

# WORLD WIDE TAX NEWS

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A new tax and a new tax credit

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## FRANCE

### NEW AUSTERITY MEASURES

The French Parliament has approved a package of austerity measures, which is designed to raise EUR 12 billion, in order to help reduce the fiscal deficit and maintain France's AAA credit rating. The package includes tax increases for both companies and individuals, and we summarise the main measures below.

#### COMPANIES

- It will only be possible to carry back a loss against profits of the previous fiscal year, instead of against profits of the three previous fiscal years, as was formerly the case. Relief for losses carried forward will be restricted to EUR 1 million, plus 60% of the amount by which profits exceed EUR 1 million in each year. However, unrelieved losses can be carried forward indefinitely. These measures will apply from the fiscal year 31 December 2011 onwards.
- The exemption for the disposal of substantial shareholdings in companies will be reduced from 95% to 90%. This will apply for fiscal years beginning on or after 1 January 2011.
- The consolidated global profit regime, enabling losses incurred by foreign subsidiaries to be deducted from profits of the French parent company, is abolished with effect for fiscal years ending on or after 6 September 2011.
- From 1 October 2011, the rate of tax on standard health insurance contracts is increased from 7% to 9%, and the rate for supportive and responsible contracts is increased from 3.5% to 7%.
- Hotel operators will be subject to a new 2% rate of tax on room charges of EUR 200 or more per night. This will apply where the applicable VAT rate is the reduced 5.5% rate, and where the VAT is due on or after 1 November 2011.

#### INDIVIDUALS

- From 1 October 2011, the EUR 1,000 capital gains allowance is abolished, and the qualifying holding period for the total exemption from tax on capital gains has been doubled from 15 to 30 years. The reductions to the taxable amount during that period are now as follows:
  - First five years: no reduction
  - Years 6 – 17: 2%
  - Years 18 – 24: 4%
  - Years 25 – 29: 8%.
- Social security contributions on income from investments and capital gains are increased from 2.2% to 3.4%.

#### FURTHER MEASURES

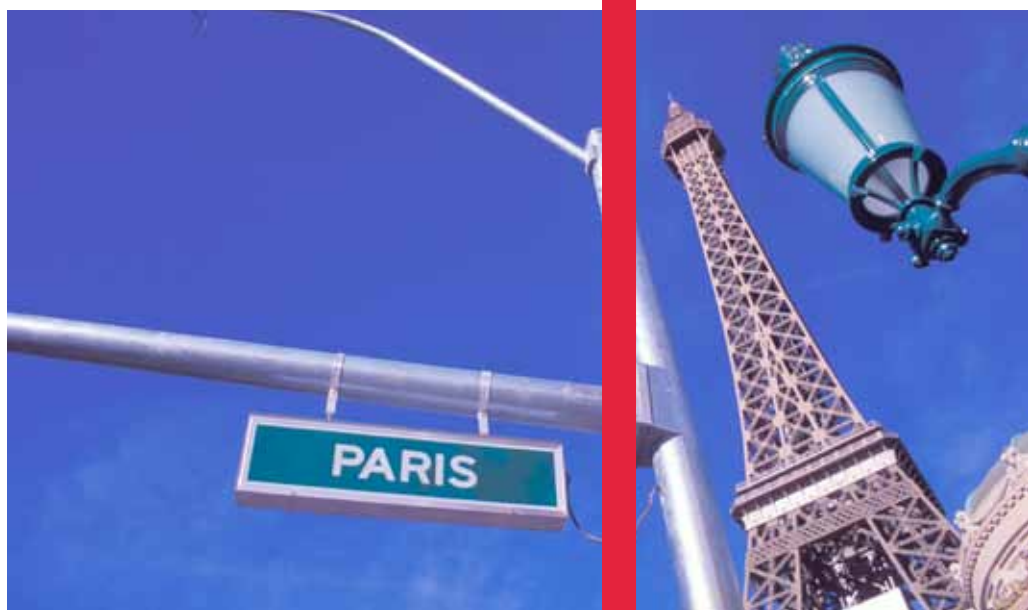
It is proposed that further austerity measures, including reductions in various tax allowances for individuals, and an additional 3% tax for individuals with high incomes or capital gains, will be introduced in 2012.

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## EDITOR'S LETTER

**W**elcome to Issue 27 of *BDO World Wide Tax News*. This newsletter summarises recent tax developments of international interest across the world. In this issue, as the European Union strives to control the financial crisis affecting some countries within the Eurozone, we look in particular at the proposed European financial transactions tax, and the austerity tax measures recently introduced by some of the affected countries. If you would like more information on any of the items featured, or would like to discuss their implications for you or your business, please contact the person named under the item(s). The material discussed in this newsletter is meant to provide general information only and should not be acted upon without first obtaining professional advice tailored to your particular needs. *BDO World Wide Tax News* is published quarterly by Brussels Worldwide Services BVBA in Brussels. If you have any comments or suggestions concerning *BDO World Wide Tax News*, please contact the Editor via the BDO International Executive Office by e-mail at [mderouane@bwsbrussels.com](mailto:mderouane@bwsbrussels.com) or by telephone on +32 (0)2 778 0130..

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# AUSTRALIA

## A NEW TAX, AND A NEW TAX CREDIT

### NEW TAX – A CARBON TAX

**T**he Government has at last put forward its controversial carbon tax plans, which opponents argue could cost taxpayers – mainly around 500 'big polluting companies' – up to AUD 1 trillion by 2050. The main aim is to cut carbon emissions to 95% of the levels in 2000, by 2020. The government hopes to pass the necessary Bills by the end of 2011.

#### Key proposals

- A 'carbon pricing' mechanism will commence on 1 July 2012, with a price that will be fixed for the first three years as a tax. The price will start at AUD 23 per tonne of emissions, and will rise at 2.5% per annum in real terms.
- The tax will apply to the stationary energy sector, transport, industrial processes, non legacy waste, and fugitive emissions.
- Transport fuels will be excluded from the mechanism. However, where applicable, an equivalent carbon price will be applied through changes in fuel tax credits or excise. A carbon price will be applied to domestic aviation, domestic shipping, rail transport, and non transport use of fuels. A carbon price will not apply to household transport fuels, light vehicle business transport and off road fuel use by the agriculture, forestry and fishing industries. At a later date, the Government will seek to establish an effective carbon price on fuel use by heavy on-road transport from 1 July 2014.
- Farming and other land-based activities will not be covered by the mechanism.

– On 1 July 2015, the carbon price will change to a fully flexible price under an emissions trading scheme, with the price determined by the market. A price ceiling and floor will apply for the first three years of the flexible price period. The price ceiling will be set at AUD 20 above the expected international price and will rise by 5% in real terms each year. The price floor will be AUD 15, rising annually by 4% in real terms.

During the flexible price period, an overall limit (or cap) will be placed on Australia's annual greenhouse gas emissions from all sources of pollution covered by the carbon price. There will be no limits on individual sectors, firms or facilities.

The Government will set a cap by issuing a fixed number of carbon units each year. Each unit will represent one tonne of pollution. Some of the carbon units issued each year will be sold by the Government at auction. Others will be allocated to businesses without charge, to "support jobs and competitiveness and help strongly affected industries during the transitional period".



Businesses will be free to buy and sell the carbon units they have acquired from the Government. This will create a market for carbon units that is "designed to ensure the reductions in pollution under the carbon price are achieved at the lowest cost to the economy": firms will buy units if they cannot reduce their pollution for less than the cost of the units.

- To alleviate concerns that the carbon tax will result in higher prices for households, it is proposed that a AUD 15 billion package of tax cuts be introduced in the first three years. The proposed package includes increases in pensions and allowances, income support allowances and family payments, and reductions in income tax for lower and middle income households.

## NEW TAX CREDIT – THE R&D TAX CREDIT

More than two years after first being announced in 2009, the Senate has passed the Bills effecting the introduction of the R&D Tax Credit, in place of the R&D Tax Concession.

The new Tax Credit, to be known as the 'Research and Development Tax Incentive', retrospectively takes effect for income years that commenced on or after 1 July 2011. The Incentive, reportedly designed to more effectively target small and medium sized enterprises, contains some significant improvements, when compared to the R&D Tax Concession. However, there are a number of areas of concern.

## Key changes

The Incentive provides:

- A 45% refundable R&D tax offset available to companies with an aggregate annual turnover of less than AUD 20 million.
- A 40% non-refundable R&D tax offset available to companies with an aggregate annual turnover of AUD 20 million or more, (with any unused offset amounts capable of being carried forward).

Changing from a tax concession (i.e. additional deduction) to a tax credit (i.e. offset) decouples the incentive from the corporate tax rate, meaning that the expected reduction in the corporate tax rate will not reduce the incentives provided.

With a 30% corporate tax rate, the rates of additional concessions available under the Tax Incentive are prima facie more beneficial than those under the 125% Tax Concession (i.e. 15% and 10% versus 7.5%) and are highly competitive with rates provided under similar programmes in other jurisdictions. However, the significant boost provided by the 175% premium on incremental spend will no longer be available.

Other changes include:

- No limitation, on the amount of R&D expenditure incurred by the entity in the income year, that attracts the refundable tax offset. Under the R&D Tax Concession, only companies with an aggregate R&D spend of less than AUD 2 million could receive the R&D Tax Offset.
- An increase in exempt entity ownership rules to allow up to 50% control by an exempt entity. Under the R&D Tax Concession an exempt entity could not have more than 25% control.
- Foreign corporations that carry on R&D activities through a permanent establishment in Australia are now eligible to claim.
- An increased level of expenditure on overseas R&D activities may be eligible, subject to the satisfaction of certain conditions. Under the R&D Tax Concession, this was limited to a cap of 10% of the total project expenditure. However, companies will still be required to seek approval, through an advanced finding, that can be lodged at any time within the income year in which the overseas activities are undertaken.
- Replacement of the 'multiple sales test' for software development so that the application to such development is only restricted where the dominant purpose of the activities is for internal administration.

## Key concerns

- The new incentive will restrict claims in relation to supporting activities in a production environment. Such claims will only be possible where supporting activities are undertaken for the dominant purpose of supporting core R&D activities. It will therefore be important for companies to retain contemporaneous objective evidence that such activities support the core R&D activities.
- The Government has stated that the definition of eligible feedstock expenditure has not changed under the Tax Incentive, but this is not supported by the wording of the provisions. In addition, rather than affecting the expenditure eligible to be claimed, the new feedstock rules result in an adjustment to assessable income when the feedstock output is sold or otherwise applied. If the ambiguous provisions are not amended in the near future, Australian Taxation Office (ATO) guidance will be required quickly.
- Despite the program remaining a 'self assessment regime', the level of detail proposed to be required in order to register activities (a requirement for claiming the Incentive) is far more onerous than under the Tax Concession. Lobbying is being undertaken to reduce the proposed compliance burden and AusIndustry (the Government body that determines eligibility of activities) has indicated that "it is listening". Accordingly, we would caution against companies significantly changing internal processes and procedures to meet the proposed requirements of AusIndustry. Nonetheless, companies should be reviewing current systems to ensure that R&D is being appropriately captured and substantiated.

## Conclusion

The new R&D Tax Incentive provides significant benefits. The new rules should not prevent any previous R&D claimants from accessing the benefits. However, it should be recognised that the law and processes that underpin the Tax Incentive are new and accordingly subject to interpretation. As the regime progresses into practice, AusIndustry and the ATO have stated they will provide additional guidance, particularly around key issues such as the definition of feedstock and clarification of the 'dominant purpose' test. Whilst uncertainties remain, it would be prudent for businesses to start planning now to make sure they can benefit from the generous benefits provided.

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# CHINA

## SOCIAL SECURITY CONTRIBUTIONS REQUIREMENT FOR FOREIGNERS WORKING IN CHINA

The PRC Social Security Law, passed by the Standing Committee of the PRC National People's Congress in October 2010, came into effect on 1 July 2011. This requires foreigners working in China to participate in the China social security scheme. The PRC Ministry of Human Resources and Social Security issued the Draft Measures for Foreigners Participating in China Social Security Contributions ('Draft Measures') for public consultation in June 2011, which were finalised ('Final Measures') and released on 6 September 2011 and took effect from 15 October 2011. We summarise the salient points as stipulated in the Final Measures as follows:-

### WORKERS WHO ARE AFFECTED

Social security contributions must be made by foreigners (and their working entities in China) who have obtained a work permit, foreign expert permit, foreign reporter permit, etc. and foreigner residence permit, as well as those who have obtained a foreigner permanent residence permit to work legally in China. This includes foreigners employed by Chinese entities, and those with employment contracts with foreign entities who are assigned to work for Chinese entities (including branches and representative offices in China). The required contributions are in respect of basic pension, basic medical care, work-related injuries, and unemployment and maternity insurances.

### CONTRIBUTION RATES

The Final Measures do not clearly specify whether foreigners should make contributions at the same rates and with the same ceiling as those which apply to Chinese nationals. If the implementation adopts the current policy for Chinese local employees, contribution rates would vary from city to city. As an example, we show below the maximum monthly contributions payable by employers and employees in Shanghai based on the current policy in Shanghai.

### PROCEDURE WHEN WORKERS LEAVE CHINA

When foreign workers leave China before they reach the retirement age, they will be able to apply for their basic pension personal account balance to be returned to them, and the basic pension insurance will be terminated. Alternatively, the workers can elect to retain their basic pension personal account balance and resume contributions when they subsequently work in China again. The treatment of employer basic pension contributions and other types of contributions has yet to be clarified.

### COMPLIANCE

Chinese entities with foreign workers must register to pay social security contributions within 30 days upon obtaining a work permit, and act as withholding agents in respect of the monthly employer's and employees' contributions.

Failure to comply could result in a penalty of up to three times the overdue contributions, plus a daily surcharge of 0.05% on the overdue contributions. In addition, a penalty of CNY 500 – 3,000 could be imposed on the in-charge personnel of the Chinese entity.

### AVOIDING DOUBLE CONTRIBUTIONS

To date, the Chinese government has entered into Totalisation Agreements with Germany and Korea. German and Korean nationals may therefore be exempt from some Chinese social security contributions under these agreements.

### FINAL IMPLEMENTATION

The Final Measures only provide general rules and requirements for foreigners working in China but currently no detailed implementation rules on such matters as contribution rates, salary base, administrative procedures, etc. have been issued. It is expected that further implementation rules/guidance will be issued by local governments to address the unclear issues. Entities which employ foreigners will need to ensure that they keep informed of developments, so that they can comply with all requirements.

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Type of PRC social security insurance	Capped wages of CNY 11,688 in Shanghai			
	Employer		Employee	
Basic Pension	22%	2,571	8%	935
Basic Medical	12%	1,403	2%	234
Injury	0.5%	58	n/a	-
Unemployment	1.7%	199	1%	117
Maternity	0.8%	94	n/a	-
Total	37%	4,325	11%	1,286



# INDIA

## SINGAPORE COMPANY DID NOT HAVE A PERMANENT ESTABLISHMENT IN INDIA

The Authority for Advance Rulings (AAR) has decided that a Singapore company did not have a permanent establishment (PE) in India, and therefore the company was not subject to tax in India on the profits of its activities which it carried out there.

The company (Tiong Woon Project & Contracting Pte Limited) undertook four projects involving the erection and installation of heavy equipment at its customers' sites in India. It used cranes which it imported from Singapore, and four to five key personnel from Singapore, together with local manpower.

The company considered that the projects were installation and assembly projects, in which case it would only have an 'installation PE' in India under the terms of the India –

Singapore double tax treaty if the projects continued for more than 183 days in any fiscal year. None of the projects lasted for more than 183 days, so the company considered that it did not have a PE in India and that it was not therefore liable to Indian tax on its profits.

However, the Revenue Department argued that the company was using its cranes and personnel to provide crane rental services in India. If that were the case, the company would have a 'services PE' in India under the terms of the double tax treaty if the projects lasted for more than 90 days. As some of the projects did last for more than 90 days, the Revenue Department considered that the company did have a PE in India and that it was therefore liable to Indian tax on its profits.

The AAR decided that the activities of setting up, fitting, placing and positioning the fabricated equipment at the sites constituted installation or assembly projects. It did not constitute supervisory activities nor the furnishing of services. Therefore the company did not have an installation PE, as the projects did not last for more than 183 days. In addition, the projects were all independent and had no interconnection or interdependence, and none appeared to be an extension of another, so the duration of projects could not be combined to form an aggregate period of more than 183 days.

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# JAPAN

## TEMPORARY TAX INCREASES TO FUND RECONSTRUCTION

The government has proposed a JPY 9.2 trillion programme of temporary tax increases over ten years, to help meet reconstruction costs following the recent earthquake and tsunami. Additional funds would be raised by selling government stakes in companies and issuing reconstruction bonds.

The detailed measures include plans to:

- Increase the corporate tax rate by about 2.5% over three years, following the already scheduled reduction by 4.5% in April 2012.
- Increase income taxes by 4% for ten years, beginning in January 2013.
- Increase residential tax by JPY 500 per annum for five years.
- Increase the National Tobacco tax by JPY 1 per cigarette for ten years, and the Local Tobacco tax by JPY 1 per cigarette for five years.

The ruling party will need to obtain the agreement of the opposition in order to implement the proposed measures.

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# MALAYSIA

## BUDGET 2012

**B**earing the theme "National Transformation Policy: Welfare for the Rakyat, Well-being of the Nation", the Budget 2012 that was unveiled by the Prime Minister of Malaysia, Datuk Seri Najib Tun Razak on 7 October 2011, was a budget for the people.

The Budget 2012 saw a total allocation of MYR 232.8 billion, of which MYR 181.6 billion was set aside for operating expenditure and MYR 51.2 billion for development expenditure. Although the total budget allocation is 9.8% higher than the allocation for 2011, the budget deficit is expected to be reduced to 4.7% of GDP as compared to 5.4% in 2011 due to higher target revenue expected from foreign and domestic investments.

In line with the "1 Malaysia – People First, Performance Now" tagline and the Government's ongoing initiatives to bring about long-term sustainable growth, the Budget 2012 focused on five main areas:

- Accelerating investment;
- Generating human capital excellence, creativity and innovation;
- Rural transformation programme;
- Strengthening the civil service; and
- Easing inflation and enhancing the well being of the Rakyat.

### A BUDGET FOR THE PEOPLE

Despite there being no reduction in personal tax rates, the Government took a direct approach in addressing inflationary pressures and improving disposable income. Amongst other things, the Government provided MYR 500 to assist households with monthly income below MYR 3,000; MYR 100 to primary and secondary students; MYR 200 in the form of book vouchers to tertiary students at public and private local institution; an additional half monthly bonus (minimum MYR 500) to civil servants; and MYR 500 to pensioners. In addition, tax relief of up to MYR 3,000 was also provided for contributions to Private Retirement Schemes ('PRS').

To curb speculation and to prevent further price escalation in the property market, the real property gains tax ('RPGT') rate was also revised from the effective rate of 5% to 10% for disposals of properties within 2 years of acquisition.

### FOR LONG-TERM SUSTAINABLE GROWTH

The Budget 2012 also demonstrated the Government's commitment towards Malaysia's next phase of development. Over the years, the Budget had typically provided incentives for companies operating in the manufacturing and agricultural sectors. In its efforts to bring about long-term sustainable growth, the Budget 2012 saw a shift in the Government's focus away from these lower valued-added sectors to the higher-value added service sectors identified under the NKEAs, including the financial, education, tourism and knowledge-based industries.

The key incentives announced in the Budget 2012 include:-

- Liberalisation of foreign participation in 17 services sub-sectors;
- Income tax exemption for Treasury Management Centres;
- Pioneer status/investment tax allowance for 4- and 5-star hotels in Peninsular Malaysia;
- Income tax exemption for private and international schools; and
- Income tax exemption for the Kuala Lumpur International Financial District.

### A CATALYST FOR FUTURE DEVELOPMENT

Human capital development is undoubtedly one of the most important catalysts for Malaysia's next phase of transformation into a high income nation, as the success of the ETP largely hinges on whether we have the right people with the right talent and skills. Taking cognisance of this, the Government has allocated MYR 50.9 billion for the education sector alone. The incentives that have been proposed for the development of human capital include double deductions for scholarships, structure internship programmes and participations in overseas career fairs, tax incentives for profit-oriented private/international schools as well as a preferential tax rate of 15% for qualifying individuals under the Returning Expert Programme.

### A NEW BEGINNING FOR TAXPAYERS

Apart from the wide-ranging giveaways provided in the Budget 2012, what was evident (from the Finance Bill) was the tax authority's focus on increasing the responsibility of taxpayers in preparing the way for greater enforcement. With the additional obligation on taxpayers to disclose information relating to agents, dealers, distributors, etc. and power for the Inland Revenue Board ('IRB') to access computerised data, it will be pertinent for taxpayers to review their internal policies and exercise due care in discharging their responsibilities.

Notwithstanding this, it is encouraging to see that the IRB has at the same time appeared to be more equitable in its approach by providing a 2% compensation for late refunds and reducing the time-barred period to 5 years.

### MOVING FORWARD

Budget 2012 was overall a people-friendly budget which focused on some areas for Malaysia's transformation – people and performance. The Government has put in place the necessary measures to combat the people's main concern, the rising cost of living. Despite global economic uncertainties and mounting pressure to increase its revenue base, the Government continued to demonstrate its strong commitment towards the nation's development by putting in place the necessary incentives and allocations to accelerate the pace of development and promote long-term sustainable growth.



Outlined below are some of the key highlights in the Budget 2012:

KEY BUDGET 2012 PROPOSALS		COMMENTS																
<b>CORPORATE TAX</b>																		
Franchise fee	Franchise fees paid by franchisees to undertake the franchise business for local franchise brands will be given a tax deduction. <i>(effective YA2012)</i>	This proposal is to encourage the further development of a local product brand and strengthen it in the domestic market as well as enhance acceptance in overseas markets.																
<b>PERSONAL TAX</b>																		
Relief on contributions to private retirement schemes ('PRS')	Removal of the tax relief of MYR 1,000 on annuity premium (which was part of the tax relief of EPF and annuity schemes). A new tax relief up to MYR 3,000 is now given for contributions to PRS approved by the Securities Commission, and annuity premiums. Withdrawals of contributions from PRS by employees prior to their maturity period or prior to attaining mandatory retirement age will be taxable. <i>(effective YA 2012 until YA 2021)</i>	This proposal is to ensure that employees in the private sector and the self-employed have sufficient savings upon attaining retirement age. This would also encourage companies to set up PRS as an additional benefit for their employees.																
<b>REAL PROPERTY GAINS TAX ('RPGT')</b>																		
Revised RPGT rates	The RPGT rates are to be revised as follows: <table border="1" data-bbox="379 730 1046 954"> <thead> <tr> <th>Holding Period</th> <th>Companies</th> <th>Individual (Citizen &amp; PR)</th> <th>Individual (Non-citizen)</th> </tr> </thead> <tbody> <tr> <td>Up to 2 years</td> <td>10%</td> <td>10%</td> <td>10%</td> </tr> <tr> <td>Exceeding 2 until 5 years</td> <td>5%</td> <td>5%</td> <td>5%</td> </tr> <tr> <td>Exceeding 5 years</td> <td>0%</td> <td>0%</td> <td>0%</td> </tr> </tbody> </table> <i>(effective for disposal of properties from 1 January 2012)</i>	Holding Period	Companies	Individual (Citizen & PR)	Individual (Non-citizen)	Up to 2 years	10%	10%	10%	Exceeding 2 until 5 years	5%	5%	5%	Exceeding 5 years	0%	0%	0%	This proposal is to curb the speculative activities in the property market which would result in a significant increase of property prices, if unmonitored. It is the Government's aim to ensure that low and middle income earners are able to own houses at affordable prices.
Holding Period	Companies	Individual (Citizen & PR)	Individual (Non-citizen)															
Up to 2 years	10%	10%	10%															
Exceeding 2 until 5 years	5%	5%	5%															
Exceeding 5 years	0%	0%	0%															
<b>INCENTIVES</b>																		
Incentive for Kuala Lumpur international financial district ('KLIFD')	Income tax exemption of 100% for a period of 10 years, and stamp duty exemption on loan and service agreements for KLIFD status companies; Industrial building allowance ('IBA') and accelerated capital allowance ('ACA') for KLIFD Marquee Status Companies; and Income tax exemption of 70% for a period of 5 years for property developers in KLIFD. <i>(effective date to be determined)</i>	This proposal is in line with the Government's objective to accelerate the development of the KLIFD, which is one of the projects identified under the National Key Economic Area. The tax breaks are also aimed at encouraging more companies (especially banking institutions) to invest in this financial district, in an effort to transform Malaysia into a leading financial hub in the region.																
Incentive for treasury management centres	Corporate tax: Tax exemption of 70% on the statutory income arising from the following qualifying services rendered by a TMC to its related companies is given for a period of 5 years:- – All fees and management income from providing qualifying services to related companies in Malaysia and overseas; – Interest income from lending to related companies in Malaysia and overseas; – Interest income and gains received from placement of surplus funds within the group with licensed onshore banks or short term investment onshore and offshore; – Foreign exchange gains from managing risks (e.g. exchange rate risk, interest rate risk and commodity risk) for the group; – Guarantee fees. Withholding tax is exempted for interest payments on borrowing by a TMC to overseas banks and related companies for qualifying TMC activities. Stamp duty is fully exempted on loan and service agreements executed by a TMC in Malaysia for qualifying TMC activities. Individual tax: Expatriates working in a TMC are taxed only on the portion of their chargeable income attributable to the number of days they are in Malaysia. <i>(for applications from 8 October 2011 until 31 December 2016)</i>	This proposal is to accelerate the development of Malaysia as a competitive financial centre in the region. This incentive is aimed at attracting more MNCs by relocate their treasury functions to Malaysia. The increase in foreign investment should lead to a multiplier effect (i.e. increase in employment opportunity, sharing of knowledge, potential expansion of other business activities in the country) and accelerate growth in the Malaysian banking, finance and capital markets.																

Incentive for providers of industrial design services in Malaysia	Industrial design services provider (registered with the Malaysia Design Council) would be awarded Pioneer Status with an income tax exemption of 70% on statutory income for 5 years. <i>(for applications from 8 October 2011 until 31 December 2016)</i>	This proposal is to promote creativity and innovation and assist in Malaysia positioning herself in the higher value add supply chain. The incentive will promote the industry and assist in addressing the "brain drain".
Incentive for new 4 and 5 star hotels in Peninsular Malaysia	Pioneer status with income tax exemption of 70% of statutory income or investment tax allowance of 60% (restricted to 70% of the statutory income) for 5 years will be given. <i>(for applications from 8 October 2011 until 31 December 2013)</i>	This proposal is to encourage investment in hotels which provide world class accommodation in line with consumer trends. This would promote Malaysia as one of the main holiday destinations in this region, therefore creating a multiplier effect in the tourism industry.
Incentive for profit oriented private schools	Income tax exemption of 70% or investment tax allowance of 100% (restricted to 70% of the statutory income) will be given on qualifying capital expenditure incurred within a period of 5 years. <i>(for applications from 8 October 2011 until 31 December 2015)</i>	This proposal is to encourage the involvement of the private sector in providing quality education, which includes the provision of state of the art educational equipment and facilities. The increased investment would create more job opportunities. In addition the enrolment of more foreign students resulting from the promotional activities carried out overseas will contribute to the increase in the country's revenue, accelerating Malaysia's move towards a k-economy with a strong foundation.
Incentive for Profit Oriented International Schools	Income tax exemption of 70% for 5 years will be given. <i>(for applications from 8 October 2011 until 31 December 2015)</i>	

*Kindly note that the above are only extracts of the key budget highlights.*

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## DENMARK

### NEW GOVERNMENT'S TAX PLANS

The new government, in accordance with the usual practice, has presented its first list of proposed legislation on the occasion of the opening of Parliament.

Draft legislation is expected to be published in November. Below is an overview of the tax measures that have been announced:

- There will be a tax reform that significantly reduces the tax on labour. It is not clear when the reform will enter into force. The previously announced millionaire tax is apparently abandoned. On the other hand, it is apparently intended to continue the Liberal-Conservative government's so-called recovery package so that the top tax threshold will automatically be increased by DKK 19,200 in 2014, and so that all thresholds (personal, etc.) are kept frozen until then.
- Property taxes - including the special tax ceiling on property taxes - and interest deduction rules will not change during this parliamentary term, which will probably be until the end of 2015.
- The multimedia tax will be abolished.
- The government will try to abolish the so-called entrepreneurial tax on shares. It is not clear whether the Liberal-Conservative government's newly adopted legislation on entrepreneur's shares - which has not yet entered into force - will be rolled back.
- The new rules on individuals' tax deductions for costs and expenses at home - the so-called service deduction - will be closed with effect from the end of 2011 and replaced by a system whereby in 2012 and 2013 individuals can apply for grants for the renovation of private dwellings.
- The Liberal-Conservative government's retirement reform is continued. This means that in 2012 there will be the opportunity to leave a retirement scheme and receive a tax free refund of contributions paid to the scheme since 1999.
- There is the possibility of increased taxes on cigarettes, unhealthy food, beer and wine, as well as on air pollution.
- The existing rules on tax deductions for health insurance would be repealed, and there will be a restriction of deductions for contributions to pension schemes. In practice, it may mean that payments for lifetime annuities are subject to the existing DKK 100,000 limit.

There will be a proposed mileage-based tax on trucks, as well as a reform of taxes on passenger cars that will make gas-guzzling cars more expensive.

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# EUROPEAN UNION

## EUROPEAN COMMISSION PROPOSES NEW FINANCIAL TRANSACTIONS TAX

As part of a longer-term solution to the current financial crisis, the European Commission (EC) has controversially proposed that a new financial transactions tax should be introduced across the 27 member states of the European Union (EU) from 1 January 2014. The tax would be levied on transactions on financial instruments between financial institutions when at least one party to the transaction is located in the EU:

### AIMS AND OBJECTIVES

The aim of the tax is to raise about EUR 57 billion a year as an additional contribution from the financial sector to help rebuild Europe's economies, and bolster public finances. The EC views the financial sector as having "played a role in the origins of the economic crisis", and as being "under-taxed by comparison to other sectors".

The EC also believes that a harmonised EU-wide financial transactions tax would help to reduce competitive distortions, discourage risky trading activities, complement regulatory measures aimed at avoiding future crises, and strengthen the EU's position to promote common rules for the introduction of such a tax at a global level.

However, concerns have been expressed that the tax could seriously damage Europe's financial services sector, if it simply resulted in transactions taking place outside the EU.

### DETAILS

It is proposed that the tax will apply to transactions carried out by financial institutions including banks, credit institutions, organised markets, investment firms, insurance companies, stockbrokers, pension funds, collective investment undertakings, alternative investment funds like hedge funds, holding companies, financial leasing companies and special purpose entities.

The tax will apply where such institutions act as party to a transaction, either for their own account or for the account of other persons. Liability for the tax will arise in the member state in which the institution is deemed to be established. Where both parties to the transaction are in the EU, the tax burden will be shared between them.

The tax will apply to the purchase, sale and transfer of financial instruments between the above-named financial institutions, at the following proposed minimum rates:

- Financial instruments other than derivatives, including shares, securities and bonds: 0.1%
- Derivative products: 0.01%

Member states would be free to apply higher rates.

The following transactions will be excluded from the tax:

- the raising of capital by private enterprises and the public sector by means of the issue of shares and bonds;
- transactions typically undertaken by retail banks in their relations with private households or businesses, such as mortgage lending, except where transactions relate to the sale or purchase of bonds or shares;
- insurance contracts;
- spot currency exchange transactions; and
- transactions with the European Central Bank and national central banks.

For electronic transactions, the tax would be payable on the same day. In other cases, the tax would be payable within three working days. Institutions liable to pay the tax would have to submit returns.

### IMPLEMENTATION

Unanimous approval would be required for implementation of the tax, but some member states, including the UK, have indicated that they would not support it.

EU member states which already have a financial transactions tax - Belgium, Cyprus, France, Finland, Greece, Ireland, Italy, Romania, Poland and the United Kingdom - would probably have to modify their existing rules. Other Member States would have to put in place the tax as proposed by the Commission.

On the wider international scene, the proposals were "acknowledged", but not endorsed, at the recent G20 summit meeting.

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# GERMANY

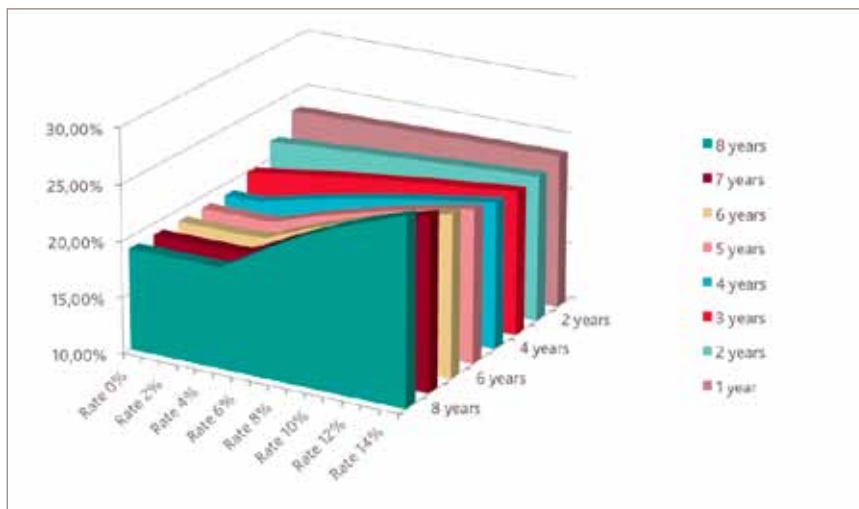
## GERMANY AND SWITZERLAND INITIAL AGREEMENT ON SWISS BANK ACCOUNTS

Germany and Switzerland have initialled an agreement on the payment of tax on funds held by German-resident individuals in Swiss bank accounts. It is proposed that the agreement will come into force in 2013, providing it is agreed by both Parliaments, and it is expected to result in tax of up to EUR 50 billion being collected. The main proposals in the agreement are summarised below:

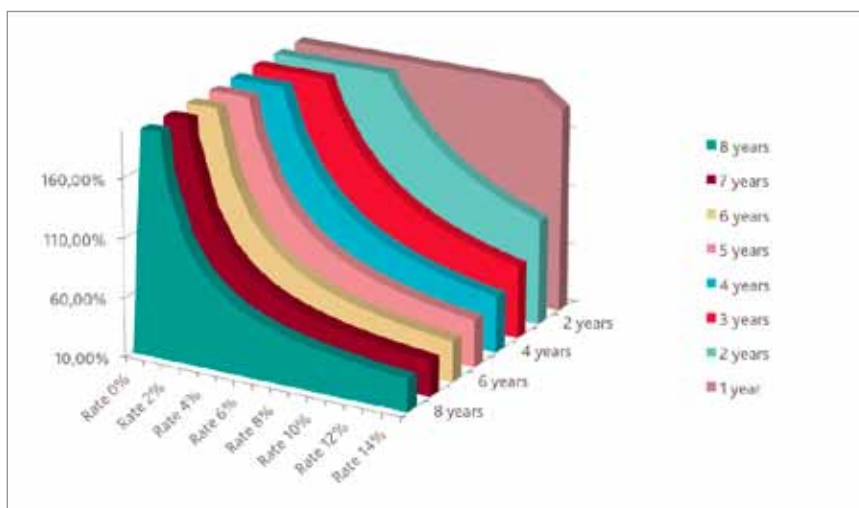
### ONE-OFF DEDUCTION TO SETTLE PAST TAX LIABILITIES

In 2013, existing bank accounts (reference date 31 December 2010) held by German residents in Switzerland from 2003 onwards will be subject to a one-off deduction of between 19% and 34% of the principal sum, to settle past tax liabilities. It is to be emphasised that the proposed one-off deduction of a minimum of 19% of the principal sum will also occur in the case of a total rate of return of 0% or less (i.e. losses). Furthermore, shorter duration bank accounts will be subject to a higher deduction rate than longer duration accounts.

See following diagram 1 illustrating the rate of one-off deduction in relation to the principal sum and rate of return per year:



In relation to earnings achieved on Swiss bank accounts the rate of one-off deduction will occur as follows (diagram 2):



As a consequence of the one-off deduction, all past tax liabilities (income tax, inheritance tax, VAT etc.) of the respective German resident are considered to be settled.

Swiss banks will pay EUR 1.64 billion upfront as a guarantee, and will be reimbursed after Germany receives the relevant tax payments.

Account holders who do not wish to pay the one-off deduction can, alternatively, disclose their Swiss accounts to the German tax authorities and consequently pay regular (past) taxes on earnings or the principal sum (income tax, inheritance tax, VAT etc.) if applicable and if not paid yet. Therefore the one-off-deduction will preserve the bank account anonymity of German residents. Based on our experience, we assume that in the vast majority of cases it will be cheaper for German residents to disclose Swiss accounts than to accept a one-off deduction. However, a reliable comparison will depend on earnings, expenses, asset allocation, etc. on a case by case basis.

### PAYMENT OF FUTURE TAX LIABILITIES

From 2013, earnings on Swiss bank accounts held by German residents will be subject to a withholding tax of 26.375%. This rate is similar to the current German tax rate on such income. This withholding tax will be retained and paid anonymously to the German tax authorities, and will ensure the effective future taxation of German residents with funds in Swiss bank accounts. In this context Germany views the withholding tax as equivalent to the (former targeted) automatic exchange of information.

The future anonymous withholding tax deduction (levied by Swiss banks) will not apply if the account holder decides to disclose bank account details and earnings to the German tax authorities. However, in this case he will be obliged - in accordance with current effective German income tax law - to declare all foreign earnings on the Swiss bank account for its annual tax assessment. Therefore, earnings of a disclosed bank account will be subject to a withholding tax of 26.375% levied by the German tax authorities.

### EXCHANGE OF INFORMATION

There will be a new information sharing provision under which the German tax authorities will be allowed to request account details of suspected tax evaders, providing there is a genuine reason for doing so. Germany will initially be allowed to request account details of up to 999 suspected tax evaders over two years.

### STOLEN DATA AND TAX FRAUD

Germany has agreed not to buy any more stolen Swiss bank account data, and Switzerland has agreed to cease pursuing tax evaders.

Germany will also not commence any new prosecutions of employees of Swiss banks, and a tax investigation involving a number of Credit Suisse employees has been settled with the payment of a EUR 150 million fine by the bank.

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# GREECE

## NEW AUSTERITY MEASURES

In order to qualify for further aid from the European Union, the International Monetary Fund and the European Central Bank, the Greek Government has announced more austerity measures, involving tax increases for individuals and public spending reductions, including salary reductions for some public sector workers.

### NEW MEASURES

The latest tax increases, announced in September 2011, are as follows:

- With effect from the 2011 tax year, the income tax threshold for individuals is further reduced to EUR 5,000.
- A new property tax, varying from EUR 0.50 to EUR 10 per square metre, depending on where the property is situated, will be charged from 2011 to 2014. The tax will be collected through electricity bills. Unemployed individuals, and those with incomes of less than EUR 12,000 per year, will be exempt from the tax, which is expected to cost the average household from EUR 1,000 – EUR 1,500 per year

### MEASURES ALREADY ANNOUNCED

The following tax measures were approved by Parliament in June 2011:

- A reduction in the income tax threshold for most individuals from EUR 12,000 to EUR 8,000.
- A solidarity levy payable by wage earners at the following rates:
  - Annual earnings from EUR 12,000 - EUR 20,000: 1%
  - Annual earnings from EUR 20,000 - EUR 50,000: 2%
  - Annual earnings from EUR 50,000 - EUR 100,000: 3%
  - Annual earnings in excess of EUR 100,000: 4%
  - Lawmakers and public office holders: 5%

The levy has already been introduced and most notices have been delivered by post. The first instalment was due by 6 October 2011

- Luxury levies on items such as yachts, cars and swimming pools, which have also now been introduced.
- The abolition of some tax exemptions
  - a new tax law to be introduced in October 2011.
- An increase in the rate of VAT for restaurant and bar sales from 13% to 23%, which came into effect on 1 September 2011
- Increases in social security contribution rates, which came into effect on 1 August 2011.

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# ISRAEL

## CONTROVERSIAL TAX PROPOSALS APPROVED

The Cabinet has approved the controversial Trajtenberg Committee Report, which contains significant tax measures that will affect both businesses and individual taxpayers. The Committee recommended various tax increases to help fund a number of social and economic reforms. Some of the main proposals are summarised below.

### BUSINESS TAXES

It is proposed that the corporate tax rate will be increased from the current level of 24% to 25% in 2012, and 25% in 2013. This contrasts with the previous plan to reduce the rate gradually to 18% by 2016.

An increase in the employer's share of National Insurance fees, from 5.9% to 7.5%, is also proposed.

The Committee also recommended that the taxation treatment of the following entities and assets are reviewed, with a view to preventing their use, or making such use less attractive:

- Personal service companies, known as 'wallet companies', which can reduce the effective tax rate for individuals who provide their personal services through a company instead of directly as an individual;
- Private holding companies, which can receive dividends free of tax; and
- Qualified stock option plans, some of which are only taxed at 25%.

### PERSONAL TAXES

It is proposed to increase the top income tax rate from 45% to 48%, for those with annual income in excess of ILS 40,231. Once again, this contrasts with the previous plan to reduce the top rate to 39% by 2016.

In addition, a special 2% tax is proposed for taxpayers with an annual income of over ILS 1 million.

Increases in capital gains tax rates are also proposed, from the current rate of 20% to 25%, and from 25% to 30% where more than 10% of a company is owned.

### IMPLEMENTATION

It remains to be seen whether the Committee's recommendations are fully implemented, as there have already been large protests by the public and labour federations, which are likely to intensify following the cabinet's vote in favour of accepting the report.

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# ITALY

## AUSTERITY TAX MEASURES APPROVED

On Wednesday 14 September 2011, the Italian Parliament approved an austerity package which included various tax increases.

### INCOME TAXES

- A 'solidarity tax' of 3% will be charged on personal incomes in excess of EUR 300,000 per year, for the tax years 2011 - 2013.
- The rate of tax on investment income and gains is increased from 12.5% to 20%.

### COMPANIES

- The so-called 'Robin Hood' supplementary tax on the profits of certain companies is increased from 6.5% to 10.5%. This supplementary tax has also been extended to apply to companies in the energy sector with a turnover of more than EUR 10 million.
- The rate of tax on the minimum income of shell companies holding assets such as yachts and luxury cars is increased from 27.5% to 38%.
- In a separate measure, relief for a carried forward loss (except for losses incurred in the first three years of trade) is to be limited to 80% of the profit in each later year. However, the previous time limit of five years on the carry forward of losses is abolished.

### VAT

The standard rate of VAT is increased from 20% to 21% with effect from 17 September 2011. The reduced VAT rates (4% and 10%) are unchanged.

The new rate will apply to transactions where the 'chargeable event' under Article 6 of the Italian VAT Law (DPR 633/72) occurs on or after 17 September 2011.

For goods, the chargeable event generally occurs, and VAT becomes due, when the goods are supplied; for services, the chargeable event occurs, and VAT becomes due, when the invoice is issued. However, where a payment is made on account before goods or services are supplied, VAT becomes due on receipt of the payment, on the amount received.

### TAX EVASION

There are to be stricter penalties for tax evasion, including prison sentences for the evasion of tax in excess of EUR 3 million and 30% of the volume of business.

### MONEY LAUNDERING

The use of cash in transactions over EUR 2.500 is banned.

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# UNITED KINGDOM

## UK AND SWITZERLAND INITIAL AGREEMENT ON SWISS BANK ACCOUNTS

As part of a continuing effort to tackle offshore tax evasion, the UK and Switzerland have initialled an agreement on the payment of tax on funds held by UK-resident individuals in Swiss bank accounts. The agreement is planned to come into force in January 2013, following scrutiny by Parliament, and after ratification procedures in Switzerland are complete. The main proposals in the agreement are summarised below.

### ASSETS COVERED

The deal covers all forms of bankable assets booked or deposited with a Swiss paying agent as at 31 December 2010 and still held on the projected date of 31 May 2013. The assets include (but are not limited to):

- cash accounts and precious metals accounts;
  - bankable assets held by a Swiss paying agent acting as a fiduciary agent;
  - all forms of stocks, shares and securities;
  - options, debts and forward contracts;
  - other structured products traded by the banks such as certificates and convertibles.
- The deal does not cover:
- contents of safe deposit boxes;
  - real property;
  - chattels;
  - insurance contracts which are regulated by the Swiss Financial Market Supervisory Authority, except for 'insurance wrapper' products, i.e. assets held by an insurance company in an account separate from the insurance company's main accounts combined with a minimal risk protection and where the pay-out or redemption is not restricted to death, disability or illness;

- assets held by companies and other entities carrying on a trading, manufacturing or other commercial activity; or
- assets which are not beneficially owned by an individual due to the discretionary nature of an arrangement such as a discretionary trust.

### ONE-OFF DEDUCTION TO SETTLE PAST TAX LIABILITIES

In 2013, existing funds held by UK residents in Switzerland will be subject to a one-off deduction of between 19% and 34% of the principal sum, to settle past tax liabilities. The one-off payment will be based on the value of the account as at 31 December 2010. This deduction will settle all outstanding UK income tax, capital gains tax, inheritance tax and VAT liabilities. However, there is no 'tax clearance' under the agreement, which is not an amnesty or disclosure facility, and which does not provide any immunity from prosecution.

The exact tax rate for the deduction will depend on how long the account has been open and when the funds were deposited. The more deposits there were, and the higher they were between 2003 and 2010, the higher the rate will be.

The deduction will not be applied if the account holder instructs the bank to disclose details of the account to HM Revenue & Customs (HMRC). Following such a disclosure, HMRC will seek unpaid taxes, with relevant interest and penalties.

Non-UK domiciled individuals will be able to opt out of the one-off tax deduction. However, if they are later discovered to have a problem, they will suffer higher penalties.

To be eligible for this deal the Swiss account must have been open on 31 December 2010



and still be in existence on 31 May 2013. This deal can apply to amounts held by UK individuals directly or indirectly, so it can look through structures such as offshore trusts and companies.

There will be complicated transitional rules for funds deposited between 1 January 2011 and 31 December 2012, including anti-avoidance measures to prevent individuals 'washing funds' through Swiss accounts. A strong principle of no tax clearance without payment will be enforced. So if funds passed through an account prior to 31 December 2010, those funds will not gain tax clearance, and an individual could still be investigated or prosecuted in relation to those funds.

Advisers will have to tell customers their options within 2 months of the Treaty coming into force. There will be an anti-avoidance provision under which banks promoting avoidance schemes will be liable for the tax avoided.

### EXCLUSIONS

Not all individuals will be able to participate in the deal. In particular, the following individuals will be excluded:

- those who are under civil or criminal investigation by HMRC when the deal is signed;
- those who have concluded a civil investigation in the past and have had their tax liability significantly amended as a result;
- those who have a criminal conviction in respect of tax evasion;
- those who were contacted as part of one of the earlier voluntary disclosure schemes, such as the offshore disclosure facility or New Disclosure Opportunity; and

- those who have relevant assets in Switzerland arising from non tax-related criminal activity or Missing Trader Intra-Community fraud.

### PAYMENT OF FUTURE TAX LIABILITIES

From 2013, UK residents with funds in Swiss banks will have a choice: they can either authorise a full disclosure of their affairs to HMRC, or face a new withholding tax of 48% on investment income, 40% on dividends and 27% on capital gains. These rates are at slight discounts on the ordinary UK top rates, to take account of the fact that the sums will be collected earlier than under normal UK tax filings. This withholding tax will ensure the effective future taxation of UK residents with funds in Swiss bank accounts.

Non-UK domiciled individuals will not be able to opt out of the future withholding tax, even if they pay the Remittance Basis Charge (RBC) (currently GBP 30,000 per annum, to increase in certain circumstances to GBP 50,000 per annum from April 2012). Their only way of not paying the withholding tax will be to disclose the account, claim the remittance basis in their UK personal tax return, and pay the RBC. This will restrict their UK taxable income/gains to UK source income/gains, plus amounts remitted to the UK.

If individuals want to disclose their accounts, the process will be similar to the one followed under the European Union Savings Directive: they will inform their Swiss agent, who will notify the Swiss Federal Authorities, who will in turn inform HMRC.

### EXCHANGE OF INFORMATION

There will be a new information sharing provision whereby HMRC will be allowed

to request account details of suspected tax evaders, whether or not the individual authorises their bank to respond.

HMRC will initially be allowed to request account details of up to 500 suspected tax evaders. The maximum number is expected to increase if appropriate. The enhanced information exchange terms will include an undertaking that the Swiss authorities will, if possible, provide information on where funds have been transferred if they have been removed from Switzerland.

### DO ACCOUNT HOLDERS HAVE ANY CHOICE?

In addition to this new agreement, the favourable terms of the Liechtenstein Disclosure Facility (LDF) remain available to UK residents. Therefore, from 2013, UK taxpayers with undisclosed funds in Switzerland wishing to legitimise funds will have to decide between using the LDF or accepting a one-off deduction under the Swiss deal.

In general, a comparison of the Swiss deal with the LDF suggests that not only will the LDF provide more certainty for taxpayers wanting to 'clean up' their tax affairs, it will also be the cheaper option in many cases, although there will be some exceptions. In addition, the LDF provides immunity from prosecution, which this agreement does not.

There are many complexities and important decisions to be considered under both the LDF and the Swiss deal. It is therefore very important for individuals that may be affected by these arrangements to seek professional advice.

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# BRAZIL

## STIMULUS PROGRAMME BRINGS TAX CUTS



The Government has announced a proposed package of tax cuts and other measures which are designed to stimulate the economy, including the export and manufacturing sectors. The main taxation measures are summarised below.

### PAYROLL TAXES REDUCTION

For certain selected labour-intensive business sectors, the 20% social security employers' contributions will be replaced by a low tax on gross incomes until 31 December 2012. The tax rate will be 2.5% for businesses in the

information and communications technology sectors, and 1.5% for businesses which manufacture clothing, footwear and furniture.

This change may be extended to businesses in other sectors after evaluation of the results in the test period up to 31 December 2012.

### ACCELERATION OF TAX REFUNDS

It is proposed to reduce the time taken to process claims for tax refunds by companies, from the previous period of several months to just 60 days.

### IMMEDIATE RECOVERY OF INPUT CREDITS

Previously, business had to recognise input credits in connection with the Program for Social Integration (PIS) and Contributions for the Financing of Social Security (COFINS) over a 12-month period. The new measures enable credits in relation to importing or acquiring plant and equipment used to produce goods and services to be taken immediately.

### CASH REFUNDS FOR EXPORTERS

In order to assist exporters to meet various tax liabilities arising in the production chain for manufactured exported goods, exporters will be able to claim a refund of up to 3% of their gross export income during the period up to 31 December 2012. Alternatively, the amount claimed can be set against other federal tax liabilities.

The applicable rate will depend on the sector to which the exporter belongs, and on the particular activities carried out.

### IMPLEMENTATION

The proposals were announced in a Provisory Measure, and will not become effective until they are incorporated in a new Law.

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# GUATEMALA

## ELIMINATION OF BEARER SHARES

In common with some other countries, Guatemala has recently changed its companies legislation, so that companies can no longer issue new shares in the form of bearer shares. All shares must now be issued as registered shares.

This measure, which will prevent the anonymous ownership of companies, came into effect on 29 June 2011. It is one of a number of measures designed to "regulate the obligations of individuals or entities engaged in the exercise of a profession or activity that could be used for the transfer, use, concealment and movement of proceeds of illegal or criminal activities". In particular, the measures are intended to combat drug trafficking and to permit tax and fiscal information to be exchanged.

Companies with existing bearer shares must convert these into registered shares within two years, and notify the Commercial Registry within 30 days of doing so. Such companies will now have to inform holders of existing bearer shares that they will be converted into registered shares, and explain the implications for them.

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# UNITED STATES OF AMERICA

## INTERNATIONAL TAX PROPOSALS

The Obama administration has released draft legislation for the American Jobs Act and the President's Plan for Economic Growth and Deficit Reduction. These include several international tax proposals which were first set out in the Budget earlier this year. The measures would come into effect, if enacted, for tax years beginning on or after 1 January 2013, and are summarised below. Approval of Congress is required for any of the proposals to be sent onto the President for his signature for enactment.

### AMERICAN JOBS ACT

#### Dual capacity taxpayers

The draft legislation defines a dual capacity taxpayer as a person who is subject to a levy in a foreign jurisdiction, and who also receives a specific benefit from that jurisdiction. For such taxpayers – mainly in the oil, gas and mining industries – it is proposed to limit the tax credit for the foreign levy to the amount of the foreign levy that would be due if the taxpayer were not treated as a dual capacity taxpayer.

#### Foreign oil and gas income – separate foreign tax credit basket

It is proposed to create a new foreign tax credit basket limitation category for foreign oil and gas income, for the purpose of limiting foreign tax credits for this category of income.

### PRESIDENT'S PLAN FOR ECONOMIC GROWTH AND DEFICIT REDUCTION

#### Determining foreign tax credits on a pooled basis

Companies will be required to determine foreign tax credits from the receipt of dividends from their foreign subsidiaries on a consolidated basis for all foreign subsidiaries. Foreign tax credits from the receipt of such dividends will be based on the consolidated earnings and profits and foreign taxes of all the foreign subsidiaries.

If enacted, this will effectively limit the foreign tax credits at the average of the foreign tax rates of all the foreign subsidiaries. Amounts in excess of the limit would be available for use in subsequent years.

#### Deferring deductions for interest in relation to deferred income

Currently, taxpayers that incur interest expense which is properly allocable and apportioned to foreign-source income may be able to deduct that expense even if some or all of the foreign source income is not subject to current U.S. taxation. It is proposed to defer the deduction of such interest expense to the extent that the U.S. taxation of such income is deferred. This measure is intended to provide better matching of the timing of interest expense deductions and the recognition of associated income.



#### Taxing excess returns on transferring intangibles offshore

To combat the shifting of income offshore by transferring intangible rights to subsidiaries that bear little or no foreign income tax, it is proposed to treat amounts which represent foreign base company excess intangible (FBCEI) income' as subpart F income that is taxed on a current basis to U.S. shareholders of the foreign subsidiaries.

This provision, if enacted, will apply to 'covered intangibles', i.e. intangible property that is sold, leased, licensed or otherwise transferred to a controlled foreign corporation ('CFC') from a U.S. related person, or in respect of which the CFC and related persons have entered into a shared risk or development agreement.

The subpart F income inclusion is defined as the excess of the CFC's gross income from the use of covered intangibles over 150% of the costs properly allocated and apportioned to that income, excluding interest, taxes and any non-directly allocable expenses.

#### Amending the definition of intangible property

It is proposed to amend the definition of intangible property for the purposes of the special rules relating to transfers of intangibles by a U.S. person to a foreign corporation, and the allocation of income and deductions among taxpayers.

The amendment would add workforce in place, goodwill and going concern value to the list of intangible property for these purposes.

The measure is intended to prevent the "inappropriate shifting of income" outside the U.S. by transferring intangible property which the IRS considers has not been valued in a reliable or realistic manner.

#### Limiting earnings stripping by expatriated entities

It is proposed to amend the so called 'earning stripping' rules limiting the deductibility of interest paid to related persons who are subject to low or no U.S. tax on that interest, in order to prevent inverted companies from using foreign-related party and certain guaranteed debt to reduce inappropriately the U.S. tax on income earned from their U.S. operations.

Interest deductions would be limited by:

- Eliminating the debt-to-equity safe harbour (currently 1.5 to 1.0);
- Reducing the adjusted taxable income threshold from 50% to 25%;
- Limiting the period for carrying forward disallowed interest to 10 years; and
- Eliminating the carry forward of excess limitation.

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# SOUTH AFRICA

## PROPOSED SUSPENSION OF INTRA-GROUP ASSET TRANSFER RULES DROPPED

A proposal in the 2011 Budget and the 2011 Taxation Laws Amendment Bill to suspend a provision in the Income Tax Act (the Act) regulating intra-group asset transfers has been dropped.

The provision in question is Section 45 of the Act, which allows the tax neutral transfer of assets between group companies provided certain criteria are met. The result of applying the section is that no capital gains tax, normal tax or donations tax, as the case may be, is triggered upon the disposal of assets intra-group. Instead, the gain is deferred until, *inter alia*, the asset is disposed of outside of the group.

The reason for the proposed suspension of the rule for 18 months was to give the South African Revenue Service (SARS) time to review various schemes which were perceived as abusing the rule, and to deal with them under anti-avoidance legislation. However, there were strong protests from the business sector, as many deals, not involving any abuse and

which were purely commercially driven, were already in progress.

The government has relented and cancelled the suspension of Section 45, but has instead introduced a different temporary solution. This takes the form of proposals for a possible restriction on tax deductions for interest payable in connection with debt used to fund the acquisition of assets in transactions involving section 45 as well as section 44 (amalgamations) and section 47 (liquidation, winding-up and deregistration) transactions.

Two transaction channels are envisaged as follows:

- Green channel: Sections 44, 45 and 47 reorganisations that do not involve interest-bearing debt will be able to use the relief without approval by SARS; and
- Amber channel: Sections 44, 45 and 47 reorganisations that utilise interest-bearing debt, two categories –

- where debt is funded within the group and there is no revenue loss or the possibility of revenue loss, automatic pre-approval to be given; and
- where such interest-bearing debt may result in a revenue loss, approval will be discretionary. In exercising discretion, regard will be had to whether or not the interest payments are ultimately exempt and the level and nature of the debt involved.

These new proposals apply to transactions involving section 45 from 3 June 2011, and to section 44 and 47 transactions, from 3 August 2011.

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## CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 15 November 2011.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Euro (EUR)	1.00000	1.37067
Australian dollar (AUD)	0.74838	1.02589
British Pound (GBP)	1.16652	1.59906
Chinese Yuan (CNY)	0.11492	0.15753
Danish Krone (DKK)	0.13435	0.18404
Israeli New Shekel (ILS)	0.19615	0.26888
Japanese Yen (JPY)	0.00946	0.01297
Malaysian Ringgit (MYR)	0.23225	0.31837
US dollar (USD)	0.72949	1.00000

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