MAZARS U.S. TAX DESK NEWSLETTER

December 2018

IN THIS ISSUE!

Welcome to the latest edition of the Mazars U.S. Tax Desk Newsletter!

As we reach the end of 2018 we discuss the many amendments and introductions of tax regulations commencing in 2019 in various countries.

In this issue, we explore and share our perspectives on:

- UK's tax developments;
- Croatia's introduction of mini tax reform in 2019;
- The changes in tax regulations in Poland for 2019; and
- The approval of the PRC law on individual invoice tax amendments in China.

The above is only a selection of the wide array of contributions in this issue. Please see page 2 for a full listing.

We are delighted that our publication is continuing to grow in content and circulation numbers. If you would like to share your country insights, please feel free to contact us.

MAZARS

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EUROPE

GERMANY

NEW TRANSFER TAX TREATMENT OF SHARE DEALS – UPCOMING CHANGES FOR INVESTMENTS IN GERMAN REAL ESTATE

INTRODUCTION

There are basically two ways to transfer real estate legally owned by a company or partnership - asset deal and share deal.

The term “asset deal” means that the property-owning company or partnership directly sells and transfers German real estate. The asset deal is subject to German real estate transfer tax (RETT) at the level of the seller and the buyer. Usually, the buyer agrees on assuming the arising RETT in the real estate purchase agreement. The term “share deal” means the (complete or partial) sale and purchase of a property-owning company or partnership by its shareholder(s). In the following, we illustrate the treatment of share deals under the current RETTA and under the new rules expected to be implemented in 2019.

SITUATION UNDER CURRENT RETTA

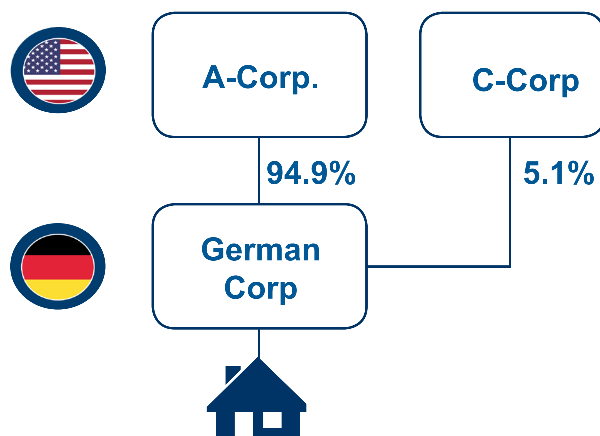
Under the current RETTA, a share deal regarding a company owning German real estate can be RETT-free whereas the same share deal regarding a partnership owning German real estate would trigger RETT.
The following overview shall illustrate the privileged treatment of companies compared to partnerships under the current version of the RETTA.

	Company with German real estate	Partnership with German real estate
Indirect or direct legal or economic unification ≥ 95% of the shares	RETT	RETT
Indirect or direct transfer of ≥ 95% of the shares within five years (change-of-ownership rule)	NO RETT	RETT

Since the change-of-ownership rule has not applied to companies owning German real estate, RETT could be avoided by selling 94.9% to the main buyer and 5.1% to an independent third party.

Before share deal:

After share deal:



The same transaction with a partnership would have been subject to the change-of-ownership rule (sale of at least 95% within 5 years) and therefore triggered RETT.

POTENTIAL CHANGES

There has not been an official draft of the changes so far. Thus, there is no 100% certainty what changes will be implemented and at what date they will become effective.

While it is not likely that the legislation process will be concluded still in 2018, it was discussed in the Conference of the Finance Ministers of the German States to introduce the following major changes potentially even with retroactive effect:

- The threshold of 95% in context with the unification of shares and the change-of-ownership rule will be decreased to 90%.
- The holding period for the change-of-ownership rule and other anti-abuse holding periods will be extended from 5 to 10 years.
- The change-of-ownership rule will apply to share deals regarding companies as well.

SITUATION UNDER POTENTIAL NEW RETTA

Impact on share deals implemented before the changes take effect

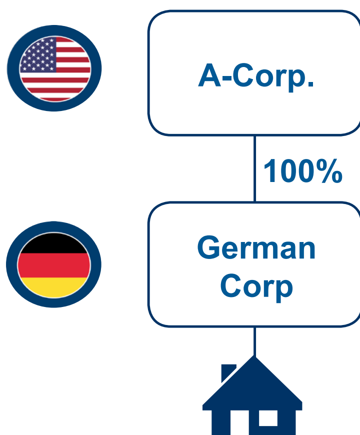
Share deals which have already been implemented should not be directly affected by the proposed changes. This means that existing structures with a third party holding 5.1% in a company owning German real estate would not have to be adjusted. However, it is possible that under the new change-of-ownership rule (extension to 10 years and application to companies) share deals before the effectiveness of the rule may have to be considered for future transactions.

IMPACT ON SHARE DEALS UNDER THE NEW RULES

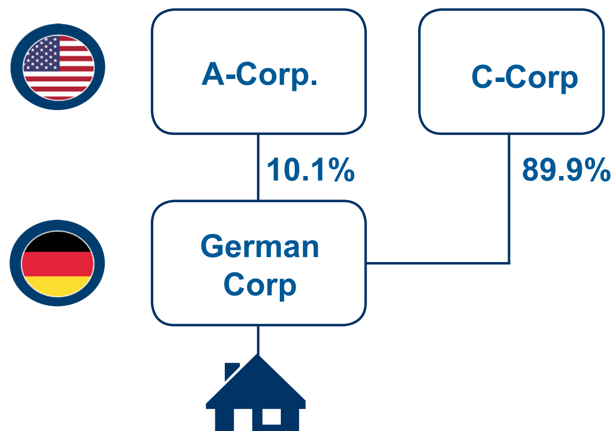
The changes should apply to all share deals taking place after the new law enters into force. This makes future share deals regarding companies less attractive from a RETT perspective. As the sale of at least 90% of the shares in a company or partnership would trigger RETT, one option could be to sell and transfer only 89.9% and keep the residual 10.1% for at least ten additional years. Even after the ten years, the residual 10.1% could not be sold to the same buyer (because that would mean a unification of 90% or more of the shares in one hand), but instead a third-party buyer would have to be found.

COMPANIES:

Before share deal:



After share deal:



CONCLUSION

The proposed changes of the RETTA will make share deals less attractive from a RETT perspective. This applies in particular to share deals concerning companies since, in contrast to the current situation, a RETT-free direct or indirect sale of 100% of the shares in a real estate owning company would not be feasible anymore. Furthermore, the generally RETT-free option to sell and transfer only 89.9% would trigger a ten-year holding period for the remaining 10.1% which would have to be considered for potential future transactions.

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REVISED DUTCH RULING PRACTICE

On November 22, 2018 the Dutch State Secretary of Finance published a letter with an update on the revised Dutch ruling practice for rulings with an international character. Herein, the State Secretary announces that the objective of the revision is to further improve the quality of the practice for companies with real economic activities and to increase the robustness thereof. The aim is to implement the new ruling practice policies as of July 1, 2019.

The proposed policy for obtaining an international tax ruling is made up of three pillars, namely content, transparency and issue processes. Below, we will briefly detail the scope of these three pillars.

OVERVIEW

Taxpayers can continue to obtain upfront clearances such as Advance Tax Rulings or Advance Pricing Agreements from Dutch tax authorities on Dutch tax law implications concerning their (international) legal structures. However, under the revised policies, changes for rulings with an international character will apply in the following fields:

1. Content
2. Transparency; and
3. Issue processes.

CONTENT

Under the new policy, taxpayers applying for an international tax ruling will be required to have sufficient 'economic nexus' with the Netherlands. This new term is to replace the current (minimum) Dutch substance requirements which are required to be met in order to obtain a tax ruling. Sufficient economic nexus means that the level of relevant operational economic activities and staff in the Netherlands should be in line with the position and the function of the relevant Dutch entity within the group. According to the State Secretary the 'economic-nexus'-threshold is substantially higher than the current Dutch substance requirements for obtaining a tax ruling. By means of a policy decree further administrative guidance shall be provided on the economic-nexus concept which will include concise and practice-related examples.

In addition, Dutch tax authorities will examine the purpose of the specific structure whereby rulings may not be obtained if the main purpose of the transaction for which the ruling is requested it to avoid domestic or foreign taxes.

The standard term of an international tax ruling should be maximized at 5 years. In exceptional cases the term may be extended to ten years.

TRANSPARENCY

The Dutch State Secretary mentions in his letter that in order to increase transparency the Dutch tax authorities will publish anonymized summaries of each international tax ruling to the public. Information provided by taxpayers to the Dutch tax authorities is to be treated as confidential whereby the summaries of the ruling cannot be traced back to the tax payer. Furthermore, Dutch tax authorities will publish an annual report on the specific international tax ruling and there will be a team of independent experts who will see to periodical assessments of the respective tax ruling.

ISSUE PROCESS

To further improve the quality of the Dutch ruling practice the State Secretary proposes to coordinate the issue process of international tax rulings more centrally by means of a designated team within Dutch tax authorities. This team will be included in the sign-off of international tax rulings.

IMPLEMENTATION

As indicated above, the aim is to implement the revised Dutch ruling practice for international tax rulings as of July 1, 2019. The letter seems to indicate that the new ruling policy has no retroactive effect, meaning that international tax rulings which are already in place, should not be affected by the revised Dutch ruling policy.

LEGISLATIVE DUTCH TAX PROPOSALS

Over the last months several tax legislative proposals have been published in the Netherlands with regard to international businesses. The first series of tax proposals were released by Dutch government on September 18, 2018 (Budget Day in the Netherlands). Further to these proposals the Dutch State Secretary of Finance sent a letter to Dutch government containing a reconsideration of certain tax law proposals. Below we will detail the latest state of affairs with regard to the following proposed tax rules:

1. Implementation ATAD 1,
2. Reduction corporate tax rate,
3. Loss Utilization,
4. Reduction 30% expat ruling, and the
5. Withholding tax legislative proposal.

1. IMPLEMENTATION ATAD 1

On Budget day the Dutch legislative proposal was released with respect to the implementation of the measures as set out in the Anti-Tax Avoidance Directive 1 ("ATAD I"). In line with previous policy letters the legislative proposal includes an interest deduction limitation for excess interest expenses up until 30% of the taxpayer's EBITDA whereby a threshold of € 1 million net interest applies (earnings stripping rules) and the CFC-regime. The CFC regime sees to Dutch tax resident tax payers who hold an interest of more than 50% in a low-taxed subsidiary or permanent establishment (a 'controlled foreign company)'. Both rules are proposed to be implemented in Dutch tax law as of January 1, 2019.

Furthermore, it is intended to abolish some rules on interest deductibility due to the introduction of the earnings stripping rules. The rules on anti-base erosion, however, will continue to exist.

2. REDUCTION CORPORATE TAX RATE

Also announced on Budget Day was the proposed gradual reduction of the current Dutch corporate tax rate of 20% (for the first € 200,000 taxable profit) and 25% for the remainder. We refer to below overview of the proposed reduction in corporate tax rate.

- Rate 2018: 20% and 25%.
- Rate 2019: 19% and 25%.
- Rate 2020: 16.5% and 22.55%.
- Rate 2021: 15% and 20.5%.

3. LOSS UTILIZATION

Currently tax losses may be set off against profits or income of the prior year or against the subsequent nine years ('carry forward'). It is proposed to limit the carry forward position to six years. According to the proposal the new rule will apply to losses incurred in and as of 2019.

Furthermore, it is proposed to abolish the restriction on loss utilization of so-called 'holding and financing companies'. Currently, losses incurred by these holding and financing companies may only be set off against income from such activities.

4. REDUCTION 30% EXPAT RULING

Under the 30% expat ruling regime, expats may (under conditions) apply a tax-free allowance of 30% of their gross salary. The maximum term of the 30% ruling is to be reduced from eight years to five years. Initially it was intended to apply the reduced term to existing situations. However, a transitional measure is included of two years for expats whose 30% ruling were to have expired in 2019 or 2020 due to the proposed reduction.

5. WITHHOLDING TAX LEGISLATIVE PROPOSAL

On Budget Day and in light of enhancing the Dutch investment climate the abolishment of the Dutch dividend withholding tax **("DWT")** was announced. However, the government later announced that it intends to maintain the DWT and to instead improve its investment climate through other measures (e.g. further reduction of the corporate income tax rate as mentioned above).

Furthermore, it has been proposed to introduce a withholding tax on outgoing interest and royalty payments to low-taxed jurisdiction. Implementation of this measure is proposed for January 1, 2021.

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UNITED KINGDOM

UK TAX DEVELOPMENTS

In the July 2018 issue we covered practical issues in relation to Brexit. We are getting closer to the 29 March 2019 deadline and at the time of writing Parliament is debating the latest withdrawal agreement. The outcome of these debates and the final form of Brexit is still uncertain, so businesses should continue to plan in order to minimise any adverse disruption to their business. Brexit inevitably cast a long shadow over the Chancellor's Budget on 29 October 2018. Depending on circumstances, the 2019 Spring Statement may yet turn into a full fiscal event, and with other more pressing issues, it is yet to be seen how much progress of the October 2018 Budget takes place to find its way through Parliament into legislation. Some of the points arising from the October Budget and other tax issues that may be of interest to US businesses are covered below.

DIGITAL SERVICES TAX

The Budget announced a proposal for a digital services tax aimed large digital businesses, taking the form of a 2% UK tax on the revenues of certain digital businesses from April 2020. It will affect organisations with global turnover in excess of £500m on 'in scope' business lines and focusing on those with a 'profitable business in the UK'.

The tax will apply to revenues generated from search engines, social media platforms and on-line market places, linked to the participation of UK users, subject to a £25m annual allowance, with exemptions or reductions for loss making and low margin businesses.

The UK's proposals on digital tax are unilateral, but the issue is being discussed in a number of other countries and in Europe. The December meeting of the European Economic and Financial Affairs Council was unable to reach agreement on the proposed EU digital service tax, but a joint declaration by France and German proposed the digital services tax should be focused on revenues from advertising. The OECD task force on the digital economy will meet in December, and the following year, aiming to develop a long-term solution to be presented at the next G20 summit meeting. The US has agreed to engage in the process.

TAXATION OF NON-UK INTELLECTUAL PROPERTY ("IP") RECEIPTS

An income tax charge will apply from 6 April 2019 (subject to anti-forestalling from 29 October 2018), to non-UK businesses realising income in low tax jurisdictions in respect of the enjoyment or exercise of rights in IP used to generate UK sales. This is along the lines of the US measure known as 'global intangible low-taxed income' or 'Gilti'. The charge will apply unless the entity performs substantially all activities in the low tax jurisdiction, or is UK resident, or is tax resident in a jurisdiction with which the UK has a double tax treaty with a non-discrimination article. This should, in principle, affect groups operating in only a few low-tax jurisdictions.

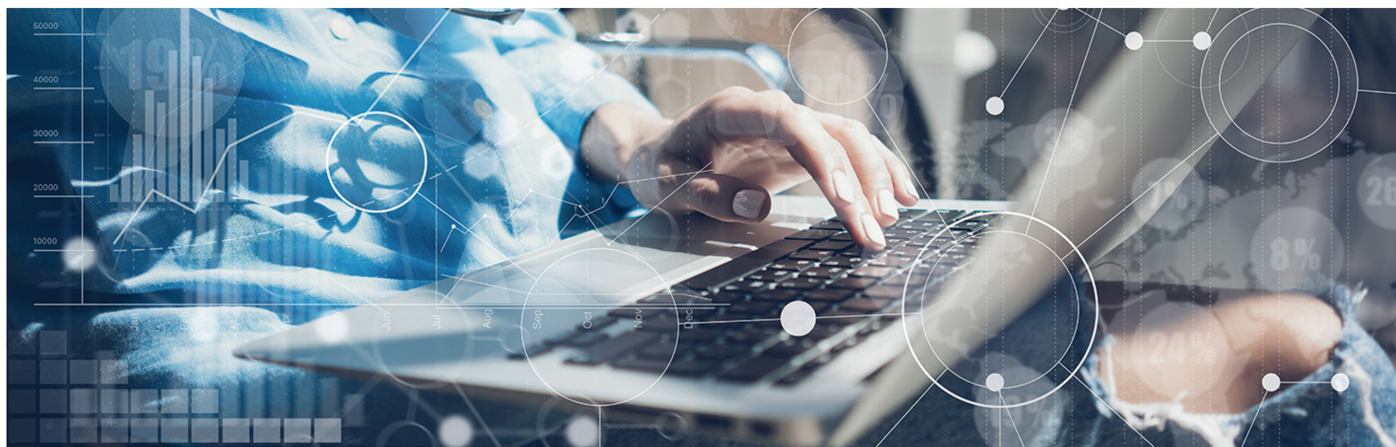
Income tax will apply to gross income generated from UK sales in respect of the exploitation of IP, subject to a £10m de-minimis threshold. It will also cover sales of IP derived from UK sales. The measure will include within its scope the indirect but substantial exploitation of IP in the UK by unrelated parties (those with a less than 25% relationship with the business being considered).

The legislation is widely drafted and will require a notification from those businesses claiming substantial activity in a low tax jurisdiction in order to be excluded from the tax. This could potentially include insurance operations, amongst others, located in low tax jurisdictions.

International businesses with UK activity will need to assess whether they are caught by these new rules and review the jurisdictions in which the group's IP is held. They should also consider how they will manage any compliance requirements arising.

RELIEF FOR INTANGIBLES

There will be a reintroduction in April 2019 of tax depreciation for goodwill, though only where it is matched by the value of acquired eligible intellectual property such as patents, trademarks, copyrights etc. There will be no reintroduction of relief for costs of acquired customer lists. There is also an alignment from 7 November 2018 of the de-grouping rules for intangible assets with those for capital gains, which may reduce de-grouping tax charges in some instances.



STRUCTURES AND BUILDINGS ALLOWANCE

Since 2011 there has been no tax relief for the costs of constructing new commercial buildings and structures in the UK. In response to industry representation, qualifying new construction costs incurred on such premises will from 29 October 2018 qualify for tax relief to be given over 50 years - the 'Structures and Buildings Allowance'.

CORPORATE CAPITAL LOSS RELIEF REFORMS

Shortly after the introduction of a new regime for the major carried forward corporation tax losses, the UK government has announced an extension of the regime. From 1 April 2020 the deductions allowance of £5m that permits carried forward losses to be offset against profits in full each year by companies and groups against profits, will now also include carried forward capital losses. Only 50% of the income and gains above the allowance, will be eligible for off-set by carried forward losses.
This is bad news in particular for companies with significant carried forward capital losses. Anti-forestalling applies from 29 October 2018 and may limit the scope for reducing the adverse impact of the change.

OFF PAYROLL WORKERS IN THE PRIVATE SECTOR

Public sector engagers have since 6 April 2017 had the obligation of determining the employment status of individual contractors they use, whether those contractors are working through intermediary entities or not. This procedure is aimed at reducing the Government's loss of tax through the use of employment intermediaries. It will be extended to the large and medium sized businesses operating in the private sector from 6 April 2020. Businesses should be assessing in advance how their take-on procedures will need to be adapted.

IMMOVABLE UK PROPERTY

With effect from 6 April 2019 non-UK resident owners of any UK immovable property will be subject to UK capital gains tax on gains arising from that date. The measure will also include gains on disposals of interests held in companies deriving at least 75% of their value from UK immovable property where the owner has held at least a 25% interest at any time in the 2 years prior to disposal. There are particular rules for collective investment funds investing in UK property, which may mean the shelter of the 25% threshold can be removed. Payment and filing deadlines in respect of these gains will advance to 30 days from disposal.

With effect from 6 April 2020 non-UK resident landlords of a UK property business will be brought within the corporation tax regime instead of the income tax regime. This will mean a different approach to the treatment of finance costs and in particular exposure to corporate interest restriction rules. Anti-forestalling will apply from 29 October 2018 for arrangements which seek to contrive an advantage in relation to the commencement of these rules.

There are a number of considerations around 6 April 2019 valuations and holding structures and finance arrangements for both the CGT and corporation tax measures that non-UK owners of UK immovable property will need to consider.

VAT GROUPING AND OFFSHORE LOOPING AND US BUSINESSES SELLING IN THE UK WITHOUT A UK ESTABLISHMENT

From dates to be set in regulation it will be possible for non-corporate persons to join a VAT group. The ability to route financial services offshore to increase input VAT recovery on costs of financial services supplied to UK consumers will also be closed. These changes were expected in the light of recent CJEU case law and to close down avoidance opportunities.

On a procedural point we understand HMRC will no longer accept form IRS 6166 as evidence of US residence for the purpose of reclaiming VAT under the 13th Directive. US businesses will instead need to request the US authorities seal a copy of form VAT66A with the relevant information. As reclaims must be made no later than 6 months after the end of the 'prescribed year' ending in June, this may present procedural difficulties in getting a claim for the year to 30 June 2018

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IRELAND

BUDGET 2019

The 2019 Budget took place on 9 October 2018. The Minister of Finance reaffirmed the commitment to the 12.5% rate of corporation tax, stating that it will not be changing. He emphasised, though, the focus on maintaining a competitive, outward facing business environment, while ensuring our tax regime is transparent, sustainable and legitimate, announcing some measures in this respect, primarily around the ATAD.

EXIT CHARGE

Ireland will see the introduction of a new Anti-Tax Avoidance Directive ('ATAD') compliant exit tax regime to come into effect on 10 October 2018. The ATAD contains five legally-binding anti-abuse measures, which all EU Member States should apply in order to combat common forms of aggressive tax planning. One of these five directives is the exit tax which is introduced to prevent companies from avoiding tax when re-locating assets offshore or migrating their residence outside of Ireland.

Irish companies that cease to be resident in Ireland for tax purposes, or that transfer assets offshore such that they leave the scope of Irish tax, will be liable to an exit tax which will apply to unrealised capital gains at a rate of 12.5%.
The early adoption of this directive by Ireland is aimed at providing certainty to businesses currently located in Ireland and considering investing in Ireland in the future.

TRANSFER PRICING

The Minister committed to a review and update of Ireland's transfer pricing provisions in 2019 to ensure that our tax system is in line with new international best practice. It is positive that such a review will be undertaken as it will help to preserve our reputation as a transparent and well regulated territory.

CONTROLLED FOREIGN COMPANY (CFC)

Another ATAD measure announced by the Minister is the introduction of Controlled Foreign Company ('CFC') rules. The Finance Bill, which was published on 19 October 2018, contained more detail on the CFC provisions. CFC rules are an anti-abuse measure designed to prevent the diversion of profits to offshore entities in low- or no-tax jurisdictions. The CFC rules will apply from 1 January 2019.

CFC rules are traditionally a feature of territorial systems of taxation. As Ireland operates a worldwide taxation model, CFC rules have not previously been a feature of the Irish corporate tax regime. It is essential that groups now review their Irish holding company structures to determine the impact of the CFC rules.

It is also possible given Ireland's relatively low corporation tax rate that the implementation of the CFC rules in other EU Member States could mean that Irish subsidiaries are impacted as they may be considered to be in a low tax jurisdiction under the rules. Therefore, as part of their self-assessment, as well as reviewing the CFCs of their Irish holding companies, groups should consider the Irish CFCs of other EU Member States. This would mean considering the people function and whether they have substantive economic activities undertaken in these subsidiaries in the respective jurisdiction where they are tax resident.

Necessary measures to prepare for Brexit are being put in place, with potential for a no-deal Brexit in mind. Measures announced include:

- A Human capital initiative worth €300 million;
- Launch of Future Growth Loan Scheme for SMEs and agriculture and food sector;
- Provision of over €110 million across a number of departments; and
- Increased funding for the PEACE programme to support economic and social stability in the Border region

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POLAND

CHANGES IN TAX REGULATIONS PLANNED FROM JANUARY 1, 2019

On November 13, 2018 the President signed the Act on amending the CIT, PIT and Tax Ordinance Act and other acts. After publication in the Journal of Laws until the end of November 2018, the new regulations will come into force on January 1, 2019.
The amendment provides for far-reaching changes in the tax system.

WITHHOLDING TAX

The amendment introduces into the Polish tax law significant changes to the previously applied principles of collection withholding tax i.e. the principle of direct application of preferences or exemptions in the field of withholding tax while meeting the documentary requirements provided for in the Corporate Income Tax Act.

COLLECTING WITHHOLDING TAX

Due to the above, from January 1, 2019 as u rule there will be an obligation to collect withholding tax on interest, royalties and dividends with general rates (19% or 20%) if those payments made to the same taxpayer exceed PLN 2 million in a tax year. Taxpayers will be entitled to apply rates resulting from double tax treaties or exemptions if some requirements are met.
The principle of obligatory collection of withholding tax according to basic rates will be the basic mechanism for collecting withholding tax for payments exceeding PLN 2 million (in relation to this one recipient in a given tax year).
New regulations give taxpayers a possibility to apply for a refund of withholding tax. However, the whole procedure will last 6 months, with the possibility of its extension - which may influence significantly cash-flows of foreign receivers (or Polish taxpayers in case of bearing financial costs of withholding tax).
The new regulations give taxpayers an opportunity to collect withholding tax with a lower rate or apply exemption by:

- making a formal statement confirming fulfillment of formal requirements and making verification of a receiver (in particular if a receiver is a beneficial owner of those payments and it runs a factual business activity in the state of its residence), or
- obtaining a binding opinion issued by the tax authorities with regard to an application of exemption from withholding tax.

BENEFICIAL OWNER DEFINITION

In addition to the above changes in the principles of collection of withholding tax, the amendment also presents the updated definition of the beneficial owner by introducing a “warrant to take into account the broader context accompanying the payment of sums to foreign entities in assessing their status as receivers of receivables” to confirm whether these foreign entities: (i) conduct a real economic activity in the country of residence, (ii) incur economic risks related to at a loss or loss of value of a given receivable; and (iii) they are able to decide for themselves the intended use of a receivable.

EXIT TAX

The amendment introduces an “exit tax” regulations which are an implementation of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD directive).

EXIT TAX – TRANSACTIONS

The exit tax could be paid by residents and non-residents, also individuals.

The exit tax will be imposed on:

- transfer of an asset outside Poland, as a result of which Poland loses (in whole or in part) the right to tax income from the sale of that asset, or
- change of tax residence by a taxpayer subject to unlimited tax liability, which means that Poland loses the right (in whole or in part) to tax the income from the possible disposal of taxpayer’s property components.

The exit tax shall be paid regardless the fact if the asset is actually disposed of or not by the taxpayer. This means that the tax will be able to occur even if the taxpayer does not achieve any real benefits from the asset.

TAX BASE

In accordance with the new regulations tax base for exit tax shall be an excess of the market value of the transferred asset over its “tax value”. The deadline for submitting the declaration and payment of tax is the 7th day of the month following the month in which the event causing taxation occurred.

The proposed tax rates for PIT taxpayers are to be 3% or 19%. In the case of PIT taxpayers, the provisions on tax on unrealized profits, as a rule, do not apply when the market value of the asset or the sum of their market values does not exceed PLN 4 million. In the case of CIT taxpayers, a single rate of 19% will apply, regardless of the value of transferred assets.

OBLIGATION TO REPORT TAX SCHEMES (“MDR”)

Another implementation of EU Directive is introducing a mandatory disclosure rule to Polish regulations.
Based on the regulation taxpayers and other entities will be obliged to report the Head of the National Treasury Administration (Krajowa Administracja Skarbowa) the so-called “Tax schemes”.

The definition of “tax scheme” is extensive – it includes so-called “reconciliation” which means “an activity or a set of related activities, including a planned activity or a set of planned activities of which at least one party is a taxpayer or who have or may have an impact on the occurrence or non-fulfillment of tax obligation. To report tax schemes will obliged not only taxpayers, but also promotors. A failure to comply with reporting obligations will entail substantial fines (liability under the provisions of the Fiscal Penal Code).

PREFERENTIAL TAXATION RULES OF THE IP BOX

The amendment introduces also preferential taxation at the rate of 5% CIT of income generated by intellectual property rights (so-called IP BOX, Innovation Box).
The broadly known worldwide solution gives a tax relief to taxpayers who earn income from the commercialization of intellectual property rights created or developed by them, so-called Innovation Box.
The requirements to benefit from the relief include conducting research and development activities directly related to the creation, commercialization, development or improvement of qualified intellectual property rights.
A taxpayer who intends to benefit from the proposed preference is obliged to keep detailed accountancy records in a way that allows calculation of the tax base, including the connection of the incurred costs of research and development with the generated income from IP rights resulting from the work carried out.
With proper structuring of business, where intellectual property is a significant carrier of value, the use of IP Box preferences can therefore bring measurable tax benefits by lowering the effective income tax rate.

OTHER CHANGES

Particularly important is the change consisting in the replacement of the CIT rate in the amount of 15% - at the rate of 9% for small taxpayers, as well as taxpayers who start business activity. The tax will be 9% of the tax base on revenues (income) other than from capital gains - in the case of taxpayers whose revenues achieved in the tax year did not exceed PLN equivalent of EUR 1.2 million (according to the average euro exchange rate announced by the National Bank of Poland for first business day of the tax year, rounded up to PLN 1 thousand).

However, firstly, taxpayers will not take advantage of the 9% rate if, in the tax year in which the taxpayer was created, and in the tax year immediately following, a previously run enterprise, organized part of the enterprise or assets of this enterprise with a value exceeding in total the PLN equivalent of PLN 10,000 euro were brought against capital. Secondly, the 9% rate does not apply to a divided company, a taxpayer who has contributed to another entity, including the capital of the previously run enterprise, organized part of the enterprise or assets of the enterprise with a value exceeding the total equivalent of PLN 10,000 euro or assets obtained by this taxpayer as a result of liquidation of other taxpayers, if this taxpayer owned shares (stocks) of these other liquidated taxpayers - in the tax year in which the division or contribution was made, and in the tax year immediately following it.

The method of making advances with respect to the 9% rate is based on the fact that taxpayers can pay advance payments taking into account this rate only until their revenues in the tax year do not exceed EUR 1.2 million. After exceeding this threshold, further advance payments will be calculated using the 19% rate.

Planned changes presented in the Amendment also include:

- Introducing changes with regard to the rules of taxation of expenses related to the use (operation) in the company of passenger cars - also leased.
- Introducing the possibility of taxpayers using copies of tax residence certificates, in the case of payments not exceeding PLN 10,000 per calendar year (for a single entity).
- Introduction of regulations on the taxation of virtual currencies (the so-called cryptocurrencies). What is important, the above regulations assume, among others that revenues from trading in virtual currencies will be qualified in accordance with revenues from capital (Article 17 of the PIT Act) or capital gains (Article 7b of the CIT Act) - but for this revenue specific tax rules will be determined and these revenues will not be combined with other income from cash capital or capital gains.
- Introducing changes to the tax loss settlement rules by adding the possibility of a one-off reduction of

income earned from a given source in one of the following five tax years consecutively for the amount of loss from this source not exceeding PLN 5 million.

Due to the scale and significance of the adopted regulations, as well as short period remaining until the presented changes become effective, it is important for entrepreneurs to take immediate measures to prepare for their implementation from 1 January 2019.

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CROATIA

CROATIA INTRODUCES MINI TAX REFORM IN 2019

A set of tax law changes has been passed in Croatian Parliament during November 2018. Most of the changes will have effect already in 2019. Below is an overview of main aspects.

CORPORATE INCOME TAX (CIT)

Croatia introduces new rules for prevention of profit shifting, in accordance with Council Directive (EU) 2016/1164 dated 12 July 2016 on establishing rules against practices of tax avoidance („Anti-Tax Avoidance" Directive - ATAD):

- First rule introduced governs the interest cap by which taxpayer can incur tax deductible borrowing costs of up to 30% of EBITDA or 3 mil. EUR (whichever is higher). It is considered that taxpayer has an overdrawn borrowing cost when borrowing costs exceeds taxable revenue from interest or from other similar taxable revenue.
- Second rules introduced governs CFC („Controlled Foreign Company") with a purpose of including the unallocated profits (from subsidiary that pays low corporate income tax rate in their jurisdiction) in tax basis of the parent company. Main purpose of taxation of unallocated profit is to tax ones that generated revenues from interest, financial assets, intellectual property, revenues from insurance, banking and etc. (so called passive income) instead of taxation of ones that do extensive business activity with a help of personnel, equipment, assets, property and so on.

Other changes in the CIT system are:

- Receivable write offs are considered tax deductible expense in case of confirmation in accordance with specific provisions about consumer bankruptcy, and specific provisions on procedure of extraordinary management in companies of system importance (so called Lex Agrokor)
- Equalization of tax position of Open-Ended Investment Funds with a Public Offering (UCITS) and Alternative Closed-Ended Investment Funds (not subject to CIT).

VALUE ADDED TAX (VAT)

Most important changes are:

- Reduced VAT rate (13%) will apply to meat, fish, fruits, vegetables, eggs, baby diapers, etc.
- Reduced VAT rate (5%) will apply to all medicines that have the approval of the competent body for medicines and medical products (currently applied only on prescription medicines)
- Conditions to register for VAT purposes is changed: if the threshold of 300,000 HRK (approximately EUR 40,000) is exceeded, VAT registration is required in the current year (currently it is required in the following year),
- 50% input VAT deduction will be allowed on company cars irrespective of their value (previously up to 400,000 HRK purchase value).
- Taxpayers without establishment in Croatia, which are in possession of Croatian VAT number, will no longer be able to use reverse charge mechanism for their B2B supplies which are taxable in Croatia (according to Article 194 of EU VAT Directive / Article 75(2) of the Croatian VAT Act). Reverse charge mechanism will be applicable to B2B supplies taxable in Croatia when these are performed by taxpayers without establishment in Croatia which are not registered for VAT purposes in Croatia,
- General VAT rate will be reduced from 25% to 24% from 1 January 2020.

As attachment to the VAT returns, taxpayers will be obliged to electronically submit records of received invoices. Deadlines will remain the same (20th in the current month for the previous month or quarter). However, it is not yet known in what form it will be necessary to submit such records to the Tax Administration.

Certain "security" measurements have been introduced for the assignment of a VAT identification number to new taxpayers or taxpayers that acquire second-hand means of transport from the EU.

More specifically, in case of doubt in justifiability of assigned VAT ID number to the new taxpayer, the Tax Administration has the authority to request from the taxpayer the submission of a collateral for ensuring payment of VAT liability for a certain period (up to 12 months). On the other hand, in the case of acquisition of second-hand means of transport from other EU Member State, the Tax or Customs Administration may request from the taxpayer a deposit as insurance to meet the VAT obligation arising from the acquisition of second-hand means of transport.

PERSONAL INCOME TAX (PIT)

Staring as of December 2018, Croatian employers can pay tax-free bonuses up to HRK 5,000 (approximately EUR 675) per annum.

Additional reductions in tax burden are effective as of 2019:

- First tax bracket (taxed at 24%) will apply to taxable incomes up to HRK 30,000 per month (approximately EUR 4,000), i.e. to taxable incomes up to HRK 360,000 per year (approximately EUR 48,000).
- Share awards in certain cases will be taxed at 24% (as capital income); however, we are still to see if the mandatory gross-up calculation requirement (which results in heavy tax burden on share awards) will be eliminated via Bylaw which is expected to be introduced shortly.
- Notional interest benefit arising from loans provided by employers to employees is reduced from 3% to 2%.
- Special provisions for seasonal workers in agriculture are introduced. Such income will be taxed as "other income", subject to tax rate at 12%, without recognizing expenditures. Such taxation would be considered as final and would not go into the annual personal income tax calculation.

SOCIAL SECURITY CONTRIBUTIONS

The rate for health insurance increases from 15% to 16.5%. However, the contributions for insurance of occupational injuries and insurance for occupational diseases and unemployment are abolished. This will ultimately result in overall reduction of employers' costs (so called Gross 2) by 0.7%. Given that the changes concern only the employer's contribution, this change will not have direct impact on net salaries of employees.

REAL ESTATE TRANSFER TAX

Tax rate is reduced from 4% to 3%.

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ASIA

THE PRC LAW ON INDIVIDUAL INCOME TAX ("IIT") AMENDMENTS APPROVED

BACKGROUND

On 31 August, the Standing Committee of China's National People's Congress formally approved the Amendments to the PRC Law on IIT (the "Amendments").

IN BRIEF

The key changes that will affect individual expatriates and their employers include:

- Revising the criteria for determining tax residency status;
- Implementing a mixture of aggregate and scheduler taxation system to replace the old scheduler taxation system;
- Amending the tax rates and taxable income brackets;
- Increasing the standard basic deduction and introducing additional specific deductible items;
- Introducing a unique taxpayer identification number; and
- Introducing an anti-tax avoidance rule.

The Amendments are indeed signifying an overhaul of the IIT system.

IN DETAILS

Salient points of the Amendments are set out below:

1. NEW DEFINITION FOR TAX RESIDENCY

In determining the tax residency status of individuals without domicile or factual residency in China, the physical presence threshold would be tightened from 'one full year' to '183 days spent in China'.

Under the old IIT law, when an individual is not usually or habitually resident in China, i.e. not being a factual resident in China, he would be considered as a Chinese resident when his physical presence in China is one full year. Under the new IIT law, that individual would be considered as a resident in China in a particular tax year if he has spent 183 days or more in China during the relevant tax year.

As a resident in China, he would be liable for IIT on their worldwide income for that relevant year.

Nevertheless, under the existing Detailed Implementation Rules of the IIT law ("Implementation Rules"), individuals without domicile in China will not be subject to IIT on the worldwide income until after they have resided in China for five consecutive full years. It is unknown at this stage how this "5-year rule" may be affected by this change to the definition of tax residence. It remains un-clear until further amendments to the Implementation Rules are introduced. Amendments to the Implementation Rules would be introduced by the State Council, without the need for approval from the National People's Congress.

2. NEW TAX SYSTEM

The Amendments have consolidated certain taxable income categories, namely income from wages and salaries, income derived from remuneration for personal services, income derived from remuneration for manuscripts and income from royalties into a category called "Comprehensive income". For the first time, PRC tax residents can deal with the tax filings on the various income included as comprehensive income on an annual basis.

Under the old IIT law, income derived from contractual or leasing operations of enterprises or institutions was under a separate taxable income category. This category of income has been removed with the relevant income incorporated into comprehensive income or business operation income respectively. Also being removed is the category called "other income".

Thus, for an individual who is receiving salaries from one employer and director fee from another separate enterprise, instead of having the salaries and the director fee taxed separately, the two incomes would be combined as comprehensive income and taxed accordingly.

The new categories are listed in the following table.

<table>
<tr><th colspan="2">OLD IIT LAW</th><th colspan="2">THE AMENDMENTS</th></tr>
<tr><th>CATEGORIES</th><th>TAX RATES</th><th>CATEGORIES</th><th>TAX RATES</th></tr>
<tr><td>Income from wages and salaries</td><td>3%-45%
7 brackets of progressive tax rates</td><td rowspan="4">Comprehensive income</td><td rowspan="4">• 3%-45% 7 brackets of progressive tax rates
• Adjusting the taxable income brackets of lower tax rates (i.e., 3%, 10%, 20% and 25%)
• Taxable income brackets of higher tax rates unchanged (i.e., 30%, 35% and 45%)
• Income derived from remuneration for personal services</td></tr>
<tr><td>Income derived from remuneration for personal services</td><td>20%-40%
3 brackets of progressive tax rates</td></tr>
<tr><td>Income derived from remuneration for manuscripts</td><td>20%</td></tr>
<tr><td>Income derived from royalties</td><td>20%</td></tr>
<tr><td>Income derived from production and business operations by individual industrial and commercial households</td><td>5%-35%
5 brackets of progressive tax rates</td><td>Business operation income</td><td>• 5%-35% 5 brackets of progressive tax rates
• The minimum threshold applicable to 35% tax rate increased to RMB 500,000</td></tr>
<tr><td>Income derived from contractual or leasing operations of enterprises or institutions</td><td>5%-35%
5 brackets of progressive tax rates</td><td colspan="2">Category removed with relevant income incorporated into comprehensive income or business operation income respectively</td></tr>
<tr><td>Income from interest, dividends and bonuses</td><td>20%</td><td colspan="2" rowspan="4">Unchanged</td></tr>
<tr><td>Income from lease of property</td><td>20%</td></tr>
<tr><td>Income from transfer of property</td><td>20%</td></tr>
<tr><td>Contingent income</td><td>20%</td></tr>
<tr><td>Other income</td><td>20%</td><td colspan="2">Removed</td></tr>
</table>

3. MONTHLY STANDARD DEDUCTIONS AND OTHER SPECIFIC DEDUCTIONS

The monthly standard deduction has been unified for all taxpayers and increased to RMB 5,000.

In addition, other specific deductions are listed in the following. These specific deductions are only deductible for comprehensive income. These are:

- Child education expenses
- Continuing education expenses
- Medical expenses for chronic diseases
- Mortgage interest expenses for residential homes
- Rental expenses for residential homes and
- Support expenses for parents
- Social security payments

The actual scope and specific procedures to claim these deductions shall be announced by the State Council in due course.

It remains to be seen as to specific deductions available to expatriates under the old IIT law.

For income derived from personal services, income derived from manuscripts and royalty income, there would be a further notional deduction equal to 20% of the income. For income derived from manuscripts, there is an addition 30% deduction, thus making effectively only 56% of income derived from manuscripts to be included in comprehensive income subject to IIT.

In addition, donations to charities are also allowed as deduction up to 30% of taxable income for IIT purposes.

4. THE NEW TAX RATES

The table below highlights the main changes to the taxable income brackets, especially for those taxpayers subject to an applicable tax rate of 25% or lower.

COMPREHENSIVE INCOME

	Current IIT rates		New IIT rates	
	Annual (Monthly) Taxable Income	Tax Rate	Annual (Monthly) Taxable Income	Tax Rate
1	Not exceeding 18,000 (Not exceeding 1,500)	3%	Not exceeding 36,000 (Not exceeding 3,000)	3%
2	Exceeding 18,000 to 54,000 (Exceeding 1,500 to 4,500)	10%	Exceeding 36,000 to 144,000 (Exceeding 3,000 to 12,000)	10%
3	Exceeding 54,000 to 108,000 (Exceeding 4,500 to 9,000)	20%	Exceeding 144,000 to 300,000 (Exceeding 12,000 to 25,000	20%
4	Exceeding 108,000 to 420,000 (Exceeding 9,000 to 35,000)	25%	Exceeding 300,000 to 420,000 (Exceeding 25,000 to 35,000)	25%
5	Exceeding 420,000 to 660,000 (Exceeding 35,000 to 55,000)	30%	Exceeding 420,000 to 660,000 (Exceeding 35,000 to 55,000)	30%
6	Exceeding 660,000 to 960,000 (Exceeding 55,000 to 80,000)	35%	Exceeding 660,000 to 960,000 (Exceeding 55,000 to 80,000)	35%
7	Exceeding 960,000 (Exceeding 80,000)	45%	Exceeding 960,000 (Exceeding 80,000)	45%

BUSINESS INCOME

	Current IIT rates		New IIT rates	
	Annual (Monthly) Taxable Income	Tax Rate	Annual (Monthly) Taxable Income	Tax Rate
1	Not exceeding 15,000 (Not exceeding 1,250)	5%	Not exceeding 30,000 (Not exceeding 2,500)	5%
2	Exceeding 15,000 to 30,000 (Exceeding 1,250 to 2,500)	10%	Exceeding 30,000 to 90,000 (Exceeding 2,500 to 7,500)	10%
3	Exceeding 30,000 to 60,000 (Exceeding 2,500 to 5,000)	20%	Exceeding 90,000 to 300,000 (Exceeding 7,500 to 25,000)	20%
4	Exceeding 60,000 to 100,000 (Exceeding 5,000 to 8,333.33)5,000)	30%	Exceeding 300,000 to 500,000 (Exceeding 25,000 to 41,666.67)	30%
5	Exceeding 100,000 (Exceeding 8,333.33)	35%	Exceeding 500,000 (Exceeding 41,666.67)	35%

5. SPECIAL TREATMENTS TO STOCK OPTIONS AND ANNUAL BONUS

It is not known how stock options and annual bonus would be treated under the Amendments. Currently, the IIT treatments would be split into 12 months at maximum. Taxpayers should closely monitor further announcements from SAT.

6. UNIQUE TAXPAYER IDENTIFICATION NUMBER

There will be unique taxpayer identification numbers assigned to taxpayers. If taxpayers are holders of PRC resident identity cards, the ID card numbers shall be the taxpayers' identification numbers. Otherwise, a new taxpayer identification number would be assigned by PRC tax bureau.

7. ADDITIONAL ANTI-TAX AVOIDANCE MEASURES

The PRC tax bureau would be empowered to adjust taxable income if they consider that those arrangements are tax driven and not commercial realistic. It also introduces CFC rules which have currently been adopted in corporate income tax law.

8. THE IMPLEMENTATION PHASES

The new Amendments shall be effective from 1 January 2019. However, monthly deduction allowance and relevant tax rates shall be applied from 1 October 2018 onwards.

UN-CERTAINTY ITEMS TO BE CLARIFIED

As mentioned above, currently expatriates who reside in China for more than 1 year but less than 5 years shall be exempted from IIT on their non-China sourced income. Up to now, whether this so called 5-year rule would be abolished or amended is not clear.

Will time basis claim in computing IIT for expatriates (including residents from Hong Kong, Macau and Taiwan) for those rendering services in both in China and outside China still be applied because of the change in definition of resident?

Also mentioned previously, it is still uncertain about the IIT treatments on stock options and annual bonus.

We expect that more circulars from SAT would be issued to clarify the Amendments. We would follow up with those developments in due course.

MAZARS' OBSERVATIONS

For expatriates, attention should be drawn to the change in the concept of tax resident. Under the Amendments, expatriates who stay in China for more than 183 days shall be considered as tax residents and are subject to worldwide income technically. Even if the so called 5-year rules still applies (it is not certain now), this change in the concept of tax residency would certainly make expatriates much easier to breach such rules.

Although it is good news that the Amendments provide more specific deductions, it is expected that the amounts of specific deductions are not particularly high. We expect that the total specific deductions would be around RMB 2,000 per month. However, tax bureaus would likely require taxpayers to provide sufficient detailed documentations to claim those expenses. We strongly advise taxpayers and their employers (as the case may be) to gather and collect relevant documents in due course.

Employers as withholding agents for most of their employees would face new challenges in employment management systems. For enterprises with a large number of expatriate employees it could bring influence on the employee costs of foreign employee and international dispatch plans.

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NEW TAX MEASURES PROPOSED IN 2018 HONG KONG POLICY ADDRESS

BACKGROUND

On 10 October 2018, the Chief Executive of Hong Kong, Carrie Lam, presented her second policy address to the Legislative Council. In her address, Lam has laid out various measures covering a wide range of issues from housing, medical care and welfare. She has also proposed a number of tax related measures and provided updates on the tax measures proposed in the 2018-2019 budget.

TAX MEASURES

1. Promoting ship leasing business

The government will use tax measures to foster ship leasing business in Hong Kong and commissioning the Hong Kong Maritime and Port Board to set up a task force to devise the details, with a view to enhancing Hong Kong's position as a ship leasing center in the Asia Pacific region.

2. Strengthening Hong Kong's status as an international insurance hub

The government will adopt various measures, including tax reliefs to promote the development of marine insurance and underwriting of specialty risks in Hong Kong so as to strengthen Hong Kong's status as an international insurance hub.

3. Reviewing the existing tax concession for fund industry

Government will enhance our legal and tax frameworks to forge a conducive environment for fund industry. Following the commencement of the open-ended fund company regime in July this year, the government is now studying the establishment of a limited partnership regime for private equity funds. The government will review the existing tax concession arrangement for the fund industry to ensure that the industry can stay in line with international requirements on tax cooperation on one hand while promoting their business on the other.

4. Expanding the double tax treaty network

The Government has so far concluded comprehensive avoidance of double taxation agreements (CDTAs) with 40 tax jurisdictions. Lam said that she hope to further expand our CDTA network, bringing the total number of such agreements to 50 over the next few years.

5. R&D tax incentives

Lam reported that the bill for providing enhanced tax deductions for qualifying R&D expenditure incurred by local enterprises (i.e. the Inland Amendment (No.3) Bill 2018) has entered the final stage of scrutiny in the Legislative Council. The passage of the bill will benefit enterprises for their qualifying R&D expenditure starting from 2018-19. The local enterprises will be provided 300% tax deduction for the first $2 million of the qualified R&D expenditure, and 200% for the remaining amount. There is no cap on the amount of the tax deduction.

6. Tax deduction of qualified premium under Voluntary Health Insurance Scheme ("VHIS")

As proposed in the 2018-2019 Budget, the government will introduce a tax deduction of qualified premium for eligible health insurance products under the Voluntary Health Insurance Scheme. The annual tax ceiling of premium for tax deduction is $8,000 per insured person. This measure will be implemented from the year of assessment following the passage of the relevant legislative amendments to encourage the public to purchase Certified Plans, so that they may choose to use private healthcare services when needed, thereby alleviating the long-term pressure on the public healthcare system.

MAZARS' OBSERVATIONS

Lam indicated that the government will continue their efforts in enhancing Hong Kong tax system to maintain its status as major leading international business centre. Lam announced that the government will offer tax incentives to attract companies to domicile their ship leasing business in Hong Kong and to promote the development of marine insurance and underwriting of specialty risks in Hong Kong. The business community in general welcomes the 2018 Policy Address. The Hong Kong General Chamber of Commerce, The Chinese General Chamber of Commerce, Federation of Hong Kong Industries etc. issued press release to complement Lam for her Policy Address

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