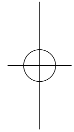

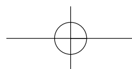

INTERNATIONAL

All change on the tax front for EU members

Jan Kooi highlights key aspects of tax changes in the UK, Germany, Belgium, France, the Netherlands and Spain.

There has been a lot of activity in the tax field this year, with many countries introducing substantial changes to their tax regimes. A few of these changes are so substantial they would each warrant a separate article, therefore here we will focus on some of the key aspects of the changes to take place in corporate income tax and in the EU.

More group relief for the UK

The major UK change is the big overhaul of the UK group relief system, as a consequence of the ICI decision of 1998 and reconfirmed by the European Court of Justice's Advocate General in his opinion of 12 September 2000. Under the new rules, group relief is now also available if the relevant UK organisations are ultimately owned for 75% or more by a non-UK firm that would have been able to head the tax group had it been a UK company. This will provide foreign groups with different operations to obtain additional tax benefits.

It should be noted, however, that the new group relief rules still do not allow members of the extended group to 'pool' their equity for purposes of the thin capitalisation rules in connection with cross border financing.

Another important element of the March Budget was the announcement that foreign mixer companies will no longer be tolerated in the future.

The UK has furthermore played a leading role in preventing the implementation of an EU-wide withholding tax on savings income for individuals. As long as no agreement has been reached on this point, other elements of the EU package, which include the abolition of withholding tax on inter-corporate interest and the royalty directive, will not be enacted.

In the November pre-budget report, it was announced that, as of 1 April2001, the UK will abolish domestic witholding tax on interest paid between non relieved UK companies (currently 20% for long-term loans).

The EU has agreed that the issue will have to be resolved at the latest by the end of 2003. The EU and the OECD have also focussed this year on the (alleged) abusive use of tax haven countries and, in the case of the EU especially, harmful tax competition. The Primerolo Report provides a long list of perceived harmful tax regimes in all EU countries. EU member countries will need to phase out some of the privileges regimes, such as the Belgium co-ordination centres, certain ruling practices in the Netherlands and perhaps even cost-plus treatment of certain co-ordination activities in Germany.

The OECD approach is much broader in scope but seems fairer, since it concentrates basically on the question of whether a certain regime should be available to all tax payers rather than, for instance, only certain foreign groups (the issue referred to as 'ringfencing').

It also published a report on the tax aspects of e-commerce, in which there seems to be a tendency to enlarge the notion of permanent establishment to include dedicated servers and 'complete business cycles', which so far would not necessarily constitute permanent establishments under either tax treaties or domestic legislation.

Jan Kooi

Implications for Germany

The most sweeping tax changes have probably been made in Germany, where the corporate and individual tax regimes will undergo major changes in 2001 and 2002. The current corporate income tax rate of 30% for distributed profits and 40% for non-distributed profits will – from 1 January, 2001 – be replaced by a uniform rate of 25%.

In addition, the imputation system for domestic dividends will be abolished and replaced by an exemption system. As a consequence, German holding companies that incur (financing) costs with respect to domestic subsidiaries will no longer be able to deduct these costs. In practice this will take effect from 2002, since the new regime will only apply to the years in which dividends are received out of post-2000 profits of the subsidiaries. A way to avoid this problem is to have the parent company enter into a tax consolidation with its domestic subsidiaries.

The rules for forming a tax consolidation for corporate income tax purposes have been substantially simplified, basically requiring from now on only 50% or more control. For trade tax and VAT purposes the rules on tax consolidation have not changed, although it is expected that there will in the near future be an overhaul of the trade tax regime.

A crucial part of German tax reform related to changes in the debt/equity ratio for thin capitalisation. From 1 January, 2001, qualifying holding companies, which so far could use a 9:1 leverage will only be able to apply a 3:1 debt/equity ratio when borrowing from foreign affiliat-