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NETHERLANDS

DRV Accountants & Tax
Advisers
Hoofdweg 52-56
3067 GH Rotterdam
Netherlands

T: +31 10 421 20 20
F: +31 10 421 03 50
E: info@drv.nl

ITALY

McDermott, Will & Emery
Carnelutti
Studio Legale Associato
Via Principe Amedeo, 3
20121 Milan
Italy

T: +39 02 655 851
F: +39 02 655 855 85
E: g.comi@camelutti.com

BELGIUM

B.A.T.N.
Avenue Louise 390/6
1050 Brussels
Belgium

T: +32 2 469 4114
F: +32 2 672 1461
E: batn@easynet.be

Netherlands: New Corporate Income Tax regime

New rules have been introduced in response to the ruling in September 2003 by the European Court of Justice in the so called Bosal Case. In this case it was held that the restriction on the deduction for interest paid on loans to acquire shares in certain EU companies was against European Law.

The new rules which apply to accounting periods starting on or after 1 January 2004 are designed to avoid a decrease in Dutch tax revenues and include provisions relating to the following:

Thin capitalisation. The rules apply to all Dutch corporate taxpayers that form part of domestic or international economic units in which legal entities and co-operations are linked organisationally. The rules allow a debt to equity ration of 3:1, but are not designed to limit the deduction of interest paid on genuine third party loans.

Loss relief restrictions. Losses incurred by pure holding or group finance companies can be set against holding or financing income in preceding and following years, but only if strict conditions are met. The new rules are intended to prevent old losses carried forward from being set against new income streams.

If the Dutch corporate income tax assessment on the Dutch holding company with EU Subsidiaries to which the participation exemption applies is not yet final, then interest paid on loans taken up to finance non-Dutch EU subsidiaries and expenses in relation to the subsidiaries can still be deducted from the taxable income.

Italy: Tax Reform

Important changes were introduced with effect from 1 January 2004. These include:

Domestic Consolidated Taxation. The new rules apply when Italian Companies, Italian Controlled Companies or foreign companies with a branch in Italy directly or indirectly hold more than 50% of the capital of subsidiaries. The whole of the profit or loss of the Italian subsidiaries which opt for consolidated taxation are offset. Dividends from Italian consolidated companies are excluded. The

option applies for three years and can be extended at the end of the third year.

International Consolidated Taxation. The Italian company which opts for consolidation must include all the foreign companies in which it owns, directly or indirectly, more than 50% of the capital. However, only the proportion of the profit or loss which relates to the capital held is included. Dividends distributed are excluded from the taxable base.

Thin Capitalisation. The interest paid on a loan to a shareholder owning more than 25% of the capital of a company turning over more than €5.164M will be restricted. The debt equity ratio is 5:1 for 2004 reducing to 4:1 thereafter. Excess interest will be treated as a dividend and subject to tax at 5%.

Dividends Received by Corporations. The dividend received from both foreign and Italian companies will be 95% exempt irrespective of the size of the shareholding, with the balance taxed as business income.

Participation Exemption: Gains and losses from the sale of shares in both Italian and other companies will be exempt providing the shares are investments in a commercial company that is not resident in a tax haven and which have been owned for more than 12 months.

International Ruling (Advanced price Agreement). Binding agreements with the tax authorities can now be reached covering transfer prices, interest, dividends and royalties, effective for the period in which agreed and the following two periods.

Belgium: European Directive on Interest and Royalties adopted

Belgium has incorporated the European Directive of 3 June 2003 (2003/49/CE) on interest and royalties in the Income Tax Code with effect from 1 January 2004, and it applies to interest accrued and paid after that date.

Interest and royalty payments to 'associated companies' will be exempt from Belgium withholding tax. Belgium defines associated companies more broadly than the European Directive. Under the Belgian rules, companies

AUSTRIA

Consultatio
Holzmeistergasse 7-9
1210 Vienna
Austria

T: +43 1 27 775 0
F: +43 1 27 775 279
E: office@consultatio.at

IRELAND

Gorman AGN
15 Herbert Street
Dublin 2
Republic of Ireland

T: +353 1 678 9266
F: +353 1 661 2632
E: postmaster@gorman.ie

LUXEMBOURG

AGN Horsburgh & Co
15-17 av. Gaston Diderich
1420 Luxembourg
Luxembourg

T: +352 40 40 341
F: +352 29 10 30
E: agn@horsburgh.lu

Further details of all these items
are available at
www.agn-europe.org



Accountants Global Network is a
worldwide association of
separate and independent
accounting and consulting firms.

AGN International - Europe Ltd
5-6 Francis Grove
London SW19 4DT

T: +44 20 8944 5955
F: +44 20 8947 3477
E: psivers@agn.org

are associated when one owns at least 25% of the share capital of the other, or both are owned at least 25% by a third. The shareholding must have been held for only a year rather than the two years permitted by the directive. Exemption can also be claimed when the participation has been held for less than a year provided that an affidavit is made and the conditions are later met in full. In these circumstances withholding tax is retained but not paid to the tax authorities. Instead it is released to the creditor when the conditions are fulfilled.

Austria – 2005 Fiscal Reform announced

The planned amendments include:

- The corporate income tax rate will be cut from 34 % to 25 %.
- The tax treatment concerning affiliated groups will be changed. For instance the summation of profits and losses within an affiliated group (as well cross-border) will be admissible.
- The reform of the income tax scale will effect a tax relief for people with moderate income and families.

Ireland: tax Changes

It is proposed to exempt the disposal of qualifying trading subsidiary companies from capital gains tax and to expand the scope of Ireland's double taxation relief provisions for dividend income paid to parent companies, to help Ireland compete internationally for headquarter and holding company regimes.

Luxembourg; Owning French Real Estate through a Luxembourg Company.

There are tax advantages in owning French real estate through a Luxembourg company (Luxco) which is in turn owned by a discretionary trust or an EU company. The Luxco company shares can be sold or the Luxco can be liquidated after a property sale. Gains realised by the trustees are tax free. Dividends received by the EU parent company are also tax free and can then be distributed to the beneficiaries.

As the rental income is not subject to VAT in Luxembourg the company will not have a VAT number or need to complete VAT returns, but will not be able to recover any VAT.

Under the double tax treaty between France and Luxembourg, income, capital gains and real estate wealth on French real estate are subject to tax

only in France. However the decisions by the French Conseil d'Etat on 18 March 1994 and 3 December 2001 that rental income amounts to business income prevents it from being taxed in France unless the Luxco has a French permanent establishment. Therefore, neither country taxes the rental income due either to internal law or the double tax treaty. Wealth tax is 0.5% of share capital and reserves of the Luxco.

There is no withholding tax on interest paid by a Luxco on a loan from a bank or offshore company. Dividends paid to an EU registered parent company are exempt from the normal 20% dividend withholding tax. If a trust lends money to the Luxco, rental income could be paid to the Luxco as interest and or real estate management costs. On the liquidation of the Luxco, the liquidation proceeds paid to a non-resident individual or trust are a repayment of capital, and therefore not subject to withholding tax in Luxembourg. Liquidation proceeds paid to a company are treated as if they are a dividend and are exempt from withholding tax if the parent subsidiary directive applies and subject to a 20% withholding tax if it does not.

Provided the Luxco completes a declaration to the French tax authorities relating to its residence and ownership, the normal 3% tax on the market value of French real estate owned by companies does not apply.

Real estate contributed into a Luxembourg company in exchange for shares is subject to a 1% capital duty. The value must be certified by a Luxembourg auditor. A foreign investor not liable to French corporate income tax contributing the property to a Luxembourg company is liable to 11.4% registration tax.

A revised France/Luxembourg Double Tax Treaty has been initialled but will not be ratified by the Luxembourg Government unless France withdraws clauses concerning anti abuse and extensive exchange of information.

AGN Tax Surveys

AGN International - Europe Ltd has completed numerous surveys of taxes across Europe for 2003. The corporation tax survey takes a trading company and shows how various items of expenditure are treated for tax purposes in different countries, and compares the tax payable. Full details are available from the website www.agn-europe.org

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