RSM Europe

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The RSM Europe Tax Centre of Excellence is a group of tax specialists from RSM International member firms across Europe. The European Tax Centre of Excellence strives to understand the client's business objectives and to deliver tailor made solutions. The high quality of communication, thanks to frequent cross border conference calls and meetings, is a key feature that builds a strong working relationship, brings fresh perspectives and ensures early identification of emerging issues.

The European Tax Centre of Excellence works closely together with dedicated teams of tax professionals in RSM member firms around the world. In particular, RSM has international tax experts based in major global business centres such as North America and Asia Pacific, to provide seamless service wherever the client's businesses are located.

Netherlands

Double Tax Treaty between the Netherlands and Japan enters into force

The new income tax treaty between the Netherlands and Japan, formally signed on 25 August 2010 in Tokyo, entered into force on 29 November 2011. The new tax treaty will replace the current income tax treaty of 1970 and the corresponding protocol(s). The tax treaty will become effective as of 1 January 2012. read more »

Ireland

New Employment & Investment Incentive Scheme: 41% Tax savings announced

A new investment scheme has been announced providing 41% tax savings for SME investors. The scheme is designed to be flexible and easy to operate and most trading businesses will qualify for it. It offers substantial tax relief to investors and this scheme will assist them in raising additional equity. read more »

Belgium

The Belgium Federal Budget 2012: Proposed tax measures

The current negotiations between the political parties about the Belgian budget for the year 2012 have lead to a number of tax measures regarding Belgian corporate income tax, personal income tax and withholding taxes. read more »

Germany

German taxation of dividends of foreign corporate shareholders violates free movement of capital

In a decision dated 20 October 2011 (C-284/09), the European Court of Justice ("ECJ") holds that the German dividend withholding tax system breaches EU law, namely the free movement of capital. The reason is the different treatment of resident and non-resident corporate shareholders. read more »

Hungary

More stringent regulations on loss carry forward in Hungary

On 29 November 2011 the act on the amendment of certain Hungarian tax laws was published. Due to the amendment, the loss carry forward rules will become more stringent as from 2012. read more »

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Although there are some deviations, for example with respect to the terms "beneficial ownership", substantial shareholdings, pensions and pension funds, the tax treaty is generally in line with the OECD Model Convention. Furthermore, the tax treaty does contain several anti-avoidance rules including beneficial ownership rules as well as a "limitation on benefits" clause. Some interesting provisions of the tax treaty are summarised below.

- The withholding tax rate for dividend payments is 10% but could be reduced to 5% and even to 0%
- The withholding tax rate for interest payments is 10% but in certain situations the 0% rate may apply
- The withholding tax rate for royalty payments is 0%
- Capital gains upon the sale of shares in a company (not being a 'real estate' company) shall be taxable only in the country of which the alienator is a resident

Japan has been one of the largest trading partners of the Netherlands for many years. The new tax treaty should strengthen the relations between the two countries. From a Japanese investor's perspective, it will become more interesting to use the Netherlands as the 'gateway to Europe'.

Sükrü Kutlu, RSM Netherlands

Ireland

New Employment & Investment Incentive Scheme: 41% Tax savings announced

The Irish government has received state aid approval from the European Commission for a new investment scheme. The Employment and Investment Incentive Scheme (EII Scheme) will provide up to 41% tax savings for SME investors and will assist SMEs in raising funding. The EII Scheme is replacing the Business Expansion Scheme (BES).

Under the EII Scheme, an individual who invests in an SME can receive tax savings of 30% on the investment in the first year and, if employment in the business increases, a further 11% three years later. The EII Scheme could create up to 2,400 jobs over the next two years.

Struggling businesses have been thrown a lifeline by the new scheme, for which most trading businesses will qualify. The scheme is designed to be easy to use and suits small and larger companies. An individual gets tax relief by purchasing new shares in the company and can invest from as little as €250 to a maximum of €150,000 in any tax year. The EII Scheme will support existing jobs and will enable businesses to create new employment.

The EII Scheme is scheduled to end on 31 December 2013. It is hoped this date will be extended in order for individuals to learn about the benefits and make use of these reliefs effectively. The scheme is designed to be flexible, allowing significant shareholders and family members to benefit from further investment in the company. Whilst it must be accepted that it is difficult to raise private equity in the current climate, the EII Scheme will hopefully prove of vital assistance in this area.

John Lyons, RSM Farrell Grant Sparks

Belgium

The Belgium Federal Budget 2012: Proposed tax measures

The current negotiations between the different political parties regarding the Belgian budget for the year 2012 have lead to a number of income tax measures regarding Belgian corporate income tax, personal income tax and withholding taxes.

One of the proposed tax measures is the harmonisation of the withholding tax rates. At the moment and in general the following withholding tax rates with respect to interest and dividends exist in Belgium: 10%, 15% and 25%. In this respect only the existing withholding tax rate of 15% for interest and dividends will increase to 21%. The existing withholding tax rate of 10% for liquidation proceeds and the existing withholding tax rate of 25% for interest and dividends will in principle remain unchanged. An additional withholding tax of 4% will be applicable where a person receives a capital income of more than €20,000. The existing withholding tax exemptions will in principle also remain valid if certain conditions are fulfilled (e.g. Parent-Subsidiary and Interest-Royalty Directive).

The notional interest deduction which is a tax deduction based on the net equity of a Belgian corporate income taxpayer will also be subject to changes. The rate of the notional interest deduction will be reduced from 3.425% (3.925% for SME) to 3% (3.5% for SME). Furthermore, the carry forward of the excess notional interest deduction for seven years will no longer be possible.

At the moment capital gains with respect to shares realized by a Belgian company may be exempt if certain conditions are fulfilled without a minimum holding period. It is proposed that capital gains will only be exempt provided that (in addition to the existing conditions) a minimum holding period of one year is met.

Other tax measures can be summarized as follows: the forfait taxation of stock options at the moment of attribution will increase from 15% to 18%; the benefit in kind for the use of a company car will not only take into account the CO2 emission of the car but also its value; the forfeits and parameters for the calculation of the benefit in kind in hands of directors for the use of real estate which belongs to their company will be adapted in order to be in line with the reality.

Gert Van den Berg , RSM Belgium

Germany

German taxation of dividends of foreign corporate shareholders violates free movement of capital

In general, dividends distributed by German corporations to German corporate shareholders are subject to an effective corporate income tax rate of approximately 0.8%. Additionally, trade tax may incur. Overall dividends are subject to German withholding tax and solidarity surcharge at a total rate of 26.375%.

Withholding taxes on dividends in the hands of resident shareholders will be deducted from the corporate income tax including the solidarity surcharge and any excess will be fully refunded.

Non-resident corporate shareholders are generally not entitled to such a tax credit or refund in Germany. An exception is governed by the EU Parent-Subsidiary-Directive. As a result of which, EU corporate shareholders owning at least a 10% interest are not subject to German withholding tax. In contrast to that, all other corporate shareholders who receive dividends are subject to German withholding tax and solidarity surcharge without the possibility of a tax credit or a refund. The final German tax burden may only be reduced to 15.825%.

As the German government has failed to fulfill its obligations under Article 56 EC with the above mentioned withholding tax system, the European Commission referred Germany to the ECJ. The ECJ rejected all justifications asserted by the German government. In particular, the different treatment could not be justified by a reference to a potential tax credit by the respective residence country of the foreign corporate shareholder. In addition, the possibility of the application of a double tax treaty could not justify the different treatment either.

According to the ECJ decision, non-resident corporate shareholders should be entitled to a refund of German withholding tax. This may also apply to dividends distributed in the past. For inbound investment structures, the ECJ decision should be implicated in the tax structuring process.

Nina Schütte, RSM Germany

Hungary

More stringent regulations on loss carry forward in Hungary

On 29 November 2011 the act on the amendment of certain Hungarian tax laws was published. As a result, the loss carry forward rules will become more stringent as from 2012.

As a general rule, the losses incurred may be carried forward indefinitely. However, under the changes the losses carried forward from previous years would be taken into account only up to 50% of the current year's tax base.

Due to the bill, in case of a corporate transformation, the legal successor should be entitled to set off the losses acquired as a result of the transformation only if the following two conditions are met:

- The shareholder or its affiliated company that was the majority shareholder of the legal predecessor on the last day before the day of the transformation, becomes the majority shareholder of the legal successor; and
- In two years following the corporate transformation, the legal successor realises revenue from at least one of the activities carried out by the predecessor (other than asset management).

If there is a change in the shareholder's structure of a company and as a result of this a shareholder obtains direct or indirect majority control in the company, the company will be entitled to set off the losses carried forward only if the "new" majority shareholder has been in an affiliated relationship continuously with the company or its predecessor in the last two years before the acquisition of the majority control. This rule does not need to be applied if:

- a part of the shares of the company, or of the person acquiring majority control in the company, was admitted to trading on a regulated market prior to the acquisition of the majority control; or
- the company continues to carry out its activity for at least two years after the acquisition of the majority control; and
    - the company realises revenue from that activity in both years;
    - the nature of the scope of activity does not differ significantly from that of the previous years. (As significant difference should be regarded for example a fundamental change in the range of customers or the scope of the provided services.)

The purpose of the abovementioned restrictions is to increase budgetary income and to prevent certain companies from not paying any corporate tax.

Szilvia Süli, RSM DTM Hungary

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