

Border Crossing

Welcome to the sixth edition of Border Crossing - the electronic newsletter from RSM International covering technical developments in global taxation.

In this issue:

Germany: New Double Tax Treaty between Germany and US

UK: Opinion released on VAT exemption for Special Investment Funds

Malta: Double Taxation Relief

UK: FIN 48 is now effective – are you ready?

Canada: Accelerating Tax Refunds for Non-Resident Corporations

**Malaysia: Onshore or Offshore income?
Updates on Double Taxation Agreements**
- with Singapore
- with Indonesia



Germany: New Double Tax Treaty between Germany and US

With the finalization of the negotiations, the new double tax treaty (DTT) between Germany and the US will enter into force in 2007 and 2008 in two steps.

In case the DTT is ratified by the US in 2007, the new provisions regarding withholding taxes will be applicable starting January 1, 2007, whereas the provisions regarding other taxes (i.e. taxes that are levied by assessment) will enter into force January 1, 2008. Most important amendments of the treaty are:

- Group companies will be able to reduce the withholding rate on dividends to 0% (requirements are inter alia: direct participation of at least 80%, holding period of twelve months); until now a rate of 5% was applicable to such dividends.
- At the same time the conditions to claim the withholding tax relief have been tightened considerably (so called limitations on benefit), among them substantial documentation requirements.
- Companies that might be considered transparent by one of the contracting states (e.g. LLC, GmbH & Co. KG) may themselves claim the benefits of the DTT if the company is considered intransparent for tax purposes in its state of residence.

As a consequence, e.g. a LLC that is considered transparent from a German point of view may claim the withholding tax relief itself if the LLC is treated as intransparent vehicle in its state of residence, the US.

- New principles regarding the attribution of profits to permanent establishments have been established, that are based on the arm's length principle (the principles regarding transfer prices between related parties including a profit margin have been adopted).
- The continuation of pension plans in case employers are seconded to one of the contracting states is facilitated.
- In a joint declaration Germany and the US agreed to start negotiations in 2013 regarding the taxation of retirement income.

For further information contact your RSM expert or:

Munich

Dr Florian Eisele

T: +49 (0)89 21 63 64 83

E: florian.eisele@rsmi.de

Europe

Caroline Walenkamp

T: +31 23 530 04 00

E: cwalenkamp@rsmniehelancee.nl



UK: Opinion released on VAT exemption for Special Investment Funds

Currently, under UK law, the exemption for fund management is restricted to the management of authorised unit trusts and trust based schemes and open ended investment companies. The management of investment trusts is liable to VAT at the standard rate.

The Advocate General (AG) has, today, delivered his opinion and concluded that closed-ended funds such as investment trust companies can be classed as special investment funds. Importantly, the AG held that the Sixth Directive has direct effect in favour of those who, under national law, do not enjoy the benefit of exemption if this is in breach of the principle of fiscal neutrality. In determining which funds can benefit from exemption, a Member State must exercise its judgement with regard to the principle of fiscal neutrality. Competing special investment funds must be treated equally as regards the levying of VAT.

Although the European Court of Justice is not obliged to follow the AG's opinion, the opinion does provide strong grounds for believing that this long running debate will be settled in the favour of investment trusts. Most investment trusts have already discussed the likely impact with their fund managers and ensured that protective claims have been submitted to HM Revenue & Customs. Any investment trusts which have not done so, should now address this as a matter of urgency. Equally, managers of investment trusts will need to consider the effect on their ability to recover VAT, and budget accordingly.

The AG's decision does also potentially open the way for the extension of the exemption for fund management to all closed-ended investment funds, not just investment trusts. In particular, it could impact funds that have been used to invest in property. Such funds, and their managers, should consider the decision carefully for the impact it could have on their business model.

For further information contact your RSM expert or:

London

Lorraine Parkin

T: +44 (0)20 865 2132

E: lorraine.parkin@rsmi.co.uk

Europe

Caroline Walenkamp

T: +31 23 530 04 00

E: cwalenkamp@rsmniehelancee.nl



Malta: Double Taxation Relief

Malta does not impose any withholding tax on outgoing dividends, interest and royalties irrespective of the recipient's tax residence and status.

However, income received from foreign sources may be subject to a withholding tax and suffer other foreign taxes and therefore Malta offers three main types of double taxation relief to ensure that any double taxation is mitigated as much as possible. Apart from the relief under Malta's treaty network, Malta also gives relief for any double taxation on a unilateral basis and allows a flat rate foreign tax credit on foreign source income and capital gains.

Unilateral Relief

Any overseas tax suffered may be allowed as a credit against the tax chargeable in Malta which is levied on the gross amount. The credit shall not exceed the total tax liability in Malta on the receipt. Unilateral relief for underlying tax is also available where the taxpayer is a Maltese company that holds more than 10% of the voting power of the overseas company paying the dividend. In order to claim unilateral relief, the recipient of the income must prove:

- that the income arose from overseas;
- that the income suffered overseas tax; and
- the amount of that tax.

Flat Rate Foreign Tax Credit

A flat rate foreign tax credit may be claimed by a Maltese company which receives income from overseas. A certificate from the auditor stating that the income arose overseas will be sufficient for this purpose. The flat rate foreign tax credit is calculated at 25% of the amount of the overseas income or gain received by the company, before allowable expenses. The income plus the credit less allowable expenses will be subject to full Malta income tax with relief for the deemed credit (up to a maximum of 85% of the Malta Tax payable). The mechanics of the flat rate foreign tax credit are demonstrated in the following example.

	Lm
Net foreign income (before expenses)	1,000
Flat rate foreign tax credit (25%)	250
Gross foreign income (before expenses)	<u>1,250</u>
Allowable expenses	(150)
Foreign income (after expenses)	<u>1,100</u>
Malta tax at 35%	385
Less FRFTC (maximum 85% of Malta tax)	(250)
Net Malta tax payable	<u>135</u>
	%
Effective tax rate on gross income	13.50
Effective tax rate on net income after expenses	15.90

Even if the company has no deductible expenses, the rate of tax is reduced from 35% to an effective rate of 18.75%. Upon a distribution of profits tax credits and refunds may apply and so the net effective tax is reduced to 6.25% or lower.

Tax Treaties

Malta has a number of double taxation agreements most of which are based on the OECD model convention. The maximum reduced withholding tax rates on dividends, interest and royalties paid to residents of Malta are as indicated overleaf. Since Malta is an EU Member State, the Parent Subsidiary Directive and the Interest and Royalties Directive may also apply and the withholding tax rate could be reduced even further.

For further information please contact your usual RSM expert or:

Malta
Maria Micallef
T: +356 2149 3313
E: maria.micallef@rsmmalta.com

Europe
Caroline Walenkamp
T: +31 23 530 04 00
E: cwalenkamp@rsmniehelancee.nl



Country	Dividends		Required % to qualify for major shareholding	Interest	Royalties
	Rate for minor sharehold.ing	Rate for major shareholding		Rate	Rate
	%	%	%	%	%
Albania	15	5	25	5	5
Australia	15	15	N/A	15	10
Austria	15	15	N/A	5	10
Barbados	15	5	5	5	5
Belgium	15	15	N/A	10	10
Bulgaria	0	0	N/A	-	10
Canada	15	15	N/A	15	10
China	10	10	N/A	10	10
Croatia	5	5	N/A	0	0
Cyprus	15	15	N/A	10	10
Czech Republic	5	5	N/A	0	5
Denmark	15	0	25	0	0
Egypt	10	10	N/A	10	12
Estonia	15	5	25	10	10
Finland	15	5	10	10	10
France	15	5	10	10	10
Germany	15	5	10	0	0
Hungary	15	5	25	10	10
Iceland	15	5	10	0	5
India	15	10	25	10	15
Italy	15	15	N/A	10	10
Korea	15	5	25	10	0
Kuwait	0	0	N/A	0	10
Lativa	10	5	25	10	10
Lebanon	5	5	N/A	0	5
Libya	15	15	N/A	15	15
Lithuania	5	15	25	10	10
Luxembourg	15	5	25	0	10
Malaysia	-	-	N/A	15	15
Netherlands	15	5	25	10	10
Norway	15	15	N/A	10	10
Pakistan	-	15	20	10	10
Poland	15	5	20	10	10
Portugal	15	10	25	10	10
Romania	5	5	N/A	5	5
San Marino	10	5	25	0	0
Slovakia	5	5	N/A	0	5
Slovenia	15	5	25	5	5
South Africa	5	5	N/A	10	10
Spain	5	0	25	0	0
Sweden	15	0	10	0	0
Syria	0	10	N/A	10	18
Tunisaia	10	10	N/A	12	12
UK	-	-	N/A	10	10

UK: FIN 48 is now effective – are you ready?

An important US taxation development impacting UK subsidiaries of US companies and UK companies listed on US stock exchanges came into effect on 15 December 2006.

The US Financial Accounting Standards Board's new Interpretation No. 48, Accounting for Uncertainty in Income Taxes, substantially changes accounting practice in accordance with US GAAP. FIN 48 now requires a more rigorous and methodical assessment of financial statement reporting of tax decisions. As a result, companies may have less flexibility in determining tax reserves.

Companies may need to introduce processes and controls to identify, assess and track material income tax uncertainties. FIN 48 is effective for fiscal years beginning after 15 December 2006 and will require additional disclosures in the annual financial statements of both public and private companies that include:

- How the company classifies penalties and interest and the total amounts recognised in the balance sheet and income statement;

- The tax years that remain subject to examination by major taxing jurisdictions; and
- A reconciliation, in the form of a table, that shows specified types of gross increases and decreases in the liability for unrecognised income tax benefits that occurred for each year presented.

We are experienced in identifying and evaluating material tax uncertainties and can provide processes and tools to implement FIN 48 and resolve these uncertainties.

To find out more about how we can assist you with the impact of FIN 48, please contact our RSM expert or:

London

Laurence Field

T: +44 (0)20 7184 4300

E: lynne.patmore@rsmi.co.uk

Europe

Caroline Walenkamp

T: +31 23 530 04 00

E: cwalenkamp@rsmniehelancee.nl



Canada: Accelerating Tax Refunds for Non-Resident Corporations

Non-resident corporations involved in transactions in Canada are often forced to wait until their tax return due date to obtain a tax refund.

Rather than provide an interest-free loan to the Canadian taxation authorities, non-resident corporations should consider utilising a faster method of either obtaining refunds due, or finalizing their tax compliance requirements.

A Canadian tax return is required for non-residents who either carry on business in Canada or dispose of "taxable Canadian property" - a defined phrase under the Income Tax Act. The required tax return is due six months after the end of the taxation year in which the non-resident transacts for the first time in Canada. Even if the non-resident is protected by a tax treaty, a return is still required under the Income Tax Act.

Non-resident corporations have flexibility in selecting a tax year-end with the only restriction being that the year-end must be within 53 weeks of the initial transaction in Canada. Therefore, the actual date selected to be a year-end is entirely optional as long as it falls within the legislated maximum period.

The choice of the tax year-end of a non-resident in Canada need not be the same as its home "domestic" residence country and, while it may seem incongruous that a single legal entity could have two distinct tax reporting periods, this cross-border difference in reporting periods can achieve favorable results.

For example, it would be advantageous for the non-resident corporation to select a year-end shortly after disposing of taxable Canadian property, especially in situations where withholding taxes have not considered costs of disposition or been over withheld. This year-end selection would allow the non-resident corporation to quickly file its Canadian tax return and obtain any applicable refunds, rather than waiting up to one year or longer to file.

However, the use of a different taxation year in Canada from that of the home jurisdiction should be reviewed with tax counsel in the home jurisdiction to ensure that no unintended consequences arise.

Once a year-end is selected, it can only be changed under a written request to the Canada Revenue Agency "for sound business reasons".

The tax professionals at RSM Richter would be pleased to discuss your situation with you to determine the most favorable results.

For further information please contact your usual RSM expert or:

Toronto, Canada

Gabriel Baron

T: +1 416 932 8000

E: gbaron@rsmrichter.com



Malaysia: Onshore or Offshore income?

The Income Tax Act, 1967 ("ITA") provides that income derived from Malaysia is subject to Malaysian income tax. However, income from sources which originate from outside Malaysia and received in Malaysia is exempted from income tax. The exemption does not apply to a resident company carrying on the business of banking, insurance or sea or air transport.

The Misconception Foreign source Income

The term "foreign-source income" is not defined in the ITA.

The determination of sources of income is more certain in the case of royalty, interest, dividend and rental. The sources of these incomes are normally where the relevant assets are deployed or utilized.

Generally, business income is deemed to be derived from Malaysia where so much of the gross income from the business as is not attributable to operations of the business carried on outside Malaysia.

In the case of service income, the source of income should be by reference to the place of operation where the services are rendered.

Owing to the lack of understanding of Malaysian tax legislations, there are taxpayers who often share a common misconception that due to the territorial tax concept, service income derived by a Malaysian resident company is not subject to Malaysian tax:

- where the recipients of the services are not located in Malaysia, although the services are rendered in Malaysia
- where the services are rendered for a short term outside Malaysia, without creating a permanent establishment in the country concerned, especially in cases where withholding tax is imposed on such income in the country concerned.

In the second situation, receipts for such services may be subject to double tax, the first time in the country from where payment is made by deduction of withholding tax and the second time taxed by the Malaysian Inland Revenue as a Malaysian source of income.

Double taxation relief

Up to Year of assessment 2006, no double taxation relief is available to the taxpayer. With the passing of the Finance Act 2006, the taxpayer would now be able to claim double taxation relief in respect of the withholding tax paid in the foreign country, restricted to the lower amount of the Malaysian tax attributable to such income and the amount of withholding tax on such income. The new double taxation relief is effective from year of assessment 2007.

Withholding tax on payments to non-residents for services rendered in Malaysia

Another misconception relates to services rendered in the territorial waters of Malaysia by non-residents.

The ITA provides that withholding tax is not applicable to payments made to non-resident persons where the services are rendered outside Malaysia.

With the misconception that such services are considered as rendered outside Malaysia by the non-resident persons, withholding tax requirements in respect of payments to such persons may not have been complied with.



Updates On Double Taxation Agreements (“DTA”)

Singapore

The New DTA between Malaysia and Singapore which came into force on 13th February 2006 is now effective on income derived on or after 1st January 2007.

Withholding tax rates

The new withholding tax rates are as follows:-

	Domestic	Old agreement	New agreement
Interest	15%	15%	10%
Royalty	10%	10%	8%
Technical fees	10%	Not provided	5%

Take advantage of the provisions in the new DTA when doing business with/in Malaysia and Singapore.

Indonesia

The protocol to amend the DTA between Malaysia and Indonesia was gazetted on 10th August 2006. The protocol will come into effect upon ratification by both countries. Salient aspects of the protocol include the following:-

Withholding tax rates

The new withholding tax rates are as follows:-

	Domestic	Existing agreement	Protocol
Interest	15%	15%	10%
Royalty	10%	10%	10%
Technical fees	10%	10%	10%

Exclusion of Labuan Offshore companies

Entities carrying on any offshore business activity in Labuan under the Labuan Offshore Business Activity Tax Act 1990 will be excluded from the benefits of the DTA.

For further information contact your RSM expert or:

Malaysia

Wong Yok Chin

T: +60 3 2697 2888

E: wongyc@rsmi.com.my

Asia Pacific

Rob Mander

T: +61 2 9233 8933

E: rob.mander@rsmi.com.au



The next issue:

The next newsletter will be published in 3rd quarter 2007.

Editor

Gillian Hawkes

PR & Communications

RSM International

Executive Office

T: +44 (0)20 7601 1080

E: gillian.hawkes@rsmi.com

The opinions expressed in these articles are the personal views of RSM International and are not intended as specific business advice. Readers of this material are recommended to seek professional advice before making any business decisions.

RSM International is an affiliation of independently owned and managed member firms. RSM International and each of its member firms are separate and independent legal entities as are RSM International Limited and RSM International Association. RSM International, RSM International Limited and RSM International Association do not practice public accounting or consulting.

© RSM International, 2007

RSM! International

The Worldwide Auditing, Tax & Consulting Network

www.rsmi.com

