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Contents

Choosing the location for establishing a holding company

Forming a holding company is a common practice in international business.

The main objective of holding companies is to hold and manage controlling shareholdings in active subsidiaries. They are referred to as “pure” holding companies when they are exclusively intended to manage equity interests or “mixed” holding companies when they also carry on business operations.

Forming a holding company addresses many interests and stakeholder requirements. Holding companies in international groups mainly enable subsidiaries to be controlled, holdings to be pooled together and the group’s policy to be harmonised.

I CRITERIA RELATING TO THE CHOICE OF LOCATION

The assessment of several considerations will lead to one country being favoured over another for the establishment of a holding company.

Legal considerations involve an examination of company law in the country of establishment. The company law must enable the relations between the partners to be organised with the most flexibility and provide for simplified formalities for the establishment and liquidation of a holding company. The conditions for obtaining certain authorisations, for example in relation to the company’s business operations (for mixed holding companies) must also be taken into account.

The tax system must offer a certain number of benefits and guarantees:

- low corporate tax rate,
- tax benefits for expatriate employees,
- network of international treaties,
- possibility to secure the arrangements by obtaining rulings,
- existence of the tax integration regime, etc.

Other considerations in addition to legal and tax matters include, for example, the stability of the political system in the country of establishment, the flexibility of financial flows particularly with regard to

The assessment of several considerations will lead to one country being favoured over another for the establishment of a holding company. Overview of questions on tax matters for groups.

exchange control rules, simplicity of accounting requirements, etc.

Two decisive aspects in terms of taxation are discussed below: the fluidity of financial transactions and the management of holdings.

1.1 Fluidity of financial transactions

The fluidity of financial transactions implies that profit transfers (dividends, interest and royalties) can be carried out freely without triggering tax-related problems. The holding company's State of establishment must have entered into bilateral double tax treaties with the States in which the subsidiaries are located permitting a reduction or exemption from withholding tax in the subsidiaries' States. The network of treaties of the State of establishment is consequently decisive.

- **Dividends**

Dividends often constitute the holding company's main, if not only, source of income.

Dividends can be taxed at two different stages:

- (i) upon payment by the distributing company

- (ii) upon receipt by the beneficiary company

(i) Payment by the distributing company

The majority of treaties provide for either an exemption from withholding tax or a reduced rate withholding tax. Withholding taxes provided for by treaties are generally limited to 5%, 10% or 15% of the gross dividend paid and entitle the holding company to a tax credit. Within the European Union, the adaptation of the Parent-Subsidiary Directive of 23 July 1990 (90/435/EEC) into national laws enables dividends paid to companies in the European Union holding at least 15% of the capital in the distributing company to be exempt from withholding tax where the distributing company is also established in the European Union (10% with effect from 1 January 2009). The same exemption applies to dividend distributions between the European Union and Switzerland, but the required size of holding is 25% in this case.

Similarly, the redistribution of dividends by the holding company to its shareholders must not be subject to a withholding tax. Failing which, it is necessary to check whether the tax withheld in the subsidiary's State can be offset against the amount of withholding tax owed upon distribution of the dividends to the holding companies.

(ii) Taxation upon receipt of the dividends by the beneficiary company

A certain number of States, including in particular in the European Union, provide for a total or almost total exemption for dividends received when certain conditions are satisfied (participation exemption regimes). This is the case for example in Luxembourg, where the holding in subsidiaries represents 10% of the share capital or, if this threshold is not reached, where the cost price of the holding amounts to at least EUR 1.2 million. This is also the case in the Netherlands if the subsidiary is held as to 5%. In Belgium, dividends received by subsidiaries held as to 10% are 95% exempt.

- **Interest and royalties**

Some holding companies may take an active role in the group management and may notably be used in the financing of subsidiaries. They may also hold the group's trademarks.

Many States apply withholding tax to interest and royalties paid to foreign companies. If the holding company is planned to be used as a vehicle for financing and/or managing trademarks, it is consequently necessary to check whether the network of bilateral tax treaties authorises a reduction of or exemption from the withholding tax applied in the debtor State.

In relations between companies established in the European Union, the Interest and Royalties Directive of 3 June 2003 (2003-49-EC) provides for the exemption from withholding tax for affiliated companies in the distributing State. For the purpose of the application of this Directive, a company is affiliated to another company if it is held at least 25% by that other company, or where the two companies are held at least 25% by a third company. This exemption also applies to flows of interest and royalties between States in the European Union and Switzerland.

- **Intragroup financial assistance (cancellation of debts, interest-free loans, subsidies, etc.)**

In the scope of the active management of its holdings, a holding company may be required to grant occasional financial assistance to its subsidiaries facing financial or business difficulties.

In this respect, it is also necessary to check that the holding company's State of establishment authorises the deduction of intragroup financial assistance.

1.2 Tax regime of participation

Several factors must be examined:

- possibility to deduct the acquisition costs for holdings and, in particular, loan interest,

- possibility to deduct provisions for depreciation in this respect,

- exemption of capital gains on disposal of securities. This is the case for example in the aforementioned States, which apply a participation exemption regime to dividends (Luxembourg, Belgium, Netherlands), subject to satisfying certain conditions.

II ANTI-ABUSE MEASURES

States do not hesitate to set up their own national legal arsenal combined with anti-abuse measures inserted in bilateral tax treaties to fight "unacceptable" tax avoidance.

2.1 Thin capitalisation rules

Thin capitalisation rules enable States to limit the deduction of interest on intragroup loans wherever the group funds the cash a subsidiary requires for its business operations by a loan rather than equity. Since the ECJ's ruling in the Lankhorst-Hohorst GmbH case on 12 December 2002 (case C-324/00), a certain number of States in the European Union have modified their rules so that they apply to loans granted by a group company, regardless of whether it is foreign or national, subject to the same conditions. These rules may considerably restrict the financing opportunities for a subsidiary by its parent company.

2.2 Fight against tax havens (Controlled Foreign Companies)

Many States have implemented regulations aimed at deterring companies from establishing subsidiaries in countries with favourable tax systems.

The preferential rules for holding companies are accordingly not applicable where the holding company holds subsidiaries in countries with favourable tax systems (tax havens) and the holding company is consequently directly taxed on profits generated by such subsidiaries. However, within the Union, anti-abuse measures must not act as an obstacle to the fundamental freedoms provided for by the Treaty establishing the European Union. The European Court of Justice has accordingly restricted the power of the Member States in this respect by ruling in the Cadbury Schweppes case on 12 September 2006 (case C-196/04) that national anti-abuse measures can only be adopted and curb the freedom of establishment if they relate to wholly artificial structures intended to avoid taxation. In order to establish the existence of an artificial arrangement, the tax authorities must demonstrate a combination of objective factors, in particular, the lack of physical manifestation of the company established abroad, in terms of premises, staff and equipment.

2.3 Place of effective management

According to tax treaties, in the event of dual residence, the residence of a company is determined by reference to the place of effective management.

Therefore, it is necessary to ensure that the holding company cannot simply be considered as a "mailing address" with no legal substance. This would notably be the case for a holding company whose effective management bodies are located in another State (for example, location of the board meetings, location of the real decision-making, etc.).

In this case, the State of the place of effective management would be entitled to tax the holding company's profits.

2.4 Fight against treaty shopping

As regards holding companies, treaty shopping involves establishing an intermediary holding company in a State with the sole objective of benefiting from treaties entered into by this State, in circumstances where these treaty benefits would be denied without the establishment of an intermediary holding company.

To fight against such arrangements, most treaties contain a clause whereby the reduction of the withholding tax or the exemption from the withholding tax on dividends, interest and royalties, is only granted to the effective beneficiary of such income (see the article by Mike Boutell on this matter in "Progress in Europe" in CMS Tax Connect of April 2007, followed by a country-by-country analysis by the lawyers in the CMS Alliance).

As shown above, choosing a country for establishing a holding company is a sensitive issue, which requires a solid understanding of both national laws and existing treaties. To facilitate your choice, the lawyers in the CMS Alliance have replied to the main tax questions that must be addressed by an international group. Lawyers in Cyprus and Estonia have also contributed to this special issue along with the regular panel.

Please do not hesitate to contact the lawyers in the CMS Alliance if you require any additional information.

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Austria

Tax regime applicable to holding companies in Austria

Tax regime applicable to holding companies in Austria

I Introduction

Is there a specific legal regime applicable to holding companies ? No specific "holding companies regime" exists under Austrian Law.

What are the legal structures most commonly used for holding companies ? Local holding companies are generally set up as a joint-stock company (*Aktiengesellschaft*, abbreviated "AG"), a limited liability company (*Gesellschaft mit beschränkter Haftung*, abbreviated "GmbH") or a European Company (*Societas Europaea*, abbreviated "SE").

What is the minimum legal share capital ? AG: EUR 70,000; GmbH: EUR 35,000; SE: EUR 120,000,

Is there any capital tax ? Contributions (registered share capital or paid-in surplus) made by the direct shareholder or a direct sister company are subject to 1% capital tax. To set up a holding company with the minimum share capital, this capital tax may not be avoided (minimum share capital of an AG: EUR 70,000; for a GmbH: EUR 35,000). However, avoidance schemes exist for further contributions such as :

- contribution of equity in a share-for-share exchange under certain conditions (shares contributed representing at least a 25% shareholding or giving the Austrian holding company majority ownership, the contributing company having owned the shares for at least two years)

- indirect cash contributions, i.e. contributions by an indirect shareholder such as a grandparent company.

What is the corporate tax rate ? 25% (flat rate)

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? Dividends paid to a resident parent company are exempt from corporate income tax (Domestic Participation Exemption).

Dividends paid to a foreign parent company are exempt from corporate income tax (International

Participation Exemption) if the following conditions are met:

- Participation of at least 10%,

- The shareholding must represent a minimum participation of 10% in the capital of the foreign entity: ordinary shares, preferred shares, non-voting shares etc., all qualify. There is no requirement regarding voting rights and it is not necessary for the shares to have been fully paid up. Since 2004, it is no longer required that the share is held in the registered share capital. Therefore, for instance profit participation rights will qualify as well.

- The foreign corporation must be comparable to an Austrian corporation. This will generally be the case if the foreign company meets the following criteria:

°it is a legal entity distinct from its shareholders

°it has a fixed share capital

°the shareholders only have limited liability

°the shareholders can participate in the corporation's decision-making (through shareholders meetings, etc.), but

°there is a management structure distinct from the shareholders (board of directors or similar)

°the foreign corporation does not need to be treated as a taxable entity in its home jurisdiction (e.g. corporations which are treated as partnerships for tax purposes in their home country would also qualify).

Foreign partnerships (from an Austrian legal perspective), trusts, foundations, Irish unlimited companies and similar vehicles will not be deemed comparable to an Austrian corporation and would thus not qualify for the participation exemption.

Participations in foreign corporations held indirectly (via a partnership) also qualify.

- One-year holding period requirement

- The shareholding must have been held by the holding company for an uninterrupted period of at least one year. In the event of a dividend distribution, the dividends are taxed on a preliminary basis during the one-year period. The tax is refunded after the one-year holding period requirement has been met.

Dividends are tax exempt and double taxation is avoided within the corporate group.

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? Yes, according to the domestic participation exemption.

- a subsidiary resident in the EU, a subsidiary resident outside the EU ? Yes, according to the international participation exemption.

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? A 25% withholding tax is imposed. No tax needs to be withheld if a domestic corporate shareholder holds at least an interest of 25% in the company.

Please note that in case of a corporation with a shareholding lower than 25%, the withholding tax is applied although the domestic participation exemption applies and dividends paid to the holding company are tax exempt. Consequently, the withheld tax is refunded or credited against corporate income tax from other sources.

- within the EU ? A 25% withholding tax is imposed, which may be claimed back under a refund procedure if the following conditions are met:

°25% minimum shareholding (10% in the event of reciprocity)

°one-year minimum holding period

Relief at source is only granted in this case if additional criteria set forth in the relevant decree issued by the Austrian Ministry of Finance are fulfilled:

°expiry of the minimum holding period when the dividend is paid, and

°minimum substance of the EU parent company (e.g. business premises, employees, operating income etc.).

°certificate of residence of the parent company issued by an EU Member State.

- outside the EU ? A 25% withholding tax is imposed. The withholding tax is usually reduced or even withdrawn according to the respective double taxation agreement (DTA) entered into by Austria with the respective country.

What is the domestic rate of withholding tax ? 25 % (flat rate).

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? No

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ?

Yes. The regular corporate tax rate (25%) applies. Savings deposits, bonds and other commercial papers of financial institutions are subject to a withholding tax of 25%.

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located :

- in the same jurisdiction ? A withholding tax on interest payments relating to loans and credits is only levied if the loan or credit facility is secured by real estate. Hence, intercompany interest payments by an Austrian resident company are not subject to Austrian withholding tax under current legislation.

- within the EU, outside the EU ? No withholding tax on interest.

Are there any thin capitalisation rules ? No

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Yes. The regular corporate tax rate (25%) applies.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located :

- in the same jurisdiction ?If the licensor is an unlimited income taxpayer (meaning either business management or domicile in Austria), no tax is withheld by the holding company.

- within in the EU ? 20% withholding tax. Tax exempt in the event where :

°the licensor is based in a EU member state

°direct participation of at least 25% (licensor holding a minimum stake of 25% in licensee and vice versa qualify) or direct participation of a third company of at least 25% in the licensor and licensee (the licensor and licensee being direct sister companies)

°minimum holding period of one year (already met when the payment is made) and

°royalties are at arm's length.

- outside the EU ? 20% withholding tax, which may be reduced under the applicable Double Tax Agreements (DTA) entered into by Austria and the respective countries.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? Since the Austrian Tax Reform Act 2005, interest incurred due to debt financing of the acquisition of participations (being held as business property) is deductible.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? In the event where the value of a participation (shares) in a holding decreases permanently and substantially, the value has to be written down.

Are capital gains tax exempt ? Capital gains from the disposal of a participation in a domestic corporation are taxable.
As a general rule, capital gains from the disposal of a participation in a foreign subsidiary may be tax exempt, if the conditions for the exemptions on dividends are met (participation of at least 10%, comparability of the foreign subsidiary to an Austrian corporation, one-year holding period requirement). Alternatively, an option to treat gains (and losses) upon disposal as tax effective may be made upon acquisition of the participation.

Are capital losses tax deductible ? In general, capital losses from the disposal of a participation in a domestic corporation (which are not simply the result of the distribution of dividends) are deductible spread over the current and the six consecutive years.
In case of a foreign subsidiary, as a general rule, capital losses are treated as being tax-neutral. However, the Austrian holding company may opt to treat both capital gains and capital losses/write-offs as taxable. Thus, capital losses may then be offset against any taxable income derived by the holding company (e.g. license or income, income from other activities like trading, etc.).

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? Under Austrian anti-abuse provisions, the tax exemption is replaced by a credit system (so-called switch-over clause since the tax treatment switches from the exemption regime over to the imputation regime) which applies if the foreign subsidiary:

- earns mainly passive income (i.e. interest, rental or license income, capital gains from the sale of participations) and

- is taxed outside of Austria at an effective tax rate of 15% or less.

Under this switch-over clause, dividends and capital gains are taxed at the ordinary rate of 25% with a tax credit for any underlying foreign taxes paid.

Is it possible to obtain a tax ruling ? In Austria, tax rulings (sometimes called letter rulings) issued either by the competent tax office or by the Austrian Ministry of Finance are available. The latter may be applied for on an anonymous basis. Although letter rulings issued by the Austrian Ministry of Finance are not legally binding they are often relied on by local authorities in a future tax audit as these rulings accordingly reflect the view held by the Austrian Ministry. With respect to the participation exemption, such rulings are generally only applied for with regard to a possible switch-over case, as the exemption provision itself is rather straightforward. Possible areas for tax rulings might also cover comparability issues regarding the foreign subsidiary.

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? Under the new Austrian group taxation scheme, even holding companies may qualify to act as the group parent company. The requirements to be met are:

- direct or indirect participation exceeding 50%, and

- a written application to form a tax group to be filed with the competent tax office including an agreement on the allocation of tax costs.

Even two and more parent company groups may be established under specific circumstances. The qualifying participation must exist during the whole fiscal year during which the group taxation scheme applies.

Under the group taxation scheme, taxable profits and losses are determined on the level of each subsidiary and are subsequently attributed to the parent company. In this context, tax losses incurred by foreign-based subsidiaries held directly by the group (parent) company may be used to offset the group's taxable profits as long as they are not used abroad. Furthermore, for the acquisition of domestic qualifying participations, depreciation of goodwill applies (maximum 50% of the acquisition costs, spread over 15 years). The group has to be in existence for at least three years otherwise the tax would be recaptured determined on a stand-alone basis.

Are holding companies subject to VAT ?
Acquisition and disposal of a participation : Only holdings rendering administrative, financial, commercial and technical services to its subsidiaries are treated as entrepreneurs. Consequently, only these types of holdings are entitled to deduct the VAT already paid in the context of an acquisition and of a disposal of a participation in the holding (like lawyer's or notary's fees) from its own VAT liability. Holdings which merely concentrate on the acquisition and the administration of the respective participations are not deemed to be entrepreneurs and are therefore not entitled to take this deduction.
Payment of dividends and interest: VAT-exemption.

Other taxes (professional taxes, taxes on salaries, etc.) Real Property Acquisition Tax (in general, 3.5% of value of consideration), Fees on Business Transactions.

Is there any specific tax regime for employees (i.e. expatriates) ? There is no specific tax regime for employees under Austrian law. In general, the income of an employee is subject to withholding tax unless he qualifies as an independent contractor. Where and how the income of expatriates is taxed is determined in accordance with the applicable national Austrian tax law and the respective DTA. However, specific tax exemptions (e.g. for construction workers), tax benefits (e.g. for persons whose immigration to Austria is in the public interest), and simplifying provisions (e.g. deductibility of certain expenses of expatriates) have to be complied with in this context.

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Belgium

Tax regime applicable to holding companies in Belgium

I Introduction

Is there a specific legal regime applicable to holding companies ? No

What are the legal structures most commonly used for holding companies ? A private limited liability company (*société privée à responsabilité limitée - SPRL*) and a limited company (*société anonyme - SA*).

What is the minimum legal share capital ? EUR 61,500 for a SA and EUR 18,600 for a SPRL.

Is there any capital tax ? No, except in certain circumstances if an individual contributes to the share capital of a real estate company. In this case, a 12.5% (10% if the real estate is located in Flanders) registration duty will be levied.

What is the corporate tax rate ? 33.99%

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? The participation exemption regime is granted provided that:

- the beneficiary has maintained (or undertakes to maintain) at least a 10% shareholding (or a shareholding having an acquisition value of at least EUR 1.2M) during at least one year in the share capital of the subsidiary;

- the subsidiary is a fully taxable company;

- the participation has been booked as a fixed financial asset by the mother company (the beneficiary).

95% of the dividend received is tax exempt. This means that the remaining portion of 5% is fully taxable (at the normal corporate income tax rate of 33.99%).

“Tax regime applicable to holding companies in Belgium”

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? Yes

- a subsidiary resident in the EU ? Yes

- a subsidiary resident outside the EU ? Yes

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? Yes. However, if the beneficiary has held at least 15% of the shares issued by the subsidiary for one year (or undertakes to maintain such a participation for at least one year), no withholding tax applies.

- within the EU ? The same rules apply.

- outside the EU ? The same rules apply.

What is the domestic rate of withholding tax ? 25% (in certain cases, the withholding tax is fixed at 15%).

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? No

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ?

Yes, according to the normal corporate income tax rate (33.99%).

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? Yes, as a rule a 15% withholding applies except if the debtor and the creditor are affiliated companies (or banks).

- within the EU ? Yes, as a rule 15%. However, this rate can be reduced by a double tax treaty or an exemption granted in accordance with the EU Interest and Royalty Directive (for affiliated companies).

- outside the EU ? Yes, as a rule 15%. This rate can be reduced by a double tax treaty.

Are there any thin capitalisation rules ? As such, no thin capitalisation rules apply in Belgium.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Yes, at the normal income tax rate (i.e. 33,99%). However, the taxable base for royalties deriving from some patents ("*brevets*") corresponds to 20% of their amount.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? No, except if the beneficiary is a private individual.

- within in the EU ? Yes, as a rule 15%. However, this rate can be reduced by a double tax treaty or an exemption granted in accordance with the EU Interest and Royalty Directive.

- outside the EU ? Yes, as a rule 15%. However, this rate can be reduced by a double tax treaty.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by a holding company tax deductible ? Yes.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied and are capital losses tax deductible ? Yes. The depreciation of the participation is tax deductible provided that it corresponds to a loss of the paid-up capital of the subsidiary.

Are capital gains tax exempt ? Yes, provided that the subsidiary is subject to a normal tax regime.

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? No CFC rules apply in Belgium. However, if dividends are received from a subsidiary subject to a favourable tax regime, the participation exemption regime is not applicable.

Is it possible to obtain a tax ruling ? Yes

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? No

Are holding companies subject to VAT ? No. If the holding company does not perform management services, no VAT registration is required.

Is there any specific tax regime for employees (i.e. expatriates) ? Yes, foreign executives can be treated – from a tax law standpoint – as Belgian non-residents. Thus, only the remuneration deriving from the Belgian-sourced (excluding the remuneration corresponding to activities performed outside Belgium) activities will be taxable in Belgium.

Moreover, part of the salary (up to 11.250 € per year) earned by a foreign executive will be considered as an indemnification for higher costs, taxation, living expenses, etc., paid by the employer to encourage the executive to work in Belgium. This indemnity may be granted tax-free.

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Cyprus

Tax regime applicable to holding companies in Cyprus

I Introduction

Is there a specific legal regime applicable to holding companies ?

Cyprus implemented a new tax reform in 2003 as a step towards its entry into the European Union in 2004. The new domestic tax regulations combined with the implementation of European directives have made Cyprus a highly attractive location for holding/intermediary companies.

Cypriot legislation does not offer a specific regime or provisions for holding companies, but tax legislation contains features that make the jurisdiction a favourable holding jurisdiction.

Cyprus is commonly used as an intermediate holding jurisdiction in the following circumstances:

- By international or local groups, companies or private investors who are investing outside of Cyprus, aiming to stream dividends cheaply and easily.

- For holding subsidiaries, which hold significant values and may be sold off in the future.

- To benefit from the favourable tax provisions of the Double Taxation Treaty network, as well as from EU directives.

- Where it may be important to achieve a tax-exempt winding-up of the holding company in the future.

What is the minimum legal share Capital ? There is no legal requirement regarding the minimum or maximum share capital of a Cypriot company.

Is there any capital tax ? Capital duty is payable upon registration as a fixed amount of CYP 60 plus 0.6% on the nominal value of the authorised share capital. There is no capital duty on the share premium. Therefore the capital duty may be minimised by having a small authorised share capital and a high share premium.

What is the corporate tax rate ? The corporate income tax rate for a Cypriot resident company is 10%. The taxable income under the income tax law is calculated based on the accounting profits as defined by the International Financial Reporting Standards (with some adjustments).

‘Tax regime applicable to holding companies in Cyprus’

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? Cyprus applies a participation exemption regime on received dividends. It applies to dividends received from a resident subsidiary as well as dividends received from a non-resident subsidiary (subject to conditions outlined in "Dividends received from a non-resident subsidiary").

Is the participation exemption applicable when dividends are distributed by :

- a domestic subsidiary ? Dividends received by a Cypriot resident company from its Cypriot resident subsidiary are tax exempt.

- a subsidiary resident in the EU, outside the EU ? Dividends received by the Cypriot company from a foreign subsidiary are exempt from corporate income tax, but subject to the so-called Special Defence Contribution ("SDC") with a rate of 15%.

However, dividend income is exempt from SDC, if the company receiving the dividend is resident in Cyprus or a company which is not resident in Cyprus but maintains a permanent establishment in Cyprus, and owns at least 1% of the company paying the dividend. This exemption does not apply if (a) more than 50% of the activity of the paying company results directly or indirectly in investment income and (b) the foreign tax burden is significantly lower than the tax rate payable in Cyprus.

In addition, the above criteria imply that both conditions have to be met for the exemption not to be applicable. For example: if a foreign trading company is held more than 1% by a Cypriot holding company and the foreign company pays a dividend to the Cypriot company, the dividend will be exempt from any tax even if its tax burden is substantially lower than the Cypriot tax burden (the corporate income tax rate in Cyprus is 10%), as less than 50% of the foreign company results in investment income (the foreign company being a trading company).

Since both (a) and (b) of the criteria have to be met for the exemption not to apply, the exemption is almost always satisfied. This results in the non-taxation of the foreign-source dividend.

The above exemption mechanism is applicable to dividends received from EU resident subsidiaries as well as from subsidiaries resident outside of the EU.

A dividend received by a Cypriot company from a non-resident subsidiary where a foreign withholding tax has been levied, and if such dividend is liable to taxation in Cyprus, the tax paid abroad may be credited against the tax payable in Cyprus.

1.2 Outgoing Dividends

Is there any withholding tax paid by a holding company if the creditor is located :

- in the same jurisdiction, within the EU, outside the EU ? Outgoing dividends distributed by a Cypriot resident company are tax exempt. This applies to payments to resident shareholders as well as to non-resident shareholders regardless of their country of residence or the existence of a Double Taxation Treaty with that country. (An individual resident shareholder is subject to SDC at 15% on the dividend received).

Cypriot corporate legislation contains regulations regarding deemed distribution of dividends.

2. Interest

2.1 Incoming Interest

Is incoming interest taxable ? If so, at what rate ? Interest received as a result of the ordinary activities of the company, or activities closely related thereto, is not considered to be interest for SDC purposes. Such interest is considered to be trading income and is subject to corporate income tax.

If the interest received does not result from the business activity of the company or is not closely related thereto: Interest received by a Cypriot resident company is subject to income tax at 10% on 50% of the interest received, and to SDC at 10% of the whole amount of interest received. This results in an effective and combined tax rate of 15%.

If foreign withholding tax has been levied, the tax paid abroad may be credited against the tax payable in Cyprus.

2.2 Outgoing Interest

Is there any withholding tax paid by a holding company if the creditor is located :

- in the same jurisdiction, within the EU, outside the EU ? Cyprus does not impose withholding tax on interest payments made by a resident debtor to a resident creditor or to a non-resident creditor, regardless of jurisdiction the interest is paid to.

Are there any thin capitalisation rules ? Cypriot tax legislation does not contain any thin capitalisation rules.

3. Royalties

3.1 Incoming Royalties

Are incoming royalties taxable ? If so, at what rate ? Depending on the jurisdiction of source, no withholding tax or reduced withholding tax is often available either under a Double Taxation Treaty or the EU Interest and Royalty Directive. The Cypriot network of Double Taxation Treaties offers low or zero rates of withholding tax on royalties in most cases.

3.2 Outgoing Royalties

Is there any withholding tax paid by a holding company if the licensor is located :

- in the same jurisdiction, within the EU, outside the EU ? Cyprus does not impose withholding tax on royalties paid by a Cypriot company, if the rights are exercised outside of Cyprus by the Cypriot company. This applies irrespective of the location of the non-resident beneficiary of the royalty payments.

When the royalties are connected with use in Cyprus, a 10% withholding tax is levied, subject to the provisions of any treaty or directive.

III Tax Treatment of the Participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? The cost of investment relating to the acquisition of a participation is not tax deductible. This is in line with the tax exemption on gains from sale of shares in Cyprus.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? The value of the shares held in a subsidiary or any shares held should be written down for financial reporting purposes. Financial statements for Cypriot companies are subject to International Financial Reporting Standards, which allow the written value not to reflect the actual market value but the initial cost price.

Are capital gains tax exempt ? Capital gains are tax exempt, except for gains arising from the sale of immovable property located in Cyprus, or from sale of shares in non-listed companies that own immovable property in Cyprus. The tax rate is 20%.

Are capital losses tax deductible ? Capital losses relating to immovable property can be offset against capital gains relating to immovable property, and therefore reduce the taxable amount subject to capital gains tax.

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? Cyprus does not have any controlled foreign company legislation (CFC).

Is it possible to obtain a tax ruling ? A ruling may be obtained from the Cypriot tax authorities. The timeframe is usually one month from submitting the request. The ruling is binding on the tax authorities as to the facts presented, but can be overturned by a court.

V Miscellaneous

Disposal of shares Gains on the sale of shares are tax exempt provided that the disposed shares comply with the definition of "securities" under the Cypriot income tax law. "Securities" are defined as "shares, bonds, debentures, founders' shares and other securities of companies or other legal persons, incorporated under a law in the Republic or abroad and options thereon". The only exemption is if, and to the extent that, the company holds real estate located in Cyprus, as mentioned in the above section on capital gains and losses.

Liquidation A Cypriot holding company may cease operations and distribute the assets to its shareholders as proceeds on liquidation are tax exempt (subject to the company not having any undistributed dividends from any year, in accordance with the deemed distribution regulations).

Can the holding company opt for consolidated tax treatment of its subsidiaries ? A holding company may not opt for the consolidated tax treatment of its subsidiary. However, Cypriot tax legislation provides for losses to be offset against profits within the same group of companies during the same year of assessment.

Companies are considered to be in the same group if they are resident in Cyprus and have a 75% direct or indirect holding relationship: one company is owned 75% (of the ordinary share capital with voting rights) by the other, or if both companies are owned 75% by a third company throughout the whole year of assessment, and if that shareholder is beneficially entitled to not less than 75% of the profits available for distribution and any assets that would be available for the shareholder upon winding-up thereof.

Company A would not be considered to be the owner of 75% of Company B if any of the profit upon a sale of the share holding that Company A holds directly or indirectly in Company B would be considered as a trading receipt for Company A.

Company losses may be carried forward indefinitely and offset against future profits.

Reorganisation regulations Cypriot income tax law introduces regulations regarding company reorganisations, which strictly comply with the regulations of the Merger Directive, but with a wider application. The regulations apply to domestic reorganisations, cross-border reorganisations with both EU and non-EU member states as well as to reorganisations abroad with tax implications in Cyprus. There are no tax consequences on income or capital from a Cypriot holding company involved in a reorganisation.

The reorganisation has to qualify as a reorganisation under Cypriot law.

Are holding companies subject to VAT ? Due to the fact the VAT is a tax on consumption, the Cypriot holding company will not be subject to VAT legislation, or entitled or obliged to register for VAT purposes, if the activity of the Cypriot holding company is restricted to merely holding assets.

If the company has business activities or provides management services which fall under the scope of VAT, it may be required to register for VAT purposes if the value of the taxable supplies in the last 12 months exceeds CYP 9,000. If the value is lower than CYP 9,000 the holding company may register voluntarily.

The standard rate of VAT is 15%.

Stamp Duty Stamp duty is a tax on contracts documenting transactions in Cyprus. The tax becomes payable upon execution of some corporate documents and most contracts.

The stamp duty on corporate documents is various fixed amounts of minor value. The stamp duty payable on execution of contracts is levied on the value (consideration), and the rates are CYP 1.50 for every CYP 1,000 for contracts of the value of up to CYP 100,000, and CYP 2 for every CYP 1,000 for contracts of the value of over CYP 100,000.

Income tax Individuals resident in Cyprus are taxed on their worldwide income. Non-Cypriot residents are taxed on their Cypriot-source income only.

Rates of the individual income tax:

Taxable income, in CYP	Tax rate
0 – 10,000	0%
10,001 – 15,000	20%
15,001 - 20,000	25%
20,001 and over	30%

Income tax for expatriates: Non-resident individuals, who take up residency and employment in Cyprus, are liable to income tax as shown in the above table, but they are entitled to tax relief of 20% on their total income, up to a limit of CYP 5,000 per year, for the first three years following the year the employment commenced.

Conclusion

Cyprus provides a most beneficial tax environment for holding companies, due to the domestic legislation, the implementation of European directives following its EU membership, as well as a wide network of beneficial Double Taxation Treaties.

Exchange rate: 1 CYP = EUR 1.72 (11.06.2007)

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Aristodemou Loizides Yiolitis & Co.

A business law firm with qualified Cyprus lawyers practicing in international banking and finance transactions. In the past year the firm acted for international institutions and reputable companies on transactions involving Cyprus.

Estonia

Tax regime applicable to holding companies in Estonia

Tax regime applicable to holding companies in Estonia

I Introduction

Is there a specific legal regime applicable to holding companies ? There no special regime applicable for holding companies.

What are the legal structures most commonly used for holding companies ? Private limited companies (*osaühing*) are used extensively as holding companies. Public limited companies (*aktsiaselts*) are also used for particular projects.

What is the minimum legal share capital ? Generally, the minimum share capital is EEK 40,000 (EUR 2,564) for private limited companies and EEK 400,000 (EUR 25,641) for public limited companies.

Is there any capital tax ? There is no capital tax.

What is the corporate tax rate ? According to the Income Tax Act, resident legal persons and non-resident legal persons who have a registered branch or a permanent establishment in Estonia do not pay income tax on annual profits. Instead, profit distributions by companies are taxed (so-called dividend tax). In addition to the dividend tax, some other payments by the taxable person, like payment of fringe benefits or hospitality may incur income tax liability.

The rate of the income tax is 22/78 (i.e., where the net dividend is 100, the tax is (100x22)/78 = 28.20. The rate will be reduced gradually to 20/80 by 2009.

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? There is a participation exemption regime on dividends received in Estonia. Dividends distributed to shareholders of an Estonian holding company, which were either subject to withholding tax or the profit from which the dividends was paid out have been taxed abroad or in Estonia, with the exception of a low tax jurisdiction, can be exempt from income tax if the Estonian holding company held 15% of the shares in a distributing entity when the dividends were received. Full exemption is allowed.

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? The exemption applies to dividends distributed by a domestic subsidiary (an Estonian subsidiary will be subject to income tax at the rate of 22/78 on the distributed dividends).

- a subsidiary resident in the EU ? The exemption also applies to dividends distributed by a subsidiary resident in the EU.

- a subsidiary resident outside the EU ? The exemption also applies to dividends distributed by a subsidiary resident outside the EU, except dividends distributed from a subsidiary located in a low tax jurisdiction.

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? Estonian distributing entities are subject to income tax at the rate of 22/78 on outbound dividends. Neither resident natural or legal persons are subject to any additional withholdings.

- within the EU ? In addition to Estonian corporate income tax payable by an Estonian company upon distribution of dividends, a withholding tax at the rate of 22% is imposed on dividends paid to EU resident companies by an Estonian company, unless the beneficiary owns at least a 15% share in the Estonian company, in which case there is no withholding. If the participation is less than 15%, the relevant tax treaty provisions can be applied to reduce the withholding tax.

Natural EU resident persons are not subject to any additional withholding tax.

- outside the EU ? In addition to Estonian corporate income tax payable by an Estonian company upon distribution of dividends, a withholding tax at the rate of 22% is imposed on dividends paid to non-resident companies by an Estonian company, unless the beneficiary owns at least a 15% share in the Estonian company, in which case there is no withholding. An exception applies to legal persons located in a low tax jurisdiction.

If the participation is less than 15%, the relevant tax treaty provisions can be applied to reduce the withholding tax.

Natural non-resident persons are not subject to any additional withholding tax.

What is the domestic rate of withholding tax ? There is no withholding tax imposed on domestic distributions of dividends.

Is it possible to offset withholding tax on incoming dividends against the withholding tax on outgoing dividends ?

The credit method can be used to offset withholding tax on incoming dividends against the income tax payable by Estonian legal persons on the distribution of outbound dividends. Please also refer to the analysis on exempted dividends above.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Incoming interest is not taxable for corporate entities unless it is distributed in the form of dividends by an Estonian holding company. However, tax credits can be used by an Estonian holding company to offset withholding tax paid abroad against income tax payable in Estonia on dividends.

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ?As regards the payment of interest to natural resident persons, income tax at a rate of 22% is withheld from the interest (interest paid by credit institution is tax exempt). Market interest rate paid to other Estonian legal person is not subject to income tax.

- within the EU ? There is no withholding tax imposed on interest. Only excessive interest above the market interest rate is subject to a withholding tax at the rate of 22%.

- outside the EU ? There is no withholding tax imposed on interest. Only excessive interest above the market interest rate is subject to withholding tax at the rate of 22%.

Are there any thin capitalisation rules ? There are no thin capitalisation rules in Estonia. Only the payment of excessive interest rate above the market interest rate can be subject to taxation.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Incoming royalties are not taxable for corporate entities unless distributed in the form of dividends by an Estonian holding company. However, tax credits can be used by an Estonian holding company to offset withholding tax paid abroad against income tax payable in Estonia on dividends.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? As regards the payment of royalties to natural resident persons, income tax at the rate of 22% is withheld from the royalties. Royalties relating to the payor's business activities paid to other Estonian legal persons are not subject to income tax.

- within the EU ? Since the EU Interest and Royalties Directive has been fully implemented in Estonia, royalties paid by an Estonian company are not subject to withholding tax if the beneficial owner and the Estonian company are associated companies and are incorporated in the EU. In order to benefit from this exemption, the beneficial owner should have a direct minimum holding of 25% in the capital of the Estonian company for a period of two years. The withholding tax would not be imposed if a resident company has a direct minimum holding of 25% in the beneficial owner's capital.

- outside the EU ? The general withholding tax rate is 15%. Such withholding tax rate can be reduced where the recipient is located in the country with which Estonia has an applicable tax treaty. Reduced rates are generally 5%- 10%.

III Tax Treatment of the Participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? For Estonian legal persons, tax deductibility is not an important issue as there is no conventional corporate taxation system in Estonia. The acquisition of shares in holding companies by Estonian legal companies can be subject to income tax if such acquisition is not related to the business activities of an Estonian legal person.

For non-residents and natural resident persons, the costs related to the acquisition of a participation in a holding company are generally tax deductible.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? The value of the shares can be written down by an Estonian holding company for accounting purposes, which will not affect the tax liability of an Estonian holding company.

Are capital gains tax exempt ? Capital gains are tax exempt for Estonian holding companies. Resident natural persons and non-residents can be subject to income tax at a rate of 22% on the capital gain realised.

Are capital losses tax deductible ? For Estonian holding companies, losses are not tax deductible. Losses are only tax deductible for accounting purposes. Resident natural and non-residents persons can deduct losses for tax purposes.

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? The acquisition of shares in a legal person located in a low tax jurisdiction can be subject to income tax at the rate of 22/78 for Estonian legal persons. The same applies to securities issued by legal persons located in a low tax jurisdiction (some exceptions apply).

There are no special CFC rules for Estonian holding companies. There are detailed CFC rules for Estonian resident natural persons.

Anti-abuse rules include transfer pricing rules, substance over form rules, step transaction rules, business relation test for expenses etc.

Is it possible to obtain a tax ruling ? It will be possible to obtain a preliminary tax ruling as from 1 August 2008. The state fee for obtaining a preliminary ruling is EEK 12,000 (EUR 769).

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? There is no consolidation for tax purposes. Consolidation is allowed for accounting purposes.

Are holding companies subject to VAT ? No, if the holding company only holds securities (including shares), it will most likely not be required to register as a VAT taxable person in Estonia.

Other taxes (professional taxes, taxes on salaries, etc.) Income tax at the rate of 22% is imposed as a general income tax for resident natural persons.

Employers pay 33% for social tax and 0.3% for employers' unemployment contributions from the remuneration paid to employees.

Employers withhold 0.6% for employees' unemployment contributions from the remuneration paid to employees in addition to income tax of 22%.

Is there any specific tax regime for employees (i.e. expatriates) ? There is no specific tax regime for employees. If an Estonian resident natural person received employment income from abroad and an employee spent more than 183 days abroad per year and employment income was taxed abroad, such income is tax exempt in Estonia.

As regards the taxation of non–residents, tax treaty provisions are applicable.

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France

Tax regime applicable to holding companies in France

Tax regime applicable to holding companies in France

I Introduction

Is there a specific legal regime applicable to holding companies ? No.

What are the legal structures most commonly used for holding companies ? Simplified form of joint-stock companies (*société par actions simplifiée - SAS*), limited companies (*société anonyme - SA*) and non-trading partnerships (*société civile*) for family holding companies.

What is the minimum legal share capital ? The minimum capital depends on the type of company. The minimum capital is EUR 37 000 for simplified form of joint-stock companies and limited companies, which do not make public offerings. There is no minimum capital for non-trading partnerships.

Is there any capital tax ? The creation of a holding company by other companies is exempt from capital tax. A company formed by individuals is exempt from capital tax if the individuals hold the securities in the company for at least three years.

What is the corporate tax rate ? The corporate tax rate is 33,1/3% plus a social tax at the rate of 3,3% of the corporate tax liability owed by companies whose corporate tax liability exceeds EUR 763 000.

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? A subsidiary can opt for dividends received to be deducted from the taxable income subject to a share of the costs and expenses representing 5% of the dividends received (i.e., an effective tax of 1,66% or 1,72%, depending on the amount of the company's turnover. See the corporate tax rates above).

To qualify for the exemption, the securities in the participation held by the parent company must represent at least 5% of the subsidiary's capital. The exemption is only definitively obtained after a holding period of two years.

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? Yes.

- a subsidiary resident in the EU ? Yes.

- a subsidiary resident outside the EU ? Yes.

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? No.

- within the EU ? No. Dividends distributed to a parent company whose registered office is located in another Member State are exempt from a withholding tax insofar as the parent company's participation meets the level required by the Parent-Subsidiary Directive, i.e., 15% for dividends distributed between 1 January 2007 and 31 December 2008 (threshold reduced to 10% as from 1 January 2009). In addition, further to the ECJ's ruling in the Denkavit case, the French tax authorities recognise that paid dividends qualify for the exemption when the parent company's participation meets the 5% threshold required for French parent companies.

- outside the EU ? Yes, except for dividend distributions to Finnish or Norwegian companies as these companies are treated as though they fall within the European Union.

What is the domestic rate of withholding tax ? 25% unless more favourable rates are provided for by a tax treaty. France has entered into more than 80 tax treaties.

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? Yes.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Yes, at the standard rate.

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? No.

- within the EU ? In theory yes, but there are two exceptions:

°loans granted outside of France

°loans granted by affiliated European parent companies (at least by 25%).

- outside the EU ? In theory yes, except if the loan is granted outside of France.

Are there any thin capitalisation rules ? Yes. French thin capitalisation rules, which apply as from 1 January 2007, relate to all interest paid to an affiliated company, irrespective of the geographical origin of the funds and the place of establishment of the lending company. Two companies are affiliated when one holds the majority of the other company's share capital, directly or through an intermediary, or has decision-making power over such company, or when they are placed under the control of the same third company. As an exception, these rules do not apply to group cash flows, leasing transactions and interest on granted by an affiliated bank.

The thin capitalisation rules provide for two stages:

- First stage: Interest exceeding a rate laid down by a regulation (4,48% in 2006) is not deductible unless the company demonstrates that this rate corresponds to the rate that it would have obtained if it had been granted the loan by an independent credit institution. The interest that is accordingly not deductible is subsequently not taken into account for the calculation of the thin capitalisation as described hereinafter.

- Second stage: The lending company recovers all of the deductible interest owed to its affiliated companies and compares this total with the following three limits:

- the income corresponding to the amount of said interest multiplied by the ratio existing between 1,5 times the amount of the equity in the company and the average amount of the funds lent to it by all of the affiliated companies,

- 25% of the earnings before tax plus the interest and depreciation allowances for the financial year,

- the amount of the interest received from affiliated companies. This limit enables the thin capitalisation rules to be avoided when the company only lends funds that it borrowed at the same rate.

The amount of interest which exceeds the highest of the above three limits is added back unless this surplus is lower than EUR 150 000.

The interest added back into the income may be deducted in following financial years in accordance with the above limits, but after application of a discount of 5% for each year following the second year of recognition thereof.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? They are in theory taxed at the rate of 33,1/3% but royalties collected in relation to patent licences qualify for reduced taxation at the rate of 15%.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? No.

- within the EU ? Yes, a withholding tax at the rate of 33,1/3% applies in theory except where a tax treaty excludes the withholding tax or limits the rate thereof. However, royalties paid to an legal entity in the European Union, which is affiliated to it by at least 25% is exempt from this withholding tax.

- outside the EU ? Yes, a withholding tax at the rate of 33,1/3% applies in theory except where a tax treaty excludes the withholding tax or limits the rate thereof.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? The deduction of the acquisition costs of the securities in the participation must be spread over five years (rule applying to costs incurred since 1 January 2006).

A specific mechanism must also be highlighted: it is prohibited to deduct interest on loans granted by an external shareholder, which controls the group, to acquire a new integrated subsidiary.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? No.

Are capital gains tax exempt ? Yes. Since 1 January 2007, capital gains on securities in the participation, other than securities in the real estate companies, held for at least two years, are exempt provided that the share of costs and expenses equal to 5% of the amount of the annual net capital gain derived from these securities is taxed at 33,1/3%.

The capital gains derived from the disposal of securities in real estate companies held for at least two years are subject to tax at a reduced rate of 15%.

Are capital losses tax deductible ? Capital losses in the exempt sector are not deductible. Capital losses taxed at 15% are charged to long-term capital gains taxed at the rate of 15% during the same financial year or the following ten financial years.

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? Yes, the rules are laid down by Article 209B of the General Tax Code. When a legal entity established in France and liable for corporate tax runs a company outside of France or holds, directly or indirectly, more than 50% of the shares, interests, financial rights or voting rights in a legal entity (legal person, body, trust or similar institution) established or formed outside of France and this company or legal entity is subject to preferential tax treatment, the income of this company or legal entity is subject to corporate tax.

Is it possible to obtain a tax ruling ? Not in relation to the application of the aforementioned Article 209B. However, the advance ruling procedure exists for transfer pricing matters.

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? Yes, a French holding company is authorised to consolidate the income of its French subsidiaries. This tax integration regime applies to companies subject to French corporate tax. The capital of the parent company of the group must not be held, directly or indirectly, by at least 95% by another company subject to French corporate tax. The capital of the subsidiaries must be held, directly or indirectly, by at least 95% by the parent company. Shares that the employees have acquired with their employer's assistance (mainly stock options and bonus shares) are not taken into account for the purpose of calculating this threshold.

Two alternative regimes exist, which theoretically enable worldwide income to be consolidated: the consolidated income regime and the worldwide income regime. They require approval by the Ministry of the Economy and Finances and are very rarely applied.

Are holding companies subject to VAT ? Holding companies are subject to VAT on services provided to its subsidiaries.

Other taxes (professional taxes, taxes on salaries, etc.) The holding company is subject to business tax if it provides services and payroll tax on the remuneration paid to persons other than service providers.

Is there any specific tax regime for employees (i.e. expatriates) ? Employees and directors who are asked by a foreign company to perform a temporary position in a company established in France are exempt from income tax during the year in which they start their position and the following five years on additional salary components linked to their specific situation. This exemption is reserved for persons who have not been resident in France for tax purposes during the five years preceding their start date. In particular, it applies to accommodation and removal allowances, etc.

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Germany

Tax regime applicable to holding companies in Germany

Tax regime applicable to holding companies in Germany

I Introduction

Is there a specific legal regime applicable to holding companies ? With regard to Corporate Tax, special thin capitalisation rules exist applying to holding companies.

What are the legal structures most commonly used for holding companies ? For Corporate Tax purposes, a holding company is understood as a corporation whose main activity is holding shares in and financing corporations or the assets thereof, which constitute at least 75% of the total active assets in participations.

What is the minimum legal share capital ? €25,000

Is there any capital tax ? No.

What is the corporate tax rate ? 25%.

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? Irrespective of whether the corporation is a holding company or not in Germany, the corporate tax to be paid on dividends distributed to a corporation as a shareholder is 95% tax free. Neither a minimum shareholding applies nor is a minimum holding period before the corporation tax exemption applies. 95% of the dividends distributed to the shareholding corporation is tax exempt. The remaining 5% is subject to corporation tax. Costs and expenses related to the shareholding are 100 % tax deductible.

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? Yes.
- a subsidiary resident in the EU ? Yes.
- a subsidiary resident outside the EU ? Yes.

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? Yes.

- within the EU ? Yes.

- outside the EU ? Yes.

What is the domestic rate of withholding tax ? 20% if the shareholder pays the withholding tax, 25% if the corporation distributing the dividend pays the withholding tax.

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? No.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Corporation tax: 25% (plus trade tax and solidarity surcharge in total approximately 40%).

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? No.

- within the EU ? No.

- outside the EU ? No.

Are there any thin capitalisation rules ? Yes. Interest paid to a substantial shareholder (more than 25%), a related person or a third party having a right of recourse (back-to-back financing), which exceeds EUR 250,000 per year, can be reclassified as a hidden profit distribution. The reclassification results in a business expense deduction no longer being possible and withholding tax must be withheld. A reclassification as a hidden profit distribution particularly applies if the interest rate is variable or in the event of a fixed interest rate, the interest exceeds 1.5 times the pro rata equity of the shareholder (safe haven) and the arm's length test is not met. For holding companies, the safe haven increases to three times the pro rata equity.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Corporation tax 25% (plus trade tax and solidarity surcharge in total approximately 40%).

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? No.

- within the EU ? Yes (where applicable, right of reimbursement or exemption).

- outside the EU ? Yes (where applicable, right of reimbursement or exemption).

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? Yes.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? No (depreciation is not taken into account).

Are capital gains tax exempt ? Regardless of whether a stock corporation is a holding company or not, the capital gains are 95% tax exempt, as far as the shareholder is a stock corporation. Neither a minimum shareholding applies, nor is a minimum holding period before the corporation tax exemption applies. The remaining 5% is subject to corporation tax (plus trade tax and solidarity surcharge).

Are capital losses tax deductible ? No, as far as the shareholder is a stock corporation.

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? Yes. In particular, the principle of the arm's length test: rules on hidden profit distributions and hidden capital contribution as well as the rules on the adjustment of income in the event of business relationships abroad pursuant to the Act on External Tax Relations.

Is it possible to obtain a tax ruling ? Yes. However, a binding tax ruling is in general carried out for a cost.

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? Yes. A condition involves in particular a majority participation and the conclusion of a profit transfer agreement for at least five years, the entry in the Commercial Register as well as the proper implementation (management and control relationship).

Are holding companies subject to VAT ? No.

Other taxes (professional taxes, taxes on salaries, etc.) Payroll tax as far as employees are employed.

Is there any specific tax regime for employees (i.e. expatriates) ? Yes. As far as for example under the double taxation treaty, the right of taxation on salaries is allocated to the state in which the work is performed, an exemption from the payroll tax is granted upon application to the tax authorities.

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Hungary

Tax regime applicable to holding companies in Hungary

I Introduction

Is there a specific legal regime applicable to holding companies ? No.

What are the legal structures most commonly used for holding companies ? Limited liability company (in Hungarian "Kft.") or private company limited by shares (in Hungarian "Zrt.")

What is the minimum legal share capital ? Currently HUF 3 million (approximately EUR 12 000) for a Kft and HUF 20 million (approximately EUR 80 000) for a Zrt. It is proposed to reduce these minimum amounts to HUF 500 000 (approximately EUR 2 000) for Kfts and HUF 5 million (approximately EUR 20 000) for Zrts.

Is there any capital tax ? No, but a stamp duty of HUF 100 000 (approximately EUR 400) applies for Kfts and Zrts upon establishment, and HUF 40 000 (approximately EUR 160) upon any change in the registered capital.

What is the corporate tax rate ? 16% plus a 4% so-called solidarity tax applies resulting in an effective corporate tax rate of 20%.

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? Yes. Dividends received are not subject to corporate tax nor solidarity tax unless received from a CFC. The exemption does not apply to dividends received from a CFC. Otherwise, there are no special conditions.

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? Yes.

- a subsidiary resident in the EU ? Yes, unless it is considered a CFC.

- a subsidiary resident outside the EU ? Yes, unless it is considered a CFC.

“Tax regime applicable to holding companies in Hungary”

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? No in the case of a corporate shareholder and yes in the case of an individual shareholder.

- within the EU ? No in the case of a corporate shareholder and yes in the case of an individual shareholder.

- outside the EU ? No in the case of a corporate shareholder and yes in the case of an individual shareholder.

What is the domestic rate of withholding tax ? No withholding tax applies to a corporate shareholder. A withholding tax of 25% or 35% applies to individual shareholders. However, this rate is reduced by the applicable double tax treaty in most cases.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Yes, interest is part of a company's accounting profit and as such it is subject to corporate income tax at the same rate as all other income (i.e. 16+4%). Taxpayers may opt to elect a rule according to which the tax base may be reduced by 50% of the amount by which interest received from related parties exceeds interest paid to related parties, resulting in an effective tax rate of 8+4%.

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? No, provided the creditor is a corporate entity and not a private individual.

- within the EU ? No, provided the creditor is a corporate entity and not a private individual.

- outside the EU ? No, provided the creditor is a corporate entity and not a private individual.

Are there any thin capitalisation rules ? If the total debts of a Hungarian taxpayer are higher than three times its equity, then the interest charged (and deducted as an expense for accounting purposes) on the excess debt will not be deductible for corporate income tax purposes (i.e. an "increase" adjustment needs to be made to the pre-tax accounting profit).

The level of debt applicable for this purpose is the daily average amount of debt arising from loans, private debt securities, bills of exchange and all other obligations, on the basis of which interest is payable (e.g., including debts under cash pooling schemes), owed to any party other than financial institutions (whether Hungarian or non-Hungarian), recorded in the statutory accounts for the year in which the relevant interest is paid. The level of equity applicable for this purpose is the daily average amount of the aggregate of the registered capital, capital reserves, profit reserves and fixed reserves of the relevant taxpayer.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Yes, they are subject to corporate income tax at the normal rate. However, taxpayers may opt to reduce their corporate tax base with 50% of the royalties received resulting in an effective tax rate of 8+4%.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? No, provided that the licensor is not a private individual.

- within the EU ? No, provided that the licensor is not a private individual.

- outside the EU ? No, provided that the licensor is not a private individual.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? Yes.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? Yes, and such write-down is tax deductible unless it relates to a participation held in a CFC.

Are capital gains tax exempt ? In general, they are subject to corporate income tax and solidarity tax at normal rates (i.e. 16+4%), but exemption is available for so-called notified participations.

The rules relating to notified participations provide that capital gains derived by a Hungarian tax resident company after 1 January 2007 on the transfer of participations of at least 30% held in the capital of a Hungarian or a non-Hungarian resident entity are exempt from Hungarian corporate income tax, provided the initial acquisition of that participation was notified to the Hungarian tax authorities within 30 days of the relevant acquisition and the participation has been held for at least two years on the sale date.

The relevant legislation provides that any loss incurred on the sale (or other alienation) of such participations will not be tax-deductible.

Are capital losses tax deductible ? Yes, unless relating to a notified participation. (See above)

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? Hungarian tax laws contain general anti-abuse provisions. Hungarian tax legislation (in fact, not only VAT legislation) generally recognises the doctrine of abuse of law. This doctrine is expressly stated in Article 2 of Act XCII of 2003 on the Procedures of Taxation of the Republic of Hungary. According to Article 2:

"*(1) All rights in tax-related matters shall be exercised within their meaning and intent. In the application of tax laws, contracts and other transactions contrived with the result of evading the provisions of tax laws shall not be regarded as being exercised within the specific intent of such laws.*

(2) In the cases set forth in paragraph (1), the tax authority shall establish the tax in consideration of all circumstances, in particular, the tax liability prevailing when rights are observed within their meaning and intent or, if the tax base cannot be established in this fashion, by estimation."

However, it should be noted that Hungarian Courts have been somewhat reluctant to apply this doctrine and are interpreting this doctrine rather stringently.

A CFC is defined as a subsidiary or the non-Hungarian permanent establishment of a Hungarian company located in a country where there is no corporate income tax or where the effective tax rate (i.e., the tax actually payable divided by the pre-tax profits) is below 2/3 of the applicable Hungarian corporate income tax rate. (The Hungarian corporate income tax rate is currently 16%. Consequently, an effective tax rate below 10,66% falls within the scope of the Hungarian CFC definition). However, there is an exception to the above rule: if the subsidiary performs a "*genuine business activity*" in its country of residence, it would not qualify as a CFC after all, irrespective of the relevant tax rate. The definition of a "*genuine business activity*" requires either manufacturing activities or the provision of services using its own equipment and personnel.

Is it possible to obtain a tax ruling ? Yes, a non-binding ruling may be obtained free of charge, or a binding ruling may be obtained for 1% of the value of the transaction but capped at HUF 7 million (EUR 21 000).

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? No.

Are holding companies subject to VAT ? Yes, it would be considered as a taxpayer for VAT purposes. However, the actual payment obligation or right for deduction of input VAT would only arise if the actual supply of goods or services subject to VAT is effected.

Other taxes (professional taxes, taxes on salaries, etc.) A holding company would be subject to the same Hungarian taxes as any other company.

Is there any specific tax regime for employees (i.e. expatriates) ? No.

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Italy

Tax regime applicable to holding companies in Italy

Italy is not a traditional location for holding companies. However, the participation exemption regime on capital gains (84% exempt) and on dividends (95% exempt), the worldwide tax consolidation regime and the implementation of the European Directives is making the Italian tax system more competitive.

I Introduction

Is there a specific legal regime applicable to holding companies ? There is no specific tax regime for holding companies in Italy although some legal provisions are specifically provided relating to them.

Holding companies, which are commonly organised as a limited liability company (*società a responsabilità limitata* - *s.r.l.*), a stock company (*società per azioni* - *s.p.a.*) or as a stock company limited by shares (*società in accomandita per azioni* - *s.a.p.a.*), are normally subject to corporate income tax (*IRES*) levied at the rate of 33% and the regional tax on productive activities (*IRAP)* generally levied at the rate of 4.25%. No capital tax is levied in Italy.

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? Under the participation exemption regime, domestic and foreign dividends received by a person subject to corporate income tax (*IRES*) are generally 95% tax exempt. However, dividends received from foreign entities - resident in the EU or outside the EU but not in tax havens - fall under the participation exemption regime provided that they are totally non-deductible in the foreign country.

If dividends are distributed by a subsidiary resident in a tax haven, the 95% exemption is applicable if the person resident in Italy obtains an advance ruling (prior to the filing of the relevant Italian income tax return) from the Italian tax authorities by demonstrating that the participation does not result in localising income in a tax haven. Implementing measures make it clear that 75% of the income of

“Tax regime applicable to holding companies in Italy” the foreign company must be generated in countries other than tax havens where it is fully subject to ordinary taxation.

No minimum shareholding threshold and no minimum holding period is required to benefit from the 95% dividend exemption.

The remaining 5% of the dividends received is subject to the ordinary 33% corporate income tax, thus resulting in a 1.65% effective tax burden.

It should also be noted that dividends received may be fully tax exempt under the domestic and worldwide tax consolidation regimes.

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located :

- in the same jurisdiction, within the EU, outside the EU ? No withholding tax is levied on dividends distributed to resident corporate shareholders. However, dividends distributed to non-resident corporate shareholders – not pertaining to a permanent establishment in Italy - are subject to a 27% final withholding tax (12.5% for saving shares) which may be reduced under the applicable tax treaty.

Under the domestic rules implementing the EU Parent-Subsidiary Directive (435/90/EC as modified by the Directive 123/2003/EC), the domestic withholding tax is not applied – or, if applied, may be reimbursed – provided that the following conditions are met:

- the parent company is a company that directly owns at least 15% (10% as from 2009) of the capital in the resident company;
- the parent company has one of the legal forms provided for by Annex A to the Directive 435/90/EC;
- the parent company is fiscally resident in a EU Member State and is not considered to be resident outside the European Union according to a double taxation convention with a third State;
- the parent company is subject in the state of residence to one of the taxes listed in the Directive, and does not benefit from an optional or exemption regime, which is not geographically or temporally limited;
- the participation is uninterruptedly held for at least one year.

Such a withholding tax exemption is also applied if the parent company is directly or indirectly controlled by one or more persons, who are not resident in one of the EU Member States. However, in this case it should be demonstrated that the participation is not held with the main or exclusive purpose of benefiting from the dividend withholding tax exemption.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Interest received constitutes an item of the gross taxable base taxed for IRES purposes only. Indeed, with the exception of financial companies, IRAP is not applicable to interest received.

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? Interest paid to resident companies is normally subject to a 12.5% advance withholding tax. Interest paid to non-resident companies is subject to the same 12.5% withholding tax unless it is reduced under the applicable tax treaty.
- within the EU, outside the EU ? The withholding tax rate to be applied on interest paid to non-resident companies is increased to 27% if the foreign company is resident in a tax haven.

Under domestic rules, implementing the EU Interest and Royalties Directive (49/2003/EC), the domestic withholding tax is not applied – or, if applied, may be reimbursed – provided that a number of conditions are met.

The paying party may be a company or an entity fiscally resident in Italy, which meets all of the following conditions:

- having one of the legal forms provided for by Annex A to the Presidential Decree No. 600/1973;
- being subject to corporate income tax (IRES) without the possibility of being exempted.

The receiving party may be a company fiscally resident in a EU Member State, which meets all of the following conditions:

- having one of the legal forms provided for by Annex A;
- being fiscally resident in a EU Member State and not considered to be resident outside the European Union according to a double taxation convention with a third State;

- being subject to one of the taxes listed in Annex B, without the possibility of being exempted, or to an identical or substantially similar tax applied in addition or instead of those listed taxes.

In order to benefit from the withholding tax exemption, a special relationship between the paying and the receiving parties is required. Such a relationship is deemed to exist where one party (the paying party or the receiving party) directly owns a participation that gives right to not less than 25% of the voting rights of the other party (the receiving party or the paying party); or a third company (having one of the legal forms provided for by Annex A, being fiscally resident in a EU Member State and not considered to be resident outside the European Union according to a double taxation convention with a third State, and subject to one of the taxes listed in Annex B, without the possibility of being exempted, or to an identical or substantially similar tax applied in addition or instead of those listed taxes) directly owns a participation that gives right to not less than 25% of the voting rights of the paying and the receiving party.

In any case, the participation must be uninterruptedly held for at least one year.

In order to avoid abuse of the application of the provisions under discussion, some anti-avoidance rules have been introduced, such as the beneficial ownership clause (the receiving company should be the final beneficiary and should not be acting as an intermediary, an agent, a delegate or a fiduciary of another person), the subject to tax clauses (interest paid should be subject to one of the taxes listed in Annex B paid by the receiving party). Moreover, the interest payments under discussion are included in the list of transactions for which the Italian anti-avoidance rule (Article 37-bis of Presidential Decree No. 600/73) is applicable if one or more non-EU persons, directly or indirectly, control the receiving party.

In any case, the withholding tax exemption under discussion is not applicable to interest exceeding the arm's length value.

Are there any thin capitalisation rules ? Interest related to loans obtained from or guaranteed by shareholders or their related parties (that holds – directly or indirectly – a participation representing at least 25% of the share capital) may fall under the thin capitalisation rules.

As a result, interest exceeding the 4:1 debt-equity ratio is not deductible for tax purposes.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Royalties received constitute an item of the gross taxable base taxed for IRES (33%) and IRAP (generally 4.25%) purposes.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located :

- in the same jurisdiction, within the EU, outside the EU ? Royalties paid for the use or the right to use intangibles by a non-resident licensor are subject to a 30% withholding tax unless such withholding tax is reduced under the applicable tax treaty. In some cases, the 30% withholding tax is applied to 75% of the royalties paid.

See above for the domestic rules implementing the EU Interest and Royalties Directive, whereby the domestic withholding tax is not applied or, if applied, may be reimbursed.

III Tax treatment of the participation

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? The devaluation or the revaluation of the cost of the participations in the balance sheet is not relevant for tax purposes.

Are capital gains tax exempt ? Are capital losses tax deductible ? Under the participation exemption tax regime, capital gains realised on participations may be 84% tax exempt. However, capital losses may not be fully deductible.

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? In brief, Italian CFC rules provide that where a person resident in Italy owns a participation giving control (in general, more than 50%) of a company resident in a tax haven, the income of that company is proportionally attributed to the person with control even if it is not distributed. Many technicalities regulate the practical application of this principle.

The CFC rules are extended (even if the technicalities for the practical application are different) to a participation where there is no control but where the participation is significant (in general, more than 20%).

Is it possible to obtain a tax ruling ? In the case of both controlling participations and significant participations, the CFC rules do not apply if the person resident in Italy obtains an advance ruling (prior to the filing of the relevant Italian income tax return) from the Italian tax authorities by demonstrating that:

- the company resident in the tax haven carries out an actual industrial or commercial activity as its main activity in the country where it is located. Implementing measures make it clear that the activity must be a business activity as defined by Article 2195 of the Civil Code and that the foreign company must have an adequate organisation to carry out such activity; or

- the participation does not result in localising income in a tax haven. Implementing measures make it clear that 75% of the income of the foreign company must be generated in countries other than tax havens where it is fully subject to ordinary taxation.

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? An Italian holding company may opt for the domestic tax consolidation regime and the worldwide tax consolidation regime. The latter, which is a proportional consolidation regime, implies that all the foreign companies opt for the regime (so-called "*all in, all out approach*") and requires the proposal of a specific ruling.

Are holding companies subject to VAT ? Holding companies are in principle subject to the ordinary VAT regime. However, their ordinary activities (i.e. acquisition of participations and distribution of dividends) are not relevant for VAT purposes.

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Netherlands

Tax regime applicable to holding companies in the Netherlands

Tax regime applicable to holding companies in the Netherlands

I Introduction

Is there a specific legal regime applicable to holding companies ? No, but the Dutch tax climate is very attractive for holding companies for several reasons such as:

- the participation exemption;

- approximately 80 tax treaties exist for avoiding double taxation;

- no withholding taxes on outgoing interest and royalties and an exemption from dividend withholding tax in a large number of situations.

What are the legal structures most commonly used for holding companies ? A BV (*besloten vennootschap met beperkte aansprakelijkheid*) (limited liability company) is most commonly used as a holding company. The liability of the shareholders is limited to the amount of the capital contributed. The shares of a BV cannot be traded on a stock exchange. An NV (*naamloze vennootschap*) (public company with limited liability) is used much less frequently than a BV. An NV is basically run in the same way as a BV, with the difference that its shares can be traded on a stock exchange.

What is the minimum legal share capital ? The minimum share capital of a BV amounts to EUR 18,000. The minimum share capital of an NV amounts to EUR 45,000.

Is there any capital tax ? No.

What is the corporate tax rate ? The 2007 corporate income tax rate is 25.5% insofar as the taxable profit exceeds EUR 60,000. A tax rate of 20% applies to a taxable profit up to EUR 25,000 and a rate of 23.5% applies to a taxable profit of EUR 25,000 to EUR 60,000.

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? Yes, dividends and capital gains derived from qualifying shareholdings are fully exempt from corporate income tax provided that the parent company holds 5% or more of the nominal share capital of the subsidiary.

The participation exemption does not apply to shares held in a low taxed passive investment company. This is the case if the subsidiary meets both of the following criteria: (i) it is subject to an effective tax rate of less than 10%, taking into account Dutch principles for the determination of the taxable base, and (ii) 50% or more of its assets are comprised, directly or indirectly, of non-business portfolio investment assets. As regards this latter requirement, an exception applies to real estate subsidiaries, i.e. 90% or more of the company's assets are comprised of real estate: a participation in a real estate subsidiary generally benefits from the participation exemption regardless of its tax rate. A subsidiary primarily engaged in group financing or licensing activities is deemed to be a passive company, unless certain stringent conditions are fulfilled.

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary, a subsidiary resident in the EU, a subsidiary resident outside the EU ? Yes, provided that the requirements for application of the participation exemption are met.

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? Yes, dividends distributed to a shareholder (individual or entity) in the same jurisdiction are in principle subject to dividend withholding tax. However, no dividend withholding tax is due in the event where the dividend is distributed to a shareholder benefiting from the participation exemption on the dividend received. In other words, in the event where a Dutch company owns 5% or more of another Dutch company, no dividend withholding tax is generally speaking due.

- within the EU ? Yes, dividends distributed to a shareholder (individual or entity) within the EU are in principle subject to dividend withholding tax. However, no dividend withholding tax is due if the shareholder is a company in the EU, which holds at least 5% of the share capital of the Dutch subsidiary, provided that certain relatively straightforward conditions are met.

- outside the EU ? Yes, dividends distributed to a shareholder outside the EU are in principle subject to dividend withholding tax. In the event where the shareholder is resident in a country with which the Netherlands has concluded a tax treaty, such shareholder can possibly benefit from a reduced tax rate (depending on the case).

What is the domestic rate of withholding tax ? The domestic rate of dividend withholding tax is 15%.

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? Yes, to a certain extent. If certain requirements are met, a Dutch company can obtain a reduction of the dividend withholding tax payable with respect to dividends distributed, which are paid out of incoming dividends received from qualifying shareholdings. This reduction amounts to 3% of the dividend distributed by the Dutch company. The conditions are as follows:

- the Dutch company holds at least 25% in the nominal share capital of the entity from which the dividend is received;

- the Dutch company benefits from the participation exemption with respect to the incoming dividend;

- the incoming dividend is received from an entity, which is resident in a state with which the Netherlands has concluded a tax treaty (or an entity resident in the Dutch West Indies or Aruba); and

- at least 5% dividend withholding is levied on the incoming dividend in the state of source.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Yes, at the ordinary corporate income tax rate.

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction, within the EU, outside the EU ? No.

Are there any thin capitalisation rules ? Yes, interest expenses are generally not deductible if and to the extent that the debt-equity ratio exceeds 3:1. Alternatively, if more favourable to the company, the maximum debt-equity ratio is equal to the debt-equity ratio of the group, which the company is a member of. The amount of disallowed interest is maximized to the net amount of interest paid to related parties. This means that interest paid on genuine third party loans does not suffer from thin capitalisation rules and is tax deductible.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Yes, at the ordinary corporate income tax rate.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction, within the EU, outside the EU ? No.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? No.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? It depends on whether or not the participation exemption applies to such shares. In the event where the participation exemption applies, no tax deductible write-down can be made. In the event where the participation exemption does not apply to the shares, a tax deductible write-down is generally possible if and to the extent that the fair market value is lower than the tax book value.

Are capital gains tax exempt ? Yes, provided that the requirements for application of the participation exemption are met.

Are capital losses tax deductible ? Not in the event where the participation exemption applies to such shares. An exception applies to a loss on the liquidation of a subsidiary. Such liquidation loss is tax deductible, provided that certain conditions are met (which include that the business operations of the liquidated company cannot be continued by a related entity).

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? No. To be complete, there is one exceptional CFC type of rule, which applies only in very specific cases.

Is it possible to obtain a tax ruling ? Yes, an entity can request for either an advance tax ruling (ATR) or an advance pricing agreement (APA) in order to receive certainty in advance from the tax authorities. It is possible to request an ATR with respect to the tax consequences of a specific envisaged situation or transaction. An APA can be requested with respect to the at arm's length character of intercompany transactions.

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? Yes, provided certain conditions are met. The parent company must hold 95% or more of the shares in the subsidiary.

Are holding companies subject to VAT ? No, a holding company is generally not subject to VAT if its only purpose is acquiring and holding shares in participations.

Other taxes (professional taxes, taxes on salaries, etc.) There is no business tax. A holding company can be subject to other taxes, e.g. real estate transfer tax, or can be obliged to withhold payroll tax if it has salaried employees or directors.

Is there any specific tax regime for employees (i.e. expatriates) ? Yes, for high-level employees coming from outside the Netherlands, it is possible to obtain a ruling providing for a tax free allowance of 30% of the gross employment income. Certain conditions need to be met.

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Poland

Tax regime applicable to holding companies Poland

I Introduction

Is there a specific legal regime applicable to holding companies ? No.

What are the legal structures most commonly used for holding companies ? Limited liability company holds the shares in another LLC.

What is the minimum legal share capital ? PLN 50,000 for a limited liability company and PLN 500,000 for a joint-stock company.

Is there any capital tax ? Yes. Increase in the share capital is subject to a 0.5% stamp duty. Stamp duty does not apply to the premium.

What is the corporate tax rate ? 19%.

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? Yes. The subsidiary must hold at least 10% of the shares in the subsidiary for at least two years. The two-year condition may be met after the payment of a dividend.

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? Yes.

- a subsidiary resident in the EU ? Yes.

- a subsidiary resident outside the EU ? Yes, to states in the European Economic Area.

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? Yes.

- within the EU ? Yes.

- outside the EU ? Yes.

“Tax regime applicable to holding companies in Poland”

What is the domestic rate of withholding tax ? 19%.

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? No.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Yes, 19%

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? No.
- within the EU ? Yes, 20%.
- outside the EU ? Yes, 20%.

Are there any thin-capitalisation rules ? Yes. The rules apply to shareholders' loans or sister company loans if the shareholding is higher than 25%. The debt-equity ratio is 3/1.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Yes, 19%.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? No.
- within in the EU ? Yes, 20%.
- outside the EU ? Yes, 20%.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? Yes, when the shares in the holding company are sold.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? No.

Are capital gains tax exempt ? No.

Are capital losses tax deductible ? The losses can normally be carried forward for the next five years. However, it is not possible to deduct more than 50% of losses from previous years in one year.

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? No.

Is it possible to obtain a tax ruling ? Yes.

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? Yes. However, the conditions to be met to set up a tax group are very difficult. For example, the tax group must in principle be profitable and the profit must represent at least 3% of turnover.

Are holding companies subject to VAT ? No.

Other taxes (professional taxes, taxes on salaries etc.) CIT, PIT, VAT, stamp duty, real estate tax, gambling tax.

Is there any specific tax regime for employees (i.e. expatriates) ? No.

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Russia

Tax regime applicable to holding companies in Russia

I Introduction

Is there a specific legal regime applicable to holding companies ? Russian legislation does not provide for a definition of a holding company. At present, there is no specific legal regime applicable to companies acting as holding structures.

What are the legal structures most commonly used for holding companies ? See above. In practice, setting up holding structures in Russia is a standard practice. The legal structures that can be potentially used for this purpose are limited liability companies and joint-stock companies.

What is the minimum legal share capital ? The minimum legal share capital of a limited liability company or a closed joint-stock company amounts to RUR 10,000 (EUR 286).

An open joint-stock company shall have a minimum share capital of RUR 100,000 (EUR 2,856).

Is there any capital tax ? No.

What is the corporate tax rate ? The standard corporate tax rate is of 24%. However, the rate is 9% for dividends received by Russian residents (entities and individuals) from Russian entities and 15% for dividends received by Russian entities from foreign entities or foreign entities from Russian entities. The rate is 20% for any other profits of foreign companies from Russian sources.

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? No. According to Russian tax law, dividends are subject to corporate tax at the above rates.

Tax regime applicable to holding companies in Russia

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located :

- in the same jurisdiction, within the EU, outside the EU ?

Yes. In accordance with Russian tax law, Russian entities distributing dividends act as tax agents and shall withhold the amount of tax on dividends paid to either the Russian or foreign ultimate shareholders.

What is the domestic rate of withholding tax ? The rate of tax is:

- 9% for dividends paid by Russian entities to Russian residents (entities and individuals);

- 15% for dividends paid by Russian entities to foreign shareholders (entities);

- 30% for foreign shareholders (individuals)

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? No.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ?

Yes. Incoming interest is taxable at the rate of 24%.

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? No.

- within the EU ? Yes, for interest paid to the foreign company (lender) at the rate of 20% unless otherwise provided for by the relevant tax treaty.

- outside the EU ? Yes, for interest paid to the foreign company (lender) at the rate of 20% unless otherwise provided for by the relevant tax treaty.

Are there any thin capitalisation rules ? Yes. Thin capitalisation rules are applicable if the amount of debt liabilities under the loan granted to a Russian company by a foreign company, which directly or indirectly holds more than 20% of its share capital, or by a Russian affiliated company of said foreign company, exceeds more than three times the net assets of the relevant Russian company.

The deductible rate is calculated by dividing the amount of interest by a variable thin-capitalisation coefficient, determined (quarterly) by dividing the amount of the unsettled debt by the value of the portion of the Russian company's net assets corresponding to the lending company’s shares. This result is then divided by three.

The excess portion of interest is deemed to be dividends and is taxed accordingly at the domestic law rate of 15% and withheld at source, unless otherwise provided in the relevant tax treaties.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Yes. Incoming royalties are taxable at the rate of 24%.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? No.

- within the EU ? Yes, for royalties paid to any foreign company (lender) at the rate of 20% unless otherwise provided for by the relevant tax treaty.

- outside the EU ? Yes, for royalties paid to any foreign company (lender) at the rate of 20% unless otherwise provided for by the relevant tax treaty.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? No.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? No.

Are capital gains tax exempt ? No.

Are capital losses tax deductible ? No.

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? No.

Is it possible to obtain a tax ruling ? No.

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? No.

Are holding companies subject to VAT ? No specific treatment with respect to VAT is available.

Other taxes (professional taxes, taxes on salaries, etc.) No.

Is there any specific tax regime for employees (i.e. expatriates) ? No. As a general rule, Russian tax residents are liable for Personal Income Tax (PIT) at the rate of 13% on the amount of their worldwide income, while Russian non-residents for tax purposes are liable for PIT at the rate of 30% on their Russian-source income.

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Spain

Tax regime applicable to holding companies in Spain

I Introduction

Is there a specific legal regime applicable to holding companies ? There is a specific tax regime which applies to both pure and mixed holding companies.

It is a tax participation exemption regime, which applies to dividends and capital gains derived from shareholdings in qualifying participations. In order to obtain additional tax benefits (in addition to the participation exemption regime), holding companies can register as such (“*Entidad de Tenencia de Valores Extranjeros*”, ETVE).

What are the legal structures most commonly used for holding companies ? Any type of commercial company can be used. As a requirement for ETVE registration, the shares must be nominative. The most common legal structures used are the *Sociedad de Responsabilidad Limitada (SL) or Sociedad Anonima (SA).*

What is the minimum legal share capital ? The minimum share capital is EUR 3,000 for a SL and EUR 60,000 for a SA.

Is there any capital tax ?Cash contributions to the holding company are subject to a 1% capital tax. Contributions in kind (of stakes) can be exempt under certain circumstances (i.e., stakes in foreign qualifying subsidiaries, which are contributed to a registered ETVE)

What is the corporate tax rate ? 32.5% for tax periods commencing as from 1 January 2007. Thereafter, 30% (for tax periods commencing on or after 1 January 2008).

“Tax regime applicable to holding companies in Spain”

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ?If the participated company is a Spanish tax resident, the following conditions must be met:

(a) Shareholding of at least 5% of the share-capital of the participated entity.

(b) A minimum holding period of at least one year (either before or after the profit distribution).

If the participated company is not a Spanish resident, in addition to (a) and (b) above, the following requirements apply:

(c) At least 85% of the foreign entity's revenues must derive from overseas business activities. Rules exist regarding the definition of business activities (generally speaking, those which do not fall within the scope of CFC rules).

(d) The foreign entity must be subject to a profit tax (similar or equivalent to the Spanish CIT) during the tax period in which the profit (which is distributed as a dividend) was generated. This condition is satisfied when irrespective of the effective foreign CIT, the foreign entity can benefit from the provisions of a Double Tax Treaty (DTT) entered into with Spain, and said DTT contains an exchange of information clause (in principle, all Spanish DTTs contain this clause).

For participations in Spanish affiliated companies, the mechanism results in full double tax relief when the above conditions (a) and (b) are met or, failing which, 50% relief (the dividend is included in the taxable base and through relief 100% or 50% of the amount of the dividend is rebated).

For participations in non-Spanish affiliated companies, the mechanism results in full exemption when the above conditions (a) to (d) are met (the amount of the dividend received is not included in the taxable base). If any of the conditions are not met, no partial exemption applies (in this case, double tax relief can be obtained for the CIT and WHT paid in the foreign country).

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? Yes. Please see above.

- a subsidiary resident in the EU ? Yes. Please see above.

- a subsidiary resident outside the EU ? Yes. Please see above (the distinction is made between DTT and non-DTT countries; no difference between EU and non-EU countries for participation exemption purposes).

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? Dividends paid to Spanish resident individuals are subject to a 18% WHT. Dividends paid to Spanish resident corporations are subject to a 18% WHT (to be credited against the recipient's final CIT) only if the recipient does not comply with conditions (a) and (b) set forth in 1.1 above.

- within the EU ? If the holding company is registered as an ETVE, dividends are paid from exempted income, and the recipient is not resident in a tax haven: no Spanish WHT is payable by the ETVE. Otherwise, the standard WHT of 18% applies (both to individual and corporate recipients), which may be reduced in accordance with the provisions of bilateral DTTs or through the provisions of the Parent-Sub Directive.

- outside the EU ? If the holding company is registered as an ETVE, dividends are paid from exempted income, and the recipient is not resident in a tax haven, no Spanish WHT is payable by the ETVE. Failing which, a standard WHT of 18% applies (both for individual and corporate recipients), which may be reduced in accordance with the provisions of bilateral DTTs.

What is the domestic rate of withholding tax ? 18%

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? No

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Incoming interest is fully taxable at standard CIT rates (currently, 32.5%; 30% as from 1 January 2008).

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? Yes, a 18% WHT applies to payments to Spanish resident individuals and corporations.

- within the EU ? In accordance with a Spanish domestic exemption, no Spanish WHT is applied to interest payments to EU resident individuals and corporations.

- outside the EU ? A general 18% WHT applies, which may be reduced in accordance the provisions of an applicable DTT.

Are there any thin capitalisation rules ? A 3:1 debt-equity ratio applies to borrowings from related parties who are foreign and non-EU residents. These thin capitalisation rules also apply to indirect borrowings (back-to-back loans, guarantees given by a related party in a bank financing). No thin capitalisation rules apply when the relevant parties are EU residents and there is no indirect extra-EU financing.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Incoming royalties are fully taxable at standard CIT rates (currently, 32.5%; 30% as from 1 January 2008).

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? No Spanish WHT applies if the licensor is a Spanish resident corporation and the right or service which gives rise to the royalty is exploited within the scope of the licensor's business activity. Failing which, a 18% of WHT applies.

- within the EU ? 24% standard domestic WHT rate, which may be reduced to 10% in accordance with the provisions of European Directive No. 49/2003 (Spain is allowed to apply this 10% WHT until 2011). Further reduced rates may apply in accordance with the provisions of an applicable DTT.

- outside the EU ? 24% standard domestic WHT rate, which may be reduced in accordance with the provisions of an applicable DTT.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? Yes. Costs are deductible if the holding company receives other taxable income (apart from exempt dividends and capital gains).

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? Provisions on participations quoted on stock exchanges accounted for by the holding company are deductible up to the difference between the acquisition price and the market value. Provisions on unquoted participations are deductible up to the difference between the net book value at the beginning and at the end of the financial year.

In these cases, where the holding company takes advantage of this depreciation expenditure, the subsequent profit distribution by the participated entity will only be exempt on the amount of dividend exceeding the deductible depreciation expenditure. This limitation also applies the other way around: the depreciation allowance is not deductible from on the amount corresponding to dividends previously distributed and benefiting from the exemption.

In addition to the above, the holding company is entitled to depreciate the financial goodwill, which is implicit in the participation. There are limitations regarding what must be considered as "financial goodwill" for depreciation purposes (difference between the acquisition price of the stake and underlying value of the subsidiary's assets to the extent that the said difference can not be apportioned as a higher value of the assets in accordance with Spanish GAAP on the drafting of consolidated accounts). The allowance corresponds to 5% (20-year period) of the amount of the financial goodwill, which is deemed to be depreciable.

Are capital gains tax exempt ? Capital gains on the sale of shareholdings in Spanish companies are not exempt.

For foreign participations, the conditions to be satisfied in order to qualify for the capital gain exemption are the same as those applying to the dividend exemption; that is, conditions (a) to (d) in section 1.1 above (the one-year holding period must be completed before the sale of the stake).

When the conditions are satisfied, the exemption is full (the capital gain is not included in the taxable base).

Certain limits apply regarding the amount of the exempted capital gain for a holding company that has benefited from the depreciation allowance (same rationale as explained in the preceding section).

Are capital losses tax deductible ? On a general basis, capital losses are deductible. Certain limits apply in the event where the qualifying stake was acquired by the holding company from a related party.

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? CFC rules apply when the following conditions are met simultaneously:

- Control test: over 50% shareholding in a foreign subsidiary either individually or jointly with related parties.

- Subject to tax test: the profit taxation incurred by the subsidiary is less than 75% of the amount that would have been payable in Spain.

- Residency test: the subsidiary is a non-EU resident (disregarding tax havens).

- Activity test: the subsidiary derives passive income (CFC look-through rules apply to the various items of passive income obtained by the foreign subsidiary).

Examples of passive income:

°income from immovable property or rights thereon, unless the property is used for a business activity,

°dividends and other profit distributions derived from the holding as well as interest income (holding companies with substance can be excluded),

°capital gains from the disposal of immovable property or rights thereon or from the disposal of financial assets, i.e. holdings and securities,

°income from credit, financial and insurance facilities or services when the said income leads to deductible expenditure in Spain (by related parties).

Is it possible to obtain a tax ruling ? It is possible to obtain a tax ruling in order to achieve certainty regarding whether a shareholding structure falls within/outside the scope of CFC rules. No additional concessions can be achieved through a tax ruling.

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? The tax consolidation regime only applies to Spanish resident companies. It is possible to create a consolidated tax group formed by the holding company and its subsidiaries (where the shareholding reaches at least 75%). No tax consolidation applies to foreign subsidiaries.

Are holding companies subject to VAT ? All corporations (including holding companies) were previously regarded as entrepreneurs for VAT purposes for many years. The Spanish Revenue has now issued some rulings where pure holding companies are not regarded as entrepreneurs for VAT purposes. Mixed holding companies are subject to VAT depending on the type of non-holding activity performed.

Other taxes (professional taxes, taxes on salaries, etc.) Salary payments are subject to social security contributions (approximately at a rate of 33% applied to a maximum chargeable base of around EUR 3,000) and to withholding tax for the employee's personal income tax liability at rates varying according to the amounts concerned and the employee's personal circumstances (the WHT rate aims to correspond to the employee's final tax liability).

Business tax is charged on the performance of business activities by corporations. It is charged by town councils. The tax burden is generally not significant.

Is there any specific tax regime for employees (i.e. expatriates) ? Spanish individuals who continue to be subject to Spanish personal income tax (despite being seconded to another jurisdiction for professional reasons) can benefit from an exemption on their salary income corresponding to work performed outside of Spain with an annual limit of EUR 60,100. In order to benefit from this exemption, the following conditions must be met:

Work performed for a foreign company or a foreign PE (when work is performed for a company in the same group as the employee's employer, additional requirements must be met and it must be clear that the work is performed for and *for the benefit* of the foreign company).

Work must be performed in a foreign jurisdiction with comparable personal income tax. This condition is deemed to be met when the foreign jurisdiction has entered into a DTT with Spain containing an exchange of information clause.

On the other hand, former non-residents who migrate to Spain for professional reasons can elect to be treated as non-residents during the year they become Spanish residents and the following five years. Under this regime, the individual is subject only to Spanish tax on his Spanish-source income and wealth at capped and non-progressive rates applicable to non-residents (for instance, 24% on salary income).

A number of conditions must be met for this regime to apply: (i) non-Spanish tax residence status during ten years before the migration to Spain, (ii) migration due to employment contract or letter of secondment to work in Spain, (iii) work to be mainly performed in Spain (certain thresholds for work performed abroad), (iv) salary income deriving from Spanish work not to benefit from any exemption under treaty provisions. Individuals under this regime do not qualify as Spanish tax residents for treaty purposes (unless there is reciprocity with the other country concerned).

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Switzerland

“Tax regime applicable to holding companies in Switzerland”

Regime applicable to holding companies in Switzerland

I Introduction

Is there a specific legal regime applicable to holding companies ? No. But there is a specific tax regime applicable to holding companies, only at cantonal/communal level.

Although at federal level no specific holding regime exists, holding companies are normally eligible for the participation exemption regime (also called “participation reduction regime”) with respect to dividends derived from or capital gains realised upon disposal of qualifying participations (please see section II.1 below).

What are the legal structures most commonly used for holding companies ? In Switzerland, holding companies are generally established as an "Aktiengesellschaft AG" (public limited company) or a "Gesellschaft mit beschränkter Haftung GmbH" (limited liability company).

What is the minimum legal share capital ? The minimum legal share capital for an "AG" amounts to CHF 100 000, the minimum paid-in capital being CHF 50 000. The minimum legal capital for a "GmbH" is CHF 20 000, the minimum paid-in capital being CHF 10 000. GmbH's capital must not exceed CHF 2 million.

Is there any capital tax ? Capital tax is levied only at cantonal/communal level at a rate approximately varying from 0,001 % to 0,18%, depending on the cantons and municipalities.

What is the corporate tax rate ? In Switzerland, where taxes are levied at federal and cantonal/communal level, a specific holding regime is available only at cantonal/communal level.

A company (corporate entities only) will be eligible for the cantonal/communal holding preferential regime provided that :

- the statutory purpose of the company is mainly to hold and administrate participations, and, furthermore,

- either 2/3 of the income consist of income from qualifying participations or 2/3 of the assets consist of qualifying participations of at least 20% or CHF 2 million fair market value.

In some cantons, even participations that do not reach the above threshold fulfil the requirements to enable the company to apply for the holding preferential regime.

If the company is eligible for the holding preferential regime, the tax burden is as follows:

Federal income tax : 0% to 8,5% (effective rate 7,83%) depending on the participation exemption rate

Cantonal/communal income tax : 0%

Overall profit tax : 0% to 8,5% (effective rate 7,83%) depending on the participation exemption rate.

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? Qualifying income may be eligible for the participation exemption at both federal and cantonal/communal level (also called the "participation reduction regime"). Since holding companies, however, are fully tax exempt at cantonal/communal level, they generally claim the participation exemption only for federal tax purposes.

Qualifying income may arise in connection with (i) dividends or other distributions from qualifying participations of at least 20% or, alternatively, CHF 2 million fair market value of a corporate entity or (ii) capital gains realised upon disposal of qualifying participations of at least 20%, which were held by the corporate entity for at least 12 months and, further, whose sale price exceeds the acquisition costs (which are not necessarily reflected in the company accounts).

In some cantons, even participations that do not reach the above threshold may fulfil local requirements for the participation exemption regime at cantonal/communal level.

If the participation reduction is available, the ordinary income tax rate of 8,5% (effective rate 7,83%) will be reduced, partially or totally, based on the ratio between the net income from qualifying participations and the net profit for the respective business year.

Having determined the gross income from the relevant participation, (i) financing costs and (ii) administrative expenses incurred in connection with the participation will have to be deducted in order to determine the net income from the participation, which is eligible for participation reduction.

When determining the financing costs incurred in relation to the relevant participation, either a proportional allocation of the total financing costs based on the book value of the assets, or another allocation method such as direct allocation to a single asset, can be applied. However, for allocations other than a proportional allocation based on the book value of the assets, the taxpayer must provide the tax authorities with valid business reasons in order to explain why the standard allocation method currently does not apply.

Similarly, administrative expenses incurred in connection with the participation will be, as a rule, assessed at 5% of the book value of the respective participation, unless (i) the total expenses incurred by the company are lower than the above amount or (ii) the taxpayer claims a different allocation of the expenses based on valid business reasons.

As a result, in a pure holding situation, the participation reduction will result in a full exemption of the dividends and/or capital gains. However, in situations where the company carries out other activities, the allocation of administrative and financing costs might trigger a substantial reduction in the participation exemption rate.

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? a subsidiary resident in the EU ? a subsidiary resident outside the EU ? Yes.

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? Yes, dividends distributed by a Swiss corporate entity are subject to Swiss withholding tax (WHT) at the rate of 35%. However, if the recipient entity is a Swiss resident corporate entity, the notification procedure may be applicable, allowing the company to refrain from withholding the tax.

- within the EU ? Yes, dividends distributed by a Swiss corporate entity are subject to WHT at the rate of 35%. Reimbursement or relief from WHT is available in accordance with the provisions of the applicable Double Taxation Treaty ("DTT") or the Swiss-EU Agreement on the taxation of savings, provided that the treaty requirements are met.

Individuals are eligible for treaty benefits only under a DTT, and, moreover, no relief at source is available. Reimbursement does not usually exceed 20%, leaving 15% residual WHT.

Corporate entities holding a qualifying participation are eligible for full relief at source under the Swiss-EU Agreement, provided that the treaty requirements are met. In order to apply for relief at source, both the distributing Swiss entity and the EU-resident parent company must file a formal request with the Swiss Federal Tax Authorities prior to maturity of the dividend.

Under the applicable DTT, if any, the parent company may benefit form full or substantial relief depending on its country of residence, both available at source, provided that the treaty requirements are met. In order to apply for relief at source, both the distributing Swiss entity and the EU-resident parent company must file a formal request with the Swiss Federal Tax Authorities prior to maturity of the dividend.

- outside the EU ? Yes, dividends distributed by a Swiss corporate entity are subject to WHT at the rate of 35%. Reimbursement or relief from WHT is available in accordance with the provisions of the applicable Double Taxation Treaty (“DTT”), if any.

Under a Swiss DTT, individuals are eligible for partial reimbursement of the WHT only. Reimbursement does not usually exceed 20%, leaving 15% residual WHT.

Corporate entities holding a qualifying participation may be eligible for full or partial relief at source under certain treaties, provided that the treaty requirements are met. In most cases, only a partial reimbursement of the WHT will be available, leaving 5% to 10% residual WHT for which no relief is available.

If relief at source is available, both the distributing Swiss entity and the parent company must file a formal request with the Swiss Federal Tax Authorities prior to maturity of the dividend.

What is the domestic rate of withholding tax ? Withholding tax is levied in Switzerland at the rate of 35%.

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? No.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Incoming interest is taxable together with the remaining income at the applicable standard rate.

At federal level, incoming interest is taxable at the effective rate of 7,83%.

At cantonal level, interest earned by a corporate entity, which qualifies for the holding preferential regime, is tax exempt.

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? within the EU ? outside the EU ? Interest on loans is not subject to WHT, provided that (i) the loan has not been granted to a bank and (ii) the loan does not qualify as a bond under the principles governing the taxation of syndicated loans as published by the FTA.

Furthermore, interest exceeding the arm’s length rate will be requalified as a constructive dividend and, therefore, be subject to WHT.

Are there any thin capitalisation rules ? According to the Circular on hidden equity published by the FTA, loans granted by shareholders or other related entities fall within the scope of thin capitalisation rules. Accordingly, any amount of such loans exceeding the maximum acceptable debt amount as calculated on the basis of a standard debt/equity ratio, will be requalified as hidden equity and cannot bear interest. The FTA has established maximum standard debt/equity ratios for all items of assets accounted for in the balance sheet. We will be pleased to send you these ratios on request.

Furthermore, the maximum acceptable intra-group debt cannot bear interest exceeding an arm’s length interest rate. In this respect FTA’s Circular on interest rates applicable to loans between related parties provides detailed information on acceptable interest rates. Any excess amount will be considered as a hidden dividend distribution, unless the taxpayer can prove that the higher rate complies with the arm’s length principle for this specific loan.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Incoming royalties are taxable together with the remaining income at the applicable standard rate.

At federal level, incoming royalties are taxable at the effective rate of 7.83%.

At cantonal level, royalties income earned by a corporate entity, which qualifies for the holding preferential regime, is tax exempt.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? within the EU ? outside the EU ? Royalties are not subject to WHT, provided that they do not exceed the arm's length price. In the latter case, they will be requalified as a constructive dividend and therefore be subject to WHT.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? Any costs incurred by the company in connection with the acquisition of participations, which are justified by business reasons and do not constitute a long-term value, are deductible.

Can the value of shares be written down ? If so, what are the conditions that need to be satisfied ? Depreciation on participation is allowed if and to the extent that the market value of such participation has decreased.

Are capital gains tax exempt ? Please see above, section II.1.

Are capital losses tax deductible ? Yes

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? Switzerland has not enacted any Controlled Foreign Companies legislation so far.

The Swiss anti-abuse decree enacted in 1962 provides for requirements to be met by Swiss-resident companies that earn treaty-benefited income from foreign countries in view of the issuance of the certificate of residence by the FTA. The anti-abuse decree specifically provides for:

- thin capitalisation rules;

- obligation to redistribute 25% of the treaty-benefited income earned by the company;

- maximum amount of funds that can be paid to persons who are not eligible for the treaty benefits corresponding to 50% of the treaty-benefited income earned by the company.

Pure holding companies are not subject to the anti-abuse decree of 1962.

Is it possible to obtain a tax ruling ? A ruling can be obtained with respect to the question of whether or not a company falls within the scope of the anti-abuse decree of 1962. A ruling request has to be filed with the FTA.

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? No, no group taxation is available in Switzerland.

Are holding companies subject to VAT ? No specific provisions apply to holding companies with respect to VAT. Accordingly, VAT liability will be triggered if the taxable company's turnover exceeds CHF 75,000. Since the sale of participations does not fall within the scope of VAT without being exempt, as a rule, holding companies, which are VAT liable, suffer from a substantial reduction of the deductible input tax.

Other taxes (professional taxes, taxes on salaries, etc.) No specific other taxes shall be mentioned, except for social security contributions ("AHV"), which are levied at the rate of 10.1% and are equally borne by the employer and the employee.

Is there any specific tax regime for employees (i.e. expatriates) ? For purposes of both federal and cantonal/communal income taxes, specific deductions from the taxable basis are allowed, in particular, in relation to relocation expenses, children's education and some travel expenses.

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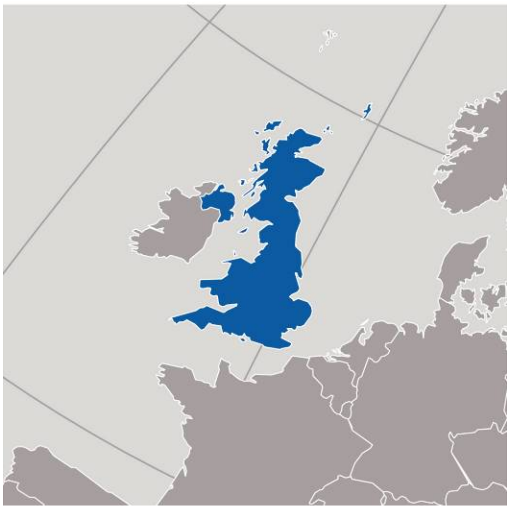

United Kingdom

Tax regime applicable to holding companies in the United Kingdom

Tax regime applicable to holding companies in the United Kingdom

I Introduction

Is there a specific legal regime applicable to holding companies ? No.

What are the legal structures most commonly used for holding companies ? The most commonly used corporate entity is the limited liability company. This may be either a private limited company (recognisable by the use of "Ltd" at the end of its name) or a public limited company (plc). A plc may offer its shares to the public and have its shares listed on a stock exchange (but is not required to) whereas a Ltd company may not do so.

What is the minimum legal share capital ? The minimum issued share capital for a plc is £50,000 of which one quarter must be paid up (together with the whole of any share premium). In the case of a Ltd company only one share must be issued (the share may be in any denomination, typically £1) and it can be issued nil paid.

Is there any capital tax ? No tax is payable on the issue of shares in a Ltd company or a plc.

What is the corporate tax rate ? The full rate of corporation tax is 30%. From 1 April 2008, the rate will be 28%. The small companies' rate of corporation tax is 20% (19% for periods before April 2007). This applies to companies (other than "close investment-holding companies") with profits up to £300,000. It has been announced that the small companies' rate will increase to 21% (from April 2008) and 22% (from April 2009).

II Financial flows from the subsidiary

1. Dividends

1.1 Incoming dividends

Is there a participation exemption regime for dividends received ? No. UK tax is payable on foreign dividends received. However, credit is given for withholding taxes and, where the holding is 10% or more of the voting power in the paying company, credit is also given for underlying taxes.

On 21 June 2007, the Government published a consultation document containing outline proposals for the reform of the taxation of foreign profits of companies. Among the proposals is an exemption for dividends from foreign companies received by large and medium sized companies holding a 10% or more participation in the paying company. The exemption would only be available where the new CFC rules (see below) apply to the company paying the dividend. The consultation document is short on detail reflecting the fact that much debate on the final form of the proposals is still to come. The new rules are unlikely to be introduced before the middle of 2009.

Is the participation exemption applicable when dividends are distributed by:

- a domestic subsidiary ? Although the UK does not have a participation exemption, a UK company (other than a share dealer) is exempt from tax on most income distributions.

- a subsidiary resident in the EU ? Not applicable

- a subsidiary resident outside the EU ? Not applicable

1.2 Outgoing dividends

Is there a withholding tax paid on dividends distributed by the holding company to a shareholder (individual or entity) located:

- in the same jurisdiction ? No.

- within the EU ? No.

- outside the EU ? No.

What is the domestic rate of withholding tax ? Not applicable.

Is it possible to set off withholding tax on incoming dividends against the withholding tax on outgoing dividends ? Not applicable.

2. Interest

2.1 Incoming interest

Is incoming interest taxable ? If so, at what rate ? Yes. Interest received will form part of the UK company's taxable profits, which will be taxed at either the main rate or small companies rate of tax. However, credit for any withholding tax will be given either under the terms of a relevant double taxation agreement or unilaterally.

2.2 Outgoing interest

Is there any withholding tax paid by a holding company if the creditor is located:

- in the same jurisdiction ? In principle, yes. Any company paying "yearly interest" that has a UK source is required to withhold tax at the rate of 20%. In contrast, "short interest" (broadly, interest on a loan that is not intended to last for one year or more) is payable gross. However, there are a number of exclusions from the requirement to withhold. Of particular relevance is the exclusion for interest on an advance from a bank if, at the time that the interest is paid, the beneficial owner of the interest is within the charge to UK corporation tax. Similarly, interest paid by the company to a company that is either resident in the UK or non-UK resident but carrying on a trade in the UK through a permanent establishment that is subject to UK tax on the interest may be paid gross.

- within the EU ? The requirement to withhold tax at the rate of 20% for "yearly interest" applies. However, the UK has implemented the Interest and Royalties Directive (2003/49/EC) so that interest paid by a UK resident company to an associated company that is resident in another EU member state may be paid gross provided that the payer or payee company owns at least 25% of the other company or a third company owns at least 25% of both the payer and payee. The right is not automatic; an application must first be made to HM Revenue and Customs ("HMRC").

There may also be a relevant double taxation agreement that operates to eliminate (or reduce) any withholding tax. In particular cases a specific exemption might apply, for example, the Quoted Eurobond exemption.

- outside the EU ? The requirement to withhold tax at the rate of 20% for "yearly interest" applies. This may be eliminated or the rate of withholding reduced by a relevant double taxation agreement. Alternatively, in some cases a specific exemption may apply, for example, the Quoted Eurobond exemption.

Are there any thin capitalisation rules ? Yes. A company that is thinly capitalised may not obtain a full deduction for interest paid where it is regarded as excessive under the UK's transfer pricing legislation. The rules can also apply in relation to third party loans, if the loan is only made, or only made on those terms, because of an arrangement between the third party lender and a company related to the borrowing company (for example, the UK company's parent provides a guarantee of the loan made by the third party). The UK does not have any formal safe harbour rules but the starting point is that a ratio of debt to equity that does not exceed 1:1 and a ratio of interest cover to interest of at least 3:1 will generally be acceptable. However, HMRC will look at what is normal financing for the industry in which the UK company operates so that companies operating in certain industries where more thinly capitalised companies is the norm will be able to achieve higher ratios of debt to equity.

3. Royalties

3.1 Incoming royalties

Are incoming royalties taxable ? If so, at what rate ? Yes. Royalties received will form part of its taxable profits, which will be taxed at either the main rate or small companies rate of tax. However, credit for any withholding tax will be given either under the terms of a relevant double taxation agreement or unilaterally.

3.2 Outgoing royalties

Is there any withholding tax paid by a holding company if the licensor is located:

- in the same jurisdiction ? In principle, tax is withheld at the rate of 22%. However, royalties paid by the company to a company that is either resident in the UK or non-UK resident but carrying on a trade in the UK through a permanent establishment that is subject to UK tax on the royalties may be paid gross.

- within the EU ? The requirement to withhold tax at the rate of 22% applies. However, the UK has implemented the Interest and Royalties Directive (2003/49/EC) so that royalties paid by a UK resident company to an associated company that is resident in another EU member state may be paid gross provided that the payer or payee company owns at least 25% of the other company or a third company owns at least 25% of both the payer and payee.

There may also be a relevant double taxation agreement that operates to eliminate (or reduce) any withholding tax.

- outside the EU ? The requirement to withhold tax at the rate of 22% applies. However, this may be eliminated (or reduced) by a relevant double taxation agreement.

III Tax treatment of the participation

Is the acquisition cost of shares acquired by the holding company tax deductible ? There is no immediate tax deduction for the acquisition cost of shares by the UK holding company (for example, on the acquisition of a subsidiary). However, on a subsequent disposal of the shares the acquisition cost will be deductible in computing any chargeable gain.

Can the value of shares be written down for tax purposes ? If so, what are the conditions that need to be satisfied ? No.

Are capital gains tax exempt ? The substantial shareholdings exemption was introduced in 2002. Broadly, where a company has owned 10% or more of the shares in another company for at least 12 months the gain arising on the disposal of the holding will be exempt provided that the selling company is a trading company (or a member of a trading group) and the target company is a trading company or a holding company of a trading group. The availability of the exemption in any given case is dependent on a number of detailed conditions.

Are capital losses tax deductible ? No. However, where a capital loss arises it will generally be available to set against capital gains that arise on the disposal of another capital asset of the company. However, if the conditions for substantial shareholding relief are met, any capital loss has no tax effect (so that it will not be available to set against other capital gains of the company).

IV Control

Are there any Anti-abuse rules/Controlled Foreign Companies rules in your jurisdiction ? Yes. Under CFC rules, the profits of a foreign company may be imputed to the UK parent where the foreign company pays tax at an effective rate that is less than 75% of the tax that would be paid in the UK. There are certain exemptions from the application of the CFC rules including an exemption where a reduction in UK tax was not a main purpose of the transactions of the CFC and it was not one of the main reasons for the existence of the CFC. There is also an exemption for where the CFC pursues an "acceptable distribution policy" (broadly, distributing 90% of the profits excluding capital gains that would have been subject to corporation tax if the CFC was UK resident).

The ECJ considered whether the CFC rules were compliant with EU law in ***Cadbury Schweppes (C-196/04)*** and held (very broadly) that the CFC rules are not EU law compliant to the extent that they apply to a company resident in another EU member state (in that case Ireland) that is carrying on genuine economic activities; the fact that the decision to locate the subsidiary company in Ireland was motivated by tax could not of itself justify the application of the CFC rules.

The Finance Bill 2007 (due to become law sometime in July) contains amendments to the CFC rules designed to bring the rules into line with EU law. The Government's approach is to provide that (on application) the imputed profits of the CFC may be reduced by an amount that represents the net economic value created by work carried out by employees of the CFC. It is not clear whether this strictly accords with the decision of the ECJ and debate on this will no doubt continue.

The Government's recent consultation document on the taxation of foreign profits (referred to above) contained proposals for amending the CFC rules. It is noteworthy that (possibly to comply with EU law) it is intended that the new CFC rules should apply to UK holdings as well as non-UK holdings. Also, the new rules would apply to companies where the participation is as low as 10%. The rules would focus on passive income such as dividends, interest and royalties but some capital gains may be brought within the scope of the new rules. Once again, details will only surface over time and the new rules are not expected to come into force until the middle of 2009.

Is it possible to obtain a tax ruling ? Generally, HMRC is prepared to give an advance ruling on all aspects of the CFC rules except calculation of the CFC's chargeable profits

V Miscellaneous

Can the holding company opt for consolidated tax treatment of its subsidiaries ? The UK allows trading losses and certain other losses to be surrendered to another UK resident company that is within the same 75% group as the company surrendering the losses. This treatment is only available for current year losses (i.e. losses in year two cannot be surrendered to another group company to set against profits arising in that group company in year 1 or year three). Although capital losses cannot be surrendered, a gain realised by one group company can be imputed to another group company on making an election and assets can be transferred intra-group at no gain, no loss.

Following the decision of the ECJ in ***Marks and Spencer (C-446/03)*** the group relief rules were amended to permit a group company resident in another member state of the EEA to surrender losses to its UK parent but only in limited circumstances. Essentially, losses may only be surrendered if the losses have not been used overseas and cannot be used either in the year that they arise or by carrying back or carrying forward. The UK legislation (enacted to comply with the decision of the ECJ) is particularly restrictive as whether the losses can be used is to be judged at the end of the accounting period in which the losses arise. Therefore, if the losses can be carried forward in the local state they cannot be surrendered to the UK parent even if it transpires that the right to carry forward is lost the following year. This aspect of the rules may not be EU law compliant.

Are holding companies subject to VAT ? If the activities of the holding company are confined to holding shares in subsidiaries, receiving dividends, issuing shares and similar types of limited and passive activity the company will only be carrying on activities that are outside the scope of VAT or exempt and as such will not be eligible to register for VAT in its own right and will be unable to recover VAT on its purchases. However, even where the activities of the holding company are not taxable it will generally be able to be included in a VAT group registration with other group companies provided that they are carrying on taxable activities.

However, if the holding company carries out any trading activities or provides management services to other members of the group it may (and indeed must if the level of taxable supplies exceeds the annual turnover threshold for registration) register for VAT. It will have to charge VAT on its supplies but will then be able to recover VAT incurred on its purchases (subject to normal rules).

Other taxes (professional taxes, taxes on salaries, etc.) Other taxes are imposed by the UK. The most significant is national insurance contributions (social security). For the tax year 2007-08, employers' contributions (not contracted out) are fixed at nil for the first £100 per week and at 12.8% above that. For employees, contributions are fixed at nil for the first £100 per week, 11% on weekly earnings between £100.01 and £670 and 1% on earnings above that.

Is there any specific tax regime for employees (i.e. expatriates) ?

There are a number of tax breaks open to individuals coming to work in the UK and these include the following.

For individuals working at a temporary location (in the UK) travel, accommodation and subsistence expenses are allowable deductions for up to 24 months.

Individuals who come to the UK for up to three years should have the opportunity to claim "overseas workday relief". This allows individuals to avoid paying UK tax on earnings that relate to their overseas workdays. This is to the extent that the portion of their salary relating to any overseas workdays is deposited by their employer into an overseas bank account and not remitted to the UK.

Where an individual intends to remain in the UK for more than three years but is not "domiciled" in the UK there is available similar relief to the overseas workday relief in the right circumstances. There is also scope for non-domiciliaries to be taxed on the favourable remittance basis in relation to other sources of non-UK income or gains.

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