

WORLD WIDE TAX NEWS

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UNITED STATES

OBAMA'S 2012 BUDGET FOCUSES ON SPENDING CUTS TO ACHIEVE DEFICIT REDUCTION

President Obama's 2012 Budget aims to reduce the fiscal deficit by USD 1.1 trillion over a 10 year period, with two thirds of the reduction to be achieved by spending cuts. For business, the key theme is 'innovation', and this is the driver for some of the main taxation measures, which are summarised below.

CORPORATE TAXATION

The Budget calls for a fundamental reform of corporate taxation to simplify the system, eliminate special interest loopholes, level the playing field, and use the savings to reduce the corporate tax rate for the first time in 25 years.

Specific proposals include:

- The simplification and expansion of a permanent Research and Development tax credit. Currently the tax credit is set to expire at the end of 2011.
- The elimination of 12 tax breaks for oil, gas and coal companies in order to raise USD 46 billion over 10 years, to help fund clean energy sources and reduce energy consumption
- Repeal of Last-In-First-Out method of accounting for inventory.

- Increase the federal unemployment tax wage base for employers.
- Defer deductions for interest expense that is treated as related to foreign source income and that is not currently subject to U.S. income tax.
- Require taxpayers claiming the deemed paid credit for underlying foreign tax paid to determine the amount of any foreign tax credit on a pooling of all foreign corporate subsidiaries' earnings and taxes paid.
- Tighten rules with respect to intangible property transfers and clarify the definition of intangible property for purposes of IRC sections 367(d) and 482.
- Tighten the ability to deduct interest expense under the earnings stripping rules of IRC section 163(j) for certain expatriated entities
- Impose a current U.S. tax on certain excess returns associated with transfers of intangible property to a CFC
- Modify the foreign tax credit tax rules for dual-capacity taxpayers

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EDITOR'S LETTER

Welcome to Issue 25 of *BDO World Wide Tax News*. The first quarter of a new year has, as usual, seen important Budget announcements in many countries. This newsletter focuses on those, and summarises other recent tax developments of international interest across the world. 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 or by telephone on +32 (0)2 778 0130.

CHINA

ADDITIONAL TAX BURDEN ON FOREIGN INVESTMENT ENTERPRISES, FOREIGN ENTERPRISES AND FOREIGN INDIVIDUALS

The China State Council released a circular Guofa [2010] No. 35 ('Circular 35') which stipulates that, effective from 1 December 2010, foreign investment enterprises ('FIEs' eg WFOEs, EJVS and CJVs), foreign enterprises ('Fes') and foreign individuals are subject to Urban Maintenance & Construction Tax ('UMCT') and Education Levy ('EL'). These taxes have been applied to domestic Chinese enterprises and individuals for a long time and pursuant to Circular 35, these taxes are now also applicable to FIEs, FEs and foreign individuals.

UMCT and EL are calculated based on prescribed percentages of the amount of turnover tax, ie Business Tax ('BT'), Value-added Tax ('VAT') and Consumption Tax ('CT') paid by the taxpayer:

For UMCT, prescribed percentage varies depending on the location of taxpayer as follows:

- 7% for taxpayers in cities;
- 5% for taxpayers in counties; and
- 1% for taxpayers in other areas.

For EL, the prescribed percentage is 3% in all areas of China.

As a result, FIEs, FEs and foreign individuals are effectively subject to a higher China turnover tax rate. For example, for an FIE which is located in Shenzhen of the Guangdong province of China and engages in the provision of consulting service, the FIE is paying 5% BT on its consulting service fee income. According to Circular 35, effective on 1 December 2010, the FIE is also required to pay UMCT and EL calculated based on the BT paid as follows:

Assuming the FIE earns a consulting service fee income of CNY 1 million,

| | |
|--------------------------------------|---------------------|
| Business Tax thereon (@5%) | = CNY 50,000 |
| UMCT thereon (@7% of BT) | = CNY 3,500 |
| EL thereon (@3% of BT) | = CNY 1,500 |
| Total taxes payable per above | = CNY 55,000 |

Hence, the additional tax burden on the FIE is 0.5% on the consulting service fee income.

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INDIA

BUDGET HIGHLIGHTS

India's Budget for the financial year beginning on 1 April 2011 was presented to Parliament on 28 February 2011. The Finance Minister stated that the economy had returned to strong growth, and the main challenge was to control inflation without endangering economic growth.

The main taxation measures in the Budget are as follows:

DIRECT TAXES

A new Direct Tax Code will be introduced from 1 April 2012.

Salaried taxpayers are to be exempted from filing returns of income, provided certain conditions are met.

The various personal exemptions will be as follows from 1 April 2011:

- Basic exemption: INR 180,000;
- Basic exemption (women): INR 190,000;
- Basic exemption (senior citizen): INR 250,000. The qualifying age has been reduced from 65 to 60;
- Basic exemption (very senior citizen, above 80 years): INR 500,000.

Basic corporation tax rates are unchanged. The surcharge is reduced from 7.5% to 5% for domestic companies, and from 2.5% to 2% for non-domestic companies.

From 2012-13, dividends received from foreign subsidiaries (currently taxed at the maximum marginal rate) will be taxed at 15% plus the applicable surcharge.

The minimum alternative tax (MAT) rate will be increased to 18% of book profits, and the MAT will be made applicable to Limited Liability Partnerships.

There will be changes to the transfer pricing rules from 2012-13 – the standard deduction of a variation of 5% on the arm's length price will be changed and will be notified, and the Transfer Pricing Officer has been authorised to determine the arm's length price of additional international transactions other than those referred by the Assessing Officer.

Any person having transactions with a Notified Jurisdiction Area (NJA), will be subject to a Transfer Pricing Audit. Money received from NJA will be treated as income and any payment of expenditure in NJA will not be allowed as deduction in computing income, if KYC norms are not satisfied.

INDIRECT TAXES

A goods and services tax (GST) is to be introduced. It is currently proposed that this will be implemented in 2012.

In the meantime, the Service Tax rate remains at 10%, and two new services are introduced:

- Services by air-conditioned restaurants having a licence to sell liquor;
- Short-term accommodation in hotels, inns, guest houses, etc.

Point of Service Tax Rules are being introduced to determine when services are deemed to be provided, in order to determine the rate of Service Tax.

The exempted services definitions have been amended to include trading, and the definitions of 'inputs' and 'input services' have been amended.

The Central Excise duty rate remains at 10%, but the lower rate has been increased from 4% to 5%.

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NEW ZEALAND

GST REGIME – SIGNIFICANT CHANGES

Parliament has enacted the most significant changes to the Goods and Services Tax (GST) regime since its introduction back in 1985. These changes are effective from 1 April 2011, and are summarised below.

PRINCIPAL PURPOSE TEST

Previously, GST incurred on the purchase of a good or service could only be claimed if the 'principal purpose' test was met. If that test was met, GST could generally be claimed in full. However, to the extent that the good or service is then applied for some other purpose (e.g. an exempt or private activity), adjustments generally needed to be made.

The new law takes away the 'principal purpose' test altogether and places the onus on the purchaser to estimate how they intend to use the good or service. If the good or service is not to be fully used for making 'taxable supplies', the estimated usage will then be used to claim a proportion of the GST incurred on the purchase. The legislation provides for adjustments to be made when the actual taxable use is different from the intended taxable use.

The new rules apply to goods and services acquired on or after 1 April 2011. Existing goods and services remain subject to the old rules, but continued adjustments are only required for certain periods of time if the supply is not of land.

REAL ESTATE

- When real estate is sold by a GST-registered person to another GST-registered person, the rate of GST will generally be 0%. This rule is intended to stop cases where GST is claimed but not returned. Specifically, this new zero-rating rule will only apply if the purchaser acquires the property with the intention of using it to make 'taxable supplies';
- A new apportionment rule applies where there is a concurrent use of land (e.g. where a property developer rents out a property while the property is for sale);
- The meaning of 'dwelling', and when a 'dwelling' is a 'commercial dwelling' for GST purposes has been clarified. In particular, the definition of "commercial dwelling" has been extended to specifically include homestays, farmstays, bed & breakfast establishments, and certain serviced apartments. This change provides certainty that taxpayers conducting such activities can be GST-registered.

NOMINATIONS

Transactions that involve nominations (e.g. when a party to the contract nominates another person to 'receive' the supply) will have the GST treatment determined on the basis of the transaction's economic substance.

ANTI-AVOIDANCE

An anti-avoidance rule formerly applied to all registered persons when the amount payable for a transaction is NZD 225,000 or more, and payment for the transaction is deferred. If the supplier is registered on the payments basis, they must use the invoice basis for this particular transaction.

The legislation has now been amended so that this rule does not apply if all of the following conditions are met:

- The supplier is a non-profit organisation
- The recipient is not GST-registered
- The recipient is either not intending to use the good/service in a taxable activity, or will only do so after full payment has been made.

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SINGAPORE

BUDGET HIGHLIGHTS

The Minister for Finance presented the 2011 Budget on 18 February 2011. With a background of a record 14.5% growth in the economy in 2010, this Budget aims to increase the real income of Singaporeans and lay down the foundation for increasing productivity so that Singapore becomes a first rate developed country. The main taxation measures are summarised below.

CORPORATE TAX

One-off corporate income tax rebate

A corporate income tax rebate of 20% will be granted for Year of Assessment (YA) 2011, capped at SGD 10,000. All companies are eligible to receive a cash grant of 5% of the Company's revenue for YA 2011, to be capped at SGD 5,000 or the 20% tax rebate, whichever is higher. This will be assessed automatically by the IRAS.

Enhancement of productivity and innovation credit (PIC) scheme

The following changes will apply to the PIC scheme, with effect for YAs 2011 to 2015:

- The tax deduction or allowance is increased from 250% to 400%
- Qualifying expenses incurred on each of the six qualifying activities are enhanced to SGD 400,000 from SGD 300,000. The combined cap on expenditure will be SGD 800,000 for YAs 2011 to 2012 and SGD 1,200,000 for YAs 2013 to 2015 respectively
- The cash payout option based on 30% of the first SGD 100,000 of qualifying expenditure will be capped at SGD 30,000 per year, with a combined cap of SGD 60,000 for YAs 2011 and 2012. This option is available for YAs 2011 to 2013.
- PIC benefits are extended to R&D activities carried out overseas.

Merger of tax deduction schemes

The Sections 14B and 14K tax deduction schemes are to be merged, since the objective of both sections is the same, i.e. to assist businesses to internationalise and expand overseas. The merged scheme is subject to a sunset clause till 31 March 2016. These changes will apply to applications submitted and approved on or before 1 April 2011.

Enhancement of claim for pre-commencement expenses

From YA 2012, there will be a 100% deduction of pre-commencement expenses incurred in the accounting year immediately preceding the accounting year in which companies earn the first dollar of trade receipts.

Foreign tax credit pooling system

From YA 2012, the foreign tax credit mechanism will be simplified. Foreign tax credits will be 'pooled' on an aggregate basis rather than considered on a source by source basis. Pooling of foreign tax credits will be allowed only if foreign sourced income is taxable in Singapore. Credit will be based on the lower of the pooled foreign taxes paid and the pooled Singapore tax payable on such foreign income, provided:

- Foreign taxes are paid in the jurisdiction from which income is remitted;
- The headline tax rate in that jurisdiction is at least 15%; and
- Singapore tax is payable on the foreign income and is eligible for a tax credit.

Extension of tax deductions for employee equity based remuneration (EEBR) schemes

From YA 2012, a deduction for the cost of acquisition of shares of a parent company by a Special Purpose Vehicle (SPV) under the EEBR scheme will be permitted. The deduction will be restricted to the lower of the amount paid by the company to the SPV or the cost incurred by SPV to acquire the parent company's shares. No deduction will be allowed in respect of purchase of newly issued shares.

Liberalisation of the withholding tax exemption regime for banks

The withholding tax exemption for Banks and approved entities is enhanced with effect from 1 April 2011. The exemption now covers interest and other qualifying payments made to all non-resident persons (excluding permanent establishments) if the payments are made for the purpose of their trade or business. A sunset clause on the enhanced scope of the exemption has been introduced.

PERSONAL TAX

A one-off income tax rebate of 20%, capped at SGD 2,000, will be granted to all resident individual taxpayers for YA 2011.

From YA 2012, a more progressive new tax rate structure for resident individual taxpayers will be introduced, and the tax rates for certain income slabs will be changed:

| Chargeable income* | Tax payable under new schedule | Tax savings |
|--------------------|--------------------------------|--------------------------|
| SGD 40,000 | SGD 550 | 39% (SGD 350) |
| SGD 60,000 | SGD 1,950 | 25% (SGD 650) |
| SGD 120,000 | SGD 7,950 | 20% (SGD 1,950) |
| SGD 160,000 | SGD 13,950 | 10% (SGD 1,550) |
| SGD 240,000 | SGD 27,950 | 4% (SGD 1,150) |
| Over SGD 330,000 | Over SGD 44,350 | Less than 0.8% (SGD 350) |

* Chargeable income = Income after tax reliefs

Alimony and maintenance payments received under Court Order or Deed of Separation will be exempted from tax. Furthermore, spouse relief and handicapped spouse relief will no longer be granted to taxpayers for maintaining their former spouses. These changes will be effective from YA 2012.

GOODS AND SERVICES TAX

The following changes will apply from 1 October 2011:

- Supplies without documentary evidence to approved marine customers for their use on commercial ships for international travel will be 'zero rated';
- Repair and maintenance services for ship parts delivered to shipyards in Singapore or Approved Marine Customers will qualify for zero rating;
- Measures will be introduced to ease GST compliance for qualifying ships which are in Singapore for a temporary period;
- Upfront GST relief will be granted on all clinical trial materials imported into Singapore;
- The Approved Contract Manufacturer and Trader ('ACMT') Scheme will be extended to qualifying biomedical contract manufacturers;
- Further enhancements will be made to the ACMT scheme made so that it can be enjoyed by all industries approved under ACMT;
- Specialised storage and other value added services supplied to overseas persons in respect of high value goods such as art and antiques which for export will qualify for zero rating, subject to conditions.

OTHER MISCELLANEOUS CHANGES

Donations

The enhanced tax deductions of 250% for approved donations will be further extended from 1 January 2011 to 31 December 2015.

Stamp duty

- Relief from stamp duty will be granted for a company converting into a limited liability partnership on or after 19 February 2011, subject to conditions;
- Stamp duty remission in excess of SGD 50 is extended to cover aborted lease contracts or agreements on or after 19 February 2011, subject to conditions;
- Nominal/fixed stamp duties of SGD 2-SGD10 is removed on certain documents executed on or after 19 February 2011.

Workers' levies and contributions

- The foreign worker levy will be increased from 1 July 2012 to 1 July 2013, by an average of SGD 60 for the manufacturing sector, SGD 180 for the services sector and SGD 200 for the construction sector. The levy rates for S-Pass holders will be increased to SGD 300-SGD 450 by July 2013;
- The employer's CPF contribution rate will go up by 0.5% to 16%. The CPF salary ceiling will also be increased from SGD 4,500 to SGD 5,000 per month;
- Tax deductions will be given to eligible companies making voluntary contribution of up to SGD 1,500 to Self Employed Persons ('SEP') Medisave accounts from 1 January 2011, subject to conditions. Such contributions will be tax exempt for SEP.

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AUSTRIA

TAX CHANGES

In December 2010 a major tax reform, known as 'Budgetbegleitgesetz 2011' (BBG 2011), was passed by the Austrian Parliament. The most important tax changes, which will mostly become effective as of 1 January 2011, are listed below.

DEDUCTIBILITY OF DEBT FINANCING INTEREST

From 2011 onwards (to be precise, for financial years starting in 2011) interest expenses relating to the acquisition of shares from related parties or controlling (direct or indirect) shareholders are non-deductible. This new provision will also apply to interest expenses resulting from intra-group share acquisitions prior to 2011.

HYBRID CAPITAL

Another important change in the Corporate Tax Act relates to hybrid instruments used for cross-border financing activities. Income derived from financing instruments qualifying as equity investments for Austrian corporate tax purposes, will no longer be exempt under the Austrian participation exemption if the corresponding payments are tax deductible for the foreign company. The amendment aims to eliminate double-dip structures which provide for a deduction of payments in the source state and a corporate tax exemption for the related income in Austria.

STAMP DUTIES FOR CREDIT AND LOAN AGREEMENTS

Previously, entering into loan agreements triggered Austrian stamp duty at a rate of 0.8% - 1.5% of the loan amount. The BBG 2011 abolishes stamp duty on loan agreements made from 1 January 2011 onwards. In order to avoid a shifting of taxation to security agreements relating to credit and loan facilities, the new law also exempts certain security agreements from stamp duty.

TAX BONUS FOR RESEARCH AND DEVELOPMENT (R&D)

Previously, an R&D tax credit of 8% or alternatively an allowance of 25% to 35% of qualifying R&D expenses could be claimed for R&D activities. As of 1 January 2011 the R&D

tax credit increases to 10%, while the R&D allowances are abolished.

TAXATION OF CAPITAL GAINS OF INDIVIDUALS

Up to now, capital gains resulting from the sale, by individuals, of privately held capital investments are exempt from income tax if the shares are held for at least one year. Under the new provisions capital gains will be taxable for private investors irrespective of the holding period. Gains will be taxed on the gross amount, without deduction of related expenses such as transaction or administrative costs, at a flat rate of 25%. If the security is held at an Austrian deposit account, the tax on capital gains will be withheld by the Austrian depository bank.

In general terms, these rules come into effect on 1 October 2011. However, special rules apply to special types of interest (e.g. capital gains on sale of shares, derivatives, etc).

Tax losses on the sale of capital investments can – apart from some restrictions – be offset against income (e.g. interest, dividends, capital gains, etc) deriving from capital investments. Such losses cannot be offset against business or other private income (e.g. employment income, lease/rental income, etc) and not carried forward for future utilisation.

To a large extent, these rules also apply to capital gains on the sale of capital investments held in the individual's business (especially with respect to the flat tax rate of 25% on the cross basis). However, certain special restrictions regarding the utilisation of tax losses have to be noted.

BANK TAX

From 2011 banks in Austria will be subject to a bank tax, which will in general be determined based on a modified balance sheet total. There is also an additional tax on speculative derivative trades.

All banks which are regarded as credit institutions under the Austrian Banking Act will be subject to this tax. This also includes Austrian branches of foreign banks (EU as

well as non-EU) as far as Austrian business activities are concerned. Financial services institutions, like leasing companies and investment companies will be outside the scope.

No bank tax will be due for banks with a modified balance sheet total of up to EUR 1 billion. The tax rate will be 0.055% for a modified balance sheet total between EUR 1 billion and EUR 20 billion and 0.085% for a modified balance sheet total exceeding EUR 20 billion. The tax rate for the additional tax on derivatives held for trading and sold options amounts to 0.013%.

OTHER MAJOR CHANGES

- Taxation of investment funds (the taxation of realised capital gains will be substantially changed);
- Taxation of certain real estate transactions of foundations and increase of preliminary CIT ('Zwischensteuer') from 12.5% to 25%;
- A special excise duty will be introduced for passenger flights. The duty will be in the range of EUR 8 to EUR 35 per passenger and will apply to all flights from 1 April 2011 onwards – some exemptions exist, especially for transfer flights;
- From 1 January 2011 onwards, the VAT reverse charge system will also cover services rendered in conjunction with the cleaning of buildings.

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EUROPEAN UNION

DRAFT CCTB DIRECTIVE PUBLISHED

On 16 March 2011, the European Commission published a draft Directive proposing a European Common Consolidated Corporate Tax Base (CCCTB). Implementation is not imminent, but companies operating cross border in Europe should track developments.

WHAT IS IT?

The CCCTB is a system of common rules for computing the tax base of companies which are tax resident in the EU and of EU-located branches of other companies.

Under the proposals, the parent company of a group (or a standalone entity) would submit a consolidated tax return, computed under the new rules, to its own tax jurisdiction.

No return would be made by its subsidiaries or qualifying branches in their local jurisdictions. Instead, the profits as computed in the consolidated return would be allocated across the Member States in which the group operates, according to a pre-determined formula. The Member States would then apply their own tax rates to the profits attributed to them.

It is proposed that the system would be optional, although the decision by a parent to opt in would bind its subsidiaries. In the first instance, such a decision would last for five years.

WILL IT HAPPEN?

In its present guise, no.

To be enacted as a Directive, it requires the unanimous agreement of all the Member States. That is not going to happen, as various States have indicated that they have a fundamental objection to the proposal.

However, the Commission seems confident that it will be taken forward under the enhanced co-operation rules of the European Treaties, under which the provisions can be adopted by a minimum of nine Member States.

While implementation of actual tax rules at the national level still seems distant, enactment in some key Member States, such as Germany, seems to be sufficiently plausible for companies to give it consideration.

IS IT ADVANTAGEOUS?

Within a qualifying group, it is difficult to say at this stage.

On the positive side, a consolidated approach automatically implements cross border loss relief and removes the application of the transfer pricing rules within the qualifying group. It should also streamline tax compliance. On the other hand, the Commission believes the common rules generally expand the tax base.

However, the most controversial aspect relates to the attribution formula. There is a heavy weighting to the location of customers, and a disregard for intangible assets, including intellectual property (IP). This approach could heavily alter the attribution of profit within a group, compared to existing structures.

From a broader perspective, any such optional structure with non participating Member States must offer arbitrage opportunities (for instance retaining IP outside the qualifying group within a jurisdiction with national incentives) which can be combined with the positive aspects of the proposals.

NEXT STEPS

For the time being, companies with European operations should track the proposals. At the moment, these will be most relevant where groups are considering a restructuring which the implementation of this Directive could naturally produce or, conversely, which the new Directive may obstruct.

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IRELAND

IRELAND'S FINANCE ACT 2011 INTRODUCES A MANDATORY REPORTING REQUIREMENT

Ireland's Finance Act 2011 was enacted on 5 February last.

Ireland's newly formed coalition Government took power in March with a sizable majority in Parliament. The new regime's programme for Government reiterates the commitment to maintaining the 12.5% rate of corporation tax and maintaining an attractive business environment for investors.

The Finance Act contains no significant changes to the corporate tax regime in Ireland.

MANDATORY REPORTING OF CERTAIN TAX TRANSACTIONS TO REVENUE

The Finance Act 2011 did however introduce legislation to relation to the mandatory reporting of certain transactions to the Irish tax authorities, namely transactions with characteristics viewed as being tax avoidance.

Ireland has existing general anti-avoidance rules (GAAR), which have had mixed results since their introduction in the late 1980s. The new regime aims to ensure that there is complete compliance on reporting certain tax transactions.

The disclosure regime will apply primarily to promoters (i.e. tax advisers). The objective is to identify and understand how certain tax transactions are designed and marketed and the persons to whom certain transactions are marketed.

A transaction is disclosable if it gives rise to an Irish tax advantage and this tax advantage is one of the expected main benefits of the transaction and it falls within one of the categories described in the legislation. Such transactions must be disclosed to the Irish Revenue as early as 5 business days from one of 3 possible relevant dates.

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ISRAEL

REFORM IN THE LAW FOR ENCOURAGEMENT OF CAPITAL INVESTMENTS

As part of the Supplementary Economics Arrangement Law (enacted in conjunction with the recently ratified 2011 – 2012 Budget), significant changes have been made to the Law for Encouragement of Capital Investments 1959. The main changes are summarised below.

TAX BENEFITS TRACK

- Cancellation of all existing tax benefits in the law and introduction of a unified tax rate on the total revenue from manufacturing activity for industrial enterprises that comply with the minimum export condition – see below. The tax rates are to be 10% in preferred area A and 15% in all other areas for the tax years 2011 and 2012 (7% and 12.5% respectively for the tax years 2013 and 2014, and 6% and 12% respectively for the tax year 2015). As a result of this reform the majority of the stipulations of the relevant paragraph 74 to the law for measuring beneficial income from a 'mixed' enterprise will be cancelled;
- Cancellation of preferred area B – leaving only preferred areas A and the rest of the country;

- Cancellation of the 'minimum' investment condition for determining beneficial income for the unified tax rate track;
- The export requirement will be 25% of the entire enterprise's revenue, unlike the previous regulations whereby the export requirement was measured separately regarding the activity deemed to be 'broadening' of current activity
- The Head of the Tax Authority will be empowered to determine regulations for attributing income for enterprises operating both in Israel and abroad;
- Only income from activity in Israel will be deemed 'beneficial' income;
- Inter-corporate dividend distributions in Israel will be tax exempt, even if derived from 'beneficial income' of the subsidiary;
- The reduced tax rates for foreign investments enterprises are cancelled;
- Factories and mines for producing natural resources (minerals, gas and oil) will be excluded from the definition of 'industrial enterprises' with respect to this particular activity;
- Companies fully owned by government bodies will not be entitled to benefits granted under the law
- The law will apply to registered partnerships whose partners are all Israeli incorporated companies;
- The tax rate for individuals receiving dividends from an enterprise under this regime will be 15%, for both Israeli resident and foreign recipients;
- A tax benefits regime has been established for 'special industrial enterprises' (substantial enterprises) under which the applicable tax rates are 5% in preferred area A and 8% in all other areas, for a period not exceeding 10 years.

GRANTS REGIME

- The stipulation preventing multiple benefits has been removed. As such, industrial enterprises that comply with the required export conditions above may benefit in parallel from both the grants regime, and tax benefits regime as outlined above. However, should the export conditions apply to revenue deemed to be "broadening" of previous activity, the enterprise may still benefit from the grants regime although the tax benefits will not apply;
- Eligibility for investment grants will be limited to industrial enterprises located in preferred area A only;
- The investment requirement for the grant will not be limited to investments in fixed assets, but will include investments in human resources or other investments, providing these investments are in line with the purpose of the law. Furthermore, the Investment Center Management will be authorised to grant loans guaranteed by the State;

- The Management of the Investment Center is authorised to approve requests received during the applicable budget year within the framework of the current year's budget or the previous year's budget;
- The determination of either the Investment Center or the tax authorities as to an enterprise being an 'industrial enterprise' will be binding on both bodies for a period of five years, unless substantial changes or erroneous reporting is evident in the enterprise;
- The Knesset Members with the authorisation of the Finance Committee are authorised to determine additional regimes for providing aid to the industrial sector (other than the grants regime for founding and/or expanding enterprises), inter alia, providing aid for professional training, employee recruitment, providing support for small and medium enterprises (SMEs), technological upgrades, etc.;
- Jerusalem is now defined as preferred area A for high tech enterprises, enterprises heavily reliant on IP, and other industrial enterprises located in substantial industrial zones.

EFFECT DATE AND TRANSITIONAL REGULATIONS

- The new tax benefit regime will apply to income generated from 1 January 2011 onwards;
- The previous law will apply to enterprises that began investing up until 31 December 2010 and notified the authorities, choosing the "election" year with respect to the benefits to be no later than 2012;
- However, enterprises wishing to apply the new law may choose to do so, while waiving the remaining benefits applicable under the previous law.

The Incentives Department at our firm will be glad to provide further clarifications and examine the implications of the new tax law with respect to specific circumstances.

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SPAIN

BUDGET HIGHLIGHTS

Law 39/2010 and Royal Decree-Law 13/2020 have introduced several Spanish tax law modifications. Here, we briefly summarise the most important ones:

1. Exemption for the distribution of dividends

To comply with EU law, Spanish Non Resident Income Tax (NRIT) Law has modified the percentage necessary in order to qualify as an exempt distribution of dividends from a Spanish company to a holding company resident in the EU.

From 1 January 2011 dividends distributed by entities resident in Spain will be exempt where (among other conditions) the EU holding company's interest, whether direct or indirect, in the capital or equity of the Spanish resident entity is at least 5% (10% until 31/12/2010).

2. Exemption on royalties paid from a Spanish company to an EU company

From 1 July 2011, Spanish NRIT Law will treat royalties paid to EU 'associated' companies by Spanish companies as exempt of Non Resident Income Tax. For this purpose, a company is considered as 'associated' when the direct or indirect holding in the capital of the Spanish resident entity is at least 25% and it has been owned throughout a one-year period.

This fulfils the requirement for Spain to implement Directive 2003/49/CE (Interest and royalties) in the period of grace allowed.

3. New tax rate bands for smaller companies

From 1 January 2011, companies with net revenues of less than EUR 10 million in the immediately previous tax period (EUR 8 million before 1st January 2011) must be taxed at a rate lower than the standard rate:

- a) 25% on the portion of taxable profits between EUR 0 and EUR 300,000 (EUR 120,202 before 1 January 2011)
- b) 30% on the remainder of taxable profits.

Where the entity forms part of a group of companies, net revenues refer to all the entities belonging to the group.

4. Electronic transport card

From 1 January 2011, a new benefit in kind rule is introduced in the Spanish Personal Income Tax (PIT) regulations. Under the PIT Law, amounts paid to cover public transport expenses incurred for work travel purposes are exempt from tax (and, consequently, from withholding tax on account), if the amounts paid do not exceed EUR 136.36 per month and EUR 1,500.00 per year.

5. Financial goodwill of EU companies

With effect for tax periods ending from 21st December 2007, tax relief on the cost of financial goodwill is denied when shareholdings are acquired in EU companies.

Companies which carried out acquisitions before the above date can write off their financial goodwill at 5% per annum.

The EU Commission also recently decided that the Spanish goodwill tax relief constituted a formal state aid for acquisitions of interests in non-EU companies, except for countries which have obstacles to investment (i.e. China, India).

6. Capital Tax

With effect from 3 December 2010, the following operations are treated as exempt for Capital Tax purposes (a 1% charge applied until 3 December 2010): company formations, increases of capital, and changes of the company address or the place where the company is managed.

7. VAT (importation)

Under Spanish VAT law the importation of goods into Spain with a final destination to another EU country is exempt. From 1 January 2011 those importations are exempt, not only when they are carried out by the tax payer but also when carried out by its tax representative (always acting on behalf of the importer).

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UNITED KINGDOM

UK ACCELERATES TAX REDUCTIONS TO RETAIN AND ATTRACT COMPANIES

In its second Budget Report, published on 23 March 2011, the Coalition Government announced an acceleration of the programme to reduce Corporation Tax rates over the next few years.

Last year, it announced a phased reduction of the main Corporation Tax rate from its current level of 28% down to 24%, in four annual 1% reductions commencing on 1 April 2011. Instead, the Budget announced that there would now be a 2% reduction, to 26%, on 1 April 2011, followed by three further 1% reductions, to take the rate down to 23% by 1 April 2014.

As already announced, the small profits Corporation Tax rate will also be reduced from 21% to 20% on 1 April 2011.

The Chancellor of the Exchequer noted that Britain had dropped from 4th to 12th place in the global competitiveness league, so the Corporation Tax reductions are part of a package of measures designed to ensure that it should:

- Have the most competitive tax system in the G20
- Be the best place in Europe to start, finance and grow a business
- Be a more balanced economy, by encouraging exports and investment
- Have a more educated workforce that is the most flexible in Europe.

The other main Budget proposals to stimulate business growth are:

- The establishment of 21 regional Enterprise Zones, in which businesses will be entitled to enhanced capital allowances, discounted business rates and other benefits
- Improvements to the Enterprise Investment Scheme and Venture Capital Trust scheme, which aim to provide finance for growing companies by giving tax incentives to investors
- Increases in the Research and Development tax credits available to small and medium-sized enterprises
- A doubling of the Entrepreneurs' Relief lifetime allowance, from GBP 5 million to GBP 10 million, which enables business owners to dispose of businesses or business assets at a low Capital Gains Tax rate of 10%.

The Budget also continues to outline how the Government intends to reform the system for taxing foreign profits of UK companies. A new regime will take full effect in April 2012, but interim measures will be effective for accounting periods commencing from 1 January 2011. The main aims of the reforms are to ensure that:

- Foreign-to-foreign trading, service and licensing activities with minimal or no UK connection should be outside the scope of the UK Controlled Foreign Company (CFC) rules
- Foreign subsidiaries will be in a position to meet business needs for a more efficient supply chain of goods, services and licensing arrangements without the constraints of the previous CFC legislation
- The administrative burden for UK companies previously affected by the existing CFC legislation will be reduced.

It is reported that some companies are already considering resuming UK residence as a result of the proposed reforms.

Other detailed proposals of interest internationally include the establishment of a Patent Box regime to tax relevant patent income arising from 1 April 2013 at a reduced 10% Corporation Tax rate, and the reform of the permanent establishment (PE) rules with effect from the date of Royal Assent of Finance Act 2011. UK resident companies will be able to elect for an irrevocable opt-in exemption for all their foreign PEs. This will apply to all present and future branches of those companies. However, no relief will be available for foreign PE losses if an election is made.

On the international personal tax front, the remittance basis charge for non-domiciled individuals will increase from GBP 30,000 to GBP 50,000 for individuals who have been resident in the UK for 12 or more years and wish to claim the remittance basis. More positively, it is proposed to exempt remittances of funds for the purpose of investing in UK businesses, which is consistent with the overall Budget aim of stimulating UK business growth. It is proposed that these changes will take effect in April 2012.

Finally, there will be a consultation with a view to introducing a statutory test to determine the UK residence status of individuals. This is a long-awaited and much-needed development, which should give much greater certainty with regard to the tax position of individuals arriving in and leaving the UK.

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BRAZIL

FINANCIAL TRANSACTIONS TAX INCREASES

Brazil has recently increased taxes on some financial transactions, including international credit card transactions and certain cross-border loans.

INTERNATIONAL CREDIT CARD TRANSACTIONS

From 27 April 2011, the rate of the financial transactions tax (IOF) on overseas credit card transactions is increased from 2.38% to 6.38%. The aim of the increase is to reduce overseas consumption.

CROSS-BORDER LOANS

From 29 March 2011, the IOF tax rate on inward short-term cross-border loans with a payment period of up to 360 days is increased to 6%. Previously, the rate was 5.38% for loans with a payment period of up to 90 days and 0.38% for other loans.

From 7 April 2011, the 6% rate also applies to loans with payment periods of up to 720 days.

The purpose of these increases is to control flows of speculative capital into Brazil, and to prevent further inflation of the Brazilian currency.

CREDIT FOR INDIVIDUALS

On 7 April 2011 the Finance Minister announced that the IOF tax rate on loans and credit granted to individuals would be doubled, from 1.5% to 3% (from 0.0041% to 0.0082% per day), in order to control the recent rapid increase in consumer lending. The increase will not apply to residential real estate credit or financial leasing.

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BES ISLANDS

NEW TAX LEGISLATION

A mended tax legislation for the BES Islands (Bonaire, St. Eustatia and Saba) came into effect on 1 January 2011.

OVERVIEW

Most tax rules are included in the 'Tax Legislation for the BES islands'. The 'Landsverordening op de inkomstenbelasting 1943' and the 'Landsverordening op de loonbelasting 1976' will meanwhile continue to be applicable under the names 'Wet inkomstenbelasting BES' and 'Wet loonbelasting BES', with some amendments.

A unilateral arrangement which resembles the 'Nederlandse Besluit ter voorkoming van dubbele belasting 2001 (ten opzichte van derdelanden)' will be introduced for the BES islands.

The tax system for the European part of the Netherlands will be linked with that of the BES islands.

A connection will be made between the tax systems of the BES islands and that of Aruba, Curaçao and Sint Maarten, by adapting the Tax Agreement of the Kingdom (BRK). The BRK will be revised, in consultation with Aruba, Curaçao and Sint Maarten.

Paying agents established on the BES islands will not have to retain levies on savings on outgoing interest payments. Information on interest payments will be exchanged.

INCOME TAX

Tax is charged on the taxable amount, i.e. taxable income minus a general allowance of USD 9,750 and, where appropriate, a child allowance of USD 1,250 per child, up to a maximum of USD 2,500 for two children. An additional allowance of USD 200 is available for the elderly (aged 60 and over).

A flat rate of 30.4% applies to Wages and Income up to a taxable income of USD 250,000, with a rate of 35.4% on the excess over USD 250,000.

For shareholding managing directors (DGA) a 'Basic salary regulation' is introduced. The regular salary is set at USD 20,000 per year, unless this can be proven to be lower. If in a non-shareholders situation the salary is higher, this higher income applies. The salary of the shareholding managing director will be at least as high as the salary of the highest paid employee in the company.

Premiums for the 'Wet ouderdomsverzekering BES', the 'Wet algemene weduwen en wezenverzekering BES' and the 'Zorgverzekering BES' will be charged separately. However, tax credit rebates exist for these insurances, due to which ultimately only 30.4% is paid. Consequently the rate will not decrease for people who do not need to pay any of the national insurances.

Withholding agents can pay wage tax and premiums for AOV, AWW and social insurances at once (one return and one payment instead of four payments).

A 5% rate applies to income from a substantial interest.

The following exemptions apply:

- Interest - USD 5,000
- Dividends - USD 5,000.

Interest on the financing of private homes is deductible at 30.4%.

Income from real estate property is no longer taxed, due to the introduction of the new Property tax.

The deeming of personal income from a tax exempt company [Vrijgestelde BV] will no longer apply.

Benefits received from foundations (including 'Stichting Particulier Fonds') are treated as dividends.

The pensionado arrangement will be abolished, with a transitional period of four years for existing pensionados. The 5% rate for pensionados is terminated immediately and substituted by a 10% rate.

PROFIT TAX

The former Profit Tax has been abolished and replaced with a new Distribution Tax and Property Tax.

DISTRIBUTION TAX

The new Distribution Tax only applies to companies admitted on bonded terms (special zones) or which are by decree considered to be established on the BES islands. All other entities are considered to be established in the Netherlands, and are subject to the Dutch Corporate Income tax (VpB) and Dividend withholding tax. When levying Dutch Corporate Income tax, a company established in the Netherlands is also considered for its profits produced by properties situated on the BES islands. Such a company is not subject to Property tax.

The Distribution Tax applies to profit distributions to shareholders by companies established on the BES islands and to payments by cooperative societies, foundations, associations and mutual funds that meet the conditions. The recipient of the dividend or payment is the taxpayer, while the company is the withholding agent.

The tax rate is 5%.

Distributions by a foundation or trust funds to charities are, under certain conditions, exempt.

PROPERTY TAX

The new Property tax charges a deemed income of 4% on land and properties. The value is established under the same accounting principles as those used for Land tax. A fixed tax rate of 25% is applied to this deemed income.

Owners of time share properties are taxed proportionally.

Properties which qualify as a private residence for Income tax purposes or which belong to the business assets of a sole proprietor are exempt.

An exemption also applies for residents of the BES islands who enjoy land and properties valued at less than USD 50,000 that are not used as a primary home.

LAND TAX

The Land tax [*grondbelasting*] will be levied at a rate of 0.345% by the island government. Private properties serving as a principal residence and other real estate properties belonging to the business estate of a sole proprietorship can be taxed (both are exempt from the new Property tax). In addition, 15% surtaxes will be collected on property that is covered by the new Property tax.



INHERITANCE TAXES

Inheritance tax has been abolished and replaced with three arrangements:

- Former residents of The Netherlands will continue to be taxed on donations and legacies for a period of 10 years after their departure
- Distributions by an SPF are covered by Distribution tax
- Donations or acquisitions obtained through the inheritance of real estate are subject to a 5% Transfer tax.

TURNOVER TAX

Former turnover taxes on Bonaire, Saba and St. Eustatius are substituted by a new Turnover Tax (ABB).

The ABB applies on the importation of goods or on the delivery of locally produced goods by the producer. A limited deduction of ABB (paid at import) is applicable to producers who sell their products locally or who export them.

Services are taxed when they are rendered locally.

Rates are as follows:

- 8% (6% for Saba and St. Eustatius)
- Insurances: 9% (7% for Saba and St. Eustatius)
- Non fuel-efficient cars: 25%.

The different rates for Saba and St. Eustatius will be eliminated after 5 years.

- A nil rate applies to:
 - Goods that are not imported
 - Export by the producer
 - Depositing on bonded terms storage
 - Delivery to a bonded company, when intended for export
 - Very fuel-efficient cars.

A large number of exemptions are applicable.

TRANSFER TAX

The Transfer Tax (OVV) remains more or less unchanged, at a rate of 5%. For a subsequent transfer within 6 months, the OVV which has previously been paid is deducted.

OTHER TAXES

Stamp duties, Registration taxes and Sales taxes are abolished.

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CANADA

"A LOW-TAX PLAN FOR JOBS AND GROWTH"

On March 22, 2011, the Honourable Jim Flaherty tabled his sixth Budget as Minister of Finance. Shortly after the Budget was tabled, the government lost a confidence motion and a federal election was called for May 2, 2011. For any of the budget measures to be effective, the new government will have to reintroduce them.

The federal government predicts that it will have a deficit for the 2010-11 fiscal year of CAD 40.5 billion, down from the original forecast of CAD 49.2 billion in last year's Budget. The deficit for the 2011-12 fiscal year is projected to be CAD 29.6 billion. It now appears the Budget may be balanced by the 2014-15 fiscal year, as only a CAD 0.3 billion deficit is forecast. The government projections show a surplus for the 2015-16 fiscal year.

The Budget contained many targeted changes but no major changes in government policy. Personal tax changes were focused on specific issues and no general personal tax relief was provided. The same was true for the corporate changes announced. There were no GST or international tax changes.

The government closed some 'tax loopholes', announcing measures in relation to capital gains realized by minors on certain dispositions, individual pension plans, the donation of flow-through shares to charities and certain perceived RRSP abuses.

The following is a summary of the main measures.

PERSONAL TAX MEASURES

Tax credits

Several new tax credits were announced for various categories of individual, including family caregivers, volunteer firefighters and children's arts.

There will also be changes to some existing tax credits, including those in relation to children, tuition, education and medical expenses

Individual pension plans (IPPs)

The Budget proposes two new measures that will apply to IPPs. First, annual minimum amounts will be required to be withdrawn from IPPs, similar to the current Registered Retirement Income Fund minimum withdrawal rules, once the plan member attains the age of 72. This will apply to the 2012 and subsequent taxation years.

The second proposal relates to contributions made to an IPP for past years of employment. The proposal requires that contributions made to an IPP for past years of employment will be required to be funded first out of a plan member's existing RRSP assets or by reducing the individual's accumulated RRSP contribution room before new deductible past contributions can be made. This measure will generally apply to IPP past service

contributions made after March 22, 2011.

Tax on split income - capital gains

The Income Tax Act contains a number of rules intended to reduce the ability of a higher-income taxpayer to split taxable income with lower-income individuals. The Budget proposes to extend the tax on split income to include capital gains that are included in the income of a minor from a disposition of shares of a corporation to a person who does not deal at arm's length with the minor, if taxable dividends on those shares would have been subject to the split income tax. Capital gains that fall under the proposed rules will be treated as dividends, such that there will be no benefit from the capital gains exemption or the capital gains inclusion rates. This measure will apply to capital gains realized on or after March 22, 2011.

BUSINESS TAX MEASURES

Partnerships - deferral of corporate income tax

Under current tax rules, corporate partners of partnerships can defer taxes on the earnings from those partnerships by up to one year if the partnership has a different fiscal year end than its corporate partners. Under changes introduced in 1995, individuals and professional corporations were restricted from similar tax deferral opportunities. The Budget now proposes to limit these corporate deferral opportunities to ensure corporate income is subject to tax on a timely basis.

The proposed measures will apply to corporate taxation years that end after March 22, 2011. Corporations with significant interests in a partnership (a corporation that together with affiliated and related parties are entitled to more than 10% of the partnership's income) will now be required to accrue income from the partnership for the portion of the partnership's fiscal period that falls within the corporation's taxation year.

Because these proposed measures could result in significant additional incremental partnership income for the first corporate taxation year ending after March 22, 2011, transitional relief will allow the incremental amount to be taxed gradually over the next five years.

A partnership will continue to be allowed to have a fiscal period that differs from that of any of its corporate partners but as a result of these measures, some partnerships may wish to change their fiscal periods. Under certain conditions for partnerships where all members are corporations, a one-time election will enable a partnership to change its fiscal period. In addition, partnerships that are part of a tiered partnership structure will be required to have the same fiscal period but this fiscal period need not align with the taxation year of any of its corporate partners.

Temporary hiring credit for small business

A temporary credit of up to CAD 1,000 will be available to offset the increase in 2011 Employment Insurance (EI) premiums over those paid in 2010. This credit will be available to employers whose total EI premiums were at or below CAD 10,000 in 2010.

Manufacturing and processing sector: accelerated CCA

Machinery and equipment acquired by a taxpayer, after March 18, 2007 and before 2012, primarily for use in Canada for the manufacturing or processing of goods for sale or lease is currently eligible for a temporary accelerated capital cost allowance (CCA) rate of 50% on a straight line basis (subject to the 'half-year rule'). The Budget proposes to extend this temporary incentive for two years to eligible machinery and equipment acquired before 2014. Machinery and equipment acquired by a taxpayer after 2013 primarily for use in Canada for the manufacturing or processing of goods for sale or lease will be eligible for a declining balance CCA rate of 30%.

Clean energy generation equipment: accelerated CCA

Class 43.2 provides accelerated CCA of 50% per year on a declining balance basis for specified clean energy generation and conservation equipment. Class 43.2 was introduced in 2005 and is currently available for assets acquired on or after February 23, 2005 and before 2020. The Budget proposes to amend Class 43.2 to include equipment that is used by the taxpayer, or by a lessee of the taxpayer, to generate electrical energy in a process in which all or substantially all of the energy input is from waste heat. This measure will apply to eligible assets acquired on or after March 22, 2011 that have not been used or acquired for use before that date.

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UNITED STATES

NEW OVERSEAS VOLUNTARY DISCLOSURE INITIATIVE

The Internal Revenue Service announced a second Overseas Voluntary Disclosure Initiative (OVDI). The OVDI offers individuals and other entities including corporations, trusts and partnerships the opportunity to disclose unreported or under-reported offshore accounts or assets. Participation in the OVDI can avoid uncertain criminal or severe civil penalties.

The 2011 initiative, referred to as the '2011 Offshore Voluntary Disclosure Initiative (OVDI)' includes several changes from the 2009 Offshore Voluntary Disclosure Program, which expired in October 2009. The overall penalty structure for the 2011 initiative is generally higher than the 2009 program. The 2011 initiative provides a new penalty

initiative may request reconsideration of the resolution of their prior case.

A comprehensive set of frequently-asked questions was issued concurrently with the announcement. Available at www.irs.gov/businesses/international/article/0,,id=235699,00.html, the FAQs highlight the importance of covered individuals to consider the initiative as a way of avoiding potential criminal and severe civil penalties. The FAQs also describe who is eligible for the initiative and set forth the procedures for entering the initiative. The FAQs, along with other documents and forms related to the 2011 initiative, are available on the Service's Web site at www.irs.gov/newsroom/article/0,,id=235584,00.html.



framework that requires participants to pay a 25% penalty on the amount in the foreign bank accounts in the same year with the highest total balance covering the 2003 through 2010 time period, in addition to any unpaid taxes, interest, and accuracy-related penalties, by the August 31, 2011 deadline.

In certain instances, however, taxpayers may be eligible for a 5% or 12.5% penalty in lieu of the 25% penalty on the foreign bank account balance, where certain mitigating facts exist. The new 12.5% penalty will generally apply to taxpayers with offshore accounts or assets of USD 75,000 or less in any calendar year covered by the initiative. The 5% penalty generally may apply where taxpayers meet one of two mitigating scenarios, including taxpayers with effectively incidental ownership in the accounts (e.g., through inheritance) and minimal account activity, and taxpayers who are foreign residents who were unaware they were United States citizens. Taxpayers who participated in the 2009 program and who believe they would have qualified for the 5% penalty under the 2011

The FAQs also provide a procedure for taxpayers with no underreported income who have inadvertently missed certain foreign information returns, such as Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (the so-called FBAR Form); Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations; and Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, to submit the delinquent forms without penalty.

For those participating in the OVDI, a request must be made to be included in the program under a pre-clearance process with the IRS Criminal Investigation Unit. Then, upon receiving approval for acceptance, participants must: provide a package of information by August 31, 2011 that includes:

- Copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure;
- Complete and accurate amended federal income tax returns (for individuals, Form 1040X, or original Form 1040 if delinquent) for all tax years covered by the voluntary disclosure, with applicable schedules detailing the amount and type of previously unreported income from the account or entity;
- Complete and accurate original or amended offshore-related information returns;
- Cooperation in the voluntary disclosure process, including providing information on offshore financial accounts, institutions and facilitators, and signing agreements to extend the period of time for assessing tax and penalties;
- Payment of 20% accuracy-related penalties on the full amount of underpayments of tax for all years;
- Payment of failure to file penalties, if applicable;
- Payment, in lieu of all other penalties that may apply, including FBAR and offshore-related information return penalties, of a miscellaneous Title 26 offshore penalty, equal to 25% (or in limited cases 12.5% or 5%) of the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the period covered by the voluntary disclosure;
- Full payment of all tax, interest, accuracy-related penalty, and, if applicable, the failure to file and failure to pay penalties with the required submissions, or make good faith arrangements with the IRS to pay in full, the tax, interest, and these penalties; and
- A Closing Agreement on Final Determination Covering Specific Matters.

Taxpayers who are already undergoing a civil examination or a criminal investigation into their tax affairs will not be eligible to participate in the OVDI.

The IRS has stated that the OVDI represents "the last, best chance for people to get back into the system". The 2011 initiative presents an opportunity for taxpayers with unreported offshore assets and income to become compliant under a structured and certain penalty regime. For taxpayers with no underreported income who have inadvertently missed certain foreign information returns, such as FBAR, 5471, and 3520 forms, the 2011 initiative may allow for the penalty-free submission of any such delinquent returns.

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SOUTH AFRICA

BUDGET 2011 HIGHLIGHTS

The Minister of Finance presented the 2011 Budget on 23 February 2011. Some of the main taxation measures are summarised below.

CORPORATE TAX RATES

The corporate tax rate remains at 28%, and the secondary tax on companies (STC) rate remains at 10%.

The turnover level at which micro businesses become liable to pay turnover tax is increased from ZAR 100,000 to ZAR 150,000 from 1 March 2011.

On 1 April 2012 the STC will be replaced by a dividends tax, which, unlike STC, will be a withholding tax levied at shareholder level.

INTERNATIONAL COMPANIES

- A new withholding tax regime with regard to interest will be introduced in January 2013
- It is proposed that the taxation of offshore cell companies will be based on their substance as multiple-investment entities. This would result in income being imputed to the parties in control of each offshore cell
- The controlled foreign company legislation is to be refined, with the intention of focusing it on the prevention of passive income being moved offshore by South African residents.

PERSONAL INCOME TAX RATES

There will be bracket creep adjustments to the income tax tables for individuals, as well as an additional rebate of ZAR 2,000 per annum for taxpayers aged 75 or older. A taxpayer's age for income tax purposes is determined as at the last day in February of the relevant tax year. Thus, a taxpayer aged 75 or older as at 29 February 2012 will qualify for the additional rebate for the 2012 year of assessment.

RETIREMENT AND PROVIDENT FUNDS

- Legislation will be introduced to limit the amount that may be withdrawn as a lump sum from a provident fund. At present, 100% of the member's balance in a provident fund may be withdrawn as a lump sum. Pension funds and retirement annuity funds limit the lump sum withdrawal amount to one third of the member's balance
- The lump sum table, used to calculate the tax free portion of lump sums from pension, provident and retirement annuity funds will be adjusted to reflect an additional ZAR 15,000 as tax free. This table will take effect for lump sums received or accrued on or after 1 March 2011
- Employer contributions to retirement funds will, from 1 March 2012, be taxed as a fringe benefit in the hands of the employee. At present, employer contributions to pension and provident funds are not taxed as a fringe benefit.

Employers are currently allowed a deduction of up to 20% of the remuneration of the employee by way of employer contributions to medical aid, pension and provident funds. We believe that it is likely that the 20% limit above will be removed i.e. that all employer contributions to retirement funds will in future be allowed as a deduction (in the hands of the employer) but will be taxable as a fringe benefit in the hands of the employee. The employee will be allowed to deduct up to 22.5% of his or her contributions plus the employer contributions to pension, provident or retirement annuity funds. The maximum deduction is ZAR 200,000 per annum.

The 22.5% is derived from the present limits of 7.5% of the employee's remuneration from 'retirement funding employment' for employee contributions to pension funds and 15% of employee's income from 'non-retirement funding employment' for employee plus employer contributions to retirement annuity funds.

In the case of high earners, the ZAR 200,000 limit may act as a serious disincentive to save, and we are recommending that it be scrapped. We await the contents of the draft legislation in this regard.

GAINS OR LOSSES ON FOREIGN CURRENCY ASSETS AND LIABILITIES

The rules relating to gains and losses on the conversion of foreign currency assets and liabilities are to be scrapped.

BASE COST OF CAPITAL ASSETS ACQUIRED PRIOR TO 1 OCTOBER 2001

At present a taxpayer may use the market value of an asset at 1 October 2001, the time apportionment formula or 20% of the proceeds to determine the base cost of an asset acquired prior to 1 October 2001. Another method for determining the base cost of such assets may be introduced, and we await draft legislation in this regard.

CLOSURE OF DIVIDEND SCHEMES

Various schemes that rely on the fact that dividends are free from income tax will be closed.

TAX ADMINISTRATION BILL

The above Bill will be tabled in Parliament during 2011. The Bill has been the subject of criticism as it gives far-reaching powers to SARS officials.

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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 4 May 2011.

| Currency unit | Value in euros (EUR) | Value in US dollars (USD) |
|-----------------------------|----------------------|---------------------------|
| Euro (EUR) | 1.0000 | 1.4813 |
| Canadian dollar (CAD) | 0.7099 | 1.0517 |
| Chinese yuan renminbi (CNY) | 0.1039 | 0.1538 |
| Indian rupee (INR) | 0.0151 | 0.0223 |
| New Zealand dollar (NZD) | 0.5419 | 0.8027 |
| Pound sterling (GBP) | 1.1174 | 1.6554 |
| Singapore dollar (SGD) | 0.5504 | 0.8155 |
| South African rand (ZAR) | 0.1018 | 0.1507 |
| US dollar (USD) | 0.6750 | 1.0000 |



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