Corporate Tax Alliance

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ECJ judges on German withholding taxes on dividends to corporations *by Volker Streu*

The court decision
The European Court of Justice ("ECJ") judged in the decision dated October 10, 2011 (case number C-284/09) on the German withholding taxes on dividend payments to corporations.

In general a withholding tax of 15 % plus a solidarity surcharge of 5.5 % is withheld on dividend payments. Lower tax rates could be applicable in case of dividend payments to EU corporations or if a tax treaty is applicable.

The ECJ saw a violation of the free movement of capital because a domestic corporation as permanent resident would receive a credit of the withheld taxes while the dividends are nearly tax free (only 5 % are taxable). But a foreign corporation as nonresident could not receive a tax credit so that the withholding taxes would be definite.

Though the case covered foreign corporations based in other EU countries and in the European Economic Area the scope of application for the free movement of capital should also pro-tect investments of corporations based in other non-EU countries (according to the case law of the ECJ and the German Federal Fiscal Court).

Due to the benefits to EU corporations from the Parent-Subsidiary Directive for investments with a minimum shareholding quota of 10 % (waiving of withholding taxes) the ECJ decision should be favourable for EU corporations with shareholdings below the quota of 10 % or non-EU corporations irrespective of the shareholding quota.

Possible Actions
Concerned corporations should file an application for receiving a tax credit based on the ECJ decision. The filing deadline would be by the end of the fourth year after the withholding taxes occurred. Therefore, in 2012 an application could be filed for taxes withheld in the year 2008 or later.

The application would have to be filed with the competent tax office in Germany. At the moment it is not definitely determined which tax office would be responsible. It could be the tax office which is responsible for the corporation receiving the dividends or the tax office which is responsible for the withholding tax on the dividend payments. The responsibility for the corporation receiving the dividends would typically depend on the place where the most valuable assets (investments) in Germany are located.

It might be useful to file the application at both tax offices as long as the German lawmaker does not change the rules on the responsibility.

The classifications of labour expenses, according to Libyan tax law *by Tariq Almontaser*

The main task of accounting work at any company in Libya is declaring the financial information for tax purposes; the accountants will reach this target whenever they have an Idea about Tax Auditing Requirements.
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The classifications of labour expenses, according to Libyan tax law

Continued from page 1 >> We would like to explain a part of requirements that is concentrating on expenses which could be considered as labour advantages. We will mention these kinds of advantages hereafter as Labour-Expenses.

Labour-Expenses are defined in Libyan tax law when it comes to the income subjected to the salary Tax in article (55) Par. (A) as the following:

"…The income resulting from work and similar incomes resulting from any service or post, whether permanent or temporary, including the following:

A. Remuneration against work, allowances, commissions, gratuities, privileges, representation allowances, and all periodical or non-periodical payments, whether in cash or in kind, as paid by companies, foundations, firms or individuals to any person against services that has been done OUTSIDE of Libya, whether this person is resident inside or outside Libya, except the employee has independent entity abroad and he has a self-regulating accounting system."

From the direct idea of the above mentioned article or the idea behind it, we could show a list of the labour-expenses regardless the place where they have been paid:

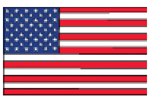
1 Food
2 Accommodations
3 International or local air tickets
4 Entertainments
5 Mobile pre-paid cards
6 Internet charges
7 Hotel residences
8 Housing
9 Provision of car
10 Transportation
11 Medical treatments or checkups
12 Visa fees
13 Car fuel allowance
14 Clothe and the like facilities
15 Any other payments (on-behalf of somebody)

Usually accounting should measure the expenses related to any fiscal year as an important part of turnover generating, which means the final beneficiary of paying those expenses is a company itself, but the other side of the coin is what the tax department (TD) always tries. There is a proficiency test called Third Beneficiary Rule (TBR) to verify who the actual beneficiary is. TD always tries to collect any information to approve that the employer pays labour-expenses for employees that are not mentioned on the payroll (as a list of advantages related to employees) regardless the ability of gathering the information in payroll bases.

For more information about Libyan labour expenses, visit *www.corptax.org/images/fotos/labor-expenses-article-2012.pdf*

Investing in the USA

by Marc Schwarz



There are a few items, some new and some old, that persons must consider when investing in the U.S.

First, advisors should continue to be aware of the anti-inversion rules which can treat a non-US company as a US company under certain circumstances. The Department of the Treasury released new regulations including a bright-line test that will makes it more difficult to avoid the application of such rules. These rules could potentially apply to non-US acquirors of portions of US companies in restructurings, particularly where there is a global group with diverse geographical asset, personnel and revenue distribution.

Second, each state has its own tax system. With the state of the global economy, states have become more aggressive in auditing companies and individuals to raise revenue. Additionally, and often forgotten in international tax planning, is that states are not obligated to follow US tax treaties. Thus, treaty protection from a permanent establishment, for instance, at the US federal level does not provide the same protection at the state level.

"each state has its own tax system"

Third, the U.S. still taxes its citizens on worldwide income regardless of where they are resident and the taxing authorities have become more vigilant and aggressive than ever at enforcing their rules and have created programs incentivizing compliance for those that have not appropriately been reporting income and disclosing certain non-US financial accounts.

CTA Meeting 2012 Prague *by CTA*

Getting to know Prague in late summer while walking through the old town in the sun is probably seeing Prague at his best. This year again, the CTA meeting was a great success.

The meeting was represented by members from Austria; Malta; the United Kindom; the United States; Germany; Italy; Ireland; Poland; the Czech Republic and the Netherlands.

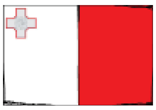
Topics that were discussed during the meeting varied from corporate migrations, attractive IP holding locations, dividend withholding tax planning to permanent establishment taxation. Also the VAT case of the Polish CTA member that is now before the European Court of Justice was highlighted. Besides these subjects, there where country updates from the USA, the UK and the Netherlands.

During the meeting we also discussed possibilities to increase knowledge sharing between the CTA members. This newsletter is one of the results of that discussion. The newsletter is a way to keep each other more frequently up-to-date about actualities including changes of local tax rules and developments in case law. The newsletter can also help us to generate more awareness with our clients of the vast benefits that CTA and its members can offer to them.

For suggestions or more information about the CTA meetings, please do not hesitate to contact the CTA by sending an E-mail to info@corptax.org.

A special thanks to Helena Navratilova who helped us organising the meeting and who welcomed us to Prague.

Redomiciliation of companies in Malta *by Antoine Naudi*



A company formed, incorporated or registered outside Malta may, subject to satisfying certain legal requirements, redomiciliate (i.e. move its domicile) to Malta whilst maintaining its legal identity and henceforth be treated as a company ordinarily resident and domiciled in Malta.

There are various reasons why a company would want to redomicile to Malta, including taking advantage of the existing attractive taxation system, the excellent infrastructural facilities and a wide array of reputable and regulated financial services, aligning its place of registration with its shareholders' base and accessing specialist capital markets.

Legal and fiscal implications
A company that redomiciles to Malta becomes subject to all the obligations and is entitled to exercise all the powers of a company originally registered under Maltese law.

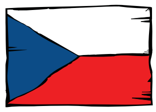
The newly registered company is treated as a company ordinarily resident and domiciled in Malta in terms of income tax legislation and hence becomes subject to tax on its world-wide income including foreign capital gains. However it also becomes entitled to benefit from Malta's vast double-taxation treaty network and applicable EU Directives.

Malta is the only EU member state which adopts the full imputation system of taxation meaning that both resident and non-resident shareholders are entitled to a full credit of the income tax paid by the company on a distribution of dividends.

This system results in a very modest effective taxation.

For more information about migration in Malta, visit: *www.corptax.org/images/publicaties/factsheet-redomiciliation-of-companies.pdf*

From the Czech chamber of deputies; new legal regulations *by Helena Navratilova*



Act on changes to tax, insurance, and other acts in connection with reducing state budget deficits.

On 13 July 2012, the chamber of deputies of the Czech Republic approved the government's draft act on changes to tax, insurance, and other acts in connection with reducing state budget deficits. The bill was then sent to the senate, which began discussing the bill in mid-August.

It is proposed that the changes, some of which have been proposed as temporary for a period of three years, become effective as of 1 January 2013. The government's draft includes, among others, the following changes:

- Determination of the maximum amount of expenses incurred by individuals (gainfully self-employed individuals with selected types of income and lessors) who deduct expenses as a percentage of their income.
- Introduction of the so-called 7% solidarity surcharge to personal income tax payable from employment income or from income of gainfully self-employed individuals that exceeds the assessment base cap applicable to social security contributions.
- Income tax payers receiving oldage pension are not eligible for tax relief.
- Increased withholding income tax for tax residents from non-EU/EEA countries with which the Czech Republic
- has not concluded a double tax treaty; the cited tax should be increased from 15% to 35%.
- Increased VAT rates from 14% to 15% and from 20% to 21%. Starting in 2016, the VAT rates should be unified and set at 17.5%; the unified rate was originally planned to take effect in 2013.
- Increased real estate transfer tax rate from 3% to 4%.

For more Czech tax news: *www.corptax.org/images/publicaties/kocian-solc-balastik-tax_news_7.pdf*

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