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VGD 会计师事务所中国部财税新讯



Germany implements AOA for Permanent Establishments

德国对常设机构实行经合组织授权方法（AOA）

After years of uncertainty and differing interpretations of the rules concerning the attribution of profits to permanent establishments the actual “Authorised OECD Approach (AOA)” was transposed into national law in Germany (§ 1 Abs. 5 EStG) by the Act Implementing the Mutual Assistance Directive and Amending Tax Regulations (Amtshilferichtlinien-Umsetzungsgesetz) effective 1 January 2013. The implementation is based on the final updated version of the OECD which was released on 22 July 2010.

The key characteristics of the AOA are:

与常设机构收入划分相关的规则存在多年的不确定性以及不同的解释。根据2013年1月1日生效的《实施互助指令和修改税收条例的法案》

(Amtshilferichtlinien-Umsetzungsgesetz)，德国将“经合组织授权方法（AOA）”列入国家法律（§ 1 Abs. 5 EstG）。此举基于2010年7月22日发行的经合组织指南最新版本。

经合组织授权方法（AOA）的特点如下：

► 1. Functionally Separate Entity Approach

职能分立企业法

For tax purposes Permanent establishments (PE) are treated like having the same independence as corporations and partnerships. Head office and PE can enter into business relationships (“dealings”).

出于税收目的，常设机构（PE）会被当作与公司和合伙企业一样，拥有法人独立性。总部与常设机构之间可以进行商业交易（“内部交易”）。

► 2.The attribution of profits is done in two steps

收入划分两步法

a. Attribution of functions, risks, assets and capital to the PE

Starting point for the allocation process are “significant people functions”. Every function performed by the company is observed and all those functions which are performed by people working for the PE are allocated to the PE. Risks and assets associated with these functions are attributed to the PE as well (“risks/assets follow functions”). Based on the risks borne and the assets economically owned free capital is allocated to the PE.

b. Identification and pricing of every supply and performance relationship between head office and PE in accordance with the arm`s length principle

The statutory order to the attribution of profits (“Betriebsstättengewinnaufteilungsverordnung” / BsGaV) entered into force on 18 October 2014 contains detailed information concerning the application of the arm`s length principle for PE. The regulation should specify the law and ensure an acceptable solution for taxpayers and tax authorities based on the internationally accepted principles.

(1) 对常设机构职能、风险、资产及资本的划分

划分从“重要人员职能”开始。每个人员工作的职能都需要进行考究，所有常驻机构的员工都应该归到常驻机构之中。除此之外，这些职能相关的风险与资产都应该归入常驻机构（即“资产和风险跟随职能”）。根据承担的风险和资产所有权，相关的无息资本将会被划分到常设机构之中。

(2) 根据公平交易原则，对总部与常驻机构每项交易进行确认与定价。

2014年10月18日生效的利润划分的法定指令（“营利分摊指令” / BsGaV）包含了如何对常驻机构实行公平交易原则的细节。这些法规法则应该根据国际公认的原则，明确相关法律并且为纳税人与税务机关提供适当的解决方案。

In consequence, the implementation of the AOA results in the following changes:

- For the allocation of profits it is no longer sufficient to solely take the actually incurred expenses into account. Furthermore, the allocated functions, risks, assets and capital influence the profit.

- This may result in virtual profits. While the company as a whole has generated losses, the PE may show a profit.

The new Double Tax Treaty China-Germany signed on 28 March 2014 but not yet in force as well as the former one contains generally the arm's length principle for the allocation of profits to PE. Nevertheless the wording of Art. 7 was not adapted to the new OECD guidelines. Thus it remains uncertain if and how the AOA will be operated in practice between Germany and China.

总而言之，实行经合组织授权方法（AOA）会产生以下变化：

- 对于利润的划分，不能再仅仅考虑实际产生的费用。职能、风险、资产与资本的分配都会影响利润的划分。

- 这些可能导致虚拟利润。当公司整体出现亏损时，其常驻机构反而会出现盈利。

2014年3月28日签订的但尚未生效的中德新税约以及旧税约均包含了向常设机构分配利润时适用的公平原则。然而第七条措辞并未根据经合组织新指引进行编改。所以暂时还很难确定授权方法（AOA）是否能够以及如何在中德交易实务中适用。

New tax treaty between Luxembourg and Taiwan

卢森堡中国台湾新避免双重税收协定

On 19 December 2011, a new double tax treaty and protocol on double taxation were signed by Luxembourg and Taiwan.

After going through the necessary approval procedures, the new double tax treaty (DTA) has finally entered into force on July 25th, 2014 (Mémorial 2014, A, n° 123, p. 1770 - 1780).

The new treaty has replaced the old DTA, which has been signed on March 4th, 1985.

Below we elaborate briefly on some key features.

卢森堡中国台湾新避免双重税收协定于 2011 年 12 月 19 日签订。

经过必要的审批程序，新避免双重税收协定于 2014 年 7 月 25 日正式生效（卢森堡公报 2014, A, n° 123, p. 1770 - 1780）。

新税约将代替于 1985 年 3 月 4 日签署的旧税约。

以下我们探讨一下一些主要细节。

► Dividends 股息

The new DTA provides that the maximum withholding tax (WHT) rate 15% on dividends, if the beneficial owner is a collective investment vehicle as a body corporate for tax purposes(e.g. SICAV, SICAF).

In all other cases, the WHT rate will remain at 10%.

新协定规定，如果收益人是出于纳税目的而成立的集体投资公司（例如：开放式投资资金 SICAV，封闭式投资基金 SICAF），将被征收最高 15% 的预提税。

其他情况下，所征预提税仍为 10%。

► Royalties 特许权使用费

The withholding tax rate of royalties is limited to 10% of the gross amount of the royalties.

Normally, Luxembourg does not levy withholding tax on royalties paid to non-residents under its domestic law.

所征预提税款上限为特许权使用费总额的 10%。

一般而言，卢森堡对支付给非居民的特许权使用费不征收预提税。

► Interest 利息

The withholding tax rate of interest payment should be subject to a minimum 10%, 15% if the beneficial owner is a collective investment vehicle as a body corporate for tax purposes (e.g. SICAV, SICAF).

In principle, Luxembourg does not levy withholding tax on interest paid to non-residents under its domestic law.

所征利息的预提税率最低为 10%，如果收益人是出于纳税目的而成立的集体投资公司（例如：开放式投资资金 SICAV，封闭式投资基金 SICAF），将被征收最高 15% 的预提税。

原则上，卢森堡对支付给非居民的利息不征收预提税。

► Capital Gains on immovable property 不动产的资本利得

In general, capital gains from the alienation of immovable property should be taxed in the state in which the immovable property is situated. However, the alienation of shares in a real estate company should be taxed in the state of which the seller is a resident.

Please feel free to contact us if you have any questions.

一般而言，因转让不动产得到的资本利得应在不动产所在国纳税。但是，转让房地产公司股份得到的资本利得应在转让者为其居民的国家征税。

如果您有其他问题，欢迎随时联系我们。

Shanghai-Hong Kong Stock Connect Officially Launched

沪港通正式运作

► About Shanghai-Hong Kong Stock Connect 关于沪港通

The Stock Exchange of Hong Kong Limited (SEHK), Shanghai Stock Exchange (SSE), China Securities Depository and Clearing Corporation Limited (ChinaClear) and Hong Kong Securities Clearing Company Limited (HKSCC) officially launched the pilot programme of Shanghai-Hong Kong Stock Connect in November 17, 2014, for establishing mutual stock market access between Hong Kong and mainland China.

This new cross-border investment channel brought by the Shanghai-Hong Kong Stock Connect will enable investors in the Mainland and Hong Kong to trade a specified range of listed stocks in each other's market through their respective local securities companies, thereby helping to promote and strengthen the connection between the Mainland and Hong Kong capital markets. For Hong Kong and overseas investors, they are now able to trade eligible Shanghai-listed A-shares, around 600 at this stage and basically SSE 180 Index and SSE 380 Index constituent shares as well as A+H shares, directly through Shanghai-Hong Kong Stock Connect.

上海证券交易所（上交所）、香港联合交易所有限公司（联交所）、中国证券登记结算有限责任公司、香港中央结算有限公司于2014年11月17日正式运作沪港通试点，其目的在于在中国大陆和香港之间建立互惠互利的股票市场互联互通机制。

这项由沪港通带来的全新跨境投资渠道使得大陆和香港的投资者可透过当地券商直接交易对方市场中特定范围的股票，由此助力提升和加强大陆与香港资本市场的联系。对于香港和海外投资者而言，他们现在可以通过沪港通直接交易在上海上市的特定A股，目前是约600余只，基本为上证180、上证380指数成分股及A+H股。

► Tax and exemption 税收及减免

China's Ministry of Finance along with State Administration of Taxation and China Securities Regulatory Commission, jointly announced on November 14, 2014 and recognized that from November 17, 2014:

中国财政部、国家税务总局和证监会联合于 2014 年 11 月 14 日发文，确认自 2014 年 11 月 17 日起：

Income tax 所得税

Gains derived by Hong Kong and overseas investors from transfer of A shares listed on SSE is temporarily exempt from income tax.

对香港及海外投资者通过沪港通投资上交所上市 A 股取得的转让差价所得，暂免征收所得税。

Dividends derived by Hong Kong and overseas investors from investing in A shares listed on SSE, the listed companies will withhold income tax at a tax rate of 10%. For those investors who are tax residents of other countries and the tax rate applicable to dividends is lower than 10% under the tax treaty between China and their residence countries, the difference will be refunded under application and approval.

对香港及海外投资者通过沪港通投资上交所上市 A 股取得的股息红利所得，由上市公司按照 10% 的税率代扣所得税。如投资者所在国与中国签有税收协定，且股息红利所得税率低于 10% 的，差额可申请退税。

Business tax 营业税

Gains derived by Hong Kong and overseas investors from transfer of A shares listed on SSE is temporarily exempt from business tax.

对香港及海外投资者通过沪港通投资上交所上市 A 股取得的转让差价所得，暂免征收所得税和营业税。

Stamp duty 印花税

Stamp duty of shares transactions is paid at a tax rate of 0.1%.

证券交易印花税税率为 0.1%。

For more information, feel free to contact us.

需要更多信息，欢迎联系我们。

The fairness tax: an eyesore for international tax planning

公平税：国际税务筹划活动中的眼中钉

As of tax year 2014 (i.e. financial years ending as of 31/12/2013) a new Belgian tax measure has been implemented, i.e. the fairness tax on distributed dividends. This new tax can have an impact on (inter)national tax planning of Belgian companies distributing dividends.

The fairness tax is applicable to all Belgian companies that do not qualify as a 'small company' under the Belgian company code.

In short, a separate assessment of 5,15% will potentially be due in case of a dividend distribution when (part of the) distributed profits have not been effectively taxed at the general Belgian corporate income tax rate.

自纳税年度 2014 年（即结算日为 2013 年 12 月 31 日的财政年度）起，比利时开始征收一项新的税项，也就是对公司派发的股息征收的所谓的“公平税”。这项新的税收有可能对分红的比利时公司（国际）国内税务筹划产生影响。

“公平税”适用于比利时公司法下除“小型公司”以外的所有比利时公司。

简单来说，当（其中一部分）公司分配利润未曾被征收过比利时企业所得税时，这部分的股息在发放时将单独征收 5.15% 的所得税。

If this is the case and the taxable basis is reduced due to the usage of notional interest deduction or tax losses carried forward, the fairness tax will be due.

Hence there are three conditions in order to assess a possible fairness tax exposure:

如果是以上所述情况，并且税基因概念利息扣减或税亏结转而减少，公司应缴纳“公平税”。

至此，评估“公平税”的税务风险需要满足三个条件：

1	Is the Belgian company distributing the dividend a large company (specific criteria)?	派发股息的比利时公司是否一间大型公司（是否符合具体条件）？
2	Does the distributed dividend exceed the taxable basis of the Belgian company?	派发的股息是否超过了比利时公司的税基？
3	Does the Belgian company make use of the notional interest deduction or tax losses carried forward in order to lower its effective tax rate?	比利时公司是否利用概念利息扣减或税亏结转降低其实际税率？

If the answer on all three questions is positive, than the complexities of the new tax measure kick in.

如果三个问题的答案都是肯定的话，那么该公司将会被征收这项新的税项。

The way to calculate the actual fairness tax is rather complex and consists out of four steps. We will briefly elaborate on the mechanism.

First we calculate the “untaxed” part of the dividend distribution by determining the positive difference between the dividends distributed and the taxable result that is effectively subject to the general corporate tax rate. If the actual taxable basis equals 0, the entire dividend has to be taken into account. However if the dividend includes retained earnings for past years, these can be deducted (exceptions to be taken into account).

The “untaxed” part will then be limited by a percentage. On the outcome a separate tax of 5,15% will be levied.

Example

BelCo distributes a dividend of 4.000 kEUR. The dividend exceeds the taxable basis of the company due to the use of notional interest deduction. Hence, the fairness tax can be due.

计算“公平税”的方法相当复杂繁琐，其包含了四个步骤。我们将简要讲述征税原理。

首先，我们需要计算“未曾缴税”的股息。这部分的股息由公司派发的股息与实际应纳税所得额的正差决定。如果实际应纳税所得额为零，则公司派发的股息需全额计税。但是，当公司派发的股息包括了以前年度的留存收益时，该部分留存收益可享受税前扣减（要考虑到一些特殊情况）。

“未曾缴税”的部分将适用一定比例的限制。最后得出的结果将会被单独征收 5.15% 的所得税。

例子

比利时公司向股东发放 400 万欧元的股息。由于利用概念利息扣减，股息大于税基。因此，公司应缴纳“公平税”。

Calculation: 计算方法：		in kEUR 单位：千欧	
Taxable result (excl. disallowed expenses and dividend distribution) 应纳税所得额（不允许列支的费用和派发的股息除外）		1.000	
Disallowed expenses 不允许列支的费用		200	
Distributed dividend [A] 发放的股息[A]		4.000	
Taxable result (incl. disallowed expenses and dividend distribution) [F] 应纳税所得额（包含不允许列支的费用和派发的股息）[F]		5.200	
Minus: 减去			
Notional interest deduction [D] 概念利息扣减[D]		-2.000	
Carried forward tax losses [E] 结转的税务亏损[E]		0	
Taxable result subject to general corporate income tax rate [B] 应缴纳企业所得税的利润[B]		3.200	
Fairness tax: calculation 公平税：计算方法			
Step 1: 第一步	[A] - [B]	800	(i)
Step 2: 第二步	No formerly taxed reserves included in dividend 股息中未曾缴纳企业所得税的储备金	-	
Step 3: 第三步	Application of percentage 适用比例 = ([D] + [E]) / [F]	38,46%	(ii)
Step 4: 第四步	Calculate the fairness tax basis 计算公平税税基 = 800 x 38,46%	308	
Fairness tax due equals 应缴公平税数额等于 (= 308 x 5,15%)		16	

Conclusion:

This new “fairness tax” can have an impact the international tax planning of large company structures. International tax structures involving Belgian companies should be re-examined in order to assess a possible tax exposure. Most likely the fairness tax is the result of the increasing awareness of base erosion and profits shifting (BEPS).

However, is it “fair” that a company is “taxed” for making use of a “tax deduction” that is been implemented in the Belgian tax code for years.

For more information, feel free to contact us.

结论：

新征收的“公平税”将会对大型公司的国际税务筹划产生影响。比利时公司在内的国际税务结构应该对有可能出现的税务风险进行再次评估。公平税很有可能是近来对税基侵蚀和利润转移活动认识不断提高的结果。

然而，在对利用了比利时税法所允许的“税减”的公司进行“征税”是否“公平”这个问题上，值得大家探讨。

需要更多信息，欢迎联系我们。



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