

# Global Dispatch

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## Australia

### Australian Federal Government announces zero tax rate for Australian ship operators

On 9 September 2011 the Australian Federal Government announced a comprehensive package of reforms to the Australian shipping industry designed to increase the international competitiveness of the Australian shipping industry and allow Australian shipping companies to compete more effectively on international routes.

The Australian Federal Government has been reviewing Australia's coastal shipping industry since 2008. In December 2010, a discussion paper was released that proposed various tax reforms to "place the industry on a sustainable footing with international competitors."

This discussion paper was followed by consultation with the shipping industry, in which Ernst & Young participated. It was noted in consultation that to rebuild Australia's shipping industry, the country's tax regime needed to match the most favorable regimes globally, such as Singapore.

The September 2011 reform package is in response to this consultation, which moves away from the original tonnage tax proposal to an exemption system. The package has four key elements:

- ▶ Tax reforms to remove barriers to investment in Australian shipping and to foster the global competitiveness of the shipping industry;
- ▶ Simplified three-tier licensing framework for participation in the coastal trade;
- ▶ Establishment of an Australian International Shipping Register to put Australian companies on a level footing with their international competitors; and
- ▶ Establishment of a Maritime Workforce Development Forum to progress key maritime skills and training priorities.

## Tax reforms for Australian shipping

The centerpiece of the tax package is the introduction of a tax exemption regime for Australian (only) ship operators, which delivers an effective tax rate of zero on the qualifying elements of corporate income tax. This will ensure that they are competitive with foreign owned and subsidized shipping. The tax exemption will offer an inclusive approach to defining those activities that qualify for the tax exemption, ensuring Australia's tax regime is competitive with the UK, Singapore and other jurisdictions. To get the benefit of this tax exemption, Australian shipping companies will have to make a 10 year "lock in" commitment to being Australian registered ships and meeting Australian maritime safety conditions. Access to the tax exemption is also contingent on meeting a minimum training requirement; ensuring that industry plays its part in securing a stable maritime skills base.

Other tax reforms for Australian shipping include:

- ▶ Reductions/concessions for Australian shipowners around depreciation and CGT for "taxable" (non-exemption) vessels.
- ▶ The Commissioner of Taxation's effective life for vessels (i.e., the depreciation period) will be reduced from 20 years to 10 years. Income tax rollover relief will be

available to defer the gain or profit on the sale of an old vessel that is replaced by a new vessel.

- ▶ An exemption from royalty withholding tax for bareboat charters to Australian lessees. We expect this exemption will only apply to vessels which are Australian flagged and crewed and meet the safety and training conditions.
- ▶ A seafarer's tax concession for Australian employers (by way of a refundable tax credit) where their employees spend at least 91 days on international voyages on an eligible vessel. The design of this concession as a refundable tax credit payable to the employer will raise interesting compliance issues.

Consistent with the Australian Government's objectives to increase the size of the national fleet, registration on the Australian primary or international shipping register will be a prerequisite for access to these tax incentives.

The changes, once introduced, are proposed to be effective from 1 July 2012.

Australian Tax Desk - Michael Anderson (*New York*)

International Tax Services - David Burns, Rachel Charles and Colin Jones (*Sydney*); Chad Dixon and Mathew Chamberlain (*Perth*); Paul Korganow (*Melbourne*)

## Australia releases draft legislation for extension of Petroleum Resource Rent Tax

The Australian Treasury on 26 August 2011 released for public comment the exposure draft legislation for the extension of the Petroleum Resource Rent Tax (PRRT).

The exposure draft legislation is based on, and generally consistent with, the recommendations provided by the industry inclusive Policy Transition Group (PTG) on 21 December 2010. As expected, the exposure draft legislation seeks to extend the current PRRT regime to oil and gas production on the North West Shelf Project and onshore oil and gas production, including coal seam gas (CSG) and oil shale from 1 July 2012.

However, despite incorporating many of the policies and recommendations of the PTG, some recommendations have not been implemented and there are issues that require further clarification.

There is no de minimis test in the law, meaning all oil and gas operations will be affected by the law, regardless of their scale of operations.

## Changes at a glance

<i>New PRRT law</i>	<i>Current PRRT law</i>
Applies to all Australian onshore and offshore oil and gas projects, including CSG and oil shale projects.	Covers only offshore petroleum projects as defined in the Offshore Petroleum and Greenhouse Gas Storage Act 2006.
Applies to the North West Shelf Project. Projects in the Joint Petroleum Development Area remain excluded.	Does not apply to the North West Shelf Project or projects in the Joint Petroleum Development Area.
The definition of petroleum is amended to include oil shale and excludes taxable resources to which the Minerals Resource Rent Tax applies.	Petroleum has the same meaning as in the Offshore Petroleum and Greenhouse Gas Storage Act 2006.
<p>The Resources Minister retains the authority to combine projects, with this authority now extending to onshore projects.</p> <p>In deciding whether projects should be combined, the Minister will consider different factors depending on whether the projects are onshore or offshore.</p> <p>Offshore projects are assessed against the same criteria as those in the current law. For onshore projects, the degree of their downstream integration is considered; however their geological, geophysical and geochemical relationship is not relevant.</p>	<p>The Resources Minister may, in certain circumstances, combine petroleum projects into a single project for PRRT purposes.</p> <p>Broadly, the combination is based on whether the following are sufficiently related:</p> <ul style="list-style-type: none"> <li>▶ The respective operations, facilities and other things that comprise the petroleum project</li> <li>▶ The persons by whom or on whose behalf the operations, facilities and other things referred to in paragraph (a) are being carried on</li> <li>▶ The geological, geophysical, geochemical and other features of the projects</li> </ul>
PRRT applies to all revenue generated from services and incidental products that were recovered, extracted or produced in carrying on a petroleum project.	PRRT does not apply to non-petroleum services and products that have been recovered, extracted or produced in carrying on a petroleum project.
Tolling receipts are assessable prior to the commencement of a petroleum project.	The law does not allow assessable tolling receipts to be derived prior to the commencement of a petroleum project.
<p>North West Shelf and onshore petroleum projects that were in existence at 2 May 2010 and transition to the PRRT on 1 July 2012, will receive additional deductible amounts. These will be either in the form of a starting base amount or by taking account of project expenditures incurred prior to 1 July 2012 via the look back approach.</p> <p>Transitioning projects can elect to apply either a market value or book value approach to determining the starting base amount.</p>	There is no equivalent under the current law.
Expenditures incurred in relation to operations and facilities that are carried on or provided for an environmental purpose (or related services) will be deductible as general or exploration expenditure.	Deductibility of environmental expenditure is not explicit in the current law.
Resource tax expenditures (for example State and Federal royalties and excise) are creditable (on a deduction equivalent basis) against assessable receipts.	Not applicable.
Payments made by way of compensation to native title holders, registered native title claimants and persons who hold rights (under a relevant Australian law) that relate to petroleum projects are deductible.	There are no specific references to native title deductions under the current law.

Taxpayers affected by these new measures should consider seeking advice to determine the impact of the PRRT exposure draft legislation on their projects and to prepare a transition and implementation strategy.

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## Canada

### R&D expert panel issues final report

In the fall 2010, Canada's federal government established an independent expert panel to lead a review of federal support for R&D. The six-member panel was asked to oversee an assessment of key programs within the government's portfolio of initiatives in support of R&D. On 17 October 2011, the panel released its final report, containing six basic recommendations.

#### Program effectiveness

Create an Industrial Research and Innovation Council, with a clear business innovation mandate, and enhance the impact of programs through consolidation.

### Program mix and design

Simplify the SR&ED tax credit benefiting small and medium-sized Canadian-controlled private corporations (CCPCs) by basing it on labor-related costs only. Increase the rate to compensate for the smaller cost base while decreasing the refundable portion of the credit over time.

### Public sector procurement

Make the encouragement of innovation in the Canadian economy a stated objective of procurement policies and programs.

### Public-private research collaboration

Charge the National Research Council with developing a plan for each of its existing institutes and major business units that would require their evolution over the next five years. Transfer the Industrial Research Assistance Program to the proposed Industrial Research and Innovation Council.

### Finance growth of innovative businesses

Direct the Business Development Bank of Canada to allocate a larger proportion of its portfolio to start-up stage financing and provide new capital to support later-stage funds.

### Establish whole-of-government leadership

Identify a federal minister responsible for innovation.

The recommendations to combine programs where appropriate and to eliminate small-scale plans should be welcome news to all R&D performers. The current environment, with more than 60 programs, has made it challenging for companies to understand and pursue the most relevant sources of funding. Various government departments will need to work together to consider the implementation of the recommendations. It is possible that the federal government could take some steps in its 2012 budget.

National Tax - Susan Bishop (*Toronto North - Thornhill*)

## Hong Kong

### Hong Kong considers deductibility of outsourced R&D expenses

At their annual 2011 meeting, representatives of Hong Kong's Inland Revenue Department (IRD) and the Hong Kong Institute of Certified Public Accountants (HKICPA) recently discussed the tax treatment of outsourced research and development (R&D) activities, which potentially produces a loss of deductible expenses to Hong Kong entities.



The question arose whether a payor could claim a deduction on relevant expenditures incurred by appointing an unapproved R&D service provider to carry out related R&D for the payor who provides instructions and guidelines. The nature of the service arrangements is a contract R&D, resulting in the payor retaining all rights associated with the R&D. In addition, any future income arising from the R&D will be fully taxable to the payor in Hong Kong.

The basis of the claim for a Hong Kong taxpayer is that even though the R&D activities are outsourced, the taxpayer still incurs the expenditure to develop intangible property that will produce future taxable income.

The IRD however took a different view and said that the expenditure in the law refers only to one incurred

directly by the taxpayer through carrying on in-house R&D activities. This interpretation precludes payments made to an outside service provider unless the service provider is an approved research institute. The IRD added that where a minor part of the R&D activities was sub-contracted out, e.g., certain laboratory tests, the overall R&D activities may be disregarded when determining whether the overall R&D activities are treated as being undertaken by a taxpayer. But such a determination is based on a facts and circumstances test.

Although whether R&D activities under a cost sharing arrangement would be regarded as an in-house R&D was not specifically addressed in the meeting, the deductibility of costs incurred under a cost sharing arrangement may

depend on contractual terms and relationships among the parties to the arrangement.

The affect of the IRD's strict interpretation of deductible R&D on taxpayers is not certain, but if there is a contract R&D arrangement in place, at a minimum, the taxpayer may lose its ability to make a future claim for a taxable deduction on payments made to a contract R&D provider. Consultation with a tax advisor is therefore strongly recommended before deciding whether to claim the deduction.

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# Hungary

## Hungarian government submits 2012 tax bill to Parliament

The Hungarian Government has submitted its 2012 tax bill to Parliament. Ernst & Young expects that the bill will be passed later than in previous years, at the end of November 2011. Note, however, that the proposals in the bill may be amended on several points before they are accepted.

The 2012 tax package includes an unusually large number of changes, even as compared to previous years. The changes will affect all businesses, either positively or negatively. Therefore, it is crucial that businesses and tax professionals have a clear view of the new rules as these create new burdens, new risks and new opportunities. The financial effects of these changes also will need to be taken into account when making business plans for 2012.

The following are some of the more important corporate tax changes in the tax bill.

### No uniform 10% corporate income tax rate from 2013

In contrast to current legislation which provides the cancellation of the 19% corporate income tax rate on tax bases exceeding HUF 500 million from 2013, the amendment proposes keeping it. Therefore, the corporate income tax rate will remain

10% up to the first HUF 500 million of the tax base and 19% for the exceeding portion.

### Limitation of loss carry forward

Based on the amendment, losses carried forward from previous years can be used only up to 50% of the tax base. In addition, there is no possibility for loss carry forward under the following scenarios:

- ▶ In the event of a corporate transformation, the legal successor is entitled to use the losses of the legal predecessor only if the majority shareholder in the legal successor was also a majority shareholder in the legal predecessor, or the legal successor continues the legal predecessors' activities for two years without any significant changes. The amendment specifically lists what it considers a significant change in the activity: major changes in the services provided, goods sold, assets managed, markets served, clients served, also including scenarios where the trading, manufacturing or service providing activity is replaced by investment (asset management) activities.
- ▶ In the event of an acquisition, the losses carried forward by the target may not be used if the company acquiring a majority shareholding in the target as a result of the acquisition was not a shareholder of the target throughout the preceding two years.

### R&D related changes

A definition of a company's own R&D activities will be introduced in the corporate income tax act. According to the proposed definition, a company's own R&D is:

- ▶ The R&D activity performed with the company's own assets and personnel, for its own benefit and at its own risk, if the result of the activity is used by the company.

A further proposed R&D related change concerns the R&D tax. Currently, it is possible to deduct the direct costs of the company's own R&D activity as well as the costs of certain purchased R&D services from the annual R&D tax liability. This deduction will be cancelled.

### Simplifications in relation to reported participations

If a shareholding is already reported to the tax authority, further reporting will be necessary only if the proportion of the shares held increases. According to interpretation of current legislation, further reporting is required if the value of the participation (but not the proportion of the shareholding) increases. The deadline for reporting will be increased from 30 days to 60 days.

### New tax benefits in relation to intangible assets

Similar to the rules for reported participation, it will be possible to report the acquisition of royalty

generating intangible assets (intellectual property, pecuniary rights), to the tax authority within 60 days of the acquisition. If the reported intangible assets are sold or disposed of after a holding period of at least one year, the gain on the sale is not taxable.

However, any losses are not deductible. If an intangible asset which is not reported is sold, the gain on the sale is not taxable if this gain is used to purchase further, royalty generating intangibles within four years. To apply this benefit, the taxpayer must create a tied-up reserve for the amount of the gain. The rules relating to the release of the tied-up reserve are the same as those relating to the development reserve.

### **Thin capitalization rules to be applicable on a net basis; thin capitalization in relation to non-interest bearing liabilities**

Based on the proposed amendment, when calculating thin capitalization, it will be possible to deduct from the amount of debt the amount of receivables that are lent further. Thin capitalization rules will be extended to non-interest bearing liabilities if a transfer pricing adjustment has been applied to them. Therefore, when calculating thin capitalization, not only interest accounted for in the books but also interest imputed as a result of transfer pricing adjustments must be taken into account.

### **Rules on accounting for expenses in relation to CFCs will become stricter**

The current rules provide that costs and expenses accounted for in relation to consideration paid to CFCs qualify as business expenses only if the business purpose is proved by the taxpayer. In addition to this, the amendment proposes that the taxpayer should prepare detailed documentation to support each of these transactions. The amendment includes detailed rules as to the content of the required documentation.

Ernst & Young will provide more details as the legislation progresses.

International Tax Services - Botond Rencz (*Budapest*)

## **India**

### **Delhi Tribunal rules on transfer pricing for procurement services company**

The Delhi Income Tax Appellate Tribunal (Tribunal) in the case of *Li & Fung (India) Private Limited* (Taxpayer) ruled on the transfer pricing for a procurement services company.

The Taxpayer is part of Li & Fung Group, which has a worldwide network in export trading for the sale of finished products, The Associated Enterprise (AE) received

remuneration from uncontrolled customers at 5 percent of the "FOB value" of exports of the sourced products. For the provision of services, the Taxpayer was remunerated on an operating cost plus 5% basis. In this case, The Tribunal held that as the Taxpayer had performed all the critical functions pertaining to sourcing of finished products sold by the AE, had developed intangibles over a period of time and had a location advantage, remuneration based on a cost plus mark up was not appropriate.

The Tribunal upheld the approach adopted by the Transfer Pricing Officer (TPO) and confirmed that with regard to the facts of the case, the Taxpayer should earn a remuneration based on a percentage of FOB value of exports to end customers. The Tribunal accordingly ruled that 80% of the 5% commission on FOB value of goods earned by the Taxpayer's Associated Enterprise from uncontrolled customers should be allocated to the Taxpayer.

The Tribunal concluded the Taxpayer had performed all the critical functions and that the majority of work related to the exports was undertaken by the Taxpayer itself. The Taxpayer had developed technical capacity and owned manpower which developed intangibles to perform all the critical functions and these unique intangibles had been developed over the years. As the AE did not have the required

capacity to execute the work and given the functions performed and intangibles developed by the Taxpayer, the Tribunal held that cost plus a mark-up could not be considered as arm's length.

The Tribunal rejected the Taxpayer's claim that location savings were attributable to end customers and concluded that the AE has also been able to retain business because the Taxpayer had a location advantage to procure low cost goods. Accordingly,

the location advantage needed to be considered while remunerating the Taxpayer.

Arm's length transfer prices for intra-group services have become one of the critical transfer pricing issues in India. This ruling addresses transfer pricing issues arising from provision of intra-group procurement services. Often multinational enterprises utilize procurement companies to optimize vendor portfolios, to bundle demand or to standardize procurement

procedures. Under transfer pricing principles, affiliates may be entitled to "non-routine" profits if they perform important functions, assume significant risks and deploy valuable intangible assets. The ruling reinforces that a careful review of these factors is necessary for determining an appropriate transfer pricing model. The ruling however does not provide clear guidance on what kind of functions, risks and unique intangibles related to sourcing functions may give rise to non-routine procurement benefits.

While the ruling raises the question on relevance of location savings/ location specific advantages in transfer pricing, it does not lay down an analytical framework to evaluate the existence of location savings and other location specific advantages, quantify them and to whom they should be attributed under arm's length conditions.

In light of the present ruling, multinational enterprises with Indian affiliates should review their intra-group arrangements relating to intra-group services for India and assess the impact the ruling could have on their transfer pricing policies.

Transfer Pricing - Vijay Iyer and Rajendra Nayak (*Bangalore*)



# Mexico

## IETU tax credit for maquiladoras extended

The tax credit against Mexico's flat rate business tax (IETU) granted to maquiladoras (companies operating under the IMMEX regime) by the 2007 Calderon Decree, has been officially extended.

This extension was issued on 12 October 2011, and grants a two-year extension through 31 December 2013. Notably, the extension adds certain requirements that must be met in order to be eligible for the Calderon Decree. Specifically, starting on 1 January 2012, maquiladoras may benefit from the IETU tax credit only if the following conditions are met:

- ▶ Submission of applicable monthly and yearly federal tax returns, the taxpayer's audited financial statements, as well as official statements of operations with third parties (DIOT) and of manufacturers, maquiladoras, and exportation services entities (DIEMSE), pursuant to the Mexican legislation;
- ▶ The maquiladora has no tax deficiencies assessed by the Mexican authorities;
- ▶ The maquiladora must hold an active Federal Taxpayer Registry (RFC) and all information provided to the Mexican authorities for purposes of said Registry must be certain and exact;

- ▶ Fulfillment of several customs and international trade obligations already required by the IMMEX Decree, such as minimal yearly exportation of US \$500,000 or 10% of total sales, sole temporary importation of sensitive goods authorized by the Mexican authorities for the maquiladora's IMMEX program, destination and storage of temporarily imported goods for the purposes and in the locations authorized in said program, among others;

- ▶ Holding the corresponding supporting documentation of customs and international trade operations of the maquiladora;
- ▶ Submission of tax and customs compliance documentation and information, as required by the Mexican authorities; and
- ▶ Indication of names and addresses of foreign suppliers, producers, or buyers of goods in the corresponding invoices and customs declarations.

Failure to comply with any of the aforementioned conditions would disallow the application of the IETU tax credit.

To the extent the credit is applicable, maquiladoras can take this tax credit against their IETU liability for an amount equal to the result obtained from subtracting from the sum of income tax and IETU the product of multiplying 17.5% by the maquiladora's taxable income (i.e., its income tax base).

As a result, the maximum effective tax rate for maquiladoras should be the 17.5% IETU tax rate applied to the income tax base.

Latin American Business Center - Michael Becka (*Dallas*)

International Tax Services - Koen van 't Hek and Rocio Mejia (*Mexico City*)

# Spain

## Spain, Switzerland sign tax protocol amending treaty

Switzerland and Spain on 27 July 2011 signed a new protocol to amend the 1966 double tax treaty (treaty) and 2006 protocol that are currently in force. A version of the new protocol has been released by the Swiss Authorities and can be found on specialized web pages, although there is no official confirmation of whether it has been ratified or the date that it will enter into force. The comments provided hereunder must therefore be confirmed in the light of the official text, once it is released through official channels.

The amended text introduces two changes that are worth highlighting:

- ▶ Changes to the relief from international double taxation on income received by Spanish companies from their Swiss subsidiaries; and
- ▶ The new treaty allows for the taxation of capital gains derived from the transfer of shares in an

entity which is directly or indirectly mainly composed of real property in the other State.

### **Changes to the method for the avoidance of double taxation on dividends received by Spanish residents from Swiss entities**

The treaty provides that an entity that is resident in one of the contracting States (e.g., Spain) and derives dividends from a company

resident in Switzerland, shall be entitled, for purposes of the tax with respect to such dividends, to the same relief which would be granted to that entity if the company paying the dividends were a resident of Spain.

Under Spanish domestic rules dividends received by a Spanish entity from a Spanish resident company enjoy a full tax credit (equal to an

exemption) if the entity receiving the dividend has held at least 5% of the entity paying the dividend for a period of one year. However, dividends deriving from a foreign entity are exempt only if all the requirements for the Spanish participation exemption regime are fulfilled. These latter requirements are more complex and more difficult to comply with.

## **New protocol to Russia-Luxembourg tax treaty**

Following the signing of a protocol to the Russia-Cyprus Double Tax Treaty, the international business community was informed that the Russian Ministry of Finance would be seeking similar amendments to other double tax treaties, in particular, those concluded with Switzerland and Luxembourg.

Government Regulation No. 1410-r of 11 August 2011 approved a draft protocol introducing amendments to the double tax treaty between Russia and Luxembourg. The final text of the Protocol will depend on the outcome of further negotiations but the most important changes mentioned in the draft are likely to remain unchanged.

The most significant positive development to be introduced by the Protocol is the reduction of the minimum rate of taxation of dividends at source from 10% to 5%, a rate to be applicable if the beneficial owner of the dividends holds at least 10% of the capital of the company paying the dividends and has invested not less than EUR 80,000 in the company.

The criteria for the minimum rate to apply at present, is a 30% minimum holding and a minimum investment of ECU 75,000 or an equivalent amount in local currency.

Investors have generally refrained from using Luxembourg as a holding jurisdiction for Russian investments, primarily due to the higher withholding tax rate on dividends vis-à-vis, for example, holding companies established in the Netherlands, Switzerland and Cyprus. In this respect, the reduced 5% withholding tax rate will make Luxembourg better able to compete with those jurisdictions more commonly used by international groups to invest in Russian companies.

Under the Protocol, income of a resident of a contracting state sourced in another contracting state and not specifically mentioned in the Russia-Luxembourg double tax treaty may be taxed at source (Clause 3 Article 21 of the Treaty). The usual default rule in Russia's tax treaties is that such "other" income is exempt from taxation at source. However, some treaties, e.g., those with Belgium, Spain, and Ukraine, and the model tax treaty adopted by Russia in 2010 allow Russia to tax income not exempt under any provision besides the "Other Income" article. In practice this is unlikely to be an issue for most international investors; nevertheless, care should be taken when structuring income flows which do not fall into any specific income category dealt with in the text of the treaty.

In practice, the provision of the treaty implies that dividend income received by a Spanish parent from a Swiss subsidiary are exempt in Spain, without needing to satisfy the conditions of the Spanish participation exemption regime.

The new wording that is proposed for Article 23 (Method for the elimination of double taxation) eliminates this provision in respect of dividends received by Spanish entities from their Swiss subsidiaries, while such method continues to apply in respect of dividends received by Swiss entities from their Spanish subsidiaries.

### **Capital gains tax on shares of real estate companies**

The treaty does not allow the state of source to impose tax on capital gains deriving from portfolio investments. Article 13, paragraph 3, of the proposed new wording enables the source country to impose tax on capital gains deriving from the transfer of shares (or comparable

interest) of an entity when more than 50% of their value derives, directly or indirectly, from real estate located in such country.

Two significant exceptions are provided to the capital gains tax on the disposal of shares of real estate companies:

- ▶ Transfer of shares quoted on a Swiss or Spanish stock exchange (or any other stock exchange as may be agreed between the competent authorities);
- ▶ Transfer of shares of a company if the immovable property is used by this company for its own industrial activity.

Most of the other changes to the existing treaty and protocol aim to align the treaty to the OECD's standards. This is the case, for instance, of the proposed amendments to Article 5 (Permanent establishment), Article 9 (Associated enterprises), Article 25 (Mutual Agreement Procedure) and Article 25bis (Exchange of Information).

Multinational groups with cross-border investment structures that rely on the current Spain-Switzerland treaty's method to avoid double taxation on dividend income received by their Spanish companies from Swiss subsidiaries need to ensure that this dividend income complies with Spanish participation exemption regime requirements or revisit their holding structure before the new wording comes into effect.

The changes are also relevant to Swiss groups planning to dispose of their real estate investments in Spain. Gains from such disposition will be subject to Spanish capital gains tax if the proposed wording comes into force, while the current treaty may provide an opportunity to reorganize investments in Spanish real estate without adverse tax consequences.

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