DFK INTERNATIONAL TAX NEWSBRIEF FROM AROUND THE WORLD

Editor: Richard W. Margaroli

Commissioning Editor: Alan E. Weiner

Issue 11, January 2009

Australia

Contributed by David Sharp
DFK Richard Hill, Sydney

Foreign sourced income of Australian tax residents

The Australian taxation system operates in an environment of self assessment. This requires each taxpayer to be responsible for completing a tax return and ensuring all taxable income is reported. The Australian Taxation office conducts reviews and audits from time to time to ensure that income is being correctly reported.

Australian taxpayers are taxed on their worldwide income. Whatever the source of the income, if it is earned by an Australian tax resident it must be reported and tax paid. In most cases the taxpayer will receive a credit for any foreign tax paid.

A Controlled Foreign Company ("CFC") is a defined entity in Australian Taxation Law. In general terms it is a company not located in Australia but controlled by Australian tax residents either directly or through intermediaries. These considerations also extend to Partnerships and Trusts.

Income of CFC's that will be subject to Australian taxation is described as tainted income. This can include rental, sales or services income. In broad terms it is income, but for the existence and arrangements with a CFC, would be reported as income by an Australian taxpayer. Also included are capital gains arising in these circumstances as capital gains are taxed in Australia. Generally the country in which the CFC resides will have little or no taxation upon the tainted income that is earned by company.

1. Tainted rental income includes where land is leased to an associate or rent is paid by an associate or land is leased by a company not resident in the same country.

2. Tainted sales income occurs from the purchase or sale of goods from/to an Associate who is an Australian resident or in connection with a permanent resident in Australia.

3. Tainted services income is income derived from the provision of services by a CFC to an Australian resident or in connection with a permanent establishment in Australia.

The amount of tainted income that can be attributed to the Australian taxpayer is generally based upon the percentage ownership of the CFC. The ownership percentage can be traced through intermediaries.

The Australian taxation office maintains a register of countries from which CFC's operate and the situations in which tainted income may arise in each country.

Accordingly, where there is a legal entity trading with Australia, which appears to be controlled either directly or indirectly by Australian tax residents, it may be necessary to consider whether income earned may have to be reported by those taxpayers in their Australian tax returns.

Disclaimers:
Each Member Firm of DFK International is an independent entity and no partnership, implied or otherwise, exists between the firms by reason of their membership in DFK International.

This NewsBrief is presented as a general overview of matters discussed. It is essential to take advice on specific issues. No liability can be accepted, either by DFK International or the author of the matter, for any action taken or not taken arising from the information provided. Contact a DFK Adviser or other qualified professional before acting on any comment herein.

Contributed by Morgan Michie
DFK Gray Perry, Adelaide

Non Residents doing business in Australia

A recent decision concerned a Singapore based software company that supplied and installed products to Australian resident customers. The installation process involved the use of an office, at the customer's premises, by employees of the supplier, for a few days every two weeks over a period of less than 6 months. The Australian Tax Office ruled that the supplier had a "permanent establishment" within Australia, under the terms of the Australia/Singapore Double Taxation Agreement, with the result that any profits arising from Australia would be taxed at 30%.

Article 4 of Double Taxation Agreements involving Australia defines the term "Permanent Establishment", in relation to an enterprise, as a "fixed place of business through which the business of the enterprise is wholly or partly carried on". It then proceeds to provide examples of such establishments in the form of a place of management, a branch, an office, a store or other sales outlet, a factory etc.

However non Australian resident enterprises who wish to do business in Australia should also be aware that the Australian Taxation Office views the OECD Model Tax Convention and Commentaries as relevant to interpreting Australia's tax treaties. These commentaries provide a much wider definition of the term Permanent Establishment, than the examples provided by the relevant Treaties.

For example Paragraph 2 of the OECD Commentary on Article 5 of the OECD Model Tax Convention explains that the general definition of a permanent establishment contains the following conditions:

- The existence of a "place of business", that is a facility such as premises or in certain instances, machinery or equipment;
- This place of business must be "fixed", that is must be established at a distinct place with a certain degree of permanence;
- The carrying on of the business of the enterprise through this fixed place of business. This means usually that persons who, in one way or another, are dependant on the enterprise (personnel) conduct the business of the enterprise in the State in which the fixed place is situated.

The OECD commentary considers an enterprise to have a place of business by the mere fact that it has a certain amount of space at its disposal which is used for business activities. For example where the enterprise has at its constant disposal certain premises or part thereof owned by another business enterprise.

Brazil

Contributed by Madeleine J. Blankenstein
Pryor Consulting Services Ltda, Sao Paulo

Individual Income Tax: New Progressive Tables for 2009 and 2010:

The 451/2008 Provisional Measure, among other arrangements, approved new monthly progressive tables to be applicable in 2009 calendar year and from 2010.

The following new tables are:

I – Monthly progressive table which will take effect in 2009

Calculation Basis in R$	Tax Rate %	Deductible from Tax Payment in R$
Up to 1.434,59	-	-
From 1.434,60 to 2.150,00	7,5	107,59
From 2.150,01 to 2.866,70	15	268,84
From 2.866,71 to 3.582,00	22,5	483,84
Over 3.582,00	27,5	662,94
Deduction for any dependent: R$ 144,20		

II- Monthly progressive table which will take effect in 2010

Calculation Basis in R$	Tax Rate %	Deductible from Tax Payment in R$
Up to 1.499,15	-	-
From 1.499,16 to 2.246,75	7,5	112,43
From 2.246,76 to 2.995,70	15	280,94
From 2.995,71 to 3.743,19	22,5	505,62
Over 3.743,19	27,5	692,78
Deduction for any dependent: R$ 150,69		

IOF:

IOF Rates were reduced in credit operations (IOF – FINANCIAL TRANSACTIONS TAX)
Decree 6691 in 2008, through Today's Federal Official Gazette Publication, the IOF rate was reduced from 0.0081% to 0.0041%, in credit operations, wherein borrower is a Legal Entity.

IPI:

IPI over the purchase of brand new cars was reduced (IPI – EXCISE TAX). These new cards are basically popular models with 1.0 engines (the 0% rate)
By means of 2008 Decree 6687 in Federal Official Gazette, find below the new rates from December 15th, 2008 until March 31st, 2009.

TIPI code	Rate effective up to December 14th, 2008	Rate effective from December 15th, 2008 to March 31st,2008
8703.21.00	7%	0%
8703.22.10	13%	6.5%
8703.22.90	13%	6.5%
8703.23.10 Ex 01	13%	6.5%
8703.23.90 Ex 01	13%	6.5%
8704.21.10 Ex 01	8%	1%
8704.21.20 Ex 01	10%	3%
8704.21.30 Ex 01	8%	1%
8704.21.90 Ex 01	8%	1%
8704.21.90 Ex 02	10%	3%
8704.31.10	10%	3%
8704.31.20	10%	3%
8704.31.30	8%	1%
8704.31.90	8%	1%

IPI rates were also reduced for Vehicles running on alcohol, or flex.

2006 TIPI code	Effective Rate until December 14th, 2008	Effective Rate from December 15th. 2008 to March 31st, 2009
8703.22	11%	5.5%
8703.23.10	18%	18%
8703.23.10 Ex 01	11%	5.5%
8703.23.90	18%	18%
8703.23.90 Ex 01	11%	5.5%
8703.24	18%	18%

From April 1st, 2009 the Effective Prior rates will be re-established

Substituição Tributária (Tax Substitution) – Increase of ICMS taxes

1) Ruling 53511 increases the types of products included in this state tax: Medicine, Personal Hygiene, Cleaning and Maintenance Industry Products, Building Materials and others.

Through 2008 Ruling 53511 the State of São Paulo government added several other goods in medicine, personal hygiene, cleaning and maintenance industry products , building materials lists and others whose operations are under ICMS tax replacement scheme, additions which take effect from February 1st., 2009.

2) Special Terms to ICMS payments – Medicines, Alcoholic Beverages except Beer and tap beer, Perfumes, Personal Hygiene Products, Animal Feed, Cleaning Products, Sound equipment, car parts, Batteries and Electric Bulbs, Paper and Food Industry products, Building Materials. These payments for tax events during 2009 maybe effected two months after determination.

Import Tax – Tax Rate Reduction

Tax Rate amendment of II established by publication of Resolutions CAMEX 74, 75 and 76 from 10.12.2008

Some Software and Telecommunications goods had their Import Taxes reduced to 2%. Please check with customs agents to identify if products in your range are included.

Cyprus

Contributed by Iacovos Raoukkas
DFK Demetriou, Trapezaris Ltd, Nicosia

• Cyprus – Moldova Double Tax Treaty

The Convention between the Republic of Cyprus and the Republic of Moldova for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed by the two governments on 28th January 2008 entered into force on 3rd September 2008 and its provisions have effect:

a) in respect of taxes withheld at source, on income derived on or after 1st January 2009;
b) in respect of other taxes on income, to taxes chargeable for any tax year beginning on or after 1st January 2009;

The main provisions of the Double Tax Treaty are:

- The term “permanent establishment” includes a building site, a construction, assembly or installation project, but only if it lasts more than nine months in any twelve month period. It also includes the furnishing of services, including consultancy services, by an enterprise through employees, but only if activities of that nature continue for a period or periods aggregating aggregating more than three months within any twelve month period.
- Dividends are subject to 5% withholding tax if the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividend and 10% in all other cases.

In the case of a Cyprus company paying the dividend to a person resident in Moldova, the national law which provides for no withholding tax, overrides the provision of this agreement.

- Interest and Royalties are subject to 5% withholding tax.
- Capital Gains derived by a resident of a Contracting State from the disposal of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

• Definition of “titles”

Subject to the provisions of Article 8 (22) of the Income Tax Law N118 (I)/2002, as amended, the gain from the disposal of titles is exempt from tax.

For the purposes of defining the term “titles”, the Inland Revenue Department issued on

17th December 2008 the circular 2008/13 where “titles” are:

1. Ordinary shares
2. Founder’s shares
3. Preference shares
4. Options on titles
5. Debentures
6. Bonds
7. Short positions on titles
8. Futures / forwards
9. Swaps
10. Depositary receipts
11. Rights of claim on bonds and debentures without the right on interest
12. Index participations only if they result in titles
13. Repurchase agreements or Repos on titles
14. Participations in companies such as Russian OOO and ZAO, American LLC which are sub ject to tax on their profits, Romanian SA and SRL and Bulgarian AD and OOD.
15. Units in open-end or close-end collective investment schemes such as:
    - Investment Trusts, Investment Funds, Mutual Funds, Unit Trusts, Real Estate Investment Trusts
    - International Collective Investment Schemes – ICIS
    - Undertakings for Collective Investments in Transferable Securities – UCITS
    - Other similar investment funds

The provisions of this circular apply to the tax year 2003 and following years.

Finland
Contributed by Heikki Hassel
DFK Oy/Audit group Ltd., Helsinki

Finland to introduce Tax Account for Corporations

A new law set to come into force in the beginning of 2010 would introduce a tax account for corporations for the handling of self levied taxes, i.e. VAT, PAYE etc. declaration, paying and tax refunds. The goal of the new system is to facilitate and speed up interaction between businesses and the tax administration as well as to bring cost cuts to both parties. An example of the facilitating aspect is an internet service, which will allow businesses to follow up on their tax account, thus reducing the need for contacting the tax administration.

In the new system, each taxpayer will have an individual tax account, where all information concerning tax declaration, payment and the levying of taxes will be gathered. Due to the significant changes required in both legislation and IT-infrastructure, the new system is planned to be launched in two separate phases. The first phase, from the beginning of 2010, will deal with the self levied taxes of businesses and would not involve ordinary taxpayers. The second phase, set to be launched in the beginning of 2012, will see the system also contain other taxes levied by the tax administration.

A central change that the new system would bring is the consolidation of tax declaration procedures, declaration times and payments. The taxes included in the system would be declared on a period tax declaration and the corporation would pay a sum amount of all the taxes, which would be transferred into their tax account. This sum amount would then be allocated by the authorities to different taxes in the order stated in the legislation. Back and forth money transfers would be reduced, because for example VAT refunds could be used as payments for other taxes. Refunds that would not be used as payments for other taxes or are not returned to the taxpayer would be paid interest. Interest would also be paid on payments that were made before the due date.

Ireland
Contributed by Susan Lennon
Anne Brady McQuillans DFK, Dublin

Corporation Tax Incentives For Companies Setting Up In Ireland:

The primary focus of Ireland's strategy to attract foreign direct investment is to create a favorable economic and fiscal environment which is supportive of industry and commerce. During these difficult times, the government is keen to preserve Ireland's standing as a pro enterprise economy and as an attractive location to do business. The Government and the Industrial Development Authority are being optimistic in relation to promoting and securing new foreign investment in Ireland. By being optimistic and proactive, potential foreign investors are

more confident that we are and will remain to be an attractive country to set up in.

Even with the global downturn, Ireland continues to attract a disproportionate amount of all foreign direct investment into the EU. Almost 1,000 multinational corporations have chosen Ireland as their strategic base and there are still plenty of companies choosing Ireland to invest in.

Ireland has traditionally had very favorable corporation tax rates and incentives to persuade international companies to set up here. Since 1 January 2003, Ireland's corporate tax rate is 12.5% on all trading profits. The previous 10% "manufacturing" rate is still available to existing eligible trades until 2010, as long as the trade qualified for the 10% rate before 30 July 1998. This change broadens the type of commercial activities that can qualify for Ireland's low corporate tax rate. It also opens up new opportunities for activities such as Intellectual Property Management and Supply Chain Management. A tax rate of 25% applies to non-trading income.

The pro enterprise tax legislation continued in the recent budget with the announcement of generous tax incentives which include the following:

• *The new Tax Credit scheme for Research and Development Expenditure*
The current 20% rate of tax credit for incremental expenditure undertaken by a company on qualifying research and development (R&D) is being increased to 25% for all accounting periods beginning on or after 1st January 2009. There is also an additional option to carry back unused tax credits for offset against CT paid in previous years and the unclaimed balance can be carried forward to be claimed over 3 years as a credit.

• *3 Year tax exemption for Start-up Companies*
New start-up companies which commence trading in 2009 will be exempt from corporation tax and capital gains tax in each of the first 3 years provided that their tax liability in the year does not exceed €40,000. Measure is being examined to ensure it complies with EU rules on State Aid.
• *Capital Allowances for Energy Efficient Equipment* – Tax incentive from the 2008 budget is being extended to include 7 categories instead of 3. It allows for 100% relief in year of expenditure. The new categories are:

• Data server related systems & energy saving office equip associated with IT.
• Efficient heating/electricity equipment and control systems.
• Efficient heating/electricity equipment and control systems in relation to ventilation and air conditioning.
• Alternative fuel vehicles.

With continuing tax incentives and marketing the current pessimistic economic outlook can be changed into an optimistic one.

Netherlands
Contributed by Drs. Maarten Arts
Foederer DFK, Eindhoven

Dutch tax measures to curb the effects of the credit crunch

The Dutch Prime Minister has sent a letter to the Lower House in which tax measures (among others) are being proposed to limit the effect of the credit crunch.

Some measures have already been taken. The plan to raise VAT from 19% to 20% is cancelled and the employees contribution to unemployment insurance is set at zero.

Other new proposed measures are:
Accelerated depreciation of up to 50% annually
The proposal is a re-introduction of a discretionary or accelerated depreciation in 2009 and 2010 in order to meet business liquidity and financing needs. The depreciation can be 50% maximum in a calendar year. Some business assets are excluded (among others buildings, goodwill and cars).

Extension of 20% corporate tax bracket
In 2009 and 2010 there will be a reduction from 23% to 20% in the small and medium-sized enterprises rate in the second corporate tax bracket. The 20% rate will apply to profits up to € 200.000. The tax rate above that remains 25,5%.

Lowering Inheritance Tax rates
Deputy Minister of Finance De Jager sent the Lower House a policy proposal with his plans to modernize the current Inheritance Tax. The envisaged date of implementation

is January 1, 2010. The most important changes are:

Lowering the rate

The number of rates will be reduced from 28 to 4. The inheritance and gift rate for partners and children will be reduced to 10% for the first € 125.000 and to 20% for amounts above that. Other beneficiaries will have to pay 30% on the first € 125.000 and 40% for amounts above that.

The inheritance tax allowance for partners will be raised to € 600.000 and for children to € 19.000. The gift tax allowance for children will become € 5.000, with a one-time increase of up to € 24.000. All other beneficiaries will receive an inheritance and gift allowance of € 2.000. All allowances will be base allowances, which means that they will not cease to apply if more has been received than the amount allowed.

Simplifying business succession

Where an enterprise or stock in a company with an enterprise is inherited or gifted, 75% of the gift or inheritance tax may be waived, under certain conditions, on the grounds of the business succession tax incentive. Interest bearing extension for payment may be obtained for the remaining 25%.

Abolishing trust assets

The proposal is that such special funds should become transparent for tax purposes from now on and the assets should be attributed to the settler of the trust.

Philippines

Contributed by Tony Acyatan
Acyatan & Cc., CPAs, Mandaluyong City

Two landmark tax legislations have recently taken effect in the Philippines – affecting individual citizens and resident foreigners - as well as domestic and resident foreign corporations and partnerships.

Pursuant to Republic Act No. 9337 which took effect on November 1, 2005 - the corporate income tax rate was increased from 32% to 35% subject to the government commitment that said rate shall be reduced to 30% effective January 1, 2009. This is now in effect.

Said tax law also expanded the transactions subject to Value Added Tax and increased the VAT Output Tax from 10% to 12% which is still being observed. The graduated income tax rates for individual taxpayers (citizens and resident foreigners) depending on their net taxable income was not revised by RA No. 9337 – leaving the maximum rates for individuals now 2% higher than those for corporations.

Another major tax legislation which took effect during the second semester of Year 2008 is Republic Act No. 9504. The law somehow simplified the taxation system as well as the tax reportorial compliance and annual audit of taxpayers' financial statements. One of the changes involved the exemption of individuals who are classified as minimum wage earners from the requirement to file their annual income tax. Under said new tax law – taxpayers (individuals and juridical entities like corporations and partnerships) are privileged to choose Optional Standard Deduction (OSD) instead of the more detailed itemized deductions.

For individual taxpayers, the basis of the 40% OSD is the Gross Receipts. This is so because under Philippine tax laws, the computed Net Income of individuals are still subject to personal exemption (deductible credits) depending on marital status and number of dependent children.

For corporations and general co-partnerships the 40% OSD is based on Gross Income. This means the Gross Sales will still be reduced by the Cost of Sales. The resultant amount will be subject to deductions either itemized Operating Expenses or the lump-sum 40% OSD to arrive at the taxable Net Income. For obvious reasons, corporations are not entitled to the personal exemptions allowed to individuals.

Tax NewsBrief is edited by Richard W. Margaroli and Alan E. Weiner, Holtz Rubenstein Reminick LLP, Long Island & New York City, New York, USA