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## Cyprus

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### Mutual Funds

The Parliament of the Republic of Cyprus is set to pass two legislative amendment acts in an effort to promote the creation of Cypriot Mutual Funds.

The Income Tax (Amendment) Laws of 2009 and the Special Defense Contribution (Amendment) Laws of 2009 will clarify the tax liability of mutual funds with regards to:

1. Interest
2. Dividends
3. Profits from the sale of investment funds

### Taxation on Interest

Currently, interest accrued from collective investment schemes are taxed at the corporation tax rate (10%) once expenses are deducted.

In such cases 50% of the gross interest is exempt from Corporation tax and 100% of the interest is subject to 10% Special Defense Contribution having an effective tax rate of 15%.

The Income Tax (Amendment) Laws of 2009 will clarify the position that collective investment schemes are only liable to corporation tax. For this reason there will be an amendment in the Special Defense Contribution Tax Laws clarifying the fact that collective investment schemes are exempt from defense contribution tax.

### Taxation on Dividends

1. Currently, income from dividends is exempt from defense contribution tax if:

- It comes from another Cypriot company, or
- It comes from a foreign company in which the collective mutual fund holds more than 1% of the share capital

With the amendments, Cypriot companies which derive income from dividends from foreign companies will be exempt from defense contribution tax regardless of the percentage of share capital they hold. This amendment eases restrictions in the creation of mutual funds and makes Cyprus more attractive to companies with international activities.

2. In the case of yearly profits distributed to shareholders the following shall apply:

- If the shareholder is a natural person and a tax resident of Cyprus, then he will be liable for special defense contribution tax at a rate of 15%
- For all other cases (e.g a company which is or is not a tax resident of Cyprus, a natural person not being a tax resident of Cyprus, or another mutual fund) there will be no tax liability on distribution of profits.

In the event that profits are not distributed, currently a deemed dividend distribution is taxable for special defense contribution tax at the rate of 15% on 70% of the yearly profits of the collective mutual funds of natural persons who are tax residents.

It should be noted that the majority of mutual funds do not distribute dividends. With the proposed amendments, the rate of taxation

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for special defense contribution on deemed distributions for collective mutual funds will be reduced from 15% to 3%.

### **Taxation on profits from sale of investment funds**

Under current legislation, profits from the sale of collective mutual funds which are open or closed are taxable since the sale is not considered to be a transfer of title. With the proposed amendments natural and legal persons shall be exempt from taxation on the profits because the sale of collective mutual funds will be considered a transfer of title.

Furthermore, under the amendments the sale of the collective mutual fund will not constitute a capital reduction and therefore the seller will not have to pay special defense contribution tax.

In conclusion, the proposed amendments will significantly improve the taxation regime of collective investment funds, making them competitive with other similar investment plans abroad. Under Russian domestic law, such distributions are subject to 20% withholding tax.

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## **Hungary**

Contributed by Gyarmathy & Partners  
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### **Accounting**

#### **Accounting in euro in Hungary**

No more restrictions on switching over to accounting in euro!

The recent extraordinary fluctuation in the exchange rate of the forint has often negatively affected the income statement of Hungarian companies which have considerable transactions in euro or in other foreign currencies.

Accounting in euro or in another foreign currency may be a solution for the above problem. However, the changeover to accounting in a foreign currency has not been a real option for numerous businesses so far, as they did not comply with the conditions stipulated in the accounting act.

According to the new amendment of the accounting act, all Hungarian companies may opt for

keeping the books and preparing the annual report in euro from 2010 without having to fulfill any conditions. If a business intends to switch over to accounting in euro from 2010, it is required to amend its accounting policy and deed of foundation this year. The act allows companies to change their decision as of the 5th business year following the decision.

A business may keep the books in a foreign currency other than euro, provided that it fulfills both conditions that more than 25 % of

a) its revenues, costs and expenditure, as well as

b) its financial assets and financial liabilities

arose in the given currency in the previous year and in the current year.

The changeover to accounting in a foreign currency requires adjustments to the settlement of tax accounts in addition to changes in the accounting system.

### **Taxation**

#### **Intra-group transfer of property**

No more stamp duty on the remittance of debts and the free transfer of assets.

The remittance of debts and the transfer of assets without consideration is a typical form of intra-group transactions. In 2007, a stamp duty of up to 40 % was introduced for such transactions.

The much-debated stamp duty has been abolished effective 9 July 2009. Accordingly, the following inter-company transactions for no consideration are again free of stamp duty:

1. transfer of assets,
2. assignment of accounts receivable,
3. cancellation of debts,
4. assumption of debts.

#### **Businesses in possession of real property**

*The purpose of a new regulation to be implemented in 2010 is to eliminate the current system in place until the end of*

***2009, according to which there is no real estate transfer tax on the transfer of real property through a project company and foreign sellers usually have no income tax liability in Hungary.***

Businesses frequently manage their real estate transactions through project companies. In such cases, the real property is owned by a project company established for this purpose. Thus the shares of the project company are sold upon the sale of the property. So far such transactions have been free of real estate transfer tax and the foreign owners have usually had no tax liability in Hungary.

According to the amended act on real estate transfer tax effective 2010, real estate transfer tax will have to be paid on the acquisition of at least 75 % of the capital shares in a company that owns real estate. The shares owned by related parties will have to be taken into account for the calculation of the 75 %.

The real estate transfer tax rate on the transfer of property for consideration will be 4 % on up to HUF 1 billion in sales value regarding both real estates and the capital shares of property owners. The real estate transfer tax rate will be 2 % for amounts exceeding this value with an upper tax limit of HUF 200 million. If residential property is acquired, the tax rate will be 2 % on up to HUF 4 million, and 4 % on amounts above this value.

Pursuant to the amended act, from 2010 foreign companies and private persons, who sell their shares in a non-listed company in possession of real estate or a related company, or withdraw their shares from the company in any other way will in certain cases be liable for income tax in Hungary. The condition for the income tax liability in Hungary will be fulfilled if 75 % of the assets of the company is domestic real estate and it has a foreign shareholder for at least one day of the tax year that is not resident in a country that has a double tax treaty with Hungary or the treaty allows foreign capital gain to be taxed in Hungary.

Private persons will have to pay tax in Hungary on the income from the sale of

shareholdings in such a company pursuant to the Hungarian personal income tax act. If the foreign owner is not a private person, the new 19 % corporate tax rate effective 2010 will apply to the income, but the corporate tax paid abroad may be deducted. Double tax treaties take precedence over the domestic rules and may result in a different tax liability.

The act obliges companies that own real estate to apply for a special registration with the tax authorities, based on which the tax authority will publish the list of such companies on the internet.

### **Retrospective refund of Hungarian VAT to foreign taxpayers**

**If a foreign company qualifies as a VAT subject in Hungary, it may apply for VAT refund retroactively to 1 January 2004.**

Previous regulations did not allow numerous foreign businesses with a Hungarian VAT number to apply for the refund of VAT paid with regard to the period between 1 January 2004 and 31 December 2007. It is not widely known that the current law already allows retroactive VAT refund for this period. If the foreign company – for any reason – failed to apply for VAT registration in Hungary, it may do so retrospectively pursuant to current regulations.

Currently, EU companies who are not Hungarian VAT subjects may apply for the refund of VAT paid in Hungary until the 30th of June of the year following the subject year. VAT cannot be refunded after this deadline. It is expected that from 2010 the deadline for VAT refund will be extended to the 30th of September of the year following the subject year, simultaneously with the implementation of the electronic VAT refund system.

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**Italy**

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**CFC - Controlled Foreign Companies**

The Law Decree 1st July 2009, n.78 introduced new measures concerning “*Controlled Foreign Companies*” (CFC), in order to contrast “tax havens” and international tax arbitraging. The new discipline, that will become effective from the 1st January 2010, has been issued in order to:

- prevent and restrain illegal transfers of investments and financial activities from/to foreign countries;
- reduce and control transactions carried out between companies belonging to the same group and located in “tax havens”.

In particular, the “CFC *discipline*” consists in a group of anti-elusive rules aimed at contrasting the use of foreign companies - settled in “tax havens” - in order to transfer profits to foreign countries with fiscal privileges.

The “CFC *discipline*” states that the profits obtained by controlled foreign companies should be charged to the Italian holding company, becoming taxable in Italy. As a consequence, Italian companies should be charged with profits obtained by Controlled Foreign Companies, even without any commercial transaction occurring within the two entities.

The Law Decree n.78 has modified the “CFC discipline” applying the regime to:

- companies set up in “tax havens” (“black list”) and controlled by an Italian company;
- companies set up in “tax havens” (“black list”), in which an Italian company owns the right to at least 20% of the profits;
- companies set up in countries on the “white list” where tax rates are lower than half of the Italian rates;
- companies set up in countries on the “white list” whose majority of profits is derived from the possession/investment of financial activities, participations, intangible rights and from the supply

of services offered to companies belonging to the same group (“passive income”).

The new legislation, therefore, represents a strengthening of the previous set of rules. In order to avoid taxation, the Italian fiscal administration requires proof that the foreign company is effectively installed in the foreign country and that it is not set up to obtain an illegal tax advantage.

The Law Decree has also introduced new dispensing circumstances to the application of the “CFC *discipline*”, asking that the controlled company not only carry out a business activity in the foreign country, but also the exercise and management of this activity in the foreign market without any outsource of Italian profits.

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**Netherlands**

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The Dutch government has sent several bills to our parliament regarding new tax rules for 2010.

**Inheritance tax**

First of all the inheritance tax will have new rates. Up to € 125.000 the rate is 10%. Above that amount the rate will become 20%. The current rates start with 5% and 8%. For that reason it might be interesting to donate money to children before the end of 2009.

There are several tax facilities to transfer your business to your children. In 2010 these facilities will increase and with less terms. Please notice that a custom advice is necessary for these situations. For that reason I will skip the details.

Capital which is placed in a trust (or stiftung / anstalt) is regarded transparent for the Dutch taxes. The person or persons who are entitled to the capital are taxed for their share.

**Income tax**

Entrepreneurs can use tax facilities which are specifically designed for them. In 2010 the facilities are expanded. Some investments in 2009 and 2010 can be deducted from the from the result in a period of two years.

When a director/shareholder is renting a property to his own corporation, the revenues and the value changes are taxed against the progressive rate of box 1 (with a maximum of 52%). In 2010 the property can be transferred to the corporation without income tax and without transfer tax. Several terms are applicable.

### **Corporate tax**

Losses in 2009 and 2010 have a carry back period of 3 years instead of 1 year. The carry forward period is in that case limited to 6 years.

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### **Switzerland**

Contributed by Paolo Dermittel  
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### **VAT changes**

The Swiss government has proposed to modify the VAT law to achieve 2 objectives:

- 1) to introduce administrative simplifications
- 2) to booster economic growth

The first objective will be achieved with a first change to the VAT law which will enter into force on January 1, 2010. The second objective has to be achieved in a second step, which is still to be discussed by the Parliament (including among other things a single VAT rate, a reduction of the exceptions, further administrative simplifications).

The main changes to be implemented on January 1, 2010, relate to:

- the place of delivery of services;
- the requirements to be registered for VAT (all companies need to be registered, unless the turnover is lower than 100'000 CHF. Possibility to register even in case the turnover is below the 100'000 CHF threshold) ;
- the registration of foreign entities;

- the rules on activities excluded and exempt from VAT;
- the combination of different deliveries / services;
- the deduction of VAT paid;
- import of goods and services;
- the procedures.

Considering the many changes introduced, it is advised to review each single case in light of the new rules.

### **Recent Tax Treaties Developments**

New exchange of information clause and "grey" list of non – cooperating countries of the OECD: Switzerland has negotiated amendments to the Tax Treaties with 13 countries which in particular include an extended administrative assistance clause in accordance with Art. 26 of the OECD Model Convention. The details of the amendments have not been released so far, but according to the Swiss government there will be no automatic exchange of information and the bank secrecy will be safeguarded. The amendments still need to be discussed and approved by the Swiss parliament, and will be thereafter subject to a referendum to be effective. In March 2009 the government of Switzerland had committed to modify the exchange of information clause with at least 12 countries before the end of the year to be included in the white list of cooperative countries of the OECD. Consequently, Switzerland is no longer on the "grey" list of non-cooperating countries of the OECD.

The countries involved are the USA, the UK, France, Mexico, Denmark, Luxembourg, Norway, Japan, the Netherlands, Poland, Austria, Finland, Spain and Qatar. Negotiations with Germany and Italy have already started.

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