

## Global Update



April, 2010

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## EDITORIAL

### Integra International – Your Global Advantage!

Publishing the first issue of our Global Update in 2010, I would like to thank all the members for supporting Integra International.

### Update on new member firms and article summery

In January 2010 we welcomed two new members of Integra International from Jersey, Channel Islands and Israel.

**Herald Trust Company Limited** is a 3 partner, 50 staff firm located in the centre of St Helier. Robert Roynon-Jones, Robert Sharp, and Benjamin Bryant, are all Chartered Accountants and Fellows of the Institute of Chartered Accountants in England and Wales.

The firm from Israel, **Shpilburg CPA** has two partners and 8 staff. They are a full service CPA firm located in Bnei Brak, a suburb in the North of Tel Aviv.

In February 2010 the Japanese firm **ACTUS Tax Corporation** became a member of Integra International. It has 6 partners and 53 professional staff. ACTUS is headquartered in Tokyo with three branch offices in Osaka and Tokyo.

Our members in Netherlands, **Londen & Van Holland** moved into its own office building in a modern area of Amsterdam. One of the partners **André van der Velde**, together with senior tax lawyer **Feike Jagersma**, provided us with their input concerning the structure and importance of co-operatives and their comparison with national limited and public limited liability companies in Netherlands.

Independent national and international tax lawyer **Gérard Madec** provides some news about the French taxation system for research and development. In his article he shows practical examples of the current tax situation and a stable tendency in the future to keep and develop new innovative businesses in France.

**Simon Cheung**, the partner from our Chinese member company **C.K. Cheung (CPA) Co, Limited** was invited by Hong Kong Trade Development Council to act as a member for "TDC Professional Services Advisory Committee" from 1st April 2010. He will be an adviser to the Council for the promotional strategies and professional services industry for its world presentation.

### **Upcoming events**

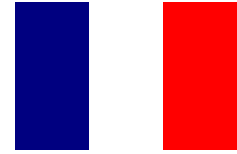
The next **Cross Border Tax Group** workshop is planned for September 2010 in Athens, Greece. The latest news and updates in international and European accounting and taxation will be discussed. The detailed topics of the upcoming seminar will be published within the next few months.

The **Transfer Pricing Group** will meet in connection with the AAA Annual Conference in Anaheim, CA, USA in May 2010. Specialists from all over the world will discuss latest news and developments in transfer pricing.

With the support and assistance of Integra International members, we will achieve a stable growth on our way to become a real global player in the international market for accounting, auditing and tax consulting.



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## FRANCE, THE NEW TAX HAVEN

*What is the most attractive European tax regime for research and development?  
The OECD just said it...  
The French regime!*

France now lines up with the general tax cut trend across Europe, proposing an attractive holding corporation regime, capital gains exemption, dividends exemption, and usually no withholding tax on royalties and interests. This is a short presentation on the French tax regime for R&D. You will understand why so many businesses are investing in or returning to France. Three of the tax cuts are described:

1. Research tax credit;
2. Impatriate exemption;
3. New innovative business incentive.

### 1. RESEARCH TAX CREDIT

#### a) Mechanism.

Today the French State refunds most R&D expenses to businesses, which, in certain circumstances can represent twice the amount of expenses. R&D expenses are tax deductible, whereas reimbursements are not, thereby allowing profit exemption. The extensive French concept of *research* includes both fundamental and applied research as well as experimental development. To qualify for tax credit, the research must *not* necessarily be patented.

#### EXAMPLES

- Creation of a fashion collection is included in the *research* concept;
- Software is considered *research* as long as it shows substantial innovation.

## **b) Amount.**

The tax credit basis includes gross salaries and social security contributions, together with a 75% lump sum for operating costs. Depreciation and patent expenses are also included. The French State refunds 30% of the above basis, up to €100 million per annum, and 5% above this level. As an exception, the rate is 50% the first year and 40% the second. The tax credit basis is doubled if hiring PhDs or equivalent. Subject to conditions, expenditures made in Europe or in a European Free Trade Association (EFTA) country is included in the tax credit basis.

### **EXAMPLE 1**

- For an employee cost of €100.000 (salaries + social security contributions), the State refunds  $(100.000 + 75.000) \times 50\% = €87.500$  for Year 1.
  - If an employee costing €100.000 is a PhD holder or equivalent, the State refunds  $((100.000 \times 2) + 200.000) \times 50\% = €200.000$  for Year 1 and €100.000 for Year 2.
- International groups may use the tax credit system and still transfer research results to a foreign country. This foreign country (e.g. the United Kingdom) may offer a second advantage for R&D, or allow royalty contracts with low taxation (e.g. Switzerland).

### **EXAMPLE 2**

- Expenditures incurred in France: €10M
  - Refunded tax credit: €8,75M
  - Expenditures recharged in a foreign country: €10M
  - The French balance sheet shows an accounting profit of €8,75M and a taxable profit of 0.
  - If the expenditures are recharged in the UK, they are tax deductible up to 175% of their amount.
- Such an attractive regime as described above foretells the end of traditional tax havens.

## **2. IMPATRIATE EXEMPTION**

France attracts trained, experienced employees. Without going into further detail, individuals relocating to France are exempt from income tax for a minimum of 50% of their salary including elements of remuneration directly related to their expatriate and impatriate assignment. A clever use of this system allows an exemption of up to 75%.

## **3. NEW INNOVATIVE BUSINESS INCENTIVE**

This regime allows total or partial tax exemption for businesses of at least 20 employees, raising their workforce to at least 15% within the 2 preceding years

**CONCLUSION: WHO CAN BEAT THAT? NOBODY.**



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## CHINA UPDATE

Invited by the Hong Kong Trade Development Council, Mr. Simon Cheung, Director of the Greater China Division of C K Cheung (CPA) Co. Limited will act as a member for "TDC Professional Services Advisory Committee" effective 1st April 2010. The Committee's main role is to advise the Council on its promotional strategies for the professional services industry, and provide TDC with information on industry trends and needs, both within and outside Hong Kong.

Having regard to the promotional objective of the professional services sector, Simon Cheung is to advise the Council on:

- the industry developments in Hong Kong;
- the mainland and overseas market developments; and
- the Council's mainland and overseas promotion programme, including the marketing channels/platforms and other supporting marketing activities

As a leader in the professional services industry, Simon Cheung's vision in and commitment to the industry will no doubt contribute to the Committee. He was honoured to be invited by the HKTDC and look forward to work closely with the Council in promoting Hong Kong's professional services industry in future.

Please see <http://www.hktdc.com/mis/ahktdc/en/s/abt-hktdc-about.html> for detail of HKTDC.



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## The Dutch Co-operative

An interesting fiscal instrument in international structures.

### Introduction

The use of a Dutch co-operative has great advantages in international structures because profit distributions from a Dutch co-operative are not qualified as dividend under Dutch law. Therefore no Dutch dividend withholding tax can be due over “dividend” payments. Historically the co-operative is well known internationally in agricultural structures. But today the co-operative structure can be successfully applied in mostly all active investment structures.

The co-operative structure can also be used in pure national situations as the Dutch participation exemption is also applicable if the investment in the co-operative is less than 5%. Regularly the participation exemption is only applicable for investment stakes more than 5%. We do not describe this advantage of the co-operative as this is outside the scope of this article.

### Civil law

The co-operative is a legal entity and therefore has legal personality under Dutch company law. Contrary to the Dutch BV and NV (the Dutch limited and public liability companies) most of the regulations for associations do apply on co-operatives. Instead of having shareholders a co-operative has members and a general meeting of members.

The co-operative has to be incorporated before a Dutch notary. The notarial deed contains the articles of association of the co-operative. In contrary to the BV or NV these articles can be very flexible.

Unlike an ordinary association a co-operative is allowed to make profits for distribution to its members. Compared to a BV or NV the requirements for establishing a co-operative are minimal. That makes it possible to incorporate the co-operative in a couple of days. The co-operative must be registered in the Trade Register of the Chamber of Commerce.

## **Tax aspects of the co-operative.**

For the Dutch tax authorities the co-operative is treated as a BV or NV except for the dividend withholding tax and some minor issues. The co-operative is regarded as a legal entity and therefore subject to the corporate income tax. The co-operative can apply for the participation exemption and can use other facilities such as the fiscal unity regime. Since the co-operative is subject to corporate income tax, it can be considered as a tax resident for treaty purposes which enables the co-operative to use the extensive network of Dutch tax treaties. Also all European Union directives are applicable to the co-operative except the EU interest and royalties directive and the EU savings directive. The most important directive in international structures is perhaps the parent –subsidiary directive which is applicable.

If a country which has to pay dividend, interest or a royalty to the co-operative, does not fully understand or accept the co-operative, it is possible to avoid problems by use of a so called sandwich structure. That means a BV with a co-operative on top inside The Netherlands. The incoming payments arrive in the BV and the outgoing payments come from the co-operative.

## **Taxation of members in the co-operative**

In case the member in the co-operative is a foreign entity, such entity could under certain circumstances become liable for Dutch corporate income tax if the structure does not fulfill certain requirements. If the co-operative is used in an active structure where the investments are active and the members of the co-operative are active in the management of the investments no Dutch tax liability should arise. To avoid uncertainty it is possible to obtain an Advance Tax Ruling (ATR) from the tax authorities.

## **Dutch dividend withholding tax**

As already described before, the most attractive feature of the co-operative is the fact that profit distributions from a Dutch co-operative are not qualified as dividends under Dutch law. Therefore no dividend withholding can be due over such payments. Under Dutch law a dividend withholding tax can only be levied from companies which capital is divided in shares and a co-operative has no shares or shareholders but only members.

This makes it possible to generate a dividend without any Dutch withholding taxes, from EU companies to shareholders worldwide. (Using the EU parent – subsidiary directive) If the subsidiary is located in a non EU country then the dividend withholding tax can be minimized using the extensive Dutch treaty network.



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## Dutch Participation Exemption

An ideal instrument in international tax structures.

Under the application of the Dutch participation exemption, all capital gains and dividends derived from qualifying participations are exempt from Dutch corporate income taxation.

Based on current law a qualifying participation is in principle a participation in which at least 5% of the nominal paid-up share capital is held.

Compared to other jurisdictions, The Dutch requirements are very simple to be met for a full exemption.

### Features of the Dutch participation exemption.

The use of a Dutch (intermediate) holding structure can be very attractive. If a participation somewhere in the world generates a dividend, the dividend withholding tax can mostly be reduced by using the extensive Dutch treaty network. The dividend itself is tax exempted in The Netherlands. If the participation will be sold then the capital gain is also exempted from corporate income tax in The Netherlands. Dividends from the Dutch holding to its shareholders can be free of dividend withholding tax if a co-operative structure is being used. In other cases one can profit from the extensive Dutch treaty network or EU parent subsidiary directive.

Also the Dutch tax authorities are very willing to provide an advance tax ruling and the financial consultancy industry is very well equipped in The Netherlands.

### Low taxed portfolio investment

If the participation can be qualified as a so called “low taxed portfolio investment participation” then only a tax credit will apply. A participation will be considered as such if the below mentioned tests are met.

## 1. Asset test

A subsidiary is regarded as a low taxed investment subsidiary if more than 50% of its direct and indirect assets are of a passive nature. Passive means in this context not business related such as bank savings etc.

## 2. Subject to tax test

Another requirement is that the participation is subject to a realistic levy of corporate income tax by Dutch standards.

Both the asset test and the subject to tax test should be met. Otherwise the regular participation exemption is applicable.

## 3. Intention test

Another escape is the intention test. The regular participation exemption is also applicable if the shares are not held as a portfolio investment.

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The **Global Update** is a quarterly publication of Integra International intended to keep its worldwide members and their clients informed about what's happening in business matters around the globe. The editor is Mag. Franz Schweiger and he can be contacted at: BF Consulting Wirtschaftsprüfungs-GmbH, Mariahilfer Strasse 32, AUSTRIA 1070 Wien, Tel. 0043 1 522 47 91, Fax. 0043 1 522 47 91 1, E-Mail: [office@bf-consulting.at](mailto:office@bf-consulting.at)  
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