

## **Ministerial Decree on Securitisation and profit sharing loans**

On 27 October 2004 the State Secretary of Finance issued a Q&A Decree on the treatment of notes with loss absorption clauses in connection with the Dutch profit sharing loan legislation.

According to article 10, paragraph 1, letter d of the Dutch Corporate Income Tax Act interest payments due on a loan which is concluded under such conditions that it actually functions as equity of the taxpayer are not deductible. The latter is the case if – legally or actually - the height of the interest is completely or partially dependent on the profit of the taxpayer. During the parliamentary discussions on introducing this law, it was stated that a loan could be profit participating if the compensation for the loan depends on the value of an underlying assets, such as a piece of real estate (e.g. the redemption price of the loan will equal x% of the value of the real estate at the time of the redemption).

According to the decree the facts of the case presented to the tax authorities were as follows. Via a credit default swap, a bank transferred the credit risk of its mortgage receivables to a Dutch BV. The shares of BV were held by a Dutch Foundation (“*Stichting*”) which

During parliamentary discussions it has already been stated that financial products which were not tax driven would not fall foul of the profit sharing loan laws.

The objectives of a Simultaneous Audit Memorandum is to determine the right amount of tax due in case:

- ❖ costs are charged cross border, and other transfer pricing issues;
- ❖ tax avoidance or evasion techniques or price manipulations, cost allocations or tax shelters are identified;
- ❖ unreported income, bribery and money laundering are suspected;
- ❖ transactions with tax havens (undefined) and tax avoidance or evasion schemes with tax havens are identified;
- ❖ multinational business practices, complex transactions, fiscal examination issues and fiscal non compliance trends are identified that may be particular to an industry or group of industries;
- ❖ profit allocation methods in special fields such as global trading and new financial instruments (which seems pretty wide to us) are used.

In order to achieve the above, certain criteria are used to identify candidates for simultaneous audits. Besides the candidate having interests in both states, the following criteria are used:

- ❖ indications of tax avoidance or tax evasion;
- ❖ indication of substantial non-compliance of tax law in the participating States;
- ❖ indications of manipulated transfer pricing;
- ❖ indication of other forms of international tax planning which, if countered successfully, may generate additional tax yield in the participating States;
- ❖ indication that the economic performance of a taxpayer, over a period of time, is significantly worse than it might be expected, for instance: the economic performance does not reflect appropriate profits when measured against sales, total assets, etc.;
- ❖ cases where the taxpayer consistently shows losses, especially long-term losses;
- ❖ cases where the taxpayer, regardless of profitability, paid little or no tax over the relevant period;
- ❖ the presence of transactions involving tax havens; or
- ❖ situations in which the tax authorities deem it important to stimulate international tax compliance.

It is clear that tax evasion need not be tolerated and that governments have the right (and obligation towards their other taxpayers) to combat this. Simultaneous audits and the exchange of information seem like excellent instruments in that endeavor. However, in EU Directives and in treaties such as these tax evasion and tax avoidance are increasingly mentioned together and treated alike, in spite of the crucial difference of evasion being illegal and avoidance not. It seems as though we have indeed come to a point of “acceptable legal behavior” and “unacceptable legal behavior”. The difference, until defined intelligibly, is a smell test and the nose that tells, that of the tax authorities; this is unsatisfactory and governments should remedy it by defining “unacceptable legal behavior”.

### **Lithuania and Sweden**

The Dutch and Swedish Tax Authorities concluded a Memorandum of Understanding on streamlining and intensifying mutual assistance (the “Swedish Memorandum”) on 3 September 2004. The Memorandum entered into force on 3 September 2004, albeit that the exchange of information clauses apply to for all of 2004. The Memorandum of Understanding with Lithuania and the Netherlands (the “Lithuanian Memorandum”) entered into force on 1 May 2004, albeit that the exchange of information clauses apply to information as of 2003. Both Memoranda included an annex on simultaneous tax audits in both countries (the “Annex”).

The Memoranda follow the layout of the Estonian Mutual Assistance Memorandum, but does contain some differences. These include:

- ❖ the Estonian Memorandum refers to tax avoidance as a reason for cross border participation, whilst the Lithuanian Memorandum limits this to tax evasion and the Swedish Memorandum limits it to fraud;
- ❖ under the Lithuanian Memorandum information about cross border dividends, interest and royalty payments are exchanged automatically; in the Estonian and Swedish Memoranda this is limited to royalties only; the Swedish Memorandum subsequently also covers VAT refunds granted under the 8<sup>th</sup> VAT Directive.
- ❖ under the Lithuanian Memorandum cross border moves of the seat or head office of companies are not exchanged spontaneously; it is under both the Estonian and the Swedish Memoranda;
- ❖ the response period on a request for assistance is 3 months under the Estonian and 6 months under the Lithuanian and Swedish Memoranda.

The Annex to the Lithuanian Memorandum is an abbreviated form of the Estonian Simultaneous Audit Memorandum. However, the criteria for audits are limited to tax evasion or avoidance (again), substantial fiscal disobedience, transactions with tax havens and the advancement of international tax compliance. It is good to see that making losses is not qualified as suspect behavior.

It is assumed that agreements like these will be concluded more often in future, especially with EU member states. Forerunners of the above Memoranda include Memoranda on the exchange of information signed by the Netherlands with the Ukraine on 4 October 2002 and with Australia on 4 June 2002.

One final comment: these Memoranda will not subject to parliamentary approval, since they are actually treated extensions of existing tax treaties. We wonder whether this is true in all cases. First it is clear that VAT refunds are not covered by the Dutch/Swedish tax treaty or any of the other documents that Memorandum is based upon (unless the VAT was charged as a tax deductible cost in first instance). Second, to the extent that the Memoranda concern tracking tax evasion, fraud and other crimes, it is unclear to us whether such cross border investigations should not be subject to prior parliamentary scrutiny, especially where they concern the operations of foreign government personnel on Dutch territory. The Estonian documents in particular are so far reaching that they do seem prime candidates for parliamentary scrutiny.

Tax evasion and tax avoidance are increasingly mentioned together in spite of one being illegal and the other not. We seem to indeed have come to acceptable and unacceptable legal behavior.

It is assumed that agreements like these will become more and more common place.

## **Waiving of written down receivable is not taxable in NL**

Income and gains from qualifying participations are exempt from Dutch corporate income tax. It has for many years been attractive for Dutch parents, to extend loans to subsidiaries, write them down and then waive them or convert them to equity in order to turn the future appreciation of the receivable into a tax free participation gain. In order to prevent this, a new law was introduced in 1990 determining that if a receivable on a participation has been written down against Dutch taxable profits, and if the receivable is subsequently converted into equity or disposed of, then an amount equal to the amount written down is added to the profit of the taxpayer. As the law read in 1994, a written down receivable was deemed to be converted or disposed of if it was changed for shares or similar instruments, transferred to an entity related to the debtor and creditor or was transferred to a foreign branch (whereby the appreciation was exempt in the Netherlands). Waiving a receivable was also taxable to the extent that the waiver was not subject to tax with the debtor, or if the enterprise of the debtor was transferred to a company related to the debtor and creditor (the shares in the debtor will not appreciate after the removal of the profit generating enterprise).

In 1988 XBV formed a consolidated group with ABV and CBV. CBV sold bridal clothing in the UK. ABV and J Ltd incorporated H Ltd in which ABV held a 2/3 interest. H Ltd would be CBV's sole UK distributor. H Ltd was not commercially successful and by 1994, ABV and CBV have written down NLG 1 mio in receivables on H Ltd. H Ltd was liquidated in December 1994 and CBV continued its sales activities in the UK. The tax inspector wanted to tax the written down receivables on the basis of either the fact that the waiver was not taxable with H Ltd, or that the enterprise of H Ltd was transferred to a company related to H Ltd and its creditor. On 18 April 2001 the Dutch Supreme Court determined that due to the consolidation, whereby XBV, ABV and CBV are treated as one taxpayer, it can not be said that the enterprise was transferred to a related party of H Ltd and its creditor (since, for tax purposes, the creditor was the related party). The Supreme Court added to that argument that in this case there is also no need for the extra taxation, since the profit generated by H Ltd's business will be taxed in the Netherlands in any case (apparently CBV did not have a UK permanent establishment).

The Supreme Court referred the question whether the waiver was subject to tax with H Ltd to the High Court of Den Bosch. According to the limited facts available to that Court, H Ltd. had tax losses carried forward at 1993 year end of approximately NLG 660.000. According to the liquidator of H Ltd, the UK Inland Revenue did not make a claim against the H Ltd for the tax due on the remaining (1 mio – 660.00 =) NLG 340.000 left unpaid (probably because H Ltd. had nothing worth claiming). No UK tax returns were filed for 1993 or 1994 and the company's final liquidation balance showed a positive equity of GBP 3.000. The High Court determined that the positive liquidation balance must come from reporting the waiver as a profit, that that profit was likely to be subject to tax in the UK and the fact that no tax was actually collected was not relevant, since that was not what Dutch law required. It finally determined that the tax inspector had the burden of proof to show that the income was not subject to tax and that he did not make use of the exchange of information clause under the UK/Dutch tax treaty (or EC Directive 77/799 for that matter) to find out whether the waiver was taxable in the UK. In those circumstances the High Court decided for the taxpayer. The tax authorities appealed against this decision but the Supreme Court upheld the High Court's decision on 15 October 2004.

We wonder what made the tax inspector go after this case. It is clear that the Dutch companies actually lost the NLG 1 mio, plus the equity (NLG 570.000) they've put into H. Ltd, and that this was not just a structure set up to avoid a recapture of the write down. Had the tax inspector won, the recapture of this loss would have been immediate whilst the relief for the loss, if any, would have been rolled forward (as a loss from the liquidation of H Ltd) until the time, if ever, when the Dutch companies terminated H. Ltd's activities.

The Dutch law on the conversion of debt has since undergone substantial changes. We refer to our [August 2004 newsletter](#) on the Conversion of debt for further information.

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## **Decree on special employee stock options**

According to Dutch law, a corporate taxpayer can only deduct the value of an employee stock option from its taxable income to the extent the employee is taxed upon the option itself. In 2001 the Supreme Court determined that an option holder is partially treated as a shareholder already, if the company in which shares can be acquired is also the issuer of the option. By treating such an option holder partially as a shareholder, the future exercise of the option is treated as a transaction between a "shareholder" and the company and the loss the company makes from the exercise of the option (the difference between the fair market price of the shares at the time of the exercise and the strike price of the option) is not deductible for corporate income tax purposes.

In a decree dated 18 October 2004, the State Secretary of Finance described the consequences of stock option plans in which the employees are not allowed to keep the shares acquired through the options, but are required to immediately sell the shares on a stock exchange (the Decree mentions shares of a BV, but since a BV's shares can not be traded on a stock exchange, we assume that an NV was meant). Due to this sales clause, the options are actually not taxed with the employees as options, but as cash payments. Wage tax is due at the time of exercise on the difference between the fair market value of the shares acquired and the strike price of the options.

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According to the State Secretary this means that a 1996 decision of the Supreme Court applies, determining that the company can deduct the fair market value of the options at the time they are granted. However, the company may not – according to the State Secretary – deduct any future loss upon the exercise of the option, since the option holder is already a partial shareholder. Eventhough the Supreme Court decided in the 1996 case that the treatment of an option for wage tax purposes is not determinative for corporate income tax purposes, we do not believe that the State Secretary's argument of no deduction upon exercise is correct. The same Supreme Court has in the past tried to strike a balance between individual taxes and corporate income tax by determining that certain costs could only be deducted in the corporate income tax sphere if they were taxable in the personal income tax sphere, which the exercise of the option in this case is (and was not in the 2001 case mentioned in the beginning of this article).

## **Decree on the expiration of the statute of limitation on debts**

In a decree dated 13 October 2004, the State Secretary answered two practical questions with regard to the expiration of the statute of limitations on receivables. Under Dutch civil, a creditor generally loses his right to claim satisfaction of a payment due, five years after the liability arose, if the creditor did nothing to collect the payment in the meantime. The first question was whether the lapse of the five years forced the debtor to book a taxable profit on the outstanding payment. The answer is no, not until it becomes absolutely clear that the debt will not be repaid. Under Dutch civil law, the debtor still remains liable for the debt eventhough the creditor can generally not enforce the claim anymore. However, there are some instances in which the creditor might still get indirect compensation, e.g. by settlement with other liabilities to the debtor.

The second question was whether, once it became clear that the debt will not be repaid, the lapse of the debt could be treated as a tax exempt waiver of the liability. The answer here too is no, since tax exempt waivers require the conscious waiving of the receivable by the creditor, which did not take place.

## **US approves protocol to US/Dutch tax treaty**

On 19 November 2004 the US Senate made many Dutch tax practitioners very happy when they approved the proposed new protocol to the US/Dutch tax treaty. Under the protocol the rate of dividend withholding tax between the US and the Netherlands is reduced to 0% in the case of certain 80% or larger participations. We refer to our newsletters from [July 2004](#) and [March 2004](#) for further information.

## **Other points of interest**

- ❖ On 29 October 2004 the Dutch Supreme Court confirmed a decision of the High Court of Amsterdam that if a subsidiary extends a loan to a parent company when it is likely that the parent will not or cannot repay it, then the loan needs to be treated as a distribution. This is the reverse of previous case law where it was determined that loans extended by parents to subsidiaries did nothing but feed a bottomless well, whereby the loans had to be recharacterised as equity.
- ❖ On 30 September 2004, the High Court of Amsterdam determined that the tax residence of a German GmbH involved in fishing was in the Netherlands and not Germany as the GmbH argued. The only presence the GmbH had in Germany was an individual, resident in Germany, who was also director of 12 other companies and apparently knew nothing about fishing. On the other hand the GmbH owned a fishing vehicle which only operated in Dutch or international waters, never docked in Germany during the relevant tax year and the crew were all resident in the Netherlands. One of the crew members also held an unlimited proxy to represent the GmbH.
- ❖ The Netherlands levies a 6% tax on the transfer of real estate. Furthermore, the contribution of Dutch real estate to a partnership can be exempt from real estate transfer tax if certain conditions are fulfilled. In the case at hand 12 BV's formed a Dutch limited partnership (*commanditaire vennootschap*) and contributed real estate worth NLG 183 mio to the Dutch LP, claiming the exemption mentioned hereabove. The tax inspector and the High Court of Amsterdam denied this exemption arguing that the limited partners were so passive that the LP was no limited partnership. On 15 October 2004 the Supreme Court determined that the High Court did not properly motivate its decision and referred the case to the High Court of the Hague for further investigation.

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# EU related tax developments

## Dutch Supreme Court decides on application of Bosal

Two decisions show how vital it is that taxpayers bring their EU claims on time.

Two decisions of the Dutch Supreme Court from 22 October 2004 show how absolutely vital it is that taxpayers bring their claims under EU law on time.

In the first case, a Dutch BV (BVA) acquired three Italian subsidiaries from its Netherlands Antilles parent in 1995. BVA claimed cost deductions for the participations in spite of the fact that the rules under the participation exemption did not allow such deductions for these participations. BVA argued that the Dutch rules disallowing these deductions were in contravention of EU law (at the time deductions were only allowed for subsidiaries receiving taxable income in the Netherlands, which generally excluded foreign subsidiaries). The inspector denied the deductions on 31 December 1997 and the High Court of the Hague decided in favor of the tax inspector on 21 November 2000; ABV appealed against the High Court decision. On 18 September 2003 the EU Court of Justice (ECJ) determined in the Bosal Case (C/168-01) that the Dutch rules were indeed in contravention of EU law (see our [October 2003 newsletter](#)). Following the Bosal decision, the Supreme Court overturned the High Court's decision on ABV. The case got referred to the High Court of Amsterdam to determine which part of ABV's costs is related to the EU profits of the qualifying participations. The inspector argued before the High Court of the Hague that only these costs might be allowed under EU law and not costs relating to non-EU profits of the subsidiaries should be allowed. In changing Dutch law in the aftermath of the Bosal decision, the law was indeed amended such that until 1 January 2004 only costs related to EU profits of participations are deductible. As of 1 January 2004 all costs are deductible. In both cases a (retro-active) carve out is made for the acquisition costs of participations which remain fully non-deductible for all participations (see "Converting debt ..." in our [July 2004 newsletter](#)).

In the second case, BBV acquired a qualifying participation in a Spanish company in 1992 and financed it with a loan in Peseta's. BBV claimed a deduction for the interest on the loan to the extent the interest concerned a compensation for the weakness of the Peseta at the time, arguing that that compensation was too remote from the Spanish participation to qualify as a non-deductible cost under the participation exemption. However, after having gone from the High Court of Amsterdam (decision 15 January 1995) to the Supreme Court (decision 28 April 1999), the High Court of the Hague on 30 March 2001 determined that the costs for the weakness of the Peseta were actually born by the creditor, since the interest on the loans was based on the interest paid on Dutch treasury bonds (which was low compared to Peseta rates). BBV appealed against that decision.

Following the Bosal decision, the Supreme Court gave both the tax authorities and BBV the opportunity to inform the Supreme Court of their opinion of the case. BBV, naturally, claimed that it too should benefit from the Bosal decision. However, the Supreme Court determined that such was not possible anymore. The original question before the High Court of the Hague was only regarding the weakness of the Peseta. The Supreme Court determined that it was not possible to still add to that the Bosal argument, since such would require a new investigation into the facts. In terms of time line, we point out that the Dutch Supreme Court referred the Bosal case (which also concerned the tax year 1993) to the ECJ on 11 April 2001 after Bosal appealed from the High Court of Arnhem's decision of 26 October 1999. It is not clear from the Supreme Court's decision when BBV had its last chance to rely on EU law for getting the deduction. That could either have been at High Court of the Hague, but dealing with that question would not have been part of its referral assignment from the Supreme Court, or – based on the Supreme Court arguments in this case – the last opportunity might have been as early as the Court of first instance, being the High Court of Amsterdam prior to 1995.

We do not agree with the Supreme Court's decision in the BBV case: as final court, it should at least have referred the question whether it was too late to benefit from the Bosal case to the ECJ, or should have argued why such is not required under EU law. After all, the final sentence of article 234 of the EC treaty determines that where a question on EU law is raised in a case pending before a court of a Member State against whose decisions there is no judicial remedy under national law, that court shall bring the matter before the ECJ.

## Amendments to double tax relief following De Groot

In the De Groot Case (C-385/00) the ECJ determined that the method in which the Netherlands provide double tax relief to individuals is not EU compliant since it exempts costs for which no deduction is allowed elsewhere. The Dutch Supreme implemented this guidance in a decision of 7 May 2004 (see our [May 2004 newsletter](#)), as did the High Court of Den Bosch ([September 2004 newsletter](#)). The Dutch Ministry of Finance issued a decree in February 2003 in which it announced that it will follow the De Groot decision, but needed to study various aspects first. They allowed for the De Groot decision to be applied under certain conditions. The new decree works out the implementation of the De Groot decision in further detail. In doing so it makes a difference to relief on tax years prior to and years after 1 January 2001 (when a new personal income tax system became effective.)

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## Advocate General advises in D-Case

On 26 October 2004 ECJ Advocate General Colomer advised in the so-called D Case (C-376/03) (no English translation available yet). D is a German national living in Germany. In 1998 D held Dutch real estate, whereby he became subject to Dutch net wealth tax. D did not qualify for the tax free base amount available to Dutch residents and to Belgian residents under the Dutch Belgian tax treaty and objected against this. The High Court of Den Bosch referred questions to the ECJ on a) whether the fact that the base free amount was available to residents only (according to Dutch national law) was EU compliant, b) whether the fact that D is not entitled to the base exemption, whilst Belgian residents are under the Dutch/Belgian tax treaty is EU compliant and finally c) whether the fact that D was only entitled to a cost compensation equal to about 10% of his total fees in this procedure, is EU compliant.

With regard to the first question the Advocate General first give a good overview of existing case law on income tax and came to the conclusion that this case law can also be applicable to net wealth taxes. He subsequently concluded that D was in a comparable situation to Dutch residents and that therefore the Dutch national law was discriminatory. The Advocate General viewed the second question (re. the Dutch/Belgian treaty) as redundant, but nevertheless gave an opinion in case the ECJ did not follow his opinion on the first question. The Advocate General determined that the Dutch difference in treatment between residents of Belgium and residents of Germany does constitute a restriction on the free movement of capital. After reviewing various ECJ decisions and the various government's objections, he concluded that an ECJ decision that it is not EU compliant to treat Belgian residents better under the Dutch/Belgian treaty than German residents would have dramatic effects for bilateral tax treaties in the EU: it would in effect implement a most favourite nation clause doctrine into at least all bilateral treaties among EU members – Dutchtax.net. He concluded that if the ECJ follows his opinion on the first question, it may nevertheless be wise not to decide on the second question.

Finally the Advocate General gave his opinion on the question regarding compensation for the costs of litigation, if the ECJ decides in favor of D. Referring to the *Grundig Italiana* (C-255/00) and the *Recherio – Cash & Carry* (C-30/02) cases, he concluded that a limited refund of the costs of litigation would restrict EU subjects' right to effective protection under EU law, since this can make litigation meaningless when the costs exceed the benefit fought for.

## EFTA Court decides in the Fokus Bank Case

Besides being members of the EU, all EU member states are also members of the European Economic Area (the "EEA"). The EEA treaty, like the EC treaty, includes a general non-discrimination clause and prohibits the restriction of, among others, the free movement of workers and capital, the freedom of establishment and the freedom to provide services. The EEA also has Norway, Iceland and Liechtenstein as member states. These states are collectively referred to as the EFTA states and they have among them the EFTA Court, which in most respects does for the EFTA states what the ECJ does for the EU. There are also specific articles in the EEA agreement to provide for the parallel development of doctrine between the cases of the ECJ and the EFTA Court.

On 23 November 2004 the EFTA Court ruled in a case (E-1/04) which lead to the abolishment of dividend withholding tax in Norway and may (or should) do the same for other EEA members. The facts were as follows. Norway does not levy a dividend tax on dividends paid by Norwegian companies to Norwegian residents: in fact it gives them a full credit for the underlying Norwegian income tax paid by the distributing Norwegian company. In 1997 and 1998 Fokus Bank distributed dividends to its shareholders. Among those shareholders were two companies residing in Germany and the United Kingdom respectively. Immediately before the decision to pay out dividends was taken, these companies sold their shares in Fokus Bank to companies residing in Norway, and exercised an option to buy the shares back shortly after the dividend payments had been completed. Fokus Bank did not withhold dividend tax on the dividends paid on these shares, since the shareholders at the time were resident in Norway. The Trondheim Tax Assessment Appeals Board in 2001 found that, for tax purposes, the foreign shareholders had to be regarded as the owners of the Fokus Bank shares, at the time of distribution of the dividends. The Trondheim Tax Collection Office subsequently determined that Fokus Bank was liable for the dividend tax resulting from the reclassification of ownership.

Fokus Bank appealed against this decision and the Trondheim District Court asked the EFTA Court (in somewhat confusing wording) whether the difference in treatment between residents and non-residents is EEA compliant.

Referring among others to the recent decisions of the ECJ in the *Anneliese Lenz* (C-315/02) and *Petri Manninen* (C-319/02) cases, the EFTA Court first determined that the rules on the free movement of capital in the EEA Agreement are essentially identical in substance to those in the EC Treaty. It then determined that the Norwegian provisions may have the effect of deterring non-residents from investing in Norwegian companies and may impede Norwegian companies from raising capital outside Norway, which constitutes a restriction on the free movement of capital within the EEA. It subsequently determined that there was no justification for such a restriction and that therefore the Norwegian system was not EEA compliant. One of the specific justifications waived aside by the EFTA Court was the argument that the non-resident shareholders may get tax credits in their country of residence. The EFTA Court rejected this, arguing first that a restriction can not be offset by advantages which shareholders may obtain in their countries of residence and second that EEA member states cannot shift their obligation to comply with the EEA Agreement to other member states by relying on the latter to make good for discrimination caused by the former's legislation.

The AG concluded that it is not EU compliant to treat Belgian residents better than German residents under Dutch tax treaties

EEA member states cannot shift their obligations by relying on other states to make good for discrimination caused by the former states' legislation.

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The question is what the reach of this decision is. As stated above, Norway has already decided to abolish its withholding tax on dividends. It seems to us that this decision would at least apply to all EEA members (including the EU) which do not have a full classical system of double taxation of company profits under their national law. However, we wonder whether this decision does not apply to all withholding taxes (including taxes on interest and royalties) where economic double taxation is relieved under national law to residents, but not to non-residents. This question will be worked out further in an article to be placed on our website.

## Hot links

- ❖ Now that the ECJ refuses to completely abolish the dysfunctional justification of cohesion, it seems as though the Commission is on a road to single handedly reverse the Bachman decision. It is pursuing Belgium to change its discrimination against foreign pension funds and has issued a final warning to Italy.
- ❖ The Commission has adopted a Regulation endorsing International Accounting Standard (IAS) N° 39 on Financial Instruments: Recognition and Measurement, with the exception of certain provisions on the use of the full fair value option and on hedge accounting.
- ❖ Following its crusade on the Savings Directive, the EU has signed agreements with Switzerland on 26 October which not only obliges Switzerland to withhold tax on certain interest payments made to individuals resident in the EU, but also extends part of the benefits under the Parent/Subsidiary Directive and the Interest & Royalty Directive to payments to and from Switzerland. San Marino too signed an agreement with the EU. Under this agreement, disclosure in accordance the Savings Directive is arranged. However – as might be expected – there is not going to be any P/S or I&R Directive benefits on payments to and from San Marino.
- ❖ The European Commission has presented a proposal to simplify current Value Added Tax (VAT) compliance obligations to help cross-border traders who supply goods and services to other EU Member States. In particular the proposal would provide for a “one-stop-shop” system whereby a trader could fulfil all his VAT obligations for EU-wide activities in the Member State in which he is established or registered.
- ❖ The European Company Statute in theory became available for use on 8 October 2004, over thirty years after it was first proposed by the Commission. A related Directive concerning worker involvement in European Companies entered into force at the same time. However, only six of the 28 EU and EEA Member States have implemented the regulations at national level necessary to allow European Companies to be set up on their territory. Ex-commissioner Bolkenstein called this “unacceptable”. We hope that his successor picks up the ball and run with it.

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