VECO TAX News

Periodic update report published by Veco Group SA
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CHINA/THE NETHERLANDS

New Tax Treaty

On 31 May 2013 the Tax Treaty between China and the Netherlands was signed. The treaty, which also applies to the Caribbean part of the Netherlands (i.e. Bonaire, Saba and St. Eustatius), generally follows the OECD Model.

Highlights of the treaty include the following:

a) dividends. The withholding tax is set at the rate of 10%. However, the rate is reduced to 5% if the receiving company is an entity (not being a partnership) that owns directly at least 25% of the capital of the company paying the dividend. The rate is lowered to 0% if the dividends are paid to the government or to a governmental institution;

b) interest. The withholding tax is set at the rate of 10%. However, the rate is 0% for interest on loans guaranteed or insured by the government or the Central Bank;

c) royalties. The withholding tax is set at the rate of 10%. The definition of royalties include, in particular, films, tapes for radio and video broadcasting. However, the reduced rate of 6% applies on royalties for the use of industrial, commercial and scientific equipment;

d) capital gains. Capital gains derived by a resident of a contracting State from the alienation of shares in an entity resident in the other contacting State may be taxed in that other contracting State if the recipient owned a participation of at least 25% in the capital of that entity at any time during the 12 months preceding the alienation This provision does not apply to the alienation of shares registered at a recognized stock exchange if the alienated shares are not more than 3% of the registered shares;

e) permanent establishment. The furnishing of services, including consultancy services, by an enterprise through employees or other personnel constitutes a permanent establishment only if the activities continue within a contracting State for a period or periods aggregating more than six months within any 12-month period;

f) elimination of double taxation. China applies the credit method for the avoidance of double taxation. In addition, China grants a credit for the underlying corporate income tax if the dividends are derived by a Chinese company owing at least 20% of the shares of the Dutch company paying the dividends. The Netherlands applies both the credit and

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the exemption with progression method.
The article on the exchange of information follows the OECD standards.
The treaty contains an anti-abuse provision under which the reduced withholding tax on dividends, interest and royalties does not apply if the main or one of the main purposes was to take advantage of the treaty. In any case, the contracting States may continue to apply their domestic anti-abuse provisions, insofar as they give to the taxation contrary to the treaty.

RUSSIA

Application of Tax Treaties

In 2013 the Russian Ministry of Finance provided some guidelines on the application of some tax treaties concluded by Russia.

1. Russia/Luxembourg Treaty: interest payments

On 11 July 2013, the Ministry of Finance addressed the tax regime applicable to interest paid to a non-related Luxembourg resident.
According to article 11 of the treaty, interest arising in Russia and paid to a Luxembourg resident can be taxed only in Luxembourg.
The Ministry of Finance clarified that interest payments may benefit from tax exemption in Russia provided that the Luxembourg resident submits to the Russian payer a certificate confirming his tax residence in Luxembourg.
To this regard, it should be noted that the certificates of tax residence issued by foreign authorities need be apostilled, unless otherwise provided for in the tax treaties concluded by Russia.

2. Russia/Austria Treaty: dividends distributions

On 8 April 2013, the Russian Ministry of Finance addressed the tax treatment applicable to dividends distributions.
Pursuant to article 10 of the tax treaty, dividends paid by a Russian company can be subject to the reduced withholding tax of 5% provided that the receiving company holds directly at least 10% of the capital of the paying company and the participation exceeds USD 100,000 or an equivalent amount in any other currency.
In the case under analysis, the nominal value of the shares held by the Austrian shareholder in the Russian company was less than USD 100,000. The fact that the acquisition costs for such shares exceeded USD 100,000 was held irrelevant.
Therefore, the Ministry of Finance concluded that the reduced withholding tax rate applies only if the nominal value of the shares held in a Russian company is at least USD 100,000, irrespective of the acquisition costs of the shares.

3. Russia/UK Treaty: partnerships

On 7 February 2013, the Ministry of Finance clarified whether a limited liability partnership (LLP) incorporated under the UK legislation may be considered a person for the purposes of the tax treaty.
Article 3 of said treaty specifies that the term "person" comprises an individual, a company and any other body of persons, but does not include a partnership.
Therefore, the Ministry of Finance concluded that, as long as the UK partnership does not qualify as a person for treaty purposes, the partnership may not claim the treaty benefits. However, the treaty may cover the members of the partnership provided they qualify as persons under the treaty and they are tax residents in the UK.

MALAYSIA/ HONK KONG

Tax Treaty

On 28 December 2012 the tax treaty between Malaysia and Hong Kong entered into force. The agreement generally applies from 1 January 2013 for Malaysia and from 1 April 2013 for Hong Kong.
Highlights of the treaty include the following:
a) dividends. The withholding tax is set at the rate of: (i) 5% if the beneficial owner is a company (other than a partnership) which holds, directly or indirectly, at least 10% of the capital of the company paying the dividends and (ii) 10% in all other cases;

b) interest. The withholding tax is levied at the rate of 10%. No withholding tax applies if interest is paid or credited to the government or other governmental institution;
c) royalties. The withholding tax applies at the rate of 8%;
d) technical fees. Fees for technical services are subject to a withholding tax of 5%. The term "technical fees" includes payments of any kind to any person, other than to an employee of the person making the payment, in consideration for any services of a technical, managerial or consultancy nature;
e) capital gains. Gains arising from the alienation of shares of a company deriving more than 50% of its value from immovable property situated in a contracting State may be taxed in that other State. However, this rule does not apply to gains derived from the alienation of shares (i) quoted on such stock exchange as may be agreed btween the contracting States, or (ii) alienated or echanged in the framework of a reorganisation of a company, or (iii) in a company deriving more that 50% of its value from immovable property in which it carries on its business.
As for the elimination of double taxation, both Malaysia and Hong Kong adopt the credit method.

BRASIL

Reporting requirements/rural property

Normative Instruction 1,391/2013, published in the Official Gazette of 5 September 2013, provided some changes to the reporting requirements concerning cross-border transactions.
As of 2002, Brazil has introduced the obligation to provide information on transactions with non-residents involving services, intangibles and any other operation with an impact on the equity of resident persons.
Such transactions must be declared in the Integrated System of Foreign Service Trade (SISCOSERV); the information reported to the system can be used by the different authorities in Brazil in order to define public policies and management mechanisms with a view to supporting Brazilian exports of services and intangibles.
The main changes introduced by Normative Instruction 1,391/2013 are the following:
a) individuals resident in Brazil are not obliged to submit information concerning cross-border transactions if they do not exceed the monthly amount of USD 30.000 (previously USD 20.000);
b) the deadline for providing information on cross-border transactions is set at the last business day of the subsequent month to date when the provision of services, the commercialization of intangibles or the transaction with an impact on the equity of persons started. As an exception, the deadline is set:
a) until 31 December 2013: at the last business day of 6th month following the date of the reportable transaction;
b) from 1 January 2014 to 31 December 2014: at the last day of the 3rd month following the date of the reportable transaction.
If the transactions are not reported within the deadlines established by the applicable regulations, penalties may apply ranging from BRL 500 (in relation to a delay in reporting the transaction) to 0.2% of the amount invoiced (in situations where the information is inaccurate or incomplete).

2. Procedure to acquire rural property

Normative Instruction 1,396/2013 issued by the National Institute for Land Settlement and Agrarian Reform regulated the procedure applied to non-residents who need to obtain authorization for acquiring rural property. Under the new regulations:
a) the Ministry of Agrarian Development must approve the acquisition project once the competent federal agency has issued its opinion;
b) in order to obtain the authorization, the applicant must file the following supporting documentation:
- a statement of proportionality between the amount of land to be acquired and the size of the project;
- a physical and financial schedule of the investment and the implementation;

- the use of public loans for funding the project, if any;
- the logistic feasibility for implementing the project, and in the case of an industrial project, the compatibility between the location of the factory and the geographic location of the land;
- the compatibility with the criteria for Ecological Economic Zoning of Brazil (ZEE) regarding the location of immovable property, if any;

c) Brazilian legal entities with participation of non-residents must apply for the authorization.

ARGENTINA

Taxation of capital gains and dividends/New tax heaven list

1. Taxation of capital gains and dividends

On 23 September 2013, the Law n. 26,893 which provides amendments to the Income Tax Law was published in the Official Gazette. The law introduced some changes to the tax regime of capital gains and dividends.

1. Capital gains. As from 23 September 2013, capital gains derived by non-residents on financial investments are subject to tax.

Under the new provisions, capital gains may arise from the sale or transfer of:

a) shares, quotas and any other participation in the capital of Argentine-resident companies;

b) bonds;

c) commercial papers;

d) securities issued by an Argentine-resident entity.

Bonds and treasuries issued by the government (whether federal, provincial or municipal) are in principle covered by the new rules, but normally exempt by its law of creation.

The tax on capital gains is levied at the effective rate of 13.5% (i.e. 15% on 90% of the securities' selling price).

As for the payment of the tax, when the transaction takes places between two non-residents, the acquirer of the assets is deemed to be the taxpayer and bears the tax burden.

Furthermore, under the new provisions, effective as of 23 September 2013, dividends and profit distributions are subject to tax when derived by resident or non-resident taxpayers. The tax is final and applies at the rate of 10% on the gross amount distributed.

The new provisions apply to dividends and profits distributed by the following entities:

a) joint-stock companies (*sociedades anónimas*);

b) limited liability companies (*sociedad de responsabilidad limitada*);

c) civil law trusts (*fideicomisos*);

d) mutual and investment funds (*fondos comunes de inversion*);

e) permanent establishments of non-residents;

f) entities known under domestic law as *sociedades en comandita simple*, *sociedades en comandita por acciones*, *asociaciones civiles, fundaciones*.

2. New tax heaven list

On 30 May 2013, the Argentine Government issued the decree 589/2013 establishing a new criterion to define when a country or jurisdiction is considered a "low or nil-tax country" (i.e. a tax heaven) for Argentine tax law purposes.

The decree repeals the former list of 87 countries and empowers the federal tax authorities to establish a new list, which will include the jurisdictions that will be considered as "*co-operators for purposes of fiscal transparency*".

The new paradigm is defined by cooperation and the willingness to exchange information, irrespective of the level of taxation.

A list of the uncooperative countries and jurisdictions will be published on the website of the tax authority (AFIP) and will be regularly updated. Those countries that have entered into tax information exchange agreements or a tax treaty with an exchange of information clause will in principle be deemed cooperative. The decree will become operational once the new list is available at the AFIP´s website.