



ENTERPRISE WORLDWIDE

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Cyprus – New Tax Compliance Obligations

New tax compliance obligations arise from Circular 2011/1 dated 15 February 2011, which has been issued by the Commissioner of Income Taxes. The circular states that as from 1 April 2011 annual income tax returns for all companies as well as for self employed individuals with turnover that exceeds €70,000 that are submitted to the Inland Revenue Department must be accompanied by a Tax Confirmation that is prepared and signed by an independent auditor or tax advisor. This requirement applies for all income tax returns submitted on or after 1 April 2011 regardless of the tax year to which the return relates and from this date the Inland Revenue Department will not accept the submission of any income tax return if not accompanied by the relevant signed Tax Confirmation.

The Tax Confirmation is a certification given by the taxpayer's auditor or their tax advisor that the tax computation within an income tax return has been prepared in accordance with the Circulars issued by the Inland Revenue Department. Please note that a false certification by the auditor or tax advisor will lead to a fine of €17.086 and/or up to 5 years imprisonment.

In addition, from 1 July 2011 all income tax returns for all companies as well as for self employed individuals with turnover that exceeds €70,000 for the 2010 tax year and subsequent tax years may only be submitted to the Inland Revenue Department by way of electronic filing using the TAXISNET electronic system. The TAXISNET electronic system will not allow the electronic submission of any income tax return if the Tax Confirmation, which constitutes an integral part of the Income Tax Return, is not duly completed and signed. We will be contacting all clients closer to the time in order to obtain an authorization to register for the TAXISNET electronic system.

Income tax returns for all tax years up to and including 2009 that are submitted on or after 1 April 2011 will continue to be submitted in paper format however the Inland Revenue Department will not accept an income tax return that is not accompanied by the Tax Confirmation. Once the electronic system of the Inland Revenue Department is



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upgraded to accept such returns electronically, it is expected that the compulsory electronic submission of such returns will also be required.

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France – Finance Act 2011

Changes in the Thin Capitalization Regime and Rules Regarding the Provision of Guarantees by Related Parties

Recently passed by the French Parliament, Finance Act 2011 has brought with it stricter provisions with regard to the French thin capitalization (“thin cap”) regime. During the debating of the legislation in the Senate, it was stated that one of the objectives of the Act was to bring within the scope of the new rules, interest paid on those loans which, although provided by a financial institution, are in fact closer to so-called “back to back” loans. The wording of the final Act goes beyond this stated objective.

The Act sets out that where interest is paid on a bank loan, and security for the repayment of that loan is provided either by a related party, or by a party whose commitment is itself secured by another company (which is also related to the debtor), then the proportion of interest which is payable on that part of the bank loan which is secured in this way will potentially be treated as interest paid to a related party and, therefore, subject to the thin cap thresholds of Article 212 of the Tax Code.

When repayment of the loan is guaranteed by security in rem provided by a related party, the portion of the loan which is guaranteed is determined according to the following ratio: value of the asset at the date on which the security has been constituted and the initial amount of the financing. This ratio that is “tainted” in this way should have to be revised if the agreement for provision of the security in rem is subsequently amended. This rule aims at not taking into account any further increase in value of the asset, which represents the security in rem, but its application is likely to cause practical difficulties with regard to the collection of relevant information.

The new provisions will not apply where the loan:

- Either takes the form of a bond issued by way of a public offering or under equivalent foreign regulations, although this excludes private placements;
- Or it is guaranteed by a related party solely by way of a pledge of shares in the debtor, or security over the debtor’s receivables, or shares in a company directly or indirectly owning the debtor so long as the holder of such shares and the debtor are members of the same tax group; as a result, this exception will not apply in particular where a foreign company grants a pledge of shares in its French subsidiary to guarantee the bank loan granted to it;
- Or it is obtained in the context of a refinancing to allow the debtor to complete the mandatory repayment of a pre-existing debt, which is required as a result of a direct or indirect takeover of the debtor (allowed up to the amount of the loan principal repaid and accrued interest to that date); this exception should allow the refinancing of secondary LBOs after 1 January 2011 without the refinanced loans falling within the scope of the new provisions;
- Or it has been obtained prior to 1 January 2011 in connection with an acquisition of securities or the refinancing of such acquisition debt (the so called “grandfathering” provision).

These new anti-abuse provisions are applicable to fiscal years ending on December 31, 2010. As a result, companies (except those benefiting from the grandfathering provisions) may be subject to the new rules for their 2010 accounting periods, that is to say the provisions will have retroactive effect.

The LBO market will only be affected by these new provisions with effect from 1 January 2011 (excluding the refinancing of secondary LBOs in the context of a change of control). On the other hand, corporate and real estate financing operations are fully impacted by the new provisions and with retroactive effect.

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Germany – Latest Developments on Extraordinary Expenses

Easier proof of sickness costs as extraordinary expenses:

Income tax will be reduced upon application when the taxable person inevitably incurs higher expenses than the vast majority of taxpayers in the same income and financial circumstances and same civil status (so-called extraordinary expenses). These include in particular sickness costs.

Amending its former adjudication the German Federal Finance Court (BFH) resolved in its judgments of Nov. 11th, 2010 that in order to declare sickness costs as extraordinary expenses it is no longer mandatory to obtain before the beginning of the treatment an expert opinion either from a Public Health Officer or a medical examiner resp. an attestation by a public authority giving evidence of an illness and the medical indication of the treatment. Proof can in fact be furnished also at a later date and by means of all suitable evidence.

In proceedings the deductibility of expenses for the treatment of a child's dyslexia was at issue. In further proceedings it was disputed whether the purchasing costs for new furniture are to be accounted for when the taxpayers feel the need for the purchase due to their child's asthmatic condition.

In both cases the German Federal Financial Court (BFH) held that the tax payer can prove the illness and medical indication of the treatment upon which the expenses are based not any longer only by an expert opinion from a Public Health Officer or a medical examiner resp. an attestation by a public authority. Such a formalized demand of evidence did not result from the law and contradicted the principle of free evaluation of the evidence.

Furthermore the BFH ruled that renouncing to claim social benefits does not prevent the deductibility of sickness costs as extraordinary expenses.

Costs of a heterologous artificial insemination deductible as extraordinary expenses:

In its judgment of Dec. 16th, 2010 amending its previous adjudication the German Federal Finance Court (BHF) held that the costs which a couple incurred for a heterologous artificial insemination can be deducted from tax as extraordinary expenses.

In the case at issue the husband was unable to procreate due to an inoperable organically based infertility so that the couple had decided to realize their wish to have children by an artificial insemination with the semen of an

anonymous sperm donor (heterologous artificial insemination). In their income tax return the couple declared the costs of this treatment in the amount of ca. € 21.000 as extraordinary expenses. The tax authorities did not allow these expenses to be deducted. The German Federal Finance Court has now ruled that the artificial insemination of the (healthy) wife with the semen of a sperm donor was in fact not intended to remove the husband's infertility but aimed at removing the couple's childlessness. Contrary to the previous opinion this is to be seen as a curative treatment, so that the costs can be allowed for as extraordinary expenses.

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Ireland – Introduction to the Irish Holding Company Regime

Due to changes in Irish government fiscal policy over several years, Ireland has become a favored location for holding companies for many US & UK international trading corporations. Our low corporate tax rate has gained many news headlines in Europe, particularly during Ireland's IMF/EU financial structuring deal. However, our low corporate tax rate is only one of many reasons to locate your corporation here.

Key Benefits of Locating Holding Company in Ireland:

- Low corporate tax rate of 12.5% on trading profits, without limit.
- Finance Act 2011 introduced an extension to 0% corporate tax rate for new start-up companies for the first three years of trading. The tax benefit has been capped to the amount of employers PRSI paid on the employees' salaries to aid job creation.
- No dividend withholding tax (DWT) on payments made to individual shareholders resident in either an EU or double tax treaty country.
- No DWT applies where they are paid to a non-resident company shareholder where that company is not controlled (50% or more shareholding) by Irish residents
- Dividends received by an Irish holding company from trading profits of a subsidiary are generally taxed at 12.5% corporation tax.
- Limited transfer pricing legislation which only applies to large companies with a turnover of more than €50M, employees of more than 250 and, assets over € 43m
- Capital Gains tax exemption for disposal of shares in a subsidiary company. There is a minimum share holding requirement of 5% and shareholding period of 1 year plus other conditions.
- Double tax treaty network with 55 countries in effect and 7 more waiting to be implemented which simplify the distribution of profits internationally and provides some clarity to our direct tax system and how it applies in conjunction with an EU or DTT country.
- Membership of the EU and Euro currency gives Ireland an advantage when trading with fellow EU countries
- The ability to combine trading activities with its holding company function i.e. charging fees for managing a foreign subsidiary would be deemed to be an economic trading activity and the profits of such an activity would attract low corporation tax.
- No 'Controlled Foreign Company (CFC)' or 'Thin Capitalization rules' are currently in force in Ireland
- There is a favorable approach by the Irish Government to foreign owned holding companies
- Low capital start up costs for investing in an Irish limited company
- Remittance taxation system available for non-domiciled Irish resident individuals provides a tax incentive to foreign individuals re-locating to Ireland
- Abolition of employers PRSI on share-based remuneration in Finance Act 2011 significantly reduces

employer's costs and is a significant benefit in deciding on whether to locate in Ireland.

If you are considering locating a holding company in Ireland and require further advice on these issues please do not hesitate to contact us.

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Malta – iGaming Malta

Malta's success as a gaming hub is attributable to a number of factors. Its membership in the European Union positions it to benefit from the application of internal market principles, with free movement of goods and services being the most fundamental. Malta also offers low official fees and gaming taxes, which, coupled with its advantageous European onshore business environment, provide very favourable conditions for setting up. The development of the gaming industry in Malta has also accelerated the development of related ancillary services including ICT, telephone, co-location and back office services.

The Jurisdiction

Malta is a country presenting a stable history in financial, banking and commercial services. By joining the EU, Malta aligned its position and perspective to EU directives and regulations, including corporate rules and money laundering safeguards. This, coupled with a strong gaming legal regime, renders the Maltese license as the best solution to any serious operator.

The Regulator

The Lotteries and Gaming Authority (LGA) is the single regulatory body that is responsible for the governance of all forms of gaming in Malta. In remote gaming, the LGA's regulatory regime aims to be both technology neutral and game neutral, hence encompassing any type of gaming using any means of distance communication, including internet, digital TV, mobile phone technology, telephone and fax.

Types of Licenses

Prospective operators may apply for either or all of the following licenses:

- Class 1 – operators managing their own risk on repetitive games (casino-type games, skill games and online lotteries)
- Class 2 – operators managing their own risk on events based on a matchbook (fixed odds betting, pool betting and spread betting)
- Class 3 - operators promoting and abetting gaming from Malta & taking a commission from promoting and/or abetting games (P2P, poker networks, betting exchange and game portals)
- Class 4 - hosting and managing online gaming operators, excluding the licensee himself;
- Class 1 on 4 - operators managing their own risk on repetitive games (casino-type games, skill games and online lotteries) operating on a third party platform duly licensed by the Lotteries and Gaming Authority
- Class 3 on 4 – operators promoting and abetting from Malta and taking a commission from promoting and/or abetting games (P2P, poker networks, betting exchange and game portals) operating on a third party platform duly licensed by the LGA

The Licensing Process

Prior to the attainment of certification, the LGA applies a 3-stage process in order to audit the business operation, the individuals making up the project team and the control and gaming system.

Phase 1- Fit & Proper Test & Business Adequacy: The first stage is to conduct a fit and proper exercise on the applicant. The Authority analyses all information related to persons involved in the financing and management, and on the business viability of the operation. It also conducts probity investigations with other national and international regulatory bodies and law enforcement agencies and carries out a financial analysis of the business plan. This generally takes around six to eight weeks.

Phase 2- Business and Technical Ability Assessment: On successful conclusion of the first stage the applicant is examined on the instruments required to conduct the business. This process lasts an average of eight weeks and includes examining incorporation documents, the games, the business processes related to conducting the remote games, the rules, terms, conditions and procedures of the games, the application architecture and system architecture of the gaming and control systems. Under the Maltese regulations, servers have to be located in Malta and both the servers and the server-location facility have to be certified as adequate and compliant by the LGA.

Phase 3 - Compliance Audit: At the end of the second stage the applicant is given a letter of intent to operate remote gaming with the intent of obtaining a certification of compliance within six months, which may be extended once for a further three months. The applicant may then establish the business in Malta, go live, conclude all agreements and carry out testing of the set-up.

A formal license is issued when the Authority obtains approval from the compliance certification entity. A normal compliance certification procedure takes two weeks to be carried out. The online gaming operations must be physically located in Malta. Other components of the system may be situated outside Malta.

Certification of the online gaming system to the satisfaction of the LGA is only necessary for those components of the system, the functioning of which directly impacts the operation of the games or the reporting of gaming and financial transactions. Certification also involves audit as to whether the gaming system is compliant with the requirements of ISO-17799: 2000 Information Technology - Code of Practice for Information Security.

Taxation

Gaming taxes differ in accordance to the type of activity/license as follows:

Casino-type Games

- € 4,600 per month during the first six months after issue of the licence ;
- € 6,900 per month subsequently for the entire duration of the licence period.

Where a casino operator operates from a host platform (Class 4 licence) the following taxation rules apply:

- Casino operator - € 1,150 per month
- Host platform - NO TAX for the first 6 months of operation; € 2, 300 per month for the subsequent 6 months & € 4,600 per month subsequently for the entire duration of the licence.

Betting Operations

- 0.5% on the gross amount of bets accepted
- 0.5% on the aggregate of stakes paid (pool betting)

Betting Exchanges & Poker Operations

5% on net income (net income is defined as revenue from rake less bonus, commissions and payment processing fees, i.e. e-commerce fees)

Tax Cap

Maximum gaming tax payable annually by one licensee in respect of any one licence is € 460,000.

With regards to corporate taxes, the gaming operators can take advantage of the Maltese International Company as the corporate vehicle, wherein they shall be subject to a corporate tax of 35% but non-resident shareholders would then benefit from a very attractive tax refund ending up in a final rate of taxation of 4.17%.

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Spain – The Spanish Tax Regime of Foreign Securities Holding Company

Spain has a special tax regime that help the companies investing abroad, providing a legal framework, similar to that which exists in other countries, which is intended to establish exemptions from corporation tax on dividends or capital gains from shares in entities not resident on Spanish territory. Due to this scheme many companies have been established in Spain to create its holding company.

1. Companies that are regarded as Foreign Securities Holding Company (Empresas de Tenencia de Valores Extranjeros in Spanish – ETVE). Are those that meet the following requirements:
 - Its purpose understands “the business of the management and administration of registered securities representing shareholders’ funds of companies that are not resident on Spanish territory by means of the appropriate organization of materials and human resources”.
 - Entities can opt for this special tax regime sending a communication to the Ministry of Economy and Finance.
2. Tax incentives of the ETVE.
 - Dividends or profit shares received by the ETVE from non-residents companies are exempt when meeting the following requirements:
 - The percentage of direct or indirect equity of non-resident entity is at least 5 per 100, having been owned continuously participation during the year preceding the day on which the benefit is payable or remain later in the time required to complete that term.
 - The minimum participation requirement is met when the acquisition value of the participation was greater than 6 million euros, without being required to reach the level of 5 per cent of the capital.
 - The benefits must come from activities abroad.
 - The non-resident owned entity has been levied a tax identical or similar to corporation tax in the year in which benefits were obtained comprises deemed to meet this requirement if the subsidiary is a resident in a country with which Spain has signed an agreement to avoid double taxation.
 - The investee should not be established in a country or territory classified under the legislation as a tax haven.
3. Distribution of profits by ETVE.
 - Profits distributed by ETVE to their members receive the following treatment to weather a corporate or a natural person:
 - When the recipient is an entity subject to corporation tax, profits are included in the taxpayer’s

assessment base. The earner shall have the right to apply the deduction for double taxation of dividends. Accordingly, the partner that has 5 per cent or more of the share capital of the ETVE will be entitled to a deduction that will not be taxed by the corporate tax.

- When the recipient is a natural person, the profits distributed by ETVE and not included in its taxable base will be considered general revenue and may apply the deduction for double international taxation. In this case, is not interesting to share in a Spanish ETVE.
4. Transmission of the participation in ETVE.
- The earnings obtained in the transmission of participation in ETVE the following treatment:
 - If the recipient is an entity subject to corporation tax and meets the requirements set out in the legislation on Corporation Tax, will apply the deduction to avoid internal double taxation and exemptions, the rent is not taxed in the corporation tax.
 - When the recipient is an individual resident in Spain, the gain or loss will be integrated into the tax base of savings, the taxpayer paying tax at 19 or 21%.
 - When the recipient is an entity or a natural person not resident in Spain, the profits distributed by the ETVE from exempt earnings will not to be subjected to tax in Spain. The remaining profit is taxed in Spain and if there is a double taxation agreement, according to it.

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United Kingdom – Selling Your Business?

The impact of the current economic climate and the fact that many baby boomers are now retiring is having an increasing effect on the number of business owners looking to sell and pursue other interests. The effect of government policies, turbulence of stock markets, low savings returns and the lack of available finance for business acquisition for small businesses means that disposing of a business interest in a trading company requires careful planning and timing.

This article looks at the tax implications for a UK taxable person of the sale rather than the mechanics of selling. Tax changes introduced in 2010 changed the landscape for the slice that is payable to HM Revenue and Customs and selling has never been so advantageous.

The sale of a business usually starts by considering the commercial implications before looking at the tax implications. In addition the parties need to be clear regarding what is actually being sold. There is a huge difference between selling a business as a going concern and selling the assets of a business and the tax implications of the later are becoming more and more critical.

If the business being sold is a close investment holding company, there are some additional tax implications.

The sale of shares

A clear distinction must be made between selling the business and selling the assets of the business. In most cases, the issue is clear. It can be less clear when only part of the business is sold, or where the old business has closed down.

How a business is sold depends on how it is constituted. If it is a limited company, you are selling your shares and the profit you make on those shares is a capital gain and this is subject to capital gains tax.

In practice, the issue is rarely that simple. If you sell the shares to a “connected person” the disposal proceeds may be replaced by “market value.” A connected person could be a son, sister-in-law or business partner. The market value of the shares is usually then negotiated with HM Revenue and Customs.

There are also implications if you sell a controlling interest in a business:

If you started the business yourself, typically your acquisition cost is zero.

The taxable gain may be reduced by more tax reliefs, of which the most important is entrepreneurs’ relief.

Entrepreneurs’ relief

This relief applies for disposals of a business from 6 April 2008. In its short life, there have been three amounts of relief depending on when the disposal was made:

Date from	Amount of relief
6 April 2008	£1 million
6 April 2010	£2 million
23 June 2010	£5 million
6 April 2011	£10 million

This is a lifetime limit for each individual. You may claim the relief for any number of sales, and for any number of businesses (assuming the conditions are met), but the total may not exceed the amount of relief for the date you receive the proceeds.

The effect of the relief is that (from 23 June 2010) you pay capital gains tax at the rate of 10% instead of at 18% or, more likely, 28%. This is substantially less than the 50% tax currently in operation on earned income over £150,000.

To qualify for entrepreneurs’ relief:

- You must own at least 5% of the ordinary shares
- You must control at least 5% of the voting rights
- The company must be a trading company
- You must be an officer or employee of the company

These conditions must have been met for at least one year before the sale.

It may be possible to claim more entrepreneurs’ relief by transferring shares to family members before the disposal, provided they meet the above conditions.

Receiving shares for a business

Often when a business is sold, the acquiring company does not pay in cash but gives the seller shares in the company. There are however, some conditions and anti-avoidance rules to be aware of which are too extensive to be reviewed here.

Sometimes an acquiring company may offer loan notes or similar instruments. These are not shares and do not carry the same rights. In addition there is a distinct possibility that you may end up with a tax liability albeit at 10% before you receive the cash.

For tax purposes, loan notes are treated as either:

- Qualifying corporate bonds (QCBs); or
- Non-qualifying corporate bonds (non-QCBs).

The distinction is important as QCBs are exempt from capital gains tax but non-QCBs are not.

If you receive shares or QCBs for a disposal, it may be possible to realize your profit by selling them over several years. This can spread the gain over several years and utilize several years' annual exemptions.

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