



VECO TAX *News*

Periodic update report published by Veco Group SA
Via Lavizzari 4, CH-6900 Lugano • tel. +41 91 911 71 11 • fax +41 91 923 94 19
Web site: www.vecogroup.ch Email: info@vecogroup.ch

SWITZERLAND/ CHINA

New tax treaty

On 25 September 2013, China and Switzerland signed a new tax treaty for the avoidance of double taxation, which will replace the current agreement signed in 1990. The new treaty still needs to be ratified by both countries before it can come into force. The main features of the treaty include the following:

- a) dividends.* For companies with a direct shareholding of at least 25%, the dividend withholding tax rate is reduced to 5% from the current 10% rate. Shareholders that do not qualify for the 5% treaty rate may still benefit from a reduced withholding tax rate of 10%;
- b) interest.* The withholding tax on interest payments remains at 10%;
- c) royalties.* The withholding tax rate on royalty payments is decreased from 10% to 9%. It should be noted, however, that the protocol to the existing treaty provides for an effective withholding tax rate of 6% for royalties that are paid for the use of, or the right to use, any

industrial, commercial or scientific equipment. This has been eliminated under the new treaty;

d) capital gains. Capital gains arising from the disposal of shares may be taxed in the state where the company whose shares are being sold is resident, provided the recipient of the gain has held, directly or indirectly, an interest of at least 25% in the capital of that company during the 12-month period preceding the disposal, or the company derives more than 50% of its value directly or indirectly from immovable property situated in the state of residence of the company whose shares are alienated.

The existing treaty is more favourable as a capital gain is only taxable in the country of which the alienator is a resident, unless the company being disposed of derives more than 50% of its value directly or indirectly from immovable property situated in the state in which that company is resident.

The article on exchange of information is in line with the OECD standards. The protocol to the treaty does not the contracting States to engage in “fishing expeditions” or to request information that is

IN THIS EDITION

SWITZERLAND/CHINA

New tax treaty

1

UNITED ARAB EMIRATES *New rules on tax residence certificate*

New Abu Dhabi financial free zone

2

ITALY *New rules on transfer of immovable properties*

2

LUXEMBOURG *Bill on patrimonial foundations*

3

unlikely to be relevant to the tax affairs of a given taxpayer. As for the anti-avoidance rules, the new treaty adds a new article specifying that domestic laws and measures concerning special adjustments of taxation still apply. In addition, the treaty provisions on dividends, interest and royalties may not apply if the main purpose

the arrangements is to take advantage of the treaty benefits.

UNITED ARAB EMIRATES

1. New rules on tax residence certificate

The Ministry of Finance of the United Arab Emirates (UAE) has changed the rules for obtaining a tax residence certificate as follows:

- to apply for the certificate, a company must have been in existence for at least 3 years;
- the Ministry can issue the certificates retrospectively. For example, for a company incorporated in 2013, the Ministry in 2016 can issue the certificate for 2013, 2014 and 2015;
- companies are required to provide audited accounts and a lease agreement.

Generally, the Ministry will issue tax residence certificates only to companies registered in either mainland UAE or one of the Free Trade Zones (FTZ) that have signed a memorandum of understanding with the Ministry. These FTZs (i.e. Jebel Ali Free Zone, Dubai International Financial Centre and Fujairah Free Zone) are committed to require certain substance from their companies.

Therefore, in order to obtain a tax residence certificate, the entities established in the FTZs will need to provide annual

audited financial statements or, for newly set up companies, the half-year accounts or an office lease of six months or more.

If the above requirements are not met, the Ministry may consider issuing a tax residence certificate to a company on a case-by-case basis.

2. New Abu Dhabi financial free zone

The Federal Government has announced that it will establish a new financial free zone in Al Maryha Island, called the “Abu Dhabi World Financial Market”. The aim is to promote Abu Dhabi as a leading global market, develop the economic environment, attract financial investment and contribute to international financial services.

The financial free zone will provide foreign investors with 100% ownership, with no requirement for a local sponsor or agent, a guaranteed tax holiday/exemption for 50 years, and ease of capital repatriation.

The licensing categories and permissible operations in the financial free zone are expected to have restrictions similar to those of other Free Trade Zones.

The new financial free zone is scheduled to be open by 2015.

ITALY

New rules on transfer of immovable properties

The Law Decree n. 104 of 12 September 2013 (the “Decree”) introduces some amendments to the taxation of transfer of immovable properties. The tax regime had been already modified by the Legislative Decree n. 23 of 14 March 2011; the Decree of 2013 makes some further changes to the legislative framework, with effect from 1 January 2014.

Registration tax

For the purposes of registration tax, the transfer of immovable properties will be subject to the following rates:

- 2%, in the case of immovable properties qualifying as first dwelling;
- 9%, in all the other cases.

In any case, the amount of registration tax cannot be lower than Euro 1.000.

The aim of above changes is to simplify the current legislative framework, which provides for rates ranging from 3% to 15%. For example, the new rate of 9% will apply to the transfer of:

- building land, currently subject to the rate of 8%;
- agricultural land, currently subject to the rate up to 15%;
- buildings, currently subject to the rate of 7%.

As for the first dwelling, the current rate of 3% will be reduced, from 1 January 2014, to 2%.

In addition, the Decree changes the criteria for identifying the luxury properties that cannot benefit from the reduced 2% rate. Indeed, under the new rules, reference is made to the properties that are classified in

the cadastral categories A1, A8 and A9 (i.e. mansions, villas and castles) whereas under the current rules reference is made to the criteria laid down in the D.M. 2 August 1969.

Amendments to the mortgage and cadastral taxes

The Decree makes some changes also to the mortgage and cadastral taxes.

Indeed, the Decree provides that the transfer of immovable properties, that are subject to the proportional registration tax (2% or 9%), are exempt from the stamp duty whereas the mortgage and cadastral taxes apply at the fixed rate of Euro 50 for each tax.

The new fixed rate will replace the current proportional rates, which are levied at the standard aggregate amount of 3%.

For example, under the current rules, the sale of a residential property, made by an individual, is subject to (i) the registration tax, at the rate of 7%, and (ii) the mortgage and cadastral taxes at the aggregate rate of 3%.

As of 1 January 2014, the same sale will be subject to the registration tax at the rate of 9% whereas the mortgage and cadastral taxes will be levied at the fixed aggregate amount of Euro 100.

It is worth mentioning that the new fixed rate will apply only upon the condition that the transfer of immovable properties is subject to the proportional registration tax of 2% or 9%.

In all the other cases, the ordinary rules will apply. Thus, in the case of transfer of

a commercial property, made by a VAT subject, registration tax will be levied at the fixed rate, and, as a result, mortgage and cadastral taxes will apply at the proportional rates (4% in the case at the hand).

Increase of the fixed rate for the registration tax, the mortgage and cadastral taxes

The Decree amends the amount of fixed rate for the registration tax, the mortgage and cadastral taxes.

The current rate of Euro 168 will be increased, from 1 January 2014, to Euro 200. The increase is general as it affects any deed that must be registered with the Italian tax authorities (i.e. corporate documents, preliminary agreements, acceptance of succession).

The above increase does not affect the deed that are subject, by express provisions of the law, to a different fixed rate; therefore, as explained above, in the case of transfer of immovable properties, which are subject to the registration tax at the proportional rate of 2% or 9%, the mortgage and cadastral taxes will be levied at the fixed rate of Euro 50 (for each tax).

LUXEMBOURG

Bill on patrimonial foundations

On 22 July 2013 the Minister of Finance has deposited the draft law n° 6595 on patrimonial foundations.

The aim of this draft law is the introduction into Luxembourg

law of an orphan structure, called “patrimonial foundation”, which completes the array of existing corporate or contractual vehicles commonly used in the areas of patrimonial and inheritance structuring and planning. It can be used as an instrument to avoid the dissipation of a private fortune at the death of one of the family members, as well as ensuring the continuity in the management of a family business since it enables the dissociation of the economic ownership of the family fortune from the management of the family business.

The patrimonial foundation is incorporated by a special notarial deed that is to be published in the Official Gazette (Mémorial C) and extracts have to be deposited with the Register of Commerce. It is to be managed by one or more directors (individuals or corporate entities), who are responsible towards the foundation for the execution of the mandate they have received and for the faults committed in their management function.

The foundation may issue registered certificates linked to assets it owns and representing rights defined in the incorporation act or other documents, to any individual or patrimonial entity acting in the scope of wealth management of one or more individuals.

The patrimonial foundation has to keep its own bookkeeping and must establish annual accounts, but the latter are neither filed with

the Register of Commerce, nor are they published.

The draft law also defines the tax regime applicable to the patrimonial foundations. As regards indirect taxes, the fixed registration duty of EUR 12 applies to the transfer of assets by a transferor to a patrimonial foundation as well as the transfer of assets by the patrimonial foundation back to the transferor. In order not to create a disparity of treatment between the transfer of assets from a private wealth as compared to the transfer of assets from a patrimonial foundation, it is foreseen that the transfers made by the foundation are subject to registration duties at similar rates as those normally applicable in the cases of donation or inheritance. Any transfer to a beneficiary made at a time where the founder is alive is hence taxed at the rate that would have been applied if the donation was made directly by the founder to the beneficiary.

At the death of the Luxembourg resident founder, all net assets (after deduction of liabilities) are subject to registration tax at a rate of 40%. This rate is reduced to 0% for net assets transferred to the spouse of the founder, his/her partner and his/her direct ascendant or descendant. It is furthermore reduced to 12% for certain categories of relatives of the founder.

The aforementioned rates also apply at the death of a non-resident founder, whereby the registration tax is only levied on the estimated net market

value (after deduction of liabilities) of any real estate located in Luxembourg.

The issuances to any person, except for the founder, of certificates related to Luxembourg real estate by a patrimonial foundation, as well as the transfer of such certificates, are subject to registration duties applicable to donations.

As regards direct taxes, the draft law considers the patrimonial foundation as autonomous taxpayer liable to corporate income tax. The income generated by the foundation is treated as commercial income from a tax perspective. Hence it is also subject to municipal business tax, but the patrimonial foundation is exempt from net wealth tax.

Certain types of income should be tax exempt at the level of the patrimonial foundation: any income derived from capital in the sense of article 97 of the Income Tax Law ("ITL"), capital gains realized upon the sale of such assets generating income in the sense of article 97 ITL and capital gains realized upon the sale of movable assets insofar as the sale takes place more than 6 months after the acquisition. As well as the above, capital and the redemption value received pursuant to an individual long-term savings, disability or life insurance policy should also be tax exempt at the level of the patrimonial foundation. On the other hand, realized and unrealized losses, as well as foreign exchange losses on

such assets are not tax deductible.

Any tax withheld upon Luxembourg sourced income cannot be reimbursed.

Hence, the transfer of assets into a patrimonial foundation is treated as a transfer for consideration which must be valued at the estimated realization value.

Consequently, depending on the asset at stake (e.g. major shareholding or real estate), the transfer could trigger taxation at the level of the transferor. Payments made, or fringe benefits granted, by a patrimonial foundation to its founder, or beneficiaries, are assimilated to capital gains benefitting from a 50% exemption.

Any sale of assets by the foundation to an individual, who is either a beneficiary or a certificate holder or the founder himself, is done at book value so as to ensure tax neutrality on such transactions. Any sale to a person, who is neither a beneficiary nor a certificate holder nor the founder, has to be done according to normal rules.