VECO TAX News

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ITALY/SINGAPORE

Bill on the ratification of the Additional Protocol to the Tax Treaty

On 24 February 2012 the Italian Council of Ministers presented a bill on the ratification and execution of the Additional Protocol to the Tax Treaty between Italy and Singapore.
The Protocol provides for a new formulation of the article on exchange of information, which is aligned to the OECD standards. In particular, under the new article a Contracting State cannot deny to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity.
The report accompanying the bill clarifies that the ratification of the Protocol will allow Singapore to be cancelled from the Italian "black lists" and to be included in the "white lists" still to be issued.

ITALY

New penalties for the illegal movements of cash across borders

The Decree Law n. 16/2012 tightened the penalties applicable to illegal movements of cash across national borders.
As a general rule, under the Legislative Decree n. 195/2008 any person entering or leaving Italy and carrying cash of a value of € 10.000 or more is obliged to declare it to the Italian customs.
Starting from 2 March 2012, the Decree Law n. 16/2012 increased the penalties for the violation of said obligation, as follows:
a) *seizure*. Seizure of non-declared cash can be executed within the limit of (i) 30% if the amount does non exceed € 10.000, and (ii) 50% in all other cases;
b) *fine*. Fine ranges, with a minimum amount of € 300, from 10% to 30% of non-declared cash if the amount does not exceed € 10.000, and from 30% to 50% in all other cases;
c) *cash settlement of the fine*. The fine can be settled by paying (i) 5% of non-declared cash if the amount does not exceed € 10.000 and (ii) 15%

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if the amount does not exceed € 40.000. Cash settlement is not allowed if non-declared cash exceeds € 40.000 or if another cash settlement occurred in the preceding five years.

PANAMA
Recent Tax Treaties

Treaty between Ireland and Panama

On 24 January 2012 Ireland ratified the Tax Treaty concluded with Panama.
Highlights of the Treaty include the following:
a) *dividends, interest and royalties*. The withholding tax on dividends, interest and royalties is levied at the rate of 5%;
b) *capital gains*. Capital gains realized on substantial participations (i.e. those attributing more than 25% of voting rights or share capital of a company) may be taxed in the Contracting State where the company is resident provided that the seller has held the participation for a period of less than 12 months prior to the alienation.
Capital gains realized upon the sale of (i) shares in real estate companies deriving more than 50% of their value from immovable property situated in a Contracting State or (ii) interest in a trust or a partnership deriving more than 50% of their value from immovable property situated in a Contracting State may be taxed in that State;
c) *elimination of double taxation*. Ireland applies the tax credit method whereas Panama applies the exemption method;
d) exchange of information. The article on exchange of information follows the OECD standards. However, the Protocol to the Treaty sets out measures aimed at preventing the so-called "fishing expeditions". Furthermore, the Protocol clarifies that the States are not obliged to exchange information on an automatic or spontaneous basis.

Treaty between Portugal and Panama

On 23 February 2012 Portugal ratified the Tax Treaty concluded with Panama.
Highlights of the Treaty include the following:
a) *dividends*. The withholding tax on dividends is levied at the rate of: (i) 10% if the beneficial owner of such dividends is a company owning at least 10% of the share capital of the distributing company and (ii) 15% in all other cases;
b) *interest and royalties*. The withholding tax on interest and royalties is levied at the rate of 10%;
c) *capital gains*. Capital gains from the alienation of shares may be subject to tax in the State of residence of the company provided that the shares represent at least 25% of the capital of that company. However, the tax so charged cannot exceed either 5% of the alienation value or 10% of the net amount of the gain.
Capital gains arising from the alienation of shares deriving more than 50% of their value from immovable property situated in a Contracting State may be taxed in that State;
d) *elimination of double taxation*. Portugal applies the tax credit method whereas Panama applies the exemption method;
e) *exchange of information*. The article on exchange of information follows the OECD standards. However, the Protocol to the Treaty sets out measures aimed at preventing the so-called "fishing expeditions". Furthermore, the Protocol clarifies that the State are not obliged to exchange information on an automatic or spontaneous basis.

Treaty between France and Panama

On 1 February 2012 the Treaty between France and Panama entered into force. The Treaty generally applies from 1 January 2013.
Highlights of the Treaty include the following:
a) *dividends*. The withholding tax is levied at the rate of (i) 5%, if the beneficial owner is a company owning at least 10% of the capital of the distributing company and (ii) 15% in all other cases;
b) *interest and royalties*. The withholding tax on interest and royalties is levied at the rate of 5%;

c) *capital gains*. Capital gains from the alienation of shares may be subject to tax in the State of residence of the company provided that the shares attribute at least 25% of the entitlement to profits of that company.
Capital gains arising from the alienation of shares deriving more than 50% of their value from immovable property situated in a Contracting State may be taxed in that State;
d) *elimination of double taxation*. France applies the tax credit method whereas Panama applies the exemption method;
e) *exchange of information*. The article on exchange of information follows the OECD standards. However, the Protocol to the Treaty sets out measures aimed at preventing the so-called "fishing expeditions". Furthermore, the Protocol clarifies that the States are not obliged to exchange information on an automatic or spontaneous basis.

Other Treaties

Panama is negotiating tax treaties with the following States: Austria, Hungary, United Arab Emirates, United Kingdom.
Furthermore, an agreement on exchange of information is under negotiation with Germany.

UNITED KINGDOM /LIECHTENSTEIN
Tax Treaty for the avoidance of double taxation

On 11 June 2012 the Tax Treaty between the United Kingdom and Liechtenstein was signed.
Highlights of the Treaty include the following:
a) *tax residence*. For the purposes of the application of the Treaty the following entities are deemed to be resident in Liechtenstein:
- the undertakings for collective investments in transferable securities (UCITS) regulated by the Act on Certain Undertakings for Collective Investment in Transferable Securities of 2011;
- the investment undertakings in real estate and other assets regulated by the Investment Undertaking Act of 2005;
- the foundation (Stiftung) or establishments (Anstalt) subject to tax under article 44(1) of the Law on National and Municipal Taxes of 2010.
On the other hand, private assets structures subject only to the minimum corporate tax are not deemed to be resident in Liechtenstein;
b) *dividends*. As a general rule, no withholding tax is levied on the distributions of dividends. However, a withholding tax applies at the rate of 15% in the case where dividends are paid out of income derived from immovable property by an investment vehicle which distributes most of this income annually and whose income (from the immovable property) is exempted from tax;
c) *interest and royalties*. No withholding tax applies on interest and royalties;
d) *capital gains*. The tax regime of capital gains follows the OECD Model. The only difference regards the sale of non-listed shares deriving more than 50% of their values from immovable property. In this case, capital gains are taxable only in the State where the immovable property is situated;
e) *exchange of information*. The article on exchange of information follows the OECD standards In particular, under such article, a Contracting State cannot deny to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity.

RUSSIA/CYPRUS
Protocol to the Tax Treaty

On 2 April 2012 the Protocol to the Tax Treaty between Russia and Cyprus entered into force.
The Protocol modifies the provisions of said Treaty as follows:
a) *dividends*. The Treaty provides for the application of the withholding tax at the rate of (i) 5%, if the minimum investment is at least equal to USD 100.00, and (ii) 15% in the other cases. The Protocol has changed the minimum

threshold (to benefit from the 5% withholding tax) from USD 100.000 to EUR 100.000, with effect from 1 January 2013;

b) *capital gains*. Under article 13 of the Treaty capital gains arising from the sale of movable assets may be taxed only in the State where the seller is resident. However, the Protocol provides that capital gains arising from the sale of share deriving more than 50% of their value from immovable property may be taxed in the State where the immovable property is located. This regime does not apply in the case of listed shares or where the sale of shares is part of a qualifying reorganization. The provisions of the Protocol should apply starting from 1 January 2017;

c) *exchange of information*. The article on exchange of information is aligned to the OECD standards;

d) *limitation of benefits*. Under this clause the Contracting States may agree to disallow the treaty benefits in the case where the main purpose or one of the main purposes is to obtain such benefits.

It is worth mentioning that, as a consequence of the Protocol entering into force, Cyprus is to be removed from the black list issued by the Russian Tax Authorities.

ITALY

Amendments to the exit tax regime

The Decree Law n. 1/2012 introduced some amendments to the exit tax applicable in the case where an Italian-resident company moves its tax residence abroad.

The old regime

Under article 166 of the Italian Tax Code the transfer of the tax residence out of Italy triggers the immediate taxation of capital gains accrued on assets of the relocating company, unless the assets remain part of a permanent establishment in Italy (of the relocating company). The exit tax is also applicable if the assets are subsequently taken away from the permanent establishment.

The exit tax regime was scrutinized by the European Commission (infringement procedure n. 2010/4141) and it was held to be in conflict with the European rules on freedom of establishment.

Moreover, the European Court of Justice express its view on the topic in the National Grid Indus case (C-371/10). The Court stated that national laws may tax capital gains accrued on company's assets until the transfer of residence whereas national laws are prevented from taxing such capital gains immediately, i.e. upon the transfer of residence.

The new regime

Under the new version of article 166, the transferring company may opt to defer the taxation of latent capital gains until the assets are effectively alienated or otherwise disposed of in the State where the company has moved its residence.

However, the new regime (i.e. option for deferred taxation) applies only to residence transfer in a Member State of the European Union (EU) or the European Economic Area (EEA), included in the Italian white list. Note that as for the transfer in an EEA member state, Italy must have concluded with that State an agreement concerning the mutual assistance for tax credit recovery similar to what provided by the Council Directive 2010/14/EU.

From a practical standpoint, the new regime entails that:

a) upon the transfer of residence, the company has to determine the taxable base (i.e. the difference between the market value of the assets transferred and their tax values);

b) upon the alienation of said assets, the company has to pay in Italy the taxes as calculated upon the transfer of residence.

The new regime applies to the transfer of residence occurred starting from 24 January 2012.

The implementation rules will be laid down in a Decree to be issued by the Italian Ministry of Finance.