

Landwell & Associés

# International Tax newsletter

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# Foreword / Introduction

## **About Landwell & Associés ([www.landwell.fr](http://www.landwell.fr))**

*Landwell et Associés is the French law firm member of the PricewaterhouseCoopers' international network, with over 500 lawyers and staff in Paris (Neuilly sur Seine) and throughout France.*

*Landwell & Associés provides taxation, business law and employment law services to help its clients implement their national and international projects, regardless of size or complexity. The firm's range of multidisciplinary expertise allows Landwell & Associés to provide its clients with a global approach to complex issues that can be combined as required with the various skills and expertise of PricewaterhouseCoopers' network professionals including auditors, chartered accountants, risk analysts and financial experts.*

## **About PricewaterhouseCoopers ([www.pwc.com](http://www.pwc.com))**

*PricewaterhouseCoopers provides industry-focused audit, advisory and tax services to public and private companies and organisations, to build trust and enhance value for its clients and their stakeholders.*

*Over 155 000 people in 153 countries across our network share ideas, experience and solutions in order to develop fresh perspectives and practical advice specifically adapted to each situation.*

*In France, PwC has developed this approach with Landwell, the local law firm member of the PricewaterhouseCoopers' network. PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity. PricewaterhouseCoopers counts 3 800 people in 25 offices in France.*

**This letter was prepared by the Landwell and PwC network International Tax Structuring team.**

## **À propos de Landwell & Associés ([www.landwell.fr](http://www.landwell.fr))**

*Landwell et Associés est en France la société d'avocats d'affaires membre du réseau mondial PricewaterhouseCoopers, et regroupe près de 500 avocats et professionnels à Paris (Neuilly sur Seine) et en régions.*

*Ces derniers accompagnent leurs clients dans la mise en œuvre de leurs projets, quelle qu'en soit la taille ou la complexité, de dimension nationale ou internationale, en fiscalité, droit des affaires et droit du travail. La multi-compétence du cabinet permet une approche globale des problématiques et peut également être associée à l'expertise des autres métiers du réseau PricewaterhouseCoopers : auditeurs, experts-comptables, experts en risques ou en matière financière.*

## **À propos de PricewaterhouseCoopers ([www.pwc.fr](http://www.pwc.fr))**

*PricewaterhouseCoopers développe des missions d'audit, de conseil et d'expertise comptable pour des entreprises et des organisations, publiques et privées, privilégiant des approches sectorielles et assurant confiance et valeur ajoutée pour ses clients et l'ensemble des parties prenantes.*

*Plus de 155 000 personnes travaillent en réseau dans 153 pays, partageant points de vue, expériences et solutions pour proposer des perspectives innovantes et des conseils adaptés à chaque problématique. En France, PwC développe cette approche avec Landwell, cabinet d'avocats membre du réseau PricewaterhouseCoopers. Constitué d'entités légalement autonomes et indépendantes, membres du réseau PricewaterhouseCoopers International Limited, PricewaterhouseCoopers rassemble en France 3 800 personnes dans 25 bureaux.*

**Cette lettre a été préparée par l'équipe International Tax Structuring de la société d'avocats Landwell et du réseau mondial PwC.**

# Proposed Legislative Changes

## Australia

Phasing Down Of Australia's Interest Withholding Tax On Financial Institutions To Support Banking Competition.

On May 11, 2010, the Australian Government announced legislative proposals to phase down the Interest Withholding Tax ('IWT') incurred by local subsidiaries and branches when they pay interest on borrowings from their overseas parents. This reform also applies to Australian-owned financial institutions borrowing from overseas related parties, and any financial institution borrowing offshore retail deposits which they on-lend to Australia. In relation to local subsidiaries of overseas parents, the IWT rate will be reduced from 10% to 7.5% in 2013-2014 and to 5% in 2014-2015. Additionally, the IWT rate for borrowings by any bank branch from its overseas head office will be reduced from 5% to 2.5% in 2013-2014 and to 0% in 2014-2015. The definition of what qualifies as a "financial institution" is still unclear.

### Comprehensive Review Of Australian Tax System

The Australian Government commissioned a comprehensive review of Australia's tax system 18 months ago.

On May 2, 2010, the report was released with 138 recommended changes. In its response, the Australian Government indicated that it will initially accept 5 of those recommendations including inter alia:

- (i) Reducing the existing company tax rate from 30% to 29% from 2013-2014 and to 28% from 2014-2015; and
- (ii) a new Resource Super Profits Tax ("RSPT") on natural resource projects at a rate of 40% on the realised value of resource deposits. It is expected that the Australian Government will make more announcements regarding the remaining recommendations in the coming months.

### New Australian Tax Arrangements For Managed Funds

The Australian Government will put in place a new tax system for Managed Investment Trusts ('MITs') for commencement on July 1, 2011. The proposed reforms will provide much needed certainty and simplification, by ending some confusion between tax and trust law and fixing the potential for double taxation. The Government also plans to undertake further consultation on the details and supporting legislation in the coming months. This will be of relevance to non-resident investors that participate in Australian MIT arrangements and currently benefit from reduced Australian withholding tax rates.

## Canada

Government Of Canada Seeks Public Input On Proposals To Require Information Reporting Of Tax Avoidance Transactions

On May 7, 2010, the Minister of Finance released for public consultation proposals concerning an information reporting regime for certain tax avoidance transactions. The stated goals of the proposals are to ensure that the Canadian tax system is fair for all Canadians and help the Canada Revenue Agency (CRA) identify instances of aggressive tax planning. The proposals provide details about: (i) the persons who would be subject to the reporting rules; (ii) the transactions that would be required to be disclosed; (iii) a proposed form and timing of disclosure; and (iv) consequences for failure to disclose a reportable transaction. These proposals are similar to the approaches being considered by the US and other Revenue agencies throughout the world to increase transparency and introduce greater efficiency into the audit process. These proposals (as modified to reflect public consultations) are expected to apply to transactions entered into after 2010.

## India

### Enacts Finance Bill 2010

The Finance Bill, 2010 has entered into law after the President of India gave his assent on May 8, 2010. The tax changes included in the bill are generally effective from April 1, 2010, with several exceptions. The effective corporate tax rate has been reduced from 33.99% to 33.22% as a result of a reduction in surcharge from 10% to 7.5%, and the rate for the minimum alternative tax ("MAT") has increased from 15% to 18%. As initially proposed, an exclusion from capital gains was provided for the conversion of certain small companies to limited liability partnerships ("LLPs"). The final bill has been amended to clarify that a transfer of shares by a shareholder of a company converting into an LLP will also fall within the capital gain exclusion. Another key change enacted is that the receipt of shares by a company in the form of a gift may be treated as income in the hands of the recipient company, with effect from June 1, 2010.

## UK

### **New Coalition Government Tax Proposals And Emergency Budget**

Following the general election on May 6, 2010, the UK now has a new Conservative / Liberal Democrat coalition government. A final coalition agreement was published on May 20, 2010, and a post-election emergency budget will be delivered on June 22, 2010. Key tax proposals include: reform of the corporate tax system by simplifying reliefs and allowances, in order to reduce headline rates; tax avoidance will be tackled, which may involve a general anti-avoidance rule and the development of Liberal Democrat proposals that taxpayers should have to pay for clearances from the tax authorities; and introduction of a banking levy.



## Tax Legislation

### Ghana

#### **Finance & Treasury Cross Border Issues - Receiving Or Making Payments In Foreign Currency**

In accordance with Ghana's foreign exchange provisions, unless it has received special dispensation under other laws or agreements, an entity may not (i) make or receive payment in foreign currency in respect of a transaction between it and another resident entity in Ghana; or (ii) receive payment into its offshore account (outside Ghana) from its service recipient in Ghana. Generally, entities may only make receipts and payments in foreign currency if a license to deal in foreign exchange has been obtained. In spite of these requirements, entities operating in Ghana do in practice undertake such transactions without necessarily obtaining a license. As of the date of writing this note, the Bank of Ghana is yet to apply sanctions against those who breach these provisions. However, as such transactions are becoming increasingly common, due care should be taken. Notwithstanding the above provisions there are special guidelines for entities operating in the mining and petroleum sectors.

### New Zealand

#### **Potential Changes To The Taxation Of Foreign Funds In Portfolio Investment Entities**

An Officials' Issues Paper seeking feedback on suggested changes to the tax treatment of foreign funds in portfolio investment entities (PIEs) was released on April 14, 2010. The paper proposes to exempt foreign-sourced income that is derived by a non-resident through a PIE. Two options are being considered:

- **Option 1:** restrict the exemption for non-resident investors to PIEs with only foreign assets; or
- **Option 2:** allow the exemption for non-resident investors to apply any PIE, but only with effect on foreign income (and only where that income can be traced to individual investors).

Submissions for the proposed changes close on June 4, 2010.

## Nigeria

### Exemption Of Interest On Foreign Debt From Withholding Tax

There is an incentive in the tax law providing exemption from tax on interest earned by a foreign lender. This could be partial or full exemption depending on the terms of the loan as summarised below:

Repayment period (including moratorium)	Grace period (moratorium)	Tax exemption
above 7 years	not less than 2 years	100%
5 - 7 years	not less than 18 months	70%
2 - 4 years	not less than 12 months	40%
below 2 years	nil	nil

### Tax Waiver On Interest On Bonds

The Federal Government of Nigeria has approved tax waivers for all categories of bonds (including corporate bonds) and short term government securities. Also, a reduction in stamp duty by 80% was approved for debenture re-issues. However, these waivers will not be effective until the necessary administrative and legislative processes have been concluded.

## Singapore

### Updates

The Singapore tax authority (IRAS) has issued a circular detailing the phasing out of industrial building allowances, and the Monetary Authority of Singapore (MAS) has likewise published details of changes to the tax incentives for offshore insurance companies and to the tax incentives for futures members of the Singapore Exchange Limited and members of Singapore Commodity Exchange Limited. The Economic Development Board of Singapore (EDB) has also published details of the extension and enhancement to the investment allowances for aircraft rotables. These changes were announced during the 2010 Budget Speech.



## Taiwan

### **Statute For Innovating Industries Passed By The Legislative Yuan On April 16, 2010**

The Statute for Innovating Industries ("Statute") was passed by the Legislative Yuan on April 16, 2010. The Statute replaces the Statute for Upgrading Industries, which expired on December 31, 2009. Among the various tax incentives, i.e. investment tax credit ("ITC") on R&D / training expenditure and income tax exemption for international logistics centers / operation headquarters and emerging, important and strategic industries provided under the Statute for Upgrading Industries, only ITC on R&D expenditure is retained by the Statute. Following the reduction in tax incentives offered under the new Statute, there are currently discussions to further reduce the corporate income tax rate from 20% to 17% or 17.5%. Further reduction in the corporate income tax rate is expected to significantly boost Taiwan's international competitiveness.

## Ukraine

### **Changes In Rules For Foreign Investments**

With effect from March 15, 2010, the National Bank of Ukraine ("NBU") has introduced a number of changes to the procedure for the acquisition of foreign currency for the purpose of paying dividends and profit repatriation. One positive development that has been introduced is an effective limitation on the documentation of evidence of foreign investment which must be submitted to the servicing bank in order to acquire the foreign currency. If a foreign investor holds an investment for more than 5 consecutive years, the bank confirmation (evidence of a foreign investment) is not mandatory for the purpose of acquiring foreign currency for dividends and profit repatriation. If the holding is less than 5 years, then evidence of the initial foreign investment continues to be a requirement. In addition, on April 27, 2010 the Parliament of Ukraine passed Law No. 6122 which significantly relaxed the rules for making foreign investments into Ukraine. In particular, the Law cancelled mandatory registration of foreign investments, mandatory conversion of foreign investments made in cash into the national currency of Ukraine, and the ban on early repayment of foreign borrowings. The Law has been signed by the President and is awaiting official publication to become effective.

### **New Provision On Corporate Profits Tax**

On April 27, 2010 Ukrainian Parliament adopted changes to the Law "On Corporate Profits Tax". In particular, the draft law provides for a tax exemption for dividend income received by Ukrainian companies from their affiliates, both resident and non-resident companies, located in non-tax haven jurisdictions. In addition, no advance corporate income tax should apply to dividends received by Ukrainian companies from their affiliates and distributed up to shareholders. To enjoy these tax benefits, a Ukrainian shareholder should hold at least 20% of the shares in the controlled entity. The new provisions are similar to participation exemption rules existing in many European jurisdictions and should increase the attractiveness of Ukraine for locating holding companies. The draft law is awaiting the signature by the President and official publication to become effective.

### **New State Budget Law Effects Joint Stock Companies**

The 2010 State Budget Law, which was adopted by the Parliament on April 27, 2010 and came into effect from April 30, 2010, included changes to the Ukraine's Joint Stock Companies Law. According to these changes, all public and private joint-stock companies are required to pay dividends in 2010 to their shareholders amounting to at least 30% of their net profits earned in the current year and/or retained earnings of the previous years. It is obvious that the amendments to the legislation are aimed at triggering 25% advance corporate tax arising normally on the payment of a dividend, as well as 15% personal income tax (due on distribution of dividends to individuals). The changes generally should not result in an additional tax burden for corporate taxpayers since companies are entitled to offset the advance corporate tax against their future corporate tax liabilities. However, this may have an adverse impact on the companies' cash position.

## UK

### **Finance Act 2010**

Finance Bill 2010 was enacted as Finance Act 2010 on April 8, 2010. Many of the measures announced in the March 2010 Budget have not been included in the Finance Act, due to the general election which took place on May 6, 2010, and will instead be considered by the new Government and Parliament for inclusion in a post-election Finance Bill.

# Administration & Case Law

## Australia

### Inter-Company Debt Pricing – “Rule Of Thumb”

For a number of years, the pricing of cross-border inter-company debt has been a contentious tax issue in Australia. Recently, the Australian Taxation Office (‘ATO’) issued practical guidelines called the “rule of thumb” which state that taxpayers will be at low risk of ATO challenge if they price the inbound loan at the parent company’s usual rate of interest, and stay within the legislated “safe harbour” debt levels of 75% of net Australian assets. This is intended to be an interim measure until the ATO resolves its position on various outstanding issues. The rule of thumb is relevant only to the application of the transfer pricing rules.

## Canada

### Intra-Group Lending Transactions - Advanced Tax Ruling Issued By The CRA

An advanced tax ruling recently issued by the CRA allows certain proposed transactions undertaken to redeploy funds from a Canadian subsidiary of a foreign multinational corporation elsewhere in the corporate group. The transactions ruled on involved a controlled foreign affiliate of the Canadian subsidiary lending funds received from the Canadian subsidiary as an equity contribution to related foreign companies that are not foreign affiliates of the Canadian subsidiary. The interest income earned in respect of the loan is treated as foreign accrual property income (“FAPI”) and taxable on a current basis in Canada as if Canada had earned the interest income directly. The CRA ruled that the proposed transactions will not trigger a deemed dividend under subsection 15(2), Canadian non-resident withholding tax, or the application of the general anti-avoidance rule. This planning may not work for every fact situation; however, this ruling is welcomed news for numerous inbound to Canada taxpayers that have desired the ability to do this for many years.

## Egypt

### Insurance Services Sector

Since July 1, 2009, the Egyptian Financial Supervisory Authority (EFSA) has been the single authority that regulates non-bank financial services, including the insurance services sector. In Egypt, for an insurance company to be incorporated it must take the legal form of an Egyptian joint stock company with an issued capital of not less than EGP60 million which could be fully owned and managed by foreigners. Bank assurance has been a debatable topic recently. Based on the executive regulations insurance companies have the right to market their products through banks that have the permission from the Egyptian Central Bank to do so. However, recently, the Egyptian Central Bank has frozen any potential agreements regarding bank assurance. It should be noted that such information has not been formally disclosed.

## UK

### Group Relief Between Two UK Subsidiaries Of A US Parent

The First-tier Tribunal has found that the effect of the non-discrimination article in the UK-US double tax agreement was such that losses could be claimed and surrendered as group relief between two UK subsidiaries of a US parent. Group relief is available where two companies are members of the same group. Two companies are members of the same group if one is the 75% subsidiary of the other, or both are 75% subsidiaries of a third company. Prior to changes made by FA 2000, the legislation provided that the reference to a ‘company’ applied only to companies resident in the UK. Thus two UK subsidiaries with a common overseas parent were not in a group relief group. FA 2000 removed this restriction with effect for accounting periods ending on or after April 1, 2000. The restriction of group relief by reference to UK resident companies was first challenged in ICI v Colmer which held that two UK subsidiaries with a common EU/EEA parent company could claim group relief. The current decision finds similarly for non-EU/EEA parent companies (albeit based on different arguments and so far at Tribunal level only).

## **Tax Framework For Business**

Following the publication of a draft version for consultation in February 2010, the Government has now finalised and published its 'Tax framework for business'. This sets out a short and clear statement of principles for UK tax policy and how the Government engages with business in developing tax policy. An accompanying Ministerial letter explains how the Treasury and the tax authorities will apply the framework in practice.

## **US**

### **IRS Litigation Over Characterization Of Intercompany Financing As Debt**

The IRS recently has been aggressively focusing on examining the debt treatment of intercompany financing involving US inbound companies. The result in many of these cases has been that the IRS has proposed to disallow interest deductions claimed by a US corporate borrower. Under a current case in litigation in the US Tax Court, the issue is whether intercompany debt is bona fide debt for US federal income tax purposes.

### **IRS Examining Tax Returns Of Foreign Corporations Requesting Refunds Of Overwithheld Taxes**

The IRS has recently established a Compliance Initiative Project to review samples of Form 1120-Fs (Income Tax Returns of a Foreign Corporation) that are seeking refunds for taxes over-withheld at source. Such examinations may include requests for significant detailed information unrelated to the item of income subject to withholding.



# Treaties

## Australia

### **New Australia / Turkey Double Taxation Convention**

On April 29, 2010, Australia and Turkey signed a new double taxation treaty, the first between the countries. The treaty includes inter alia:

- (i) Reductions in source-country withholding taxes on certain cross-border payments of dividends (5%), interest (10%) and royalties (10%);
- (ii) A framework for the exchange of information between the countries; and
- (iii) A general obligation for both countries to relieve double taxation on cross-border income by permitting tax paid under the other country's laws, and in accordance with the proposed treaty, to be allowed as a credit against tax payable under their own laws. The treaty will enter into force when both countries advise that they have completed their domestic requirements. Legislation for this purpose will be introduced in the Australian Parliament as soon as practicable.

## Belgium

### **Treaty Between US And Belgium – MAP On Qualification Of Pension Plans For Treaty Benefits Signed**

The United States and Belgium have signed a mutual agreement procedure (MAP) that specifies the types of pension plans that will qualify for treaty benefits under Art. 17 (Pensions, Social Security, Annuities, Alimony, and Child Support) of the 2006 US-Belgium treaty. The list is not intended to be exclusive and hence the competent authorities can always be requested to recognize that other plans qualify for treaty protection.

### **Treaty Between Israel And Belgium: Revision**

An in-principle agreement for revision of the income tax treaty and annex between Israel and Belgium was agreed on March 18, 2010. The intended revision would align the treaty with the OECD Model Convention (2008), in particular the new Art. 7 (business profits), Art. 13 (capital gains) and Art. 26 (exchange of information). Furthermore, withholding tax would be limited under the treaty to 5% on dividends (and 0% if paid to substantial shareholders and qualifying pension funds), 5% on interest and 0% on royalties.

## Canada

### **CRA Issues Favourable Canada - US Treaty Ruling for a Canadian Unlimited Liability Company ("ULC")**

The CRA expressed its views in a recent advance tax ruling that certain deemed dividends, interest, and royalties to be paid from a ULC to a US parent would not be caught by new Article IV(7)(b) of the Canada-US Income Tax Convention ("the treaty"). Briefly, Article IV(7) of the treaty has the effect of denying treaty benefits to payments made to or payments made by certain hybrid entities such as a ULC. A key factor in determining whether Article IV(7) applies is whether the treatment of the amount of income would be the same if it was derived through or received from a non-hybrid entity. The ruling confirms that the CRA would not apply Article IV(7)(b) where a ULC increases its paid-up capital, resulting in a deemed dividend subject to Canadian withholding tax, followed by the ULC distributing the funds through a reduction of paid-up capital. Additionally, Article IV(7)(b) would not apply to interest and royalties paid by ULC to US Parent. The CRA further noted that the Canadian general anti-avoidance rule would not apply.

## Chile

### **Chile And The US Sign A Convention**

On February 4, 2010 Chile and the United States of America ("US") signed a Convention in order to avoid double taxation ("DTC"), as part of Chile's and the US policies to reduce double taxation issues affecting taxpayers. Even though the Convention has already been signed by both parties it is not yet in force. Broadly speaking, the DTC shall enter into force once both countries have notified each other about the fulfillment of their internal procedures. Chile also signed on March 10, 2010 a DTC with Australia, which will be in force once the abovementioned procedures are complied with. With the signature of these two new Conventions, Chile has 6 signed DTCs; along with the 20 that are currently in force with different States, based on the OECD Model with deviations, Chile has the broadest DTC network in Latin America.

## Germany

### Germany - UK

On March 30, 2010 UK and Germany signed a new Double Tax Treaty. A major change is the reduction of withholding tax on dividends from 15% to 5% in case the beneficial owner is a company (other than a partnership), which holds directly at least 10% of the capital of the company paying the dividends. The Treaty will come into force once both countries have ratified it and exchanged the deeds. It is expected that Germany will ratify the Treaty this year so that it would be effective as of January 1, 2011.

### Germany - Anguilla

Germany signed a Tax Information Exchange Agreement (TIEAs) with Anguilla. The agreement is in accordance with the OECD standard and enables the German tax authorities to get access to information which are necessary for the taxation in Germany.

### Germany - Belgium

On January 21, 2010 Belgium and Germany signed a protocol amending the Income and Capital Tax Treaty of April 11, 1967 (as amended by the 2002 protocol). The protocol contains an exchange of information provision in line with Art. 26 of the OECD Model Convention. For criminal tax matters the protocol will be effective retroactively from January 1, 2006 and for all other tax matters from January 1, 2010.

### Germany - Bulgaria

On January 25, 2010 Bulgaria and Germany signed a new Double Tax Treaty. Inter Alia the Treaty provides for a reduced withholding tax on dividends in case of intercompany dividends. Moreover, a switch over clause from the exemption method to the credit method will be introduced. The Treaty also provides an extended information exchange clause. The Treaty will come into force once both countries have ratified it and exchanged the deeds. It is expected that Germany will ratify the Treaty this year so that it would be effective as of January 1, 2011.

### Germany - Malaysia

On February 23, 2010 Malaysia and Germany signed a revised agreement (Revisionsabkommen). The revised agreement adjusts the already existing Double Tax Treaty from 1977. Inter Alia the revised Agreement provides for the following amendments.

- (i) The withholding tax on interest will be limited to 10% (previous 15%).
- (ii) A switch over clause from the exemption method to the credit method will be introduced.
- (iii) An extended information exchange clause will be introduced. The Treaty will come into force once both countries have ratified it and exchanged the deeds. It is expected that Germany will ratify the Treaty this year so that it would be effective as of January 1, 2011.

### Germany - Syria

On February 17, 2010 Germany and Syria signed a Double Tax Treaty. The Tax Treaty limits the withholding tax on dividends and interest to 10% and on royalties to 12%. Moreover, it provides for an information exchange clause based on the OECD-Model Convention 2005. The Treaty will come into force once both countries have ratified it and exchanged the deeds. It is expected that Germany will ratify the Treaty this year so that it would be effective as of January 1, 2011.

## Ghana

### Double Tax Agreement With Switzerland In Force

The Double Tax Agreement between the Republic of Ghana and the Swiss Confederation has been signed and is in force. It should be noted, however, that provisions relating to withholding tax will only be effective from January 1, 2011.



## India

### Indian And US Competent Authorities Address Mark-Up For software Services Under Mutual Agreement Procedure

The Competent Authorities (“CAs”) of India and the US recently have been involved in discussions on the mark-up for software services provided by Indian enterprises to their associated enterprises, per the Mutual Agreement Procedure (“MAP”) of Article 27 of the India-US treaty. The CAs have now apparently reached a negotiated settlement for financial year 2004 - 2005 (i.e., year ending March 31, 2005), whereby they have agreed to a full cost mark-up of 17.5% for software services. The settlement is binding only for the taxpayer involved and the year in dispute. However, it does at least provide a point of reference for taxpayers involved in transfer pricing disputes in India. Revenue authorities in India have been very aggressive recently in transfer pricing audits and have generally assessed the transfer prices of contract software service providers (which are normally compensated at a full cost plus mark-up for their services) at a markup of about 25% to 28% for financial year 2004-05. In light of this, several US affiliates of Indian companies have filed MAP applications in the US under the India-US treaty over the past few years.

## Poland

### Poland and Switzerland Sign A New Protocol To Double Tax Treaty

In April 2010 Poland and Switzerland signed a protocol to their double tax treaty. The protocol lowers the maximum withholding tax rate to 5% (currently: 10%) for interest and royalties. The protocol also introduces an exemption from WHT, provided that the beneficial owner is a company related to the company paying the royalties/interest. Furthermore, the protocol removes the option of applying the withholding tax exemption (as long as Switzerland based on its internal laws does not levy withholding tax on royalties). In respect of dividends, the protocol provides for a possibility to apply for an exemption as long as the company receiving the dividends holds at least 10% of the shares in the paying company for consecutive 24 months (currently there is a possibility to lower the WHT to 5%). The protocol also implements other changes e.g.:

- (i) a real estate clause to the Article on capital gains,
- (ii) an arbitration clause to the Article on Mutual Agreement Procedure,
- (iii) from a Polish perspective - extension of applicability of the credit method to capital gains (currently it is applicable only to dividends, interest and royalties). If the protocol is ratified and the diplomatic notes are exchanged by the end of 2010, the protocol will apply to (i) withholding tax on amounts due on or after 1 January 2011 (however, new tax rules applicable to interest and royalties will apply only to payments due on or after July 1, 2013), and (ii) other taxes for fiscal years beginning on or after January 1, 2011.

## New Zealand

### New Zealand – Turkey

New Zealand and Turkey signed a new Double Tax Agreement on April 22, 2010. The agreement will come into force once both countries have given legal effect to it.

### New Zealand – Australia

Article 10 of the New Zealand / Australia Double Tax Agreement allows a nil rate of withholding tax to apply to certain dividends where the shareholder has a minimum 80% ownership interest in the company and certain other criteria apply. In certain instances, an application for a competent authority determination must be made to obtain the nil rate of withholding tax. The New Zealand Inland Revenue has issued some guidance on how to apply for a competent authority determination. Broadly, an application should be made in writing to the relevant taxation authority (i.e. the New Zealand Inland Revenue or the Australian Tax Office), and should set out in detail the relevant facts and circumstances of the paying company (e.g. confirmation that the 80% ownership requirement is satisfied, and details of the corporate and capital structure of the company).

## Nigeria

### Double Tax Treaty Partners

There are currently Double Tax Treaties in place with Belgium, Canada, China, Czech Republic, France, the Netherlands, Pakistan, Philippines, Romania, Slovakia, South Africa and the United Kingdom. DTTs with Spain, Sweden and Poland are still pending. Nigerian DTTs offer some tax advantages including a reduced withholding tax rate of 7.5% on dividends, royalties and interest.

## Singapore

### Treaty Signed With Saudi Arabia

Singapore signed a treaty with Saudi Arabia on May 3, 2010. However, it has not been ratified and does not have the force of law.

## US

### US - Belgium

The competent authorities of the United States and Belgium have entered into an agreement regarding the types of pension plans established in either contracting state that will be deemed to generally correspond to a pension plan recognized for tax purposes in the other contracting state. The listing in the agreement is not intended to be exclusive. Any US or Belgian pension plan of a type not mentioned in the agreement, may ask the competent authority of the other contracting state for a determination that the plan generally corresponds to a pension plan recognized for tax purposes in that other state. US/Belgium competent authority agreement regarding pension plans.





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