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ecision of the Supreme Court. The eme Court confirmed the decision of Court of Appeal of the Hague and led that, even if the construction con- l of several related transactions with the ition of avoiding dividend withholding a way incompatible with the object and ose of the Dividend Withholding Tax un appeal based on the concept of abuse v had nevertheless to be dismissed. In circumstances, the dividends could not ixed under the Netherlands–Belgium '. Specifically, Art. 10 of the Nether- –Belgium treaty provided for the impo- of withholding tax on dividends paid company resident in the Netherlands to lgian resident. It was, however, not ent that the Netherlands and Belgium lso intended to impose dividend with- ng tax on a Belgian resident who sold s in a Netherlands resident company to er company resident in the Nether- in return for dividends which were afterwards on the shares. In addition, etherlands–Belgium treaty did not con- ny other provisions which authorized etherlands to tax the dividends.

nce: SUPP. S., C; GET-VI, 6.2.

RWAY

mission proposes significant ges to tax system

commission appointed by the parlia- (*Stortinget*) in January 2002 (see TNS- 2002)) presented its report on 6 ary 2003. In the report, the com- on proposes a number of changes to esent tax system. The commission was ically appointed to consider possible dments to the tax system established tax reform of 1992, with a view to ing the significant differences between xation of business and earned income. op marginal tax rate on earned income rently 64.7%, including employees' nployers' social security contributions, ly 28% on business and investment e. Details of the report are summa- below.

erall proposals and tax rates. The proposes major changes to the tax sys- ncluding a reduction in the income tax on earned income and the abolition of the deemed earned income regime for limited companies and the net wealth tax. These reductions would be financed by increased taxation on dividend income and immovable property. The proposals for the top marginal tax rates on earned income would reduce these to 54.3% for the first bracket (currently, on income in excess of NOK 720,000) and 49.9% for the second bracket (currently, on income of between NOK 360,000 and NOK 720,000). The main rate of income and corporate income tax for the net income of all taxpayers would remain unchanged at 28%.

(b) Allowances, deductions and benefits in kind. The commission proposes the removal of the earned income allowance, replacing it with a split rate structure for the basic tax allowance and significantly increasing the allowance. The rate for the basic tax allowance would be 40% of gross employment and pension income until the basic tax allowance amounted to NOK 26,000, with a basic allowance of NOK 20,000, and 20% of this income up to an allowance of NOK 57,200. These proposals are intended to reduce the income tax charge on low incomes. Conversely, the commission proposes a widening of the tax base by reducing the number of deductible items, such as gifts to charities, union dues and commuting expenses, and eliminating the special allowances for the elderly and disabled. In addition, new rules for the valuation of benefits in kind would increase the taxable value to the real value of the benefits.

(c) Taxation of dividend income. The commission has proposed an entirely new model for the taxation of dividends. Whilst the current imputation regime allows for a full credit against income tax for the underlying corporate income tax from resident companies, the proposed system would only allow a partial exemption for dividend income on the base cost of the distributing company's shares. In general, individual taxpayers would be liable to income tax on dividend income at the ordinary rate of tax, giving rise to a combined effective tax rate of 48.16% on distributed corporate profits. There would, however, be a tax-free amount equal to a return computed as a fixed interest on the tax base cost of the individual shares. Any unused part of the annual tax-free amount could be carried forward or added to

the cost of the shares on realization. In order to counteract avoidance schemes, interest payments from companies to shareholders above a certain level would be made subject to taxation at the level of dividends. The proposed regime would apply to dividends from resident companies and non-resident companies, thereby avoiding any possible conflict with EU law.

(d) Double tax relief. The committee proposes a number of changes to the double tax relief regime to make it more flexible and possibly even to allow for the offshore mixing of dividends. No changes have been proposed to the rules for ordinary credit for foreign taxes, but the regime for crediting underlying corporate income tax would undergo significant changes. An exemption method for income from certain high-tax countries would also be introduced. Under the current legislation, the credit for the withholding tax and underlying tax in respect of dividends from non-resident companies may be set off against Norwegian corporate income tax if the participation in the foreign company amounts to at least 10%. In addition, the underlying tax paid by a second-tier subsidiary may be credited. The ownership requirement at this level is 25%, but the committee proposes a reduction to 10%. It also proposes that a credit should be given for the corporate income tax of lower-tier subsidiaries and the limit on tax paid in the country of residence of the subsidiary should be abolished. In addition, there are certain proposals for technical amendments to the regime. The effect of these proposals would be that dividends from highly taxed companies and companies suffering lower levels of tax could be mixed offshore so as to create an average of creditable corporate income tax equal to the Norwegian corporate income tax, thereby reducing the overall effective level of tax in a group at a cost to the Norwegian Revenue. In addition, to the amended credit regime, the commission proposes a limited exemption regime in respect of dividends from specific countries where the level of corporate income tax is similar to that in Norway. It is suggested that the scope of the regime should be restricted to a list of countries for which an exemption would be appropriate.

(e) Unilateral implementation of EC Merger Directive. The commission proposes the unilateral implementation of the EC Merger Directive so as to allow for mergers and demergers to take place cross border on a tax-neutral basis. Whilst it is possible to obtain permission from the Ministry of Finance under current law for such reorganizations, the commission's opinion is that the legislation should give businesses the right to do so in a tax-neutral way. No detailed suggestions as to how the Directive should be implemented are, however, provided.

Reference: TNS-98 (2002).

PERU

Amendments to the Income Tax Law

The Income Tax Law was amended by Law 27,804, published in the Official Gazette of 2 August 2002. In particular, Law 27,804 abolished the additional income tax on dividend distributions created by Law 27,513 (see TNS-303 (2002)). Law 27,804 also made changes to the tax base, deductions and exemptions and created an additional advance payment of tax. The important aspects of Law 27,804, which applies from 1 January 2003, are summarized below.

(a) Tax base. The amendments are:

- dividends and all profit distributions distributed by resident entities on or after 1 January 2003 (regardless of whether or not the profits out of which the distributions are paid relate to a previous accounting period) where the shareholders' meeting is held on or after 1 January 2003 are subject to a final withholding tax of 4.1%. This tax does not apply if the recipient of the distributions is a resident legal entity, in which case the distributions are exempt from withholding. Legal entities must act as withholding agents for distributions. Distributions made by non-resident entities are included in a recipient's tax base and taxed under the general rules; and
- capital gains and all profits from funds, trusts, etc. are taxable in the tax year in which they are received by a taxpayer. Accordingly, the exemption in respect of these gains and profits is abolished.

(b) Deductions. Changes are made in respect of the following deductions:

- expenses incurred in respect of vehicles where the use of the vehicle is indispensable and the vehicle is wholly used in taxable activities are allowable. Expenses in respect of vehicles used for administrative or management purposes are allowable on the basis of a list to be issued by the tax administration that will take into account the different characteristics of enterprises;
- deductions in relation to gifts to national public entities (except for profit-making bodies) and approved non-profit charitable, social, welfare, educational, artistic, sporting, health, etc. foundations cannot exceed 10% of net income after deducting extraordinary losses arising from accidents; and
- generally, expenses incurred in tax havens are not allowable. The amendment has, however, created exceptions for expenses incurred in tax havens in relation to loans, insurance and reinsurance, the chartering of ships, international transport to and from Peru and transit rights through the Panama Canal, which are now allowable.

(c) Exemptions. The period of the application of the exemptions for all interest and capital gains derived from shares or securities, etc. is extended from 31 December 2002 to 31 December 2006. However, the exemption for capital gains and all profits from funds, trusts, etc. is abolished (see (a)).

(d) Additional advance payment of tax. All enterprises and industries, agricultural, fishery, forestry and mining activities and all commercial and service enterprises are subject to an additional advance payment of tax. Payments are made annually and can be credited against final income tax liabilities. The following entities are excluded from liability to the additional advance payment of tax: (i) enterprises that had not commenced activities as at 1 January 2003 (such enterprises will only be subject to the additional advance payment of tax from the tax year following the commencement of activities) and (ii) public enterprises supplying electricity, water, etc. The additional advance payment of tax is calculated using rates varying from 0% to 1.5% of net assets, with the amount due being divided into nine payments. The tax administration will issue details of payment dates and procedures in respect of the additional advance payment of tax.

Reference: TNS-303 (2002); LA, C, Tax Chart, 5., 6., 7., 13., 19.

PORTUGAL

Treaty with Latvia ratified

Portugal ratified the first-time income tax treaty and protocol with Latvia, signed on 19 June 2001, by way of Presidential Decree 10/2003 of 28 February 2003. Details of the treaty were reported in TNS-499 (2001).

Reference: TNS-499 (2001); SUPP. S., A, 6.3.5., C.

ROMANIA

Report from our correspondent
Mr Sorin Anghel, PFA Anghel,
Bucharest

Deemed annual taxable income of representative offices for 2003

The amended deemed annual taxable income for 2003 in respect of the representative offices of non-resident entities established in Romania was published in Official Gazette No. 41 of 24 January 2003. The income tax liability of qualifying representative offices is calculated at a rate of 38% based on the deemed annual taxable income as defined, depending on the number of employees. Accordingly, the deemed annual taxable income for the tax year 2003 in respect of representative offices is as follows:

Type of representative office (number of employees)	Deemed annual taxable income (ROL)
A: 1-2 employees	162,830,000
B: 3-5 employees	509,380,000
C: 6-8 employees	997,950,000
D: over 8 employees	2,025,075,000

It should be noted that, despite the overall reduction in the corporate income tax rate to 25%, the rate of tax on the deemed annual taxable income of representative offices remains at 38%.

Reference: TNS-174 (2002); SUPP. S., A, 6.2.1.; GET-V, A, 5.7.3.

SPAIN

Report from our correspondent
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Budget for 2003 and accompanying Law approved

The Budget for 2003 and the accompanying Law were published in the Official Gazette of 31 December 2002 as, respectively, Law 52/2002 and Law 53/2002 of 30 December 2002. The new Laws, which unless otherwise indicated apply from 1 January 2003, are summarized below.

Budget Law

(a) Corporate income tax. The capital gains indexation percentages for calculating the original acquisition cost of assets is 99.56% for assets acquired before 1984. For assets acquired between 1984 and up to and including 2003, the percentages range from 81.20% to 0%.

(b) Social security contributions. The maximum monthly base used to determine the amount of social security contributions is EUR 2,652. The minimum base will be determined by increasing the 2002 minimum by the same percentage as the monthly minimum salary, which is yet to be fixed. The rates in respect of contributions to the general system remain at 23.6% for employers and 4.7% for employees (28.3% in aggregate). For self-employed persons, the maximum monthly base is EUR 2,652 and the minimum EUR 740.70. The rate of social security contributions remains at 28.3%. The Budget Law also establishes the legal interest rate for money at 4.25% and the late payment interest rate at 5.50%.

Accompanying Law

(a) Corporate income tax. The capital gains reinvestment tax credit, under which capital gains realized on the disposal of certain assets the proceeds of which are reinvested in tangible and intangible fixed assets or in participations in capital exceeding 5%, is amended and is now, in general, 20% ously, 17%) for entities taxable at the g corporate income tax rate of 35%. A n credit of 10% is also introduced for ments and expenses incurred on l gartens used by the children of the e ees of a company.

(b) Transfer tax and inheritance and g The new Law provides that the 4-year of limitations on assessments, coll penalties and refunds in respect of authorized by foreign public persons on the date that a deed is submitted Spanish authority, unless an intern treaty establishes another date for the the period.

(c) VAT. The main changes relate place of supply of certain services. Tl introduces new rules referring to tl ation of electronically supplied s following EU Council Directive 2002/ of 7 May 2002 regarding the VAT ai ments applying to radio and tel broadcasting services and certain ele cally supplied services, which entere force on 15 May 2002 (see TNS-153 (2 (EU Member States do not have to c with the Directive until 1 July 2003 measure will apply in Spain from 2003. Under the new rules, electro supplied services including the provis web sites, web-hosting, the distance n nance of programmes and equipme supply and updating of software, the of images, text and information, the n available of databases, the supply of films and games, and distance teachi taxable in Spain if supplied:

- to a taxable person who has estal within the Spanish VAT territory land Spain and the Balearic Islanc business or has a fixed establishm which the services are supplied or, absence of such a place, the place he has his permanent address or u resides is in the Spanish VAT territ
- by a taxable person established in to a non-taxable person establish Spain, in another EU Member Stat an undetermined address; and
- by a taxable person established o the European Union to a non-taxab son established in Spain.