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Welcome to the September 2018 edition of Tax Link.

Tax Link is a Nexia publication that gives the readers access to the latest updates from across the globe. The articles were sourced from tax professionals across the network, who provide insightful country information on both national and international developments.

This edition contains 12 articles, that vary from EU – Court declares important German cross border tax provisions to violate EU-law, US Exporters: FDII Deduction's in tax reform's, Cryptocurrency regulations in India, Poland and Slovakia, UK VAT consequences of 'no deal' Brexit , Tax reform in France to OECD hybrid mismatch rules in Australia.

There was a fantastic response to the last article request and I thank you all again for sharing your information with Nexia International and the wider audience. If you would like any further information on the topics in this edition, the contributor's details are provided for each article and they are happy to give further detail.

If you wish to contribute to future editions please do not hesitate to contact me.

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Australia's Implementation of the OECD hybrid mismatch rules

In the Federal 2016-17 Budget, the Government announced it would implement the Organisation for Economic Cooperation and Development (OECD) hybrid mismatch and branch mismatch rules from Action Item 2 of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan. Legislation containing these measures, which aims to overcome loopholes to ensure that multinationals pay their fair share of tax in Australia, has passed through both Houses of Parliament and now awaits assent.

In effect, the Hybrid Mismatch rules aim to prevent multinational companies from exploiting differences in tax jurisdictions to gain an unfair competitive advantage by avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements.

What will the rules apply to?
The rules will apply to payments that give rise to hybrid mismatch outcomes which can be best summarised as:

- deduction/non-inclusion mismatches ("D/NI") where a payment is deductible in one jurisdiction and non-assessable in the other jurisdiction;
- deduction/deduction mismatches ("D/D") where the one payment qualifies for a tax deduction in two jurisdictions;
- imported hybrid mismatches whereby receipts are sheltered from tax directly or indirectly by hybrid outcomes elsewhere in a group of entities or a chain of transactions.

These rules will operate to prevent entities that are liable to income tax in Australia from being able to avoid income tax or obtain a double taxation benefit by exploiting differences between the taxation treatment of entities and instruments across different countries.

The rules will neutralise hybrid mismatches by cancelling deductions or including amounts in assessable income of the Australian entity. The rules also contain targeted integrity provisions which will prevent the effect of the hybrid mismatch rules from being compromised by multinational groups using interposed country conduit type vehicles to invest into Australia, as an alternative to investing into Australia using hybrid instruments or entities. These structures can be used to effectively replicate a deduction/non-inclusion outcome. Intra-group financing arrangements involving routing of funds through foreign interposed entities which result in an Australian income tax deduction (for example, interest on a loan), and the imposition of foreign income tax on the payment at a rate of 10% or less, are arrangements where the integrity rules may be applied.

Subject to some exceptions, the rules have application to certain payments after 1 January 2019, and to income years commencing on or after 1 January 2019. Limited transitional arrangements, impacting frankable dividend distributions, apply for Additional Tier 1 regulatory capital issued by banks or insurance companies.

Unfortunately, the measures clarify that the thin capitalisation measures are not impacted by the new rules. This means an inappropriate outcome will arise where a debt deduction is disallowed under the hybrid mismatch provisions given the debt itself remains in the calculation of debt for thin capitalisation purposes.

Who do these rules apply to?
The rules can apply to payments between related parties, members of a control group or between parties under a structured arrangement. Unlike the recently enacted Diverted Profits Tax or Multinational Anti-Avoidance Law measures, the Hybrid Mismatch rules do not have a de minimis or materiality threshold.

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What do you have to do with individually owned capital property if a Canadian resident passes away?

Estate freezes have been the cornerstone of estate planning for business owners for as long as capital gains tax has existed in Canada, dating back to 1972. The main driver for their implementation has been income tax minimization at death to the business owner's estate, in regards to corporate shares that the business owner owns at that time.

What is an Estate freeze?
When a Canadian resident individual passes away, the decedent is deemed to dispose of all capital property owned at that time for its fair market value immediately before death. Any inherent capital gains or losses of the property(ies) owned at that time will be included in the taxable income of the decedent's final personal income tax return for the year of death.

This can result in a very substantial tax liability that the estate would not necessarily have funds to pay. It can even result in the need to sell all or part of the family business in order to pay the tax.

The foregoing deemed disposition of the decedent's capital property can be deferred in a particular instance. Specifically, where the capital property is transferred or distributed to:

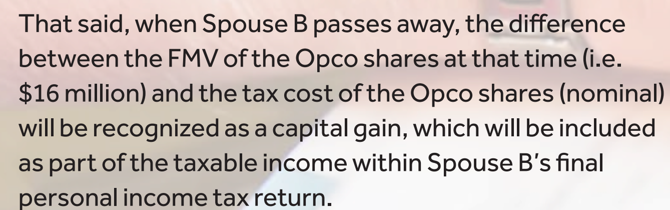
- the decedent's spouse or common-law partner, who was a Canadian resident immediately before the decedent's death; or
- a testamentary spousal trust, that was a Canadian resident immediately after the time that the property vested indefeasibly in the trust; and

the property has vested indefeasibly with such person within the period ending 36 months after the death of the decedent, then the capital property will be deemed to have been disposed of at the decedent's tax cost, rather than its fair market value, immediately before death.

While the foregoing tax deferral rule is certainly beneficial to avoid paying capital gains taxes upon the death of a business owner who has a surviving spouse, eventually the tax liability will be borne by that surviving spouse and could very well grow to a much higher amount than upon the earlier death of the business owner. A numerical example best explains this concept.

Example:
Assume a spouse ("Spouse A") is the sole shareholder of a company ("Opco"). It is estimated that these shares have a current fair market value ("FMV") of $5 million and has a nominal tax cost. The spouse is married ("Spouse B") and has adult children. It is projected that on a balance of probabilities, Spouse A will pass away before Spouse B, and that Spouse B will pass way before the adult children. Assuming for the purposes of this example, that the shares of Opco will have grown in value to $12 million when Spouse A passes away, and to $16 million when Spouse B passes away.

If Spouse A structures the last Will and Testament to provide that the Opco shares will vest indefeasibly with Spouse B upon death, either directly or through a testamentary spousal trust, then there will be no deemed disposition of the Opco shares at the time of Spouse A's death.



That said, when Spouse B passes away, the difference between the FMV of the Opco shares at that time (i.e. $16 million) and the tax cost of the Opco shares (nominal) will be recognized as a capital gain, which will be included as part of the taxable income within Spouse B's final personal income tax return.

While it was clearly beneficial to defer paying income taxes in respect of the Opco shares upon Spouse A's death, the negative income tax consequence which arose is that the capital gain which was realized when Spouse B passed away increased from $12 million to $16 million, since the Opco shares continued to grow in value following Spouse A's death.

In the context of this example, it cannot be ignored that the capital gains tax implication to Spouse A's estate could have been limited to when the Opco shares had $5 million of value, if some form of proactive course of action was previously implemented, as opposed to having done nothing and allowing the shares to grow to $12 million, or alternatively, to $16 million in value. The foregoing proactive course of action is commonly referred to as an estate freeze.

Here is a paper written by Nathan Choran, Tax Partner at Zeifmans, for the 2018 B'nai Brith Tax Conference on the implementation of an estate freeze, and an update how the recent amendments to the Income Tax Act will affect estate freezes moving forward.

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"When a Canadian resident individual passes away, the decedent is deemed to dispose of all capital property owned at that time for its fair market value immediately before death."

Cyprus modernizes the existing regulatory and tax framework pertaining to Investment Funds

Cyprus is continuing to upscale its legal, regulatory and tax framework in an effort to keep the jurisdiction at the forefront of fund managers' and investors' minds.

The new legislation constitutes a ground-breaking development for Cyprus Investment Funds as it incorporates a combination of provisions influenced by the respective legislative frameworks of other jurisdictions exceling within the investment funds industry.

Registered AIFs (RAIFs)
A new development is the introduction of RAIFs resulting to a drastically time efficient and more affordable way for establishing AIFs in Cyprus.

The RAIF has the characteristics and structuring flexibilities of regulated AIFs managed by an authorised AIFM, except that RAIFs are not subject to authorization and supervision by the Cyprus Securities and Exchange Commission (CySEC) as with AIFs. So, in order for RAIFs to commence operations, they need to be externally managed by an Alternative Investment Fund Manager (AIFM) established in Cyprus or within another EU Member State. Instead, the establishment of a RAIF will need to be notified to the CySEC and be included in a special register that shall be maintained to this end.

As for RAIFs which are structured as limited partnerships, these may also be externally managed by managers other than AIFMs (i.e. Investment Firms, UCITS Management Companies). In such a case, the RAIF must necessarily be closed-ended and invest in illiquid assets.

So, the key characteristics of RAIFs are:
- Appointment of local depository.
- Option for umbrella structure with multiple investment compartments.
- Structured as either a common fund or an investment company of variable or fixed capital or a limited partnership.
- Exclusively addressed to professional and/or well informed investors.
- Supervision at the level of the AIFM managing the RAIF(s).
- Be open or closed ended.
- No minimum capital requirements.

AIFs structured as Limited Partnerships with inherent legal personality
Another significant new provision is the option for structuring an AIF as a limited partnership with separate legal personality i.e. compared to the AIFs structured as traditional limited partnerships.

Amendments to the related Tax Laws
New provisions have been introduced in the Cyprus tax legislation relating to the taxation of investment funds. The new provisions enhance further the already competitive tax framework of Cyprus applicable for investment funds, fund managers and investors.

Special mode of taxation for carried interest / performance fee for AIF and UCITS fund managers
Certain employees and executives of investment fund management companies or internally managed investment funds may opt for a new mode of personal taxation.

Subject to conditions, the new law provides for the introduction of an optional, special mode of taxation for the variable fee/employment remuneration of fund managers' (when the fee is charged based on the profitability of the organization), providing taxation at the flat rate of 8%, with a minimum tax liability of Euro 10.000 per annum.

The new mode of taxation is available for a period of 10 years in total, subject to the annual election of the individual. The new provisions aim to enhance the already competitive Cyprus tax framework for fund managers.

No permanent establishment issues
A new addition has been made to the definition of the term 'permanent establishment' (PE) in the Cyprus income tax legislation. In particular, no PE will be deemed to arise in Cyprus in cases of:
- investment into Cyprus tax-transparent investment funds by non-resident investors and
- management from Cyprus of non-Cyprus investment funds.

The above income tax law amendments safeguard against uncertainties in relation to such cases.

Each compartment is treated as a separate taxpayer
According to the law, each compartment of an AIF or UCITS should be treated as a separate taxpayer thus further facilitating the effective operation of Cyprus investment funds via multiple compartments, in accordance with international fund industry standards.

VAT considerations
The services provided by the Investment Manager and Fund Administrator are not subject to Cyprus VAT.

As per the relevant VAT circular, asset management services provided to special investment funds are exempt from Cyprus VAT and in particular those consisting of:
- Investment management including the management of the risks associated with the operation of the investment funds.
- Administration services, including legal services and fund management accounting services, customer services, valuation services, record keeping, income allocation services etc.
- Marketing .

In addition to the above, the said VAT circular clarifies that Management companies or Self-managed AIFs may under certain circumstances, assign to third parties, a specific and essential part of the management which, is either compulsorily assigned on the basis of the UCITS legislation or voluntarily in the case of a self-managed AIF, for the purposes of the efficient exercise of their operations. The VAT treatment of these services, whether provided in the form of subcontracting of the total of the administrative aspects of management or which comprise a specific and essential part of the management, is also exempt from the imposition of Cyprus VAT.

Therefore, it is evident that VAT planning and transactional flow structuring is a pre-requisite for affected entities aiming to utilize optimization opportunities and minimize VAT costs.

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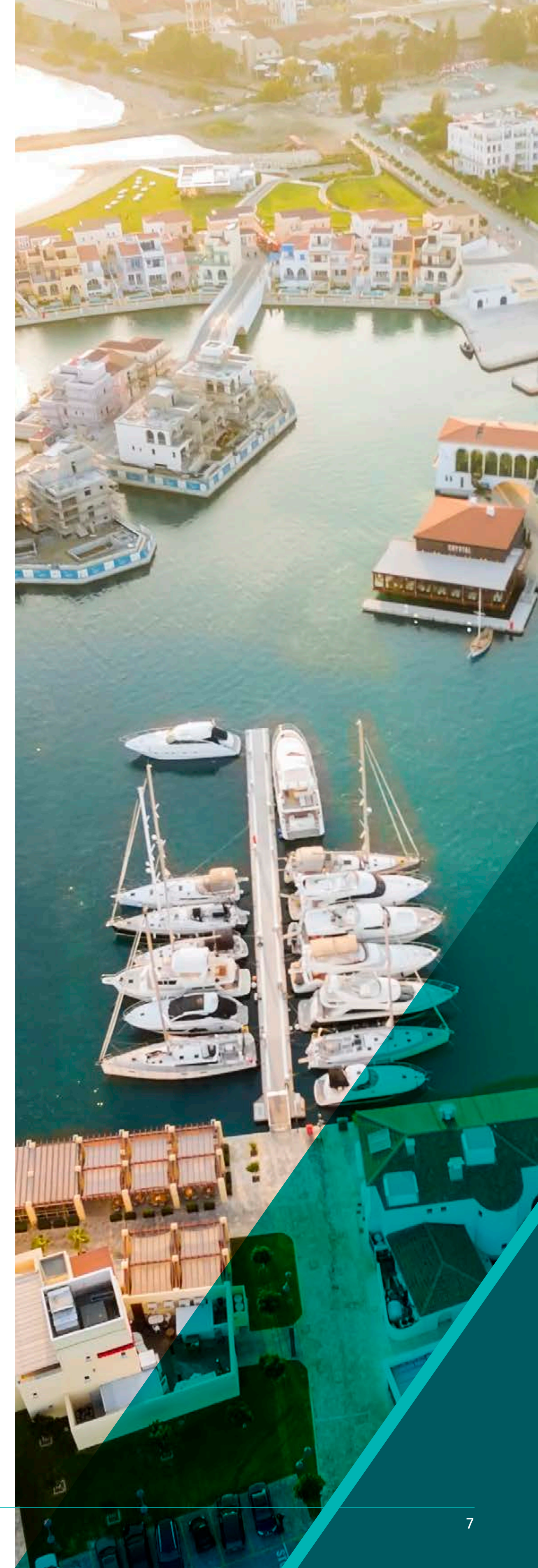

France - Income tax collecting: Implementation of a withholding tax starting on 1 January 2019

In France, income tax is collected the year following the income's receipt pursuant to the filing of tax return. Starting January 1st , 2019, the payment of French income tax will change to a withholding system.

This withholding tax is not a new tax but, just a new way for the French Tax Authorities (FTA) to collect income tax.

Filing obligations remain unchanged and the taxpayer will still have to report his income from the previous year on his tax return in May-June of each year.

The final amount of income tax due will still be calculated in September, after the FTA has received each taxpayer's tax return.

In 2019, the first year of the withholding tax implementation, due to the current tax collection system, the taxpayer will end-up paying both his income taxes for 2018, and the amounts withheld for 2019.

In order to avoid such a burden, the law provides for a tax credit, which will cancel the tax calculated and owed for unexceptional income received in 2018.

Scope of the new withholding system

This withholding system applies to any income, which comes within the definition of income for the purpose of the withholding system, regardless of whether the taxpayer is a French resident or not (e.g. French rental income received by a foreign tax resident).

However, not all income will be subject to withholdings. Two types of income are excluded from this system:

- income that is already subject to a withholding tax as dividends, interests or a salary paid to foreign tax residents;
- income, which, by its nature, is exceptional such as a capital gain on securities or real estate properties.

In practice, income taxes will be withheld using either of these two methods:

- directly withheld and paid by the debtor of the taxpayer's income (e.g. employer for the salary, Social Security or retirement funds for pensions);
- automatically withheld by the FTA on the taxpayer's account for income such as rental income, income of independent workers or income from foreign sources.

Specifically, employees paid abroad by a foreign employer, but who are French tax residents, will be subject to the FTA's automatic withdrawal on their foreign income.

Tax basis

The withholding tax is only based on income that comes within the scope of the definition of income for the purpose of the withholding system. For example, the amount of tax due on capital gains will still be paid in September Y+1.

Furthermore, salaries will be taken into account without any deductions for professional expenses.
Finally, losses will be taken into account for a nil amount

Tax rate

If the tax basis is contemporary, the tax rate's calculation is based on the taxpayer's last income known by the French Tax Authorities.

The tax rate, specific to each household, for year N is calculated as follows:

Between January and August of year Y, before the taxpayer has filed his tax return reporting his Y-1 income:

$$R= \frac{\text{Tax on income Y-2 within the withholding tax scope}}{\text{Income Y-2 within the withholding tax scope}}$$

Between September and December of year Y, after the taxpayer has filed his tax return reporting his Y-1 income:

$$R= \frac{\text{Tax on income Y-1 within the withholding tax scope}}{\text{Income Y-1 within the withholding tax scope}}$$

Payment of the final income tax

The final amount of income tax due will still be calculated by the FTA upon receipt of the taxpayer's tax return.

The tax notice, received around September Y+1, will indicate the amount of withholding tax collected during year Y and the potential difference between the two amounts.

Such difference can be the consequence of, for example:

- payments made by the taxpayer which result in a tax credit;
- the evolution of the income received during the year;
- the realization of a capital gain or receipt of other income coming outside of the withholding tax scope.

If the amount of withholding tax is higher than the amount of tax due, the difference will be reimbursed to the taxpayer in September Y+1.

If the amount of withholding tax is lower than the amount of tax due, the difference will have to be paid:

- in September, if such difference is of less than €300;
- In equal payments throughout September to December included if the amount due is superior to €300

Adjustments to the amount withheld

Automatic adjustments:
The tax rate can be automatically modified if the taxpayer, reports, within two months after the event has occurred, a marriage, a divorce, a birth, a death, the conclusion or end of a "PACS" (civil partnership).

The tax rate can also be automatically adjusted by the FTA at the taxpayer's request, in the case of spouses who want to have individual tax rates. This individual tax rate can be useful when spouses have an important discrepancy between their income.

Adjustment by the taxpayer:
In the event that the taxpayer's income evolves between year Y-2, Y-1, Y , he can choose to adjust the amount of tax withheld.

The taxpayer can freely increase the amount of monthly withholdings.

However, if he reduces the amount and at the end of the year the amount of withholding tax paid is lower than 90 % of the amount due, he will be liable for penalties.

Tax credit applicable on 2018 income

In order to prevent the taxpayer from paying in 2019, the 2018 income tax, collected in September 2019, and the 2019 income tax, collected each month of 2019, the legislator has provided for a tax credit mechanism on "unexceptional" income. This tax credit will be deducted from the 2018 income tax. This tax credit is called the "Modernization Recovery Tax Credit" (CIMR in French).

Tax credit calculation:
The tax credit corresponds to the amount of income tax due on the taxpayer's unexceptional income. Unexceptional income is defined by opposition to exceptional income.

The CIMR is not included in the general cap on tax reductions and credits. The CIMR tax credit is deducted before any other deductions of credits and tax reductions. These tax credit and reduction will thus be fully effective for the year 2018.

The CIMR will only be granted for income declared spontaneously. This tax credit will not be applicable to tax withheld after formal notice from the FTA, even though the tax is related to eligible income.

The CIMR will be reduced by tax credits granted pursuant to double taxation treaties relating to foreign income coming within the scope of the withholding tax system.

Unexceptional income is defined by opposition to exceptional income, which is defined differently depending on the income category.

Exceptional income is defined differently depending on the income's category.

To determine the "exceptional" or "unexceptional" qualification is quite complex especially regarding salaries and the anti-abuse clauses applicable to rental income.

Besides, the tax reform turns employers and retirement funds to tax collector with new filing obligations and responsibility.

It will be important to prevent particular tax cases regarding this complex tax reform with a lot of details and exceptions or anti-abuse disposal.

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EU-Court declares important German cross border tax provisions to violate EU-law

German application of the Parent-Subsidiary Directive on the one hand and transfer pricing adjustments according to sec. 1 German Foreign Tax Act on the other hand.

German taxation has to consider two important cross border issues which were recently decided by the European Court of Justice (ECJ) in favour of the taxpayers.

Withholding Tax on Dividends and Parent-Subsidiary Directive

The first to be mentioned is the German application of the EU-Parent-Subsidiary Directive. The foreign EU-shareholder of a corporation who is tax resident in Germany has the right to a refund of German withholding tax on dividends or alternatively a tax exemption certificate. The prerequisites to be met are a 10% minimum shareholding by an EU-corporation and the observation of a holding period of at least one year. Overruling these EU-prerequisites which are transferred to national law of all member states, restrictions are allowed nationally to explicitly avoid such tax benefit in case of artificial structures. Germany introduced two anti-abuse provisions in sec. 50d para 3 of the German Income Tax Act (ITA); one was effective until 2011 and the revised one since 2012. Content of such anti-abuse provision is a deemed abuse, in particular if the EU parent operated the function of a holding company. Given this, the taxpayer had to prove by a kind of substance test that the EU-parent is operating an active business instead of administrating shares only by own staff and office space/ equipment.

The European Court of Justice had to decide upon the old version and delivered a verdict expressing that the general suspicion of abuse when implementing an EU (holding) is not in line with the Parent Subsidiary Directive and contradicts the freedom of establishment as well (ECJ of December 20, 2018, C-504/16 and C-613/16, "Deister Holding" and "Juhler Holding"). Whereas the current rule was brought to the ECJ but still pending, the ECJ decided now on this: The rule is not in line with the directive and the freedom of establishment as in case of the old rule (decision of June 14, 2018; C-449/17, "GS"). Whereas the decisions concerning the old rule are interpreted by the German tax administration in a circular of April 4, 2018, no such comment is given due to its up-to- dateness concerning the new decision. Although the interpretation given in the circular is still restrictive as the taxpayer has to prove that there is no artificial structure rather than the tax administry itself, observing the circular should bring the taxpayer into a safe position. Where this is not possible, an appeal should be filed based on the very clear decisions of the ECJ.

Some rules of the circular:

Despite the wording of the German anti-abuse rules a group view has to be taken to deny an artificial structure. Outsourcing of activities such as management or administration is not harmful. Operational business is not only active business as e.g. production and distribution but also management of own assets, in particular shares (holding function). Given this, the anti-abuse provisions lose their unassimilated strictness.

Please note that the anti-abuse provision is also applicable in case of withholding tax on dividends based on a tax treaty and of withholding tax on interest and license payments. The German tax administration announced to observe them so far as the ECJ only decided based on the Parent-Subsidiary-Directive and thus the taxpayer unfortunately has to appeal against this as the case may be.

Transfer Pricing Adjustments - Deviation from arm`s length principle due to economic reasons

Sec. 1 German Foreign Tax Act – (FTA) allows the adjustment of transfer prices with regards to transactions between a German domestic corporation and its foreign affiliated companies. In accordance to the law such relation exists in case of a substantial interest of more than 25 % directly or indirectly or the ability of controlling influence on another company. Sec. 1 FTA allows the increase of German taxable profit if the transfer price does not correspond to arm`s length. No escape-clauses to avoid such adjustment are foreseen in the law.

The European Court of Justice's ruling was based on the action brought by Hornbach-Baumarkt AG, which operates stores both in Germany and in other EU countries, in the case at hand inter alia in Dutch subsidiaries, which in turn were supported by its parent. In particular this was true by means of letters of comfort to the financing bank; without such financial aid the Dutch subsidiaries would not have been in a position to serve their liabilities and to obtain bank loans. A compensation was not agreed upon. Whereas such is not challenged in domestic cases, sec.1 FTA provides with a rule to make adjustments in cross border cases. Missing compensation was picked up by the German tax office and an adjustment of the German profit was made pursuant to sec. 1 FTA.

By decision of May 31, 2018 (C-382/16, "Hornbach-Baumarkt AG") the ECJ came to the conclusion that sec. 1 FTA violates the freedom of establishment as far as the taxpayer is not allowed to present economic reasons for the transfer price taken. Although the freedom of establishment allows national provisions to preserve their tax revenue, evidence to the contrary by presenting economic reasons must be allowed. However, sec. 1 FTA does not actually grant such possibility and so far the provision contradicted EU-law.

It has to be mentioned that the ECJ had already made a decision which clarified a similar question. In this case, the Belgian company SGI granted an interest-free loan to its European subsidiary for economic reasons. Based on Belgian law, the tax authorities made a profit adjustment and used fictitious interest rates. In this decision of January 21, 2010 (C-311-08) the ECJ pointed out that the taxpayer has to be granted the possibility of providing evidence of any economic reasons for the conclusion of the transaction.

A deviation from the arm`s length principle may be justified by economic reasons, such as e.g. the financial aid to maintain the business operations of a foreign subsidiary in the event of economic difficulties. A kind of motive test must be allowed – deviation from arm`s length requires motives which are not made on the basis of tax savings but for economic reasons.

This allows the taxpayer to existing and deferred corresponding structures based on the current German law situation.

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Online invoicing system in Hungary

As of 1 July 2018, it is obligatory to provide data of the invoices containing charged value added tax at least of HUF 100,000 (EUR 313) issued of the transactions between domestic taxpayers.

As of 1 July 2018, the data disclosure regarding the data of the invoices issued (and documents to be regarded as equivalent to invoice) shall be fulfilled after the issuance, within a short period of time, by electronic means. In case of invoicing with the use of billing/accounting software the invoice data shall be transmitted to the National Tax and Customs Administration (NTCA) without human intervention, via the public internet immediately, after the preparation of the invoice.

Data of the invoice shall be recorded on web interface in case of invoicing with the application of form, e.g. invoice pad (accordingly manual invoicing). The data report shall be fulfilled within five calendar days. This deadline is shortened if the invoice contains charged tax of HUF 500,000 (EUR 1565) or more than this amount. The data of the invoice containing of HUF 500,000 or more charged tax shall be recorded on web interface on the day after the day on which the invoice was issued.

The data disclosure liability in principle is covered by such an invoice issued on the transactions between domestic taxpayers in which there is HUF 100,000 (EUR 313) or more charged tax.

The objective of the introduction of the online data report and of the establishment of the data management system is to further whiten the economy by discouraging tax frauds. This is complemented by the free online invoicing function, as a service of the NTCA. With this development a large amount of invoice turnover become visible and traceable for the NTCA consequently the risk management can be more effective and the VAT revenues can be significantly increased.

Within the system of online invoice

- real-time data on the issued invoices arrive to the NTCA,
- issued invoices can be queried by recipients of invoices and issuers of invoices as well,
- large amount of the invoice data is rapidly available for the purpose of effective risk analysis and audit which is assisting the detection of tax frauds,
- with the automation of the data report, the administrative burdens are reducing for users of billing/ invoicing software,
- the new system substitutes the consolidated data report of issuers of invoices.

The basis of the solution is such a combined IT system which is able

- to receive and to control the invoice data that were sent in an electronic standard message as well as to confirm the sending, with the application of a system-system connection provided to taxpayers,
- to support manual recording of invoice data on a web portal,
- to trace economic activities and processes via the immediately available invoice data.

The online invoice assists the tax audit work of the NTCA, it makes the economic processes more transparent and broadens the group of the compliant taxpayers.

The obligation to supply data covers all taxpayers resident for tax purposes in the country. As such, all VAT registered taxpayers have to perform data-supply of their invoices with an output tax amount of least HUF 100,000 (EUR 313) issued to another resident taxpayer.

Pursuant to the VAT Act effective from 1 July 2018 concerning invoices made out with invoicing programs, electronic data supply must be made – as defined in separate law – of the changes where the tax charged to the other domestic taxpayer reaches or exceeds HUF 100,000 (EUR 313) after the change. In the case then, if the amount of tax charged in the invoice modified by a rectified invoice (i.e. the original invoice and its previous

rectified invoices) increases to or is higher than HUF 100,000, the rectified invoice is subject to reporting requirements (i.e. data supply).

There could be a question that will the issue of invoices by hand become forbidden in the case of invoices exceeding the tax amount threshold of HUF 100,000? Such a provision is not expectable. As of the 1st July 2018, data disclosure must be provided on every invoice [issued to domestic (Hungarian) taxpayer], which contains charged (output) tax amounting to HUF 100,000 or even more, no matter how the production of invoice takes place. In the case if the invoice issued to the other taxpayer, which contains at least output VAT of HUF 100,000, was produced as a handwritten invoice with the application of a form (for instance a block of invoices), the data disclosure must be performed within 5 calendar days in such a way that data must be recorded on a dedicated website. However, if such an invoice contains output tax of HUF 500,000 (EUR 1565) or even more, the data disclosure must be performed on the day following the day when the invoice was issued. If recording the data content of a handwritten invoice, which is prescribed by the VAT Act, on the dedicated website causes too big administrative burden for the taxpayer it can be expedient for him to go for applying billing/ invoicing software.

It is not obligatory to perform an online data-supply on data of invoices issued by billing/invoicing software on tax exempted supply of goods to other Member States or third countries. The obligation of submitting recapitulative statements (Form 'A60) is not affected by introducing obligation of providing invoice data online.

It is expected that the recipient of invoice can also interrogate the data of those invoices also after 30 June 2018, on which the issuer of the invoice has performed a data disclosure. Availability of invoice data provided by the issuer of the invoice can make easier for the recipient of the invoice to compile the itemized data disclosure (summary statement) on invoices, which has to be submitted in his VAT return. Furthermore, knowledge on the invoice issuer partner's practice and completeness (or incompleteness) of online supply of invoice data can also be suitable for judging business partner's behaviour and reliability. With regard to all of these circumstances, getting acquainted with invoice data provided by the invoice issuer is expedient even after 30 June 2018 as well; however, the recipient of invoices will not be obliged by legal rules to check the obligation of online supply of invoice data to be performed by the issuer of invoice. It must be noted that a default penalty for each invoice affected with failure may be imposed upon private individual taxpayers up to HUF 200,000 (EUR 625) and upon other taxpayers up to HUF 500,000 (EUR 1565) for non-compliance with the obligation of data disclosure (or for its late, incomplete, erroneous performance as well as for perming data disclosure with false data).

In the event if the online program was unable to provide data by 1 July 2018, the NTCA did not fine when the data of the invoice arrived by the end of July 2018.

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Cryptocurrency - Indian regulatory response

Mirroring the global trend, cryptocurrency mania gripped Indian residents at the end of 2017 with number of exchanges offering trading facilities reaching 15 with corresponding increasing in active traders as well as investors. However, Indian regulatory response to the "Cryptomania" was slow to arrive.

The first mention of the same was in February 2018 when Honorable Finance Minister of India in his budget speech expressly stated that the Government does not consider cryptocurrencies as a 'legal tender'. Soon after the speech, on April 5, 2018, Reserve Bank of India (RBI) directed all banks to wind up all banking relationship with virtual currency exchanges and traders.

Important to note that the government has not categorized cryptocurrency as 'illegal'. 'Not being a legal tender' is not the same as being 'illegal'. Not a legal tender implies that the Government does not consider it as an official currency i.e. you cannot use it like money. However, people can own it or trade it on regular basis, just like one would transact in a barter system, all the while being within four corners of the law. Thus, it would seem that the Government has tried to restrict the utility of cryptocurrency as official tender, as of now. And this position adds to the confusion in the minds of various stakeholders.

Jolted by the RBI's directions, a number of cryptocurrency exchanges challenged the ban in the Supreme Court (Apex judicial authority in India). The matter is still pending before the court. Also the court has declined to offer any sort of interim relief on the RBI restrictions to cryptocurrency transactions as of now. This dealt temporary blow to virtual currency exchanges and traders and the trade volumes dipped for a short period. However, the said ban pushed investors and sellers to seek out alternate ways to transact like peer to peer trading platforms or - the Government's worst nightmare - using cash. Gradually, trading volumes surged dramatically with average daily volumes as high as $75 million - close to levels before the rule changes - Coindelta, the Pune-based cryptocurrency exchange, told Reuters.

However, Government has another ace up its sleeve in its endeavor to curb Crypto trade. Impending trouble for cryptocurrency investors is taxability under Goods and Services Tax (GST) Act. As per the recent Bloomberg article, the government of India may levy GST of 18% on digital currency trades, even if there's lack of clarity about their legal status in India. The value of a cryptocurrency transaction would be based on the value in rupees or the equivalent in freely convertible foreign currency. This would clearly impact the returns of the investors and Government is hoping that it would curb the enthusiasm of Crypto traders.

Amongst all authorities in India which targeted cryptocurrency, India's Income tax department had first mover advantage. Notices were issued to around 0.1 Million traders and investors in February 2018 asking questions over their crypto trade even when heavy ambiguity exists as to the taxability of cryptocurrencies. This ambiguity arises due to its unique quality - being considered as a security as well as a currency or as goods and services ('Currency' has not been defined in the tax laws). The income tax problem becomes compounded due to inherent difference in Indian income tax between taxation of capital assets taxed at lower rates vis-à-vis taxation of business profits taxed at higher rates.

Another view suggests that if cryptocurrency are classified as capital asset, the virtual currency earned from mining these currencies might not be taxed as

assets generated from mining process will be considered as a 'Self-generated' capital asset.

In the backdrop of all the above controversies and confusion in relation to cryptocurrency regulation, Department of Economic Affairs secretary has commented that draft regulations would be ready and presented before the year end. Looking at the current scenario in relation to cryptocurrency in India, the one hopes that the above draft would highlight a broader clarity in relation to legality as well as taxability of cryptocurrency in India.

"Cryptocurrency – The Rise of Digital Currency... Money of the Future?"

On a separate related note, it should be noted that various government agencies in India are serious about using Blockchain technology (Distributed ledger system allows organization of any chain of records or transaction without the need of intermediaries) into the growing digital economy of the country. To cite few examples, revenue department of India's largest state – Uttar Pradesh is introducing Blockchain technology in next six months to store and protect land-related data. Another state Kerala has embarked on a strategy to leverage the Blockchain technology to streamline purchase and distribution network of milk, vegetables and fish in the state.

Thus, it is clear that Indian Government may go hard on making laws relating to trading of virtual currencies in India but it cannot ignore the underlying benefits that a Blockchain technology may provide giving a tremendous boost to economy.

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Poland and cryptocurrencies

Cryptocurrencies have been a hot subject in recent years in Polish and global media. They are referred to in the context of investment, speculative fluctuations in value and use in business as an alternative means of payment.

Poland cannot be called a pioneer in the process of legalization and regulation of cryptocurrencies, but since the end of last year there has been an intensified discussion on this subject. This was to some extent initiated by changes on the crypto-market at the end of the year (significant increases in value of cryptocurrencies) and approaching tax settlements period.

Firstly, the Polish financial supervision committee (KNF) and the Ministry of Finance undertook actions aimed at explaining what cryptocurrencies are and informing about the risks associated with cryptocurrencies' trade. The committee also started to verify the legality of entities dealing with the intermediation of the virtual currencies.

On 1 March 2018, the lower chamber of the Polish parliament adopted a new law on counteracting money laundering and financing of terrorism. This Act implements the provisions of the Directive of the European Parliament and of the Council (EU) 2015/849 of May 20, 2015. This is the first legal act in Poland that notices the existence of virtual currencies and provides some sort of a definition. Due to the fact that it seems to be different than the standpoint presented so far by the Polish tax authorities and administrative courts (which treated the virtual currencies as property rights), there may be some disputes in this respect in the future.

Current tax regulations

Turnover taxesVAT

The Polish VAT Law does not regulate directly the subject of cryptocurrencies. Generally, approach of Polish tax authorities in terms of VAT follows the judgement of the European Court of Justice in case C-264/14 Daniel Hedqvist vs. Skatteverket.

Therefore, the sale and exchange of cryptocurrency into traditional currency and vice versa, as well as the exchange of one cryptocurrency for another is subject to VAT and benefits from VAT exemption. This means that the taxpayer has no right to deduct VAT on purchased goods and services related to the extraction and purchase / sale of cryptocurrencies.

According to the standpoint of the tax authorities the tax point for VAT purposes occurs at the moment of exchange.

Civil Law Activities Tax

Assuming that the cryptocurrencies are treated as property rights, the contract for the sale and conversion of cryptocurrencies, if not traded within professional activities subject to VAT (if at least one of the parties of the transaction is exempt from VAT) is subject to tax on civil law transactions (at the rate of 1%).

In practice, it is crucial to determine whether the cryptocurrency trade in a given case is subject to VAT (if one of the parties acts as a VAT taxpayer) or a tax on civil law transactions is payable (which in practice means that cryptocurrency trading may become completely unprofitable) .

The above created a lot of uncertainty among taxpayers as well as caused many negative comments from the tax experts. Therefore, the Polish Ministry of Finance in ordinance dated 11.07.18 stated that TCLT collection from cryptocurrencies trade should be abandoned for the period between 13 July 2018 and 30 June 2019. As explained by the Ministry of Finance, this is a "temporary" solution that will allow "to make in-depth analysis and prepare solutions that regulate this issue".

Income taxes

Generally income derived from cryptocurrencies trading is subject to PIT and CIT taxation. Revenues can be generated, among others by: sale of cryptocurrencies for traditional currencies and its conversion to another cryptocurrencies, goods or services.

In the issued binding rulings the tax authorities claim that income is created when the cryptocurrency is put at the disposal. No later than the date of invoice or settlement of the claim. In other words, every event of exchange should be treated as a separate moment for income taxation.

Depending on the classification, income of natural persons from activities related to cryptocurrencies may be subject to a flat rate of 19% or taxed according to the scale (currently in Poland – 18% and 32%).

In case of legal entities, cryptocurrency trading would also fall within the scope of taxation – current basic rate is 19% (in certain cases 15%).

Costs deductibility – practice

One of the main issues when dealing with cryptocurrencies trading is securing the right to recognize tax deductible costs. The Polish tax authorities typically require a standard set of documents proving that the tax deductible costs were in fact borne and for the benefit of the taxpayer. In case of cryptocurrencies, apart from difficulties related to matching a given cost to relevant revenue a serious issue is related to the documentation of the tax deductible costs. In some cases the tax authorities question the available proofs, such as print screens claiming that the do not provide a sufficient document for recognizing the tax deductible costs. On the other hand, in many cases it as accepted to treat CSV files as basis for tax costs' recognition" should be in many cases it is accepted to treat CSV files as basis for tax costs' recognition.

Crytocurrency's markets and exchanges

According to the latest announcement of the financial supervision committee, since July 13, 2018, the entities that run cryptocurrencies markets and exchanges will should be treated as so-called obligated institutions" should be "since July 13, 2018, the entities that run cryptocurrencies markets and exchanges should be treated as so-called obligated institutions. This means that they will be subject to additional obligations set out in the Anti Money Laundering Act and if there is a suspicion that they violate the law, they will be placed on the list of public warnings - the committee observes.

Nevertheless, the financial supervision committee emphasizes that cryptocurrencies markets and exchanges are legal in Poland, but acting as one of them "may involve activities covered by relevant regulations regulating the activity of entities on the financial market, and thus the obligation to obtain appropriate KNF approvals, for example, the authorization to perform payment services in the scope of keeping payment accounts (so-called virtual purses) and executing payment transactions".

In this context, the committee reminds that entities that act as cryptocurrencies markets and exchanges, which were included on its list of public warnings, "in the belief of the financial supervision committee, might have provided payment services to customers without the required permission from the committee."

How about ICO?

The legal status of ICO (initial coin offering) is not uniform in the world. The Polish legislator has not decided to take any legislative steps that would regulate this matter so far. In November 2017 KNF issued an official statement regarding the sale of tokens. It does not refer to the legal qualification of this process, but only indicates the risks associated with it.

The committee's publication was a response to a similar statement by the European Securities and Markets Authority (ESMA) addressed to potential investors and entities interested in organizing ICO.

Cryptofuture

Due to the growing importance of blockchain and cryptocurrencies – in terms of trade, investment as well as usage as a tool in business or everyday tasks, the Polish government seems to have interest in regulating the issue of cryptocurrencies. Therefore, on 24 August 2018, the new draft bill amending Polish CIT and PIT law has been published (supposed to enter into force starting from 1 January 2019). It provides a definition of cryptocurrencies as well as outlines the rules for taxation of income derived from dealing with cryptocurrencies. But although there might be some doubts or ambiguities in terms of regulations of cryptocurrencies, the market in Poland is growing and dealing with blockchain technologies and cryptocurrencies in Poland should not be interrupted in any near future.

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The crypto (virtual) currency and taxation of digital platforms in Slovakia

The virtual currencies from Slovak tax and accounting point of view.

Trading with the virtual currencies became an increasingly discussed topic. However, until today, the legal provisions on the accounting and taxation of virtual currencies were missing in Slovakia. Therefore, the Slovak Ministry of Finance issued the first Methodological Guideline on the taxation and accounting of these virtual currencies in March 2018 and also the amendment of the Income Tax act and the Act on accounting was approved in June 2018.

Unfortunately, unlike other countries (which are more friendly to virtual currencies and no taxation or some exemption are applied, e.g. Switzerland, Denmark, Belarus or Germany) Slovakia has chosen to use virtual currency taxation.

In practice, according to the above-mentioned new legislation, any exchange of virtual currency, including an exchange for another virtual currency and exchange for a service or an asset is treated as a sale of the virtual currency.

From the Slovak accounting point of view, the virtual currency is considered as an asset, specifically defined as a short-term financial asset other than cash and should be recorded in the EURO currency for the purposes of preparing the financial statements. The virtual currency is valued in the accounting at real value. The real value for a virtual currency is considered to be the price found in the public market in a way chosen by the entity. The exchange differences due to the revaluation in the end of taxable period should not be accounted for. These valuation rules of the virtual currency will be used for the first time during the preparation of the financial statements at 1 October 2018.

The new legislation also deals with determination of the input prices of the virtual currencies and of assets and services acquired for a virtual currency. It is necessary to distinguish the moment of revenue/income recognition separately from the sale and separately from the exchange of virtual currency. When selling a virtual currency, it is booked as revenue/income at the time the transaction is confirmed in the blockchain (note: blockchain might be simply explained as an incorruptible digital ledger of economic transactions that can be programmed to record not just financial transactions but virtually everything of value) and in case of the exchange of the virtual currency at the time of the two transfers.

The income from such sales shall be included in the tax base (i.e. including an exchange of one virtual currency for another virtual currency). The income included in the tax base is determined by using a fair value at the date of exchange, while the fair value is the market value from the selected public market at the day of sale. The total amount of input values of virtual currencies could be reflected only up to the total amount of revenues derived from sale of virtual currencies, i.e. possible losses will not be included in the tax base.

For the corporate entities, the taxable income from the short-term financial assets is subject to 21% corporate income tax.

As regards the taxation of individuals, the income from sale of virtual currencies is included under Section 8 of the Income Tax Act (i.e. other personal income) and thus, will be subject to 19%/25% income tax and also to the health insurance.

From the Slovak value added tax (VAT) point of view, the virtual currency is neither specially treated in the VAT act, nor in Methodological Guidelines. Generally, the purchase and sale of the virtual currency for the purpose of its future valuation, is considered a taxable transaction from the VAT perspective. Since they are regarded as financial services, the purchase and sale of the virtual currency is exempt from the VAT. This Slovak approach is also in line with ECJ case no. C-264/14 Skatteverket/David Hedqvist. Following to the above mentioned, in case of trading with virtual currency, it is recommended to consider any potential tax implications in advance.

Slovakia might be a pioneer in the taxation of the digital platforms

While the European Union has been already working on a new legislation addressing the taxation in sharing/digital economy, Slovakia has arrived with its "own solution" in this area.

The Slovak Ministry of Finance, with the aim to address the challenges of taxing modern digital business activities, introduced with effect from 1 January 2018 the broader local definition of permanent establishment (PE).

The recurring services of mediation of transport and accommodation even if they are performed through a digital platform (e.g. Uber, Airbnb and booking.com) are considered as the activities carried on through a permanent place in the territory of Slovakia and thus, lead to creation of a PE.

The foreign operators of such digital platforms are obliged to register for the income tax purposes in Slovakia. According to the publicly available rulings of the Slovak Ministry of Finance, the operators of digital platforms create a PE in Slovakia with no regard to the fact if they come from a state with which Slovakia has a double taxation treaty, or from the states that Slovakia does not have a double taxation avoidance treaty with.

In the case the tax registration obligation is not fulfilled, the payments for mediation services shall be subject to a withholding tax, i.e. the Slovak tax resident using the platform for the sale of their services must deduct tax from the payments made to the platforms for the intermediary service provided. Since the Slovak Tax authorities does not want the tax liability transferred to the domestic providers of transport and accommodation services, a notification campaign has begun to inform foreign operators of their obligation to register a PE and warn them that if they fail to meet their obligation, they will be registered by the Slovak Tax authorities.

The Slovak Ministry of Finance explained that the aim of this new legislation was to secure a fair business environment so that local entrepreneurs paying taxes in Slovakia were not put at a disadvantage compared to those who intentionally shift their profits from Slovakia into a jurisdiction with low or zero tax duty.

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Switzerland - Revision of taxation at source

Background

The following persons are subject to taxation at source on income from employment:

- Foreign persons who are resident in Switzerland for tax purposes if they do not have a permanent residence permit (C permit);
- Persons who are not resident in Switzerland for tax purposes if they carry out an employment in Switzerland.

In December 2016, the Swiss Parliament approved a comprehensive revision of the legislation relating to the taxation of employment income at source. The Federal Law on the Revision of the Withholding Tax and the corresponding revised ordinance enter into force on **1 January 2021.**

The background of the revision is a decision of the Federal Supreme Court dating from 2010 (BGE 136 II 241), according to which the existing taxation at source system was, in certain cases, in violation of the Agreement on the Free Movement of Persons between Switzerland and the EU. Persons subject to tax at source **who are not** resident in Switzerland for tax purposes should be entitled to the same deductions as persons resident in Switzerland, provided that they earn more than 90 per cent of their worldwide income in Switzerland ("quasi-residents").

The revision aims to remove the **unequal treatment** between persons taxed at source and persons subject to ordinary taxation. At the same time, the opportunity was taken to standardise taxation at source from a procedural point of view.

Key changes

Extended scope of application of the subsequent ordinary tax assessment

Under the current law, persons taxed at source who **are** resident in Switzerland and have an annual gross income exceeding a certain limit **(CHF 120,000)** are required to file a subsequent tax return. This principle remains unchanged under the new law.

The following adjustments, however, require a distinction between persons who are and those **who are** not resident in Switzerland for tax purposes:

a. Persons who are resident in Switzerland for tax purposes

The existing **request for a reassessment of the tax at source** ("tariff correction") is being abolished and replaced with the option to file a **subsequent ordinary tax assessment on request.** As is currently the case for the tariff correction, the request must be submitted no later than 31 March of the following year. The tax authorities will then provide the tax declaration forms.

The **subsequent ordinary assessment** will also be required for taxpayers who do not exceed the annual gross income limit but that do earn income that is not taxed at source. This was previously covered by a **supplementary ordinary tax assessment**, which will be abolished.

b. Persons who are not resident in Switzerland for tax purposes

Persons who are not resident in Switzerland for tax purposes (e.g. international weekly commuters and short-term residents) will also be able to file a tax declaration through a **subsequent ordinary tax assessment on request.** To do so, one of the following requirements must be met:

- the applicant is a quasi-resident, i.e. a person who is subject to taxation in Switzerland for a majority (usually 90%) of his or her gross worldwide income, or
- the situation is comparable to that of a taxpayer resident in Switzerland, or
- a subsequent ordinary assessment is required in order to claim deductions provided for in a double taxation agreement.

The request must be submitted by 31 March of the following year.

Other changes

- Employers are now required to settle the tax at source with the employee's canton of domicile. They are, therefore, no longer able to exercise the option to settle the tax at source exclusively in their own canton of domicile.
- It is clarified that in case an employee moves to another canton, the canton of residence at the end of the tax period is responsible for the assessment of the entire calendar year, as is already the case for persons subject to ordinary taxation.
- For **international weekly commuters,** the canton of the weekday residence and not the employer's canton of domicile is responsible.

Summary

The basic principles of taxation at source remain unchanged. The revision clarifies some procedural matters, thereby essentially creating transparency and legal security. However, due to the abolition of the tariff correction, claiming deductions such as contributions to pillar 3a, alimony or education costs will tend to be a more tedious process. In such cases, a request for a subsequent ordinary tax assessment followed by a tax return will need to be submitted.

A person submitting a request for a subsequent ordinary tax assessment must be aware that this will require an annual submission. The following principle applies: once assessed through a subsequent ordinary tax assessment, always assessed through a subsequent ordinary tax assessment.

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The UK's 'Requirement to Correct' brings significant penalties

In the UK there is an increased push for financial and tax transparency alongside a growing flow of information to HM Revenue & Customs (HMRC) from overseas. As a result of this, the government introduced a 'Requirement to Correct' (RTC) existing offshore non-compliance by 30 September this year, the deadline for the first full exchange of information under the Common Reporting Standard (CRS).

Where HMRC discovers historic non-compliance after 30 September – including as a result of information they receive under the CRS – it will seek to collect not only the tax due and interest on late payment, but also penalties at levels unprecedented in the UK.

What are these higher penalties?
The starting level for penalties will be 200% of the undeclared tax. This may be reduced if the taxpayer cooperates with HMRC's enquiries, but it will not be reduced below 100% unless the taxpayer can show that there was a reasonable excuse for the irregularity. This is in contrast to the current position, where (depending on the circumstances) it may be possible to have penalties completely eliminated.

In addition, in serious cases, where the tax involved is more than £25,000 in a given tax year, a further penalty of up to 10% of the value of relevant overseas assets may be levied. Finally, the taxpayer faces the prospect of being named and shamed as a tax defaulter.

So, who does the Requirement to Correct cover?
The RTC applies to all taxpayers with an undisclosed income tax, capital gains tax or inheritance tax liability relating to an offshore issue or to an offshore transfer (ie where monies relating to UK activities or transactions have been received or transferred offshore). The RTC does not cover corporation tax or VAT.
It is vital to understand that the RTC and the new failure to correct penalties do not simply target individuals who have set up complex structures to hide money in tax havens abroad. They may equally affect anyone with income, gains or assets outside the UK who has not taken sufficient care to ensure that they have submitted complete and accurate tax returns each year.

What tax years are covered?
The RTC applies to any undisclosed liabilities that were in time for assessment on 6 April 2017 (or, for inheritance tax, on 17 November 2017). Assessment time limits vary depending on the particular circumstances in any case. The normal time limits for income tax and capital gains tax are:

- Innocent error, despite taking reasonable care: four years from the end of the year of assessment.
- Careless error: six years from the end of the year of assessment.
- Deliberate error or failure to make tax returns: 20 years from the end of the year of assessment.

Any innocent error arising in tax years 2013-14 and 2015-16 is, therefore, covered by the RTC, whilst for deliberate omissions or complete failures to submit a tax return, the disclosure may have to go back to 1997-98. Identifying the correct period for a disclosure will be vital, but establishing the category into which particular omissions fall is not always straightforward.

Errors or omissions relating to 2016-17 or later years (ie where the filing deadline falls after 6 April/17 November 2017) are not caught by the RTC or the associated failure to correct penalties (although they will be caught by the general penalty regime applicable to offshore disclosure failings).

What do I need to do?
If you had an overseas component to your financial affairs for 2015-16 or earlier years, you should review your position before 30 September 2018, even where you have previously taken advice or where you believe that all amounts have been correctly reported. A check now will allow inadvertent errors to be picked up and corrected in good time, and supplementary advice sought where needed, to prevent the possibility of higher penalties down the line.

Surely if I took professional advice in the past I don't have anything to worry about?
Even where you have taken advice, we would recommend that you review your position now to make sure that there have been no inadvertent reporting errors which would need to be disclosed by 30 September.
Assuming that you find no such errors, the fact that you have previously taken professional advice on the UK tax implications of your offshore financial affairs may protect you from penalties in the event that HMRC does later discover an error. This protection will not apply, however, in the following circumstances:

- Where your adviser did not have the appropriate expertise.
- If your adviser failed to take account of all your individual circumstances.
- If the advice was given to a third party and not directly to you. This could include situations where advice was given to a family office and then relied upon by family members.
- If the advice was given as part of a tax avoidance scheme.

It will therefore be important to consider any advice you have received when reviewing your overseas position. If the advice is insufficient, or falls within one of the exclusions above, you should consider obtaining an independent second opinion to provide protection from future penalties.

If I find something wrong, how do I make a disclosure?
There are various options for anyone needing to make a disclosure under the RTC. HMRC's Worldwide Disclosure Facility (WDF) provides an online facility. In more complex cases, or where deliberate omissions have been made, it may be that other disclosure options are more appropriate. This could include disclosure as part of an ongoing enquiry, or raising the issue with an HMRC Customer Relationship Manager, where one exists. We would always recommend discussing the appropriate disclosure route with your tax adviser.

Whichever method of disclosure you choose, it will be crucial to ensure that HMRC receive the relevant information by the 30 September deadline: we would recommend taking specific professional advice to ensure that you meet the disclosure requirements.

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UK VAT consequences of 'no deal' Brexit

On 23 August 2018, the UK Government published a series of technical notices providing guidance on how businesses and citizens may be affected if the UK leaves the EU without a deal on 29 March 2019.

We have summarised how this could impact VAT below:

Businesses importing goods into the UK from the EU

- The current VAT rules applying to imports from outside the EU will be followed for imports from EU countries when the UK leaves the EU.
- Postponed accounting will be implemented for both EU and non-EU imports. This means that VAT will be accounted for in VAT returns, rather than payment being due at the time of import. Customs declarations and other duties will still be required on entry. This represents a considerable cash flow saving.
- For parcels from overseas businesses: VAT will be collected from the UK recipient (in line with current non-EU parcels practice) for items valued over £135. Otherwise, the overseas business will account for the VAT due using an online accounting service.

Businesses exporting goods to the EU from the UK

- The current VAT rules applying to exports to outside the EU will be followed for sales to EU countries, ie supplies will be zero-rated with no VAT charged.
- Distance selling rules will no longer apply to UK businesses and therefore sales to consumers in the EU will not need to be monitored. Rules for parcels outlined above will apply in the customer's EU country.
- No EC Sales Lists will be required for sales to EU business customers.

Evidence of removal of goods from the UK will need to be obtained for all goods exported in order to obtain zero-rating. Please note that this may require a specific process change for many businesses.

Businesses providing services to EU based customers

- The general place of supply rules will remain unchanged.
- No EC Sales Lists will be required for sales to EU business customers.
- The input VAT deduction rules for specified financial services provided to EU based customers may be changed, further guidance will be released on this.

Mini One Stop Shop (MOSS)

- The UK MOSS system will no longer be available.
- Any UK business making supplies of electronically supplied digital services in the EU will need to register for the non-Union MOSS scheme in an EU Member State after the UK has left the EU.

Other issues

- HMRC is still determining the impact on the Tour Operators Margin Scheme.
- UK businesses will no longer be able to use the EU VAT Refund Scheme in EU Member States, the non-EU VAT Refund Scheme should be used.
- UK VAT registration numbers can no longer be verified on VIES. HMRC will establish a new system for checking the validity UK VAT registration numbers.

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US Exporters: The FDII Deduction Is Tax Reform's Gift to You

If your U.S. company has income from the sale of goods or services abroad, you should take notice of the new foreign-derived intangible income (FDII) deduction in the Tax Cuts and Jobs Act, which is designed to be an export incentive.

The deduction is only available to domestic C corporations, but because it is quite generous, you should study up on the provision (and its impending legal challenge) regardless of your entity type and consider a tax-advantaged restructure if it makes sense for your company.

Definition of intangible income
A corporation's intangible income is not based on its intangible assets or its income derived from those assets. A corporation is deemed to have intangible income to the extent that its income exceeds a presumed rate of return on its tangible assets. For the purposes of that FDII deduction, that intangible income must be derived from the sale of property or services to non-U.S. persons.

The FDII deduction considerably reduces effective tax rates
A domestic C corporation may deduct 37.5 percent of its FDII during the taxable year through 2025, resulting in an effective tax rate of 13.125 percent on such income. Beginning in tax years after 2025, the deduction is reduced to 21.875 percent of FDII, resulting in an effective tax rate of 16.406 percent.

This example helps to illustrate how the FDII deduction is figured:
A domestic C corporation has deduction-eligible income (DEI) of $100,000, all of which is derived from the sale of property to non-U.S. persons for foreign use. The adjusted basis of its tangible assets used in a trade or business (qualified business asset investment, or QBAI) is zero.

Example: calculating the FDII deduction

Deduction-eligible income (DEI)	$100,000
Less: deemed tangible income return (QBAI x 10%)	($0)
Deemed intangible income (DII)	$100,000
Foreign-derived deduction-eligible income (FDDEI)	$100,000
Percentage of FDDEI to DEI	100% (100,000/100,000)
FDII	$100,000 (100% x 100,000)
Less: 37.5% deduction for FDII	($37,500)
Taxable income	$62,500
U.S. tax at 21%	$13,125
Effective tax rate	13.125%

Some caveats and complications to consider
In arriving at a corporation's deduction eligible income, the statute only provides that deductions "properly allocable to such gross income" will reduce the corporation's gross income. Unfortunately, at this time there is no further guidance as to the methodology to be used in these allocations.

The statute is clear that only domestic corporations are eligible for the FDII deduction. However, a footnote to the Conference Report to the Tax Cuts and Jobs Act outlines the expectation that guidance will be issued with respect to basis adjustments under IRC Sec. 705(a)(1) "due to the reduction in the effective US tax rate resulting from the deduction for FDII." This suggests that a domestic corporate partner of a domestic partnership may be able to include in foreign-derived deduction-eligible income (FDDEI) its pro rata share of the partnership's income from the sale of property for foreign use or provision of services to a foreign person.

Complications in determining whether property is sold "for foreign use" arise in the use of intermediary manufacturers. If a domestic C corporation sells property to a U.S. person, regardless of the ultimate purchaser of that property, the property is not considered to be "for foreign use" for purposes of the FDII deduction. However, if the property is sold to a non-U.S. person, subsequent to which the non-U.S. person subjects the property to further manufacture or assembly outside the United States, the property is considered to be "for foreign use," seemingly regardless of whether a U.S. person ultimately purchases the property. Further guidance will be necessary to define manufacturing and processing activities in this context, and whether the characterization of the use of such property as "foreign" would require a substantial contribution analysis similar to that used in determining foreign-based company sales income.

The fate of the FDII deduction is uncertain
Finance ministers of the European Union are poised to challenge the FDII provision as an illegal export subsidy under World Trade Organization (WTO) rules, which do not allow what the rules call "prohibitive subsidies contingent on export." The tax benefit allowed to exporting U.S. corporations could be viewed as such a subsidy.

If a challenge progresses, it could take the WTO 12 to 18 months to reach a final determination of whether the FDII is an illegal subsidy. The EU has in the meantime asked the Organization for Economic Cooperation and Development to review the FDII provision and determine whether it could qualify as a "harmful tax practice."

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