Welcome to the second issue in 2012 of Moore Stephens European Tax Brief. This newsletter summarises important recent tax developments of international interest taking place in Europe and in other countries within the Moore Stephens European Region. 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. European Tax Brief is published quarterly by Moore Stephens Europe Ltd in Brussels. If you have any comments or suggestions concerning European Tax Brief, please contact the Editor, Zigurds Kronbergs, at the MSEL Office by e-mail at zigurds.kronbergs@moorestephens-europe.com or by telephone on +32 (0)2 627 1832.

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Denmark

Restriction on use of tax losses

With effect for accounting periods beginning after 30 June 2012, Danish companies face a limitation on the amount of losses brought forward that they may set off against the profits of following years.

Previously, there was no limitation on the amount of a loss brought forward from a previous year which a company could set off against profits. Under the new rules, however, after set-off of the first DKK 7.5 million, any remaining set-off will be limited to 60% of the balance of profits. Thus if a company has DKK 12 million of losses brought forward and DKK 10 million of profits in year 0, the maximum set-off for that year will be DKK 7.5 million + (DKK 2.5 million x 60%) = DKK 9 million. The remaining DKK 3 million of losses may be carried forward to year 1 and beyond. In a jointly taxed group, the DKK 7.5 million applies to the group as a whole.

Other measures enacted in the same legislation include:

- The introduction of joint and several liability for companies in a group subject to mandatory joint taxation.
- Companies sustaining an average operating deficit for a minimum of four previous years and carrying out transactions with affiliated entities in jurisdictions that are outside the European Economic Area and do not have a tax treaty with Denmark may be required to obtain an independent auditor’s certificate that the transactions detailed in their transfer-pricing documentation have genuinely been on arm’s length terms.

European Union

Exit tax proceedings against United Kingdom initiated

The European Commission has given the United Kingdom formal notice that it is initiating infringement proceedings in connection with ‘exit tax’ (see also below and under Norway in this issue).

Following the National Grid Indus case (C-371/10 – see European Tax Brief, Volume 1 Issue 4, December 2011), it is now clear that, although European law does not preclude the imposition of an exit tax on companies moving their tax residence from one Member State to another, the rules must, inter alia, provide companies with an option to defer tax on unrealised gains. The exit tax, it will be recalled, deems emigrating companies to have disposed of those assets that are being removed from the tax jurisdiction of the home state, whether or not there is an actual disposal. Those assets with a market value greater than their base cost but remaining in the company’s ownership thus give rise to unrealised gains.

The United Kingdom’s exit tax, imposed by section 185 of the Taxation of Chargeable Gains Act (TCGA) 1992, does provide for deferral under section 187 TCGA 1992, but only where the emigrating company remains a 75% subsidiary of a UK-resident parent company.

In the event that the United Kingdom does not respond to the Commission’s notice in a way considered adequate, the Commission may bring a case before the Court of Justice of the European Union.

Exit-tax case against Portugal proceeds

Meanwhile, the Commission’s case against the Portuguese corporate exit tax (Commission v Portugal, Case C-38/10) has been heard, and the Advocate-General has issued his opinion.

Not surprisingly, the Advocate-General opines that, by not allowing for any deferment on unrealised gains, the Portuguese legislation is in breach of European law.

The judgment of the Court in due course is unlikely to differ.
VAT rules on vouchers may be harmonised

On 10 May 2012, the European Commission announced that it would be proposing amendments to the VAT Directive (2006/112/EC) to harmonise the treatment of vouchers, such as prepaid telecommunications cards.

The market in vouchers across the European Union is apparently worth over EUR 52,000 million each year. In the absence of common rules, Member States have developed their own practices, which frequently cause problems for businesses and VAT collection when used cross-border.

The proposed new rules would provide a definition of what constitutes a voucher for VAT purposes and clarify the point of taxation for voucher transactions. Currently, some vouchers are taxed at the point of sale and others at the time of redemption, and rules for the same voucher may differ from state to state. Under the harmonised rules, the point of taxation would be determined by the nature of the voucher, and a clear distinction would be drawn between vouchers and other means of payment, such as mobile payment services. The rules will also deal with chain transactions, the right of deduction, redemption and reimbursement procedures, the person liable for payment of the tax and other obligations.

The Commission intends that the new rules would have effect from 1 January 2015.

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France

Transferring activities abroad without consideration

A case currently before the Appeal Court of Paris (Cour d’Appel de Paris) will determine whether the transfer of an activity abroad for no consideration does indeed give rise to a tax charge as an indirect transfer of profits.

A lower court – the Administrative Court of Paris (Tribunal Administratif de Paris) – held last year that the transfer by a French member of the well-known Nestlé Group of group cash-pooling activities to a related Swiss company for no consideration gave rise to a charge to corporate income tax on the income deemed to have been lost by the French company and to dividend withholding tax on the deemed dividend.

If the Appeal Court upholds this judgment, all elements of cross-border restructuring lacking full consideration for the transfer will potentially give rise to a tax charge on the transferring entity.

The facts of the case are that until 2002, Société Nestlé Finance France, a French company in the Nestlé Group, carried out the cash-pooling function solely for the benefit of the European group companies on a purely administrative basis. That year, the function was transferred to another member of the group, Nestlé Treasury Centre Europe, a company resident in Switzerland. No consideration was paid to the French company.

The French tax authorities assessed Nestlé Finance to tax on the grounds that the transfer of valuable intangible (or, indeed, also tangible) property to an affiliate for no consideration amounts to a transfer of profits; those profits consisting in this case of the interest-rate spread. The authorities quantified the missing consideration for the transfer to be 0.5% of the average value of cash managed.

The company asserted that the cash-pooling function was a purely administrative activity from which it derived no profit for itself.

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The court, however, upheld the assessment, but reduced the amount to take account of the actual spread the company had earned.
New Government’s budget

As the opinion polls had consistently predicted since last summer, the French presidential election resulted in a defeat for the incumbent, Nicolas Sarkozy, at the hands of the Socialist Party candidate, François Hollande. M Hollande’s victory was followed by the parliamentary elections in June, which provided the Socialist Party with an absolute majority in the National Assembly.

With a new President and government, the previous administration’s planned tax increases (chiefly, the increases in VAT) have been abandoned or revised in favour of the new administration’s priorities.

The new draft Budget bill has been approved by the Cabinet and was due to be debated by the National Assembly as we went to press. As it stands, the chief measures include the following:

- The rate of the financial transaction tax due to be introduced on 1 August on the acquisition value of shares in publicly traded companies with a market capitalisation of over EUR 1000 million is doubled and will now be 0.2%.
- The rate of the systemic-risk tax on banks is also to be doubled, rising to 0.5%. The tax is levied on the minimum equity the banks are required to maintain under the prudential rules of the Monetary and Financial Code.
- A one-off tax of 4% on stocks of petroleum products will be imposed.
- The VAT rise planned by the Sarkozy government for 1 October is not to go ahead, so the standard rate of VAT will remain 19.6%.
- Rental income and capital gains from holiday homes and other non-principal residences owned by non-residents will be made subject to the social security charge (prélevement social), from which they have previously been exempt. This would involve an increase from 20% to 35.5% in the tax rate on rental income and an increase from 19% to 34.5% in the rate of capital gains tax. However, under European law, it is questionable whether non-residents, especially those who are already subject to the social security systems of their home state, can be required to pay social security contributions in France.

It has also been confirmed that there will be increases in inheritance and gift tax and that the wealth tax changes introduced by the previous Government (see European Tax Brief, Issue 2, July 2011) will be scrapped. This means that the previous six-rate structure, with a threshold of EUR 800,000, will be reinstated.

Parliamentary approval for the full package is expected by the end of July. The new Government has also announced that it will introduce a further bill with tax changes (among others an additional income tax rate of 75% for taxable incomes in excess of EUR 1 million and an increase in corporate income taxes) in September/October 2012. A fuller report on the new measures will appear in the autumn issue of European Tax Brief.

Germany

Customers must certify receipt of intra-Community supplies

In response to concerns expressed by German and foreign businesses, the Ministry of Finance has published new draft guidelines for the so-called Gelangensbestätigung, the proof of receipt of an inter-Community supply for VAT purposes. As the guidelines are not binding on the courts and in some instances contradict the law, the Ministry of Finance announced by letter of 1 June 2012 that it would not apply the new rules until the law itself is amended.

Since 1 January 2012, the EU-based customer of a German supplier of goods has had, in principle, to confirm receipt of those goods on a special form (called an ‘entry certificate’ in the English version) for the German supplier to be able to claim zero-rating (exemption from VAT with credit) for that supply.
The certificate must state:
• the name and address of the customer;
• the quantity and description/name of the goods including identification number for cars;
• the date and place of receipt of the goods (if self-transport date and place at the end of transportation); and
• the date on which it is given and bear the signature of the customer.

The supplier must be able to produce this proof of receipt from his customer, together with a copy of his invoice. If the invoice is issued prior to the delivery or before the certificate has been received, the supplier should charge VAT on the invoice and issue a correction subsequently. Previously, as in most other Member States, it was sufficient for the supplier to provide proof (in the form of transport documents etc) that the supply had been made.

The draft guidelines propose some simplifications and relaxations, but the basic principle requiring action by the customer will not be abandoned.

Guernsey
Deemed-distribution rule abolished

Guernsey has abolished its deemed-distribution rules applying to resident shareholders, with effect from 1 January 2013.

Most Guernsey companies enjoy a 0% rate of corporation tax, but resident shareholders of those companies are liable to income tax at 20% not only on dividends they actually receive from such companies but also from dividends or distributions that they are deemed to receive. These deemed distributions are of two kinds. The shareholder’s share of the company’s investment income is taxed as it arises, whereas the corresponding share of trading income is taxable on the occurrence of certain events, such as death or emigration from the island. Non-resident shareholders are not liable to Guernsey tax on such occasions and neither is there any withholding tax on dividends they actually receive.

Because this régime is discriminatory against residents, it was considered unacceptable under the European Commission Code of Conduct. Although Guernsey is not within the European Union, it is a Crown Dependency of the United Kingdom, which is. In order to be compliant with the Code, Guernsey has therefore decided to repeal the deemed-distribution régime.

It is thought that the lost revenue will be recouped by increasing the scope of the 10% corporation tax currently payable by banks and financial institutions on some of their income.

Hungary
Small business measures announced

As part of an action plan to save jobs, a series of tax concessions, mostly intended for small businesses, were unveiled on 2 July 2012.

The measures include the following:
• a 50% exemption from social security contributions payable in respect of workers aged between 25 and 54 in positions requiring no qualifications;
• sole entrepreneurs and partnerships with a turnover of less than HUF 6 million per annum may opt for a new lump-sum tax on micro-businesses. In return for payment of a fixed HUF 50 000, these businesses will be exempted from corporate income tax, individual income tax and social security contributions payable in respect of employees aged between 25 and 55 and workers in positions requiring no qualifications on a monthly gross salary of no more than HUF 100 000;
• a 50% exemption from social security contributions payable in respect of workers aged between 25 and 54 in positions requiring no qualifications;
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taxes. If the business activity is carried on as a secondary activity, the lump-sum tax is HUF 25 000. Qualifying businesses will be relieved from preparing income statements (profit and loss accounts) but will be obliged to keep invoices;
- small and medium-size businesses with fewer than 25 employees may opt for a new small-business tax replacing the corporate income tax, individual income tax on sole entrepreneurs, vocational training contributions, the health contribution on dividends and social security tax. This tax will be charged at 16% on taxable income increased by payroll costs;
- employers employing female workers after their maternity leave or workers registered as long-term unemployed persons, on a monthly gross salary of no more than HUF 100 000, will be relieved from social security contributions in respect of those workers for the first two tax years of employment. In the third year of employment, social security contributions will be due at half the normal rate;
- taxable persons with a turnover of under EUR 500 000 annually will be able to account for VAT output tax on a cash basis (i.e. only once they have received payment); and
- companies struggling with shareholders’ equity loss generated by unfavourable exchange-rate movements will not be obliged to supplement the missing capital immediately.

The measures have yet to be approved by Parliament and signed into law. It is intended to recoup the lost revenue from a financial transactions tax.

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Jersey

Removal of Low Value Consignment Relief (LVCR) from all goods imported into the UK from the Channel Islands

Previously any goods of a value under GBP 18 imported into the United Kingdom from the Channel Islands could be imported free of VAT. This threshold was originally imposed to remove the cumbersome administrative work that comes from charging VAT on small-value consignments. The UK Government announced its intention to make changes to this rule in the 2011 Budget and subsequently reduced the exemption threshold from GBP 18 to GBP 15 for all EU territories and ‘special territories’ or countries that have a customs union with the European Union. This reduction came into effect on 1 November 2011. A further step has now been taken and the threshold has been removed completely as of 1 April 2012 for any imports to the United Kingdom from the Channel Islands, the result of which is that VAT must be charged on all goods irrespective of their value. The GBP 15 exemption limit still stands for the other remaining territories that could previously avail of the relief from VAT on low-value goods, unless there is an exemption in respect of specific goods such as personal belongings, certain goods for the promotion of trade, works of art and collector’s pieces, small non-commercial assignments etc.

New Pension Scheme Proposed

A new Jersey-based pension scheme that would allow individuals, regardless of where they live, to save for their retirement in a secure environment has been proposed. The pension scheme is known as The Recognised Pension Scheme (RPS) and it has been developed to allow Jersey’s finance industry to capitalise on a potential growth market and diversify its offerings to clients.

To qualify as an RPS, a pension scheme must meet the following requirements:
- it must be based in Jersey;
- no benefits can be paid out of the scheme until the member reaches the age of 55 (except in the case of death or serious illness of the member);
- at least 70% of the funds in the scheme must be designated to provide the member with an income for life; and
• benefits may only be paid to a limited category of other people on the death of the member.

The RPS could be used in situations such as where an individual is moving abroad from the United Kingdom and wants to transfer his or her existing pension scheme out of the United Kingdom. This transfer is possible under the UK’s Qualifying Recognised Overseas Pension Scheme (QROPS) with which the RPS will be compliant. The RPS will also be available to Jersey residents but most Jersey residents would find it more effective to save through existing domestic pension schemes offering immediate tax relief on pension savings.

Introduction of the Civil Partnerships (Jersey) Law

A new law introduced on 2 April 2012 recognises civil partnerships in the Income Tax Law in Jersey. The new law means that couples in a civil partnership are now entitled to the same deductions and reliefs as married couples. They will also be able to claim child allowances and elect for separate assessment. Any civil partnership formed before 2 April 2012 will be deemed to be formed on 2 April 2012. If the civil partnership was formed in another country or territory it may be recognised in Jersey depending on where it was formed. A list of recognised countries and territories has been published on the Government’s website. Jersey’s tax law taxes husbands and wives jointly as a married couple so it is necessary to distinguish between the two civil partners. On this basis the older partner will be regarded as ‘civil partner A’ and this person will be the assessable person and the younger partner will be regarded as ‘civil partner B’. The partners may, however, elect to regard the younger partner as ‘civil partner A’ by making a joint written election within two years of registering, or before 2 April 2014 in the case of a foreign-registered partnership. This election will be deemed permanent and will have effect as if it had been made on the formation of the partnership, which means that previously issued tax assessments may be amended. The partners may also elect to be assessed separately as individuals. This has no tax advantage as all allowances and reliefs will be divided evenly and the two bills added together will be the same as if the couple had been jointly assessed.

Monaco

Property holding companies face new obligations

Law No 1.381 of 29 June 2011 introduced new obligations for certain companies and legal entities holding real estate in Monaco.

Companies or structures such as foundations, trusts, investment funds and insurance policies owning Monaco real estate or rights over such property (i.e. life interests, leaseholds) will now need to:

- appoint a fiscal representative; and
- lodge an annual declaration regarding change or absence of change of beneficial owner.

Appointment of fiscal representative

The fiscal representative must be chosen from an official list of approved professionals and be appointed by 30 June 2012 at the latest.

For new real-estate acquisitions made through non-transparent structures, the fiscal representative is appointed on completion of the property purchase.

When appointed, the fiscal representative will inform the tax authorities of the mandate and obtain a tax identification number for the company in question.

Annual declaration

For all non-transparent entities, the filing of the first declaration under the new law should be made between 1 July and 30 September 2012.

The declaration aims to inform the tax authorities of whether or not there has been a transfer of beneficial ownership of the company/entity that owns the real estate during the year preceding the declaration.

The beneficial owner is defined as:

- an individual who owns the share capital or controls the company; or
- the beneficiary of a trust owning real estate; or
- the beneficiary of an insurance policy.
Duties
If a change has occurred to the beneficial ownership during the period 1 July to 30 June preceding the declaration, a duty of 4.5% applies based on the market value of the property. Payment of the duty should be made between 1 October and 30 November following the filing of the declaration.

If the change in beneficial ownership of the non-transparent entity is the result of a transfer upon death in direct line (i.e. to children or to parents) or to a surviving spouse, no transfer tax is due.

If no change has occurred in the beneficial ownership during the year, a fixed fee of EUR 10 is due on filing of the declaration.

Penalties
Penalties will apply when the company fails to appoint a fiscal representative or lodge a declaration within the given timeframe.

Failure in appointing a fiscal representative will trigger a penalty of 1.5% of the market value of the property.

Failure to declare gives rise to registration duties of 4.5%.

Late filing will result in penalties of EUR 5 000 or EUR 10 000 in addition to the applicable registration duty.

Any false declaration from the fiscal representative and/or the company may result in criminal liability and may be punished by imprisonment from one month to two years and/or penalties.

Dissolving a company and attribution of real estate
The Law of 29 June 2011 allowed for a reduced registration duty rate of 1% to apply on the dissolution of a corporate structure and the attribution of the underlying real estate to the beneficial owner(s). The initial deadline has been extended to 30 September 2012, subject to submission of a written request to the tax authorities before the end of June.

Norway

Exit-tax rules tightened

As part of its revised 2012 Budget enacted on 27 June by the Storting, the Norwegian Government has changed its rules on the exit tax imposed on companies emigrating from Norway and thereby removing assets from the reach of Norwegian tax.

The developments are partly a response to the European Court’s judgment in the National Grid Indus case (Case C-371/10 – see European Tax Brief Volume 2 Issue 1 and elsewhere in this Issue). Although Norway is not a Member State of the European Union and hence not bound by decisions of the Court of Justice of the European Union (CJEU), it is a member of the European Economic Area (EEA, which consists of the European Union, Iceland, Liechtenstein and Norway), in which certain EU tax directives apply, and of the European Free Trade Area (EFTA), which consists of the latter three countries and Switzerland.

The exit tax in its classic form deems the assets of an emigrating company to have been disposed of at the date of emigration. Consequently, if those assets stand at a gain to their base cost, tax is payable on the deemed gain, even if the assets remain in the company’s ownership and are not actually subject to a disposal. One of the cardinal points of the CJEU’s judgment in National Grid Indus was that EU-resident companies must have an option to defer the tax until there was, if at all, an actual disposal of the assets.

Under Norwegian law as it stood before the new Budget, migrating companies might defer the exit tax on unrealised assets and claim relief if the value of the assets fell after the emigration date. Furthermore, the liability to tax would lapse altogether if there was no actual disposal of the assets within five years of emigration. The new rules remove the five-year limitation (the tax will become payable on a disposal of the assets whenever it occurs) and removes the relief for a subsequent loss in value. Additionally, interest will be charged on any deferred tax, and the company concerned will not be able to claim a credit against the exit tax for any foreign tax it may pay on the disposal. A guarantee for the deferred tax must also be provided even if the company migrates to a jurisdiction with a treaty with Norway providing for exchange of information and mutual assistance in the recovery of tax. If the company migrates to a jurisdiction outside the EEA, there will be no option to defer the tax at all.

The Norwegian Government is confident the new rules are in accordance with EEA law, and they took effect from 15 May 2012.
Russia

Court extends scope of thin-capitalisation rules

Russia’s thin-capitalisation rules may also apply in relation to loans from a fellow subsidiary, a Moscow appeal court has held.

Under the Russian Federal Tax Code, interest on a loan from a foreign ‘parent’ company to its Russian subsidiary is non-deductible for corporate tax purposes and recharacterised as a dividend where the Russian company’s debt-equity ratio exceeds 3:1 (12.5:1 in the case of banks and certain other types of company). In fact, the lender does not have to have control of the Russian borrower – a holding of over 20% is sufficient to trigger the rule. The rule does not generally apply if the loan does not ultimately originate from such a qualifying shareholder, so that loans between fellow subsidiaries have previously been thought not to be caught.

The Moscow City Arbitration Court (Arbitrazhniy sud goroda Moskvy) has upheld the judgment of a number of lower courts in a case brought by the Russian power company Naryanmarmeftegaz. The tax authorities had disallowed interest the appellant company paid to a non-resident subsidiary of the Conoco Phillips group, the parent company of which holds a qualifying shareholding in the appellant. The authorities had adopted a substance-over-form approach, asserting that the loan was part of a wider series of transactions and that the funding came ultimately from the parent company.

On 21 June 2012, the Chamber of the Supreme Arbitration Court (Vysshii arbitrazhniy sud) of the Russian Federation (SAC) upheld the judgment of the Arbitration Court and refused an application to refer the case to the Presidium of the SAC for reconsideration.

It is therefore advisable for taxpayers to take note of the decision and alter their financing structures accordingly where necessary.

“... The authorities had adopted a substance-over-form approach, asserting that the loan was part of a wider series of transactions.”

Portugal

A-G: exit tax unlawful

See under European Union.

Changes in the participation exemption

Under Norway’s version of the participation exemption, 97% of the dividend received by a Norwegian company from another company has been exempt from income tax, provided that certain conditions relating to the underlying shareholding (i.e. as to extent and period of ownership) are satisfied. The remaining 3% of the dividend has been subject to national income tax at the standard 28% rate (so that the effective rate of tax on intra-corporate dividends is 0.84%).

The same rules have applied to capital gains on the disposal of such shareholdings.

Changes that took effect on 1 January 2012 introduce full exemption, without any a priori shareholding conditions for:
- Capital gains on the disposal of shares in EEA companies.
- Dividends from other Norwegian companies and from other EEA companies.

However, if the EEA country in which the distributing company or the company whose shares are alienated is a designated ‘low-tax country’, an economic substance test must be satisfied.

Other dividends and gains qualify as before for 97% exemption if the shareholding tests are satisfied.

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Spain

Further tax changes to cut deficit

New tax measures, additional to those reported on in the previous Issue (Volume 2 Issue 1) of European Tax Brief, were introduced around Easter, mostly with retroactive application from 1 January 2012. Some measures are temporary and others are intended to be of indefinite duration.

Restriction of deductible interest
A new restriction on the deduction of net interest expense (interest payable less interest receivable) has been introduced. For accounting periods beginning after 31 December 2012, companies may deduct no more than 30% of EBITDA (earnings before interest, tax, depreciation and amortisation). Interest expense in excess of this amount may be carried forward for set-off in future years for a maximum of 18 years. The rule will not apply to the first EUR 1 million of net interest expense, which will always be deductible. Where in any one year there is a balance of ‘unused’ EBITDA (i.e. where the net interest expense falls short of this limit), this balance may also be carried forward and added to the following year’s available EBITDA, for a maximum of five years. The new rule does not apply to credit institutions nor, subject to exceptions, to stand-alone companies that are not part of a group.

Free depreciation
The ability to claim depreciation at a rate of the taxpayer’s choosing for certain newly acquired assets such as plant and machinery used in economic activities has been abolished in relation to assets acquired after 31 March 2012, subject to transitional provisions. In the period 1 January to 31 March 2012, only small and medium-sized enterprises (SMEs) could claim free depreciation, provided that they maintained employment levels.

Amortisation of goodwill
The rate of amortisation of goodwill on acquisition (the excess of the price paid over the value of the assets acquired) is reduced from 5% to 1% (straight-line) in taxable years 2012 and 2013.

Restriction of incentive tax credits
The annual limit on the application of incentive tax credits (such as in relation to investment in research and development) has been reduced from 35% to 25% of liability to corporate income tax (as reduced by domestic and foreign tax credits) and the reinvestment tax credit included within the class of restricted credits. The 25% restriction is to apply in taxable years 2012 and 2013, but excess credits may now be carried forward for a maximum of 15 (previously 10) years; the limit for excess R&D credits is now 18 years (previously 15).

Tax amnesty
Taxpayers who declare previously undeclared assets will be absolved from all penalties and other sanctions on the payment of a one-off tax of 10% on the acquisition cost. Declarations must be made by 31 December 2012 to qualify for the amnesty.

United Kingdom

Several Budget measures reversed or modified

The Finance Bill, which will enact most of the tax measures announced by the Chancellor of the Exchequer in his Budget statement on 21 March, has completed its passage through the House of Commons. Although it is yet to be passed by the House of Lords, no further amendments to it may be made. Royal Assent is expected no later than 17 July. The Government had previously already announced that it would withdraw or amend several measures announced on Budget day that had proved to be controversial. Some of these were matters that had been put forward for consultation with a view to inclusion in next year’s Finance Bill rather than this year’s.

Perhaps the ‘retreat’ with the highest profile was the decision to defer the rise in fuel excise duties made by the Finance Act 2011 but due to take effect on 1 August 2012. The increase has now been deferred to 1 January 2013. It amounts to GBP 0.0302 per litre. The controversial plan to place a cap on the

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The aggregate of certain types of income tax relief that individuals are allowed to claim in a single tax year will not now include charitable donations.

The Government also made concessions on the so-called ‘pasty tax’, which would, broadly, have imposed standard-rate VAT on all hot takeaway food not only, as now, when intentionally sold hot but also on items that are left to cool naturally but may still be sold warm (such as the eponymous pasties – meat pies). Items in the latter category will now remain zero-rated. Standard-rate VAT will not now be imposed on all static holiday caravans, but will be charged at the 5% reduced rate on such caravans and touring caravans over 7 metres in length from 6 April 2013.

These are currently zero-rated. Holiday caravans of under that length were and remain standard-rated.

The Government also intended to remove zero-rating from the supply of approved alterations to listed buildings (building of historical or architectural interest) and from the first grant of a major interest in a substantially reconstructed building where 60% or more of the work consisted of approved alterations. It will still put into effect the first of these changes, but extend the scope of transitional provisions to include exception for more cases where applications for consent for the alteration had been made before Budget day. Zero-rating also remains for the first grant of a major interest in a listed building substantially reconstructed from a shell.

No concessions have been made on the so-called ‘granny tax’, which was in fact merely a freeze from 2013-14 onwards to the level of the higher personal allowance available to taxpayers aged 65 or over. These higher allowances will remain at the 2012-13 level until exceeded by the personal allowance for taxpayers under 65, at which point they will lapse.

The Government has reiterated its commitment to introduce a general anti-abuse rule (GAAR) into tax legislation from April 2013, and has published draft legislation for comment. The announcement came at a time when fresh publicity had been given to the use of avoidance schemes by prominent entertainers and others.

The proposed legislation draws heavily on the Aaronson report, published in November 2011, and it is proposed that it should apply to income tax, corporation tax, capital gains tax, petroleum revenue tax, the oil supplementary charge, the bank levy, inheritance tax, stamp duty land tax and national insurance contributions. VAT is to be excluded from the scope, largely because it is already subject to the abuse of law doctrine at the European level.

As recommended by Aaronson, there will be an advisory panel, consisting of representatives from HMRC (the tax authority) and business and taxpayer representatives, to give opinions on cases where HMRC proposes to apply the GAAR and to develop, update and approve guidance on its use.

The legislation provides that its purpose is to ‘counteract tax advantages arising from abusive tax arrangements. A tax arrangement is abusive if entering into it or carrying it out ‘cannot reasonably be regarded as a reasonable course of action having regard to all the circumstances, including the relevant tax provisions, the substantive results of the arrangements, and any other arrangements of which the arrangements form part’.

The response period ends on 14 September 2012.

“...
Ordinary-residence concept to be abolished

The Government has confirmed, in its response to the June 2011 consultation on a statutory residence test, that ‘ordinary residence’ will be abolished for tax purposes. A somewhat similar concept will be retained and put on a statutory basis for the purposes of the relief for periods of work spent abroad by short-term secondees working in the United Kingdom. The response, which includes new draft legislation, also sets out changes to the consultation proposals, including increasing the automatic non-residence threshold from 10 to 15 days; a provision for ‘exceptional circumstances’ in the day-counting rule; and revisions to split-year treatment. Comments on the draft legislation and further consultation questions are invited by 13 September 2012.

For the background to the proposed changes on residence, see European Tax Brief, Volume 1 Issue 2 (July 2011) and Volume 1 Issue 4 (December 2011).

EU takes action against exit tax

See under European Union.

Currency table

For ease of comparison, we reproduce below exchange rates against the euro and the US dollar of the various currencies mentioned in this newsletter. The rates are quoted as at 9 July, and are for illustrative purposes only.

<table>
<thead>
<tr>
<th>Currency</th>
<th>Equivalent in euros (EUR)</th>
<th>Equivalent in US dollars (USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Euro (EUR)</td>
<td>1.0000</td>
<td>1.2301</td>
</tr>
<tr>
<td>Danish krone (DKK)</td>
<td>0.1344</td>
<td>0.1564</td>
</tr>
<tr>
<td>Pound sterling (GBP)</td>
<td>1.2595</td>
<td>1.5493</td>
</tr>
<tr>
<td>Hungarian forint (HUF)</td>
<td>0.0035</td>
<td>0.0042</td>
</tr>
</tbody>
</table>

Up-to-the-minute exchange rates can be obtained from a variety of free internet sources (e.g. http://www.oanda.com/currency/converter).

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www.moorestephens.com