise and Suggested Approach

For enterprises in the transportation and certain modern service sectors (the detailed scope can be referred to the Shanghai VAT pilot reform regulations) that are located in the provinces/cities that the VAT reform has not been implemented, it is recommended to carefully study the Shanghai VAT reform regulations, conduct the tax impact estimation and make necessary preparation work as soon as possible, including:

- Assessing whether the company's operation model should be changed
- Considering whether the pricing basis and method with customers and suppliers should be adjusted
- Modifying standard contract terms
- Arranging relevant training to internal finance and management personnel

For enterprises in the sectors of producing/broadcasting/publishing movies and TV products, postal, telecom and communication, railway transportation, in addition to making the above preparation, they should also closely monitor the process and contents of the VAT pilot reform legislation on their industries, particularly the applicable VAT rates and possible tax preferences.

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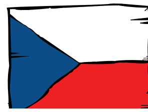
Czech Republic, Tax Brief

by Helena Navratilova



International Taxation

Protocol to the Double Tax Treaty concluded between the Czech Republic and Austria ("Protocol")

On 26 November 2012, the Protocol concluded between the two countries that was signed in Vienna on 9 March 2012 came into force and was published in the Collection of International Treaties of the Czech Republic

The Protocol, which now constitutes an integral part of the countries' bilateral agreement, shall be carried out in relation to tax periods starting on or after 1 January 2013. Article I of the Protocol provides double taxation relief in the Czech Republic and offers Czech tax residents a more advantageous tax regime pursuant to the Czech income tax act ("ITA"). Under the ITA, it is possible (under certain conditions) to avoid double taxation of income from gainful activities from sources in Austria and to exempt such income from taxation in the Czech Republic.

"The Czech Republic is striving to strengthen mutual information exchanges with countries and jurisdictions with preferential tax regimes, so-called "tax havens"

Article II of the Protocol secures the required extended information exchange in relation to all taxes and allows the tax administrations of the two countries to obtain information from banks and other financial institutions that is necessary for exchanging tax information. This marks a change in Austria's position on bank secrecy when exchanging information.

Treaty on Mutual Administrative Assistance in Tax Matters and Treaties between the Government of the Czech Republic and the Government of the Cayman Islands on Information Exchange in Tax Matters ("Treaty")

On 26 October 2012, the Czech Republic signed a multilateral treaty on mutual administrative assistance in tax matters and a related protocol. On the same day, an agreement between the government of the Czech Republic and the government of the Cayman Islands on information exchange in tax matters ("Agreement") was signed.

The objective of the Treaty is to make tax administration more efficient and to improve tax compliance. By signing the Treaty, the Czech Republic is addressing and responding to tax evasion efforts and the need to strengthen and accelerate international cooperation in tax administration. The Czech Republic is also striving to strengthen mutual information exchanges with countries and jurisdictions with preferential tax regimes, so-called "tax havens". These additional steps play an important role in the fight against tax evasion.

Changes to the Czech tax legislation effective from 1 January 2013

Taxation of sole proprietors will bring the greatest impact

Temporary Introduction of Solidarity Tax

From 1 January 2013 taxpayers whose aggregate employment-generated income (gross salary) and partial tax base from business or any other independent gainful activity (revenue minus expenditures adjusted for tax purposes) exceed 48 times the average salary (as determined under the Social Security Insurance Act, the threshold is CZK 1,242,432 in 2013, i.e. CZK 103,536 per month) is subject to a 7% "solidarity tax" surcharge on the amount exceeding the limit (i.e. 15% + 7% in 2013 and 2014, and 19% + 7% in 2015). At the same time, taxpayers subject to the solidarity tax surcharge will be required to file a personal income tax return.

Permanent Cap on Flat-Rate Costs & Expenses

Starting 2013 sole proprietors still enjoy the opportunity to deduct costs and expenses on a flat-rate basis. However, professions applying the 40% flat-rate costs and expenses deduction (such as attorneys-at-law, auditors, tax advisors, experts, writers, artists, insolvency trustees) are subject to an overall cap of CZK 800,000 as a total maximum lump sum deduction. Income from leaseholds applying the 30% flat-rate costs and expenses

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Continued from page 5 >> deduction is subject to an overall cap of CZK 600,000. In other words, the flat-rate costs and expenses applicable to income exceeding CZK 2 million per year are at all times lower than 40% or 30% of the generated income. In other circumstances, such as income generated from a licensed trade, farming, or forestry, there is no cap on flat-rate costs and expenses.

Limited Spouse-, Children-, and Pensioner-Related Discounts

Starting in 2013, taxpayers who apply a percentage-based discount are no longer able to apply a tax discount to a spouse and take advantage of child-related tax relief if the sum of their sectional tax bases to which the flat-rate costs and expenses were applied exceeds 50% of their total tax base.

From 2013 through 2015, working pensioners will lose the right to a personal annual discount if they receive old-age or third-degree disability pension on 1 January of the relevant taxation period.

Permanent Increase of Withholding Tax for Tax Residents of Countries that Have Not Entered into a Tax Treaty with the Czech Republic

Income paid to foreign tax residents from Czech sources will be subject to higher withholding tax of 35% (the current rate is 15%). However, the increase only applies to tax residents of countries that have not entered into a double taxation treaty or a tax information exchange treaty with the Czech Republic.

Czech tax residents continue to be subject to the 15% withholding tax rate.

Changes to the VAT Tax

Starting 2013 VAT increased from the current 14% to 15% (reduced rate) and from 20% to 21% (basic rate) in the period from 1 January 2013 until 31 December 2015. As of 1 January 2016, a uniform VAT rate of 17.5% is planned.

The basic VAT rate will newly apply to baby diapers and certain health care products.

Changes to the inheritance, donation and real estate transfer tax act.

As of 1 January 2013, the real estate transfer tax increases from the current 3% to 4%.

Changes to the General Health Insurance Premiums Act

From 1 January 2013 until 31 December 2015, the maximum assessment base for general health insurance premiums has been abolished, which causes mandatory payments to increase. The increase impacts all insurance premiums payers (sole proprietors, employees, and employers) if the insured's assessment base exceeds 72 times the average salary (the threshold amount for 2013 is CZK 1,863,648).

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