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Private Equity and European Tax Developments

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The European response to the financial crisis and the budget difficulties of certain European Union ("EU") Member States has included significant tax reforms, many directly or indirectly impacting private equity groups operating in the EU. These changes include revisions to rules on thin capitalization and the deductibility of interest payments. Efforts are also underway to harmonize EU tax rules, in particular between France and Germany.

This memorandum reviews the main developments implemented in 2011 and, in some cases, anticipated for 2012 to the corporate tax laws and certain personal tax laws of the EU and the major EU Member States (*i.e.*, France, Germany, Italy and the U.K.) that may be of interest for the private equity industry.

I. European Union

Noteworthy EU tax developments include proposals of the European Commission (the "Commission") to extend the scope of the interest and royalties directive, to strengthen measures against double taxation and double non-taxation, to introduce a financial transaction tax ("FTT") and to establish a common consolidated tax base ("CCTB").

1. Taxation of Interest: Proposal for a Revised Directive 2003/49/EC

On November 11, 2011, the Commission published a proposal to revise Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. The directive exempts certain intra-group interest and royalty payments from withholding tax. The Commission proposes, among other things, to widen the scope of the directive by reducing the currently applicable direct 25% minimum holding requirement to a direct or indirect 10% threshold and by extending the list of eligible companies in line with the EU Parent-Subsidiary Directive.

2. Taxation of Dividends: Commission Communication on EU Double Taxation

On November 11, 2011, the European Commission published a communication regarding double taxation in the EU. Among other things, the Commission announced that in 2012 it plans to present measures on cross-border double taxation of dividends paid to portfolio investors. The Commission also intends to address various other double taxation issues, including transfer pricing issues.

3. Anti-Avoidance: Commission Consultation Concerning Double Non-Taxation

Moreover, the European Commission announced on November 11, 2011, that it intends to launch a consultation on so-called "double non-taxation." The purpose of the consultation is to establish the full scale of this phenomenon and to identify and develop an appropriate policy response. In the long run, this initiative might have an impact on certain tax structures (*e.g.*, double-dip structures).

4. Proposal for an FTT

The Commission's proposal for an EU-wide FTT, published on September 28, 2011, could apply to activities of private equity firms, including investments in portfolio companies and subscriptions for fund interests.

With regard to investments, an acquisition of shares from an EU seller would generally subject the fund to an FTT charge of 0.1% of the consideration. If the seller is an EU financial institution (including an EU private equity fund), it too may be subject to a 0.1% FTT charge. With regard to subscriptions, an issuance of fund units to an EU investor may trigger a 0.1% FTT charge, with a potential second charge if the EU investor is a financial institution.

An exemption may be available where the target company (in the case of an acquisition) or the fund (in the case of a subscription) has no connection with the EU. The exemption requires proof that "there is no link between the economic substance of the transaction and the territory of any Member State". No guidance has been given about what this means, so the scope of the exemption is unclear.

Additional incidences of the tax may also apply to related transactions (*e.g.*, if an acquisition is leveraged and derivatives are entered into for funding purposes), but no charge would apply in respect of a subscription for shares in a portfolio company or other form of capital injection. Note also that the 0.1% rate is only a minimum. Member States may choose to impose a higher rate.

The Commission proposed an effective date of January 1, 2014. However, the proposal must be approved by all 27 Member States, and some Member States, including the UK, have expressed their opposition to the FTT unless it is introduced at a global level. One possibility that has been raised is the introduction of an FTT at a Eurozone level.

French President Nicolas Sarkozy announced on January 9, 2012, that France will unilaterally implement an FTT, which could be included in a revised 2012 budget act to be discussed by the French Parliament in the coming months. The key features of the French FTT are still unknown, but further details should be released later this month. However, French Minister of Finance François Baroin indicated that the French FTT should have a low rate but a broad base, and should replicate as much as possible the features of the EU-wide FTT proposed by the Commission.

5. Common Consolidated Tax Base

In March 2011, the Commission presented a proposal for an EU-wide CCTB. Under this proposal, corporations would have to follow only one set of rules when determining their tax base and file only one tax return for their operations in the EU. Although the EU-wide proposal is unlikely to lead to legislation in the foreseeable future, more limited harmonization initiatives are likely. For example, Germany has agreed with France to bilaterally align their corporate tax systems with the goal of implementing a single corporate tax system by 2013.

II. France

Further to the broadening of the French thin capitalization rules adopted in December 2010 as part of the 2011 Finance Law, in 2011 the French legislator introduced limitations on the use of tax losses, new restrictions on the deductibility of interest expenses on acquisition debt as well as a new corporate income tax surcharge.

1. Taxation of Losses: Amendments to Loss Carry-back and Carry-forward Rules

The Second Amended Finance Law for 2011, adopted in September 2011, imposes strict limits on the right to carry tax losses back or forward, with a view to aligning the French tax rules with the German tax rules.

Under the formerly applicable rules, French tax losses could be carried back over the previous three fiscal years or carried forward indefinitely. Under the new rules:

- The right to carry back losses is limited to the immediately preceding year and a maximum of €1 million; and
- The right to use tax loss carry-forwards against the profits of a given tax year is capped at € 1 million plus 60% of the portion of the profits of such tax year in excess of € 1 million. The remaining losses may be carried forward, subject to the same limitations.

These new rules apply to fiscal years ending on or after September 21, 2011 (including outstanding losses generated in prior fiscal years).

2. Taxation of Interest: New Restriction on the Deductibility of Interest on Acquisition Debt ("Carrez Amendment")

The Fourth Amended Finance Law for 2011 adopted on December 21, 2011 introduced a new restriction on the deductibility of financial expenses incurred by a company in connection with debt aimed at financing the acquisition of a participating interest, where the borrower is not in a position to demonstrate:

(i) that the decisions relating to such shareholding are effectively taken by the borrower or by a company established in France that controls the borrower or is directly controlled by it; and

(ii) where a control or an influence is exercised over the target company, that such control or influence is exercised by the borrower or by a company established in France that controls the borrower or is directly controlled by it.

Such demonstration has to be made:

(i) for shareholdings acquired during a fiscal year beginning on or after January 1, 2012, in respect of the fiscal year(s) covering the twelve-month period following the acquisition of the shares;

(ii) for shareholdings acquired during a fiscal year beginning before January 1, 2012, in respect of the first fiscal year beginning after such date.[1]

This restriction does not apply if one of the following conditions is met:

(i) the purchaser can demonstrate that the acquisition was not financed by debt in respect of which the purchaser or a group company bears interest expenses,

(ii) the purchaser can demonstrate that the gearing ratio of the group to which it belongs is equal or greater than its own gearing ratio; or

(iii) the total value of the participating interests held by the company at the end of the fiscal year represents less than €1 million.

Where the restriction applies, the amount of the disallowed financial expenses in respect of a given fiscal year is equal to a fraction of the aggregate amount of financial expenses incurred by the borrower during such fiscal year, in proportion to the ratio between the acquisition price of the shares and the average amount of debt of the borrower during such fiscal year.

The reinstatement obligation applies to the fiscal year in respect of which the above-mentioned demonstration has to be made and to fiscal years closed until the end of the eighth year following the year of the acquisition.

Specific provisions apply in case of mergers and other reorganizations.

This provision applies to fiscal years beginning on or after January 1, 2012.

3. <u>Corporate Income Tax Surcharge</u>

As part of the measures aimed at reducing the public debt, the Fourth Amended Finance Law for 2011 introduced an exceptional corporate income tax surcharge that applies to companies with an annual turnover in excess of €250 million. For companies which belong to a consolidated tax group, the €250 million threshold is assessed at group level.

The new surcharge is equal to 5% of the gross corporate income tax before deduction of any available tax receivables (e.g. those resulting from the carry back of tax losses), tax

[1] Strictly speaking, for companies with a fiscal year coinciding with the calendar year, the first fiscal year concerned by these provisions would be 2013. The French tax authorities may, however, consider that these provisions should apply to the 2012 fiscal year.

reductions or tax credits. As a result, the effective corporate income tax rate for companies impacted by this surcharge will be 36.1%.

The surcharge applies to fiscal years closed between December 31, 2011 and December 30, 2013 (inclusive). For companies with a fiscal year coinciding with the calendar year, it will therefore apply to the 2011 and 2012 fiscal years.

4. 2012 anticipated developments

2012 being a year of presidential and legislative elections in France, the tax measures that will be adopted in 2012 depend on the outcome of such elections. In this respect, it should be noted that, as part of the debate on the 2012 Finance Law and of the Fourth Amended Finance Law for 2012, members of the Socialist Party proposed several amendments, which aimed at further restricting the deduction of interest expenses but which were ultimately rejected.

III. Germany

Anticipated developments in Germany include changes to the taxation of portfolio dividends and the German anti-treaty/directive shopping legislation required to comply with EU law. Changes to the taxation of losses and the German rules for group taxation are under discussion, although revenue concerns are likely to interfere with a prompt tax reform.

1. Taxation of Dividends: Withholding Tax on Portfolio Dividends

Dividends paid by German companies to foreign shareholders that do not meet the 10% minimum participation threshold of the EU Parent-Subsidiary Directive (*i.e.*, portfolio dividends) are generally subject to a 26.375% withholding tax. A foreign corporate shareholder may qualify for a partial withholding tax refund reducing the effective rate to 15.825%. By contrast, the withholding tax on dividends paid to domestic corporate shareholders is almost entirely refunded. The European Court of Justice (the "ECJ") decided on October 20, 2011 that this unequal tax treatment of portfolio dividends infringes the free movement of capital.

It is unclear how the German legislator will react to the ECJ's decision (*e.g.*, disallowing the withholding tax refund for domestic corporations or allowing the refund for foreign corporations). Based on the ECJ decision, non-German corporations should consider applying for refunds of withholding tax on portfolio dividends received during the last four years.

2. Anti-Avoidance: German Anti-Treaty/Directive Shopping Rule

Under the EU Parent-Subsidiary Directive, a German company can pay dividends to an EU parent company free of withholding tax.[2] Non-German private equity funds typically invest in German portfolio companies through Luxembourg holding companies.

The German anti-treaty shopping provision seeks to prevent the abuse of treaties or the EU Parent-Subsidiary Directive through the interposition of inactive holding companies in the EU or other treaty countries. The provision was tightened in 2007 to require *inter alia* that the EU parent company or other treaty resident company derive at least 10% of its gross revenue from active business. At the request of the Commission, this 10% active income test will now be abolished. Henceforth, the payment for which the EU parent company claims the exemption (*e.g.*, the dividend) must constitute revenue from active business (unless there are economic or other *bona fide* reasons for interposing the non-resident corporation with respect to revenue from passive business and such interposed corporation has substance). If, as expected, the Commission will close infringement proceedings against Germany following the revision of the German anti-treaty/directive shopping provision, this could indicate that the Commission considers the revised test for interposed EU holding companies to be in compliance with EU law.

The new rule will not necessarily make it easier for Luxembourg holding companies to claim benefits under a treaty or the EU Parent-Subsidiary Directive. The Luxembourg holding company will usually have to demonstrate that it is an active management holding and not merely a passive finance holding (*i.e.*, it will have to actually exercise a managerial influence on its participations and not merely exercise its shareholder rights).

3. Taxation of Losses

The German Ministry of Finance recently issued a 140-page report (the "Report") on a proposed German business tax reform. The Report has been widely criticized as being too hesitant and overstressing revenue neutrality. As regards tax losses, the most important proposals in the Report are:

- *Deductibility of "final losses" in other EU countries:* According to a 2010 German court decision, a German taxpayer may deduct losses from operations in other EU countries if the losses are "final", *i.e.*, can no longer be used in the other EU country. This decision is seen by the tax authorities as an overly taxpayer-friendly interpretation of ECJ case law. The report proposes to limit the application of the decision by narrowly interpreting "final losses". Losses would only be "final" if the taxpayer and related persons permanently cease to derive income in the other EU country.

- *Mitigation of loss limitation rules:* The so-called minimum taxation rule limits the use of loss carry-forwards to offset positive income. If the annual income ex-

[2] In addition, many treaties limit Germany's right to withhold tax on royalties, dividends or certain types of interest paid to residents of such treaty-countries.

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ceeds EUR 1 million, only 60% of the exceeding income can be offset against loss carry-forwards; the remaining 40% are subject to tax. The Report concludes that repeal or phase out of the minimum taxation rule would have a material adverse effect on tax revenue. The Report notes, however, that if the government was willing to accept certain losses in revenue and decided to repeal or phase out the minimum taxation rule, revenue losses could (and should) be limited by simultaneously introducing an expiration date for loss carry-forwards.

- *Ownership changes:* Another loss limitation rule concerns changes in the direct or indirect shareholding of a loss corporation that may result in the partial or complete forfeiture of current losses, loss carry-forwards and certain other tax attributes. The rule is often criticized as being too broad. Moreover, the constitutionality of the rule is currently challenged. Nevertheless, the report recommends retaining the rule due to the losses in revenue to be expected as a result of any change.

4. Group Taxation: Cross-border Tax Groups

The Federal Fiscal Court recently decided that the anti-discrimination clause of the British-German double taxation agreement generally requires the recognition of a cross-border trade tax group (*Organschaft*) between a British parent and a German subsidiary.[3]

Against this background, it is considered by certain foreign parent companies to conclude with their subsidiaries cross-border profit-and-loss transfer agreements[4] and subsequently claim, on the basis of an anti-discrimination argument (either under a tax treaty or under EU law), the benefits of a cross-border corporate income and trade tax group although German domestic law still requires the group parent to have its place of management in Germany.

However, the German Ministry of Finance announced on December 27, 2011, that it will not apply the aforementioned Federal Fiscal Court decision to any cases other than the decided case (*i.e.*, the matter may have to be litigated again).

The aforementioned Report discusses a reform of the German group taxation and recognizes that the requirement of a profit-and-loss transfer agreement complicates the establishment of tax groups. The Report discusses alternative concepts for group taxation that do not require the conclusion of a profit-and-loss transfer agreement but recommends against these changes because of concern over the potential revenue losses. In particu-

3 A major advantage of a German trade tax group is to avoid the partial disallowance of intra-group interest expense incurred by a German borrower: under the German trade tax rules, the tax-deductibility of interest expense is limited, but there is no corresponding exemption for intra-group interest income. In the case of an Organschaft, however, intra-group interest is disregarded.

4 Under a profit-and-loss transfer agreement, the parent becomes liable for the losses of the subsidiary and the subsidiary has to transfer its profits to the parent. The conclusion of a profit-and-loss transfer agreement is a requirement under the current German Organschaft rules (both for corporate income and trade tax purposes). It is subject to discussion whether this requirement is in line with EU law.

lar, the Report is concerned that dropping the requirement to conclude a profit-and-loss transfer agreement may open the door to cross-border group taxation.

IV. Italy

The Italian government recently approved measures to ease concerns of the European Central Bank and financial markets about Italy's economy. These measures include several tax measures that may have an impact on private equity firms investing in Italy, including the imposition of a 5% withholding tax on intra-group interest payments, a 0.25% registration tax on intra-group guarantees in connection with bond issuances, the introduction of a solidarity tax, an amendment of the rules regarding loss carry-forwards, and a tax-deductible allowance for capital contributions.

1. Taxation of Interest: Withholding Tax on Intra-group Interest Payments

The Italian rules implementing the EU directive on intra-group payments of interest and royalties, were changed and now contemplate a 5% withholding tax, rather than a full exemption, on certain intra-group interest payments in case the lender lacks the beneficial ownership requirement. Such change was effective as of July 6, 2011.

In particular, the 5% withholding tax would be applicable to interest payments made to a qualifying EU lender not meeting the beneficial ownership test but otherwise eligible for the EU directive exemption, if such payments are ultimately used to fund interest payments due on bonds (i) traded on a qualifying regulated market within the EU or the EEA, and (ii) guaranteed by the Italian intra-group borrower or another qualifying group company. In addition, this piece of legislation introduces a 0.25% registration tax on the intra-group guarantee granted in connection with such bond issuances.

These rules follow a recent audit trend whereby the Italian tax administration has been closely scrutinizing financing structures benefiting from the EU intra-group interest exemption, including the fact pattern contemplated in the new set of rules (*i.e.*, indirect bond issuances launched by Italian groups in the international debt markets, typically structured by resorting to an EU-based issuer guaranteed by its Italian parent company, that generally is the recipient of the proceeds raised on the market).

2. Taxation of Losses: Amendments to Loss Carry-forward Rules

The provisions regulating the right to carry forward tax losses for Italian corporate income tax purposes were also amended. The new rules apply to net operating losses ("NOLs") realized as of the 2011 tax period.

Under the rules previously in force, NOLs realized in the first three years of activity of a firm ("Start-up NOLs") could be carried forward without limitation and offset against profits earned in any following years, while NOLs incurred after the initial three-year start-up period could only be carried forward for five years.

Under the amended rules, not only Start-up NOLs but also ordinary NOLs may now be carried forward indefinitely (*i.e.*, the 5 year-period limitation for ordinary NOLs has been

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repealed). However, carried-forward ordinary NOLs can be offset only for an amount equal to 80% of the profits of any given year.

3. New Solidarity Tax and Carried Interest

In the summer of 2011, the Italian Government introduced, *inter alia*, an income tax surcharge (the so-called "solidarity tax") to be applied on income earned by all Italian residents at a 3% rate on any income exceeding Euro 300,000, resulting in the highest marginal rate equal to 46% (plus local surcharges of up to approximately 2.5%). Such surcharge may impact remuneration policies of private equity firms in Italy.

The solidarity tax would apply only for the tax periods 2011-2013. However, the Italian government is empowered to extend its application after 2013 if and to the extent the Italian budget is not balanced at the end of that period. The solidarity tax will be deductible from gross income earned in 2012 and 2013.

The solidarity tax overlaps with the 10% additional tax, which was introduced in 2010, on variable compensation paid to certain executives employed in the financial services sector and later extended to certain top executives of industrial holdings.

4. Deductibility of Capital Contributions

To encourage financing by means of equity rather than debt, the Italian government has recently approved a rule whereby a nominal return on any new equity injections made as of December 31, 2010, shall be deductible from these entities' taxable income as of the 2011 tax period. The nominal return rate would be equal to 3% for the first three years and thereafter set annually by ministerial decree.

V. UK

Although the UK has not generally made tax law changes in response to the financial crisis (other than introducing a bank levy in relation to banks' balance sheets), there have been a number of significant tax developments in 2011 including proposed reforms to the existing "controlled foreign company" or "CFC" regime, new "disguised remuneration" rules, a consultation regarding a statutory residence test for individuals and a recommendation for a general anti-avoidance rule.

1. Anti-Avoidance: CFC Reforms

Since 1984, the UK has had a CFC regime intended to prevent the avoidance of corporation tax by UK companies arranging for income to arise to and be retained by overseas subsidiaries where the tax liability (if any) would be much lower than if the income had arisen in the UK. Broadly, the regime provided for a UK resident company with an interest in the overseas company to be assessed to tax in respect of certain profits of the overseas company. Protection for genuine overseas investment was provided under a range of exemptions.

In November 2010, the UK government proposed reforms to the CFC regime and interim changes were made in Finance Act 2011 in anticipation of full reform in 2012. Part of the draft legislation for the full reform was published on December 6, 2011. It anticipates repeal of the current legislation and its replacement with a new regime which, in general, is favorable to taxpayers compared to the previous regime.

The profits of CFCs that are within the scope of the new rules will be defined using a "gateway". The gateway is designed to specifically identify circumstances where there has been an artificial diversion of UK profits to low tax jurisdictions, and to bring only those profits within the charge. This proportionate approach marks a departure from the current "all or nothing" regime.

As an alternative to the gateway, the regime will also provide entity-level exemptions, such as an exemption for CFCs resident in certain excluded territories and a low profits exemption.

Profits falling within the gateway and not otherwise excluded will be apportioned to the UK and the tax levied on UK resident companies with a 25% assessable interest in the CFC. The CFC charge will be reduced by a credit for any foreign tax attributable to the apportioned profits and by the offset of relevant UK reliefs. The regime will apply to both non-UK resident companies which are controlled from the UK and tax-exempt foreign permanent establishments of UK resident companies.

A special "finance company partial exemption" will be enacted for certain finance company CFCs. This will exempt 75% of the CFC's profits from certain loans. This means that from 2014, when the main rate of UK corporation tax is 23%, the effective tax rate will be only 5.75%. The government is also considering whether additional exemption for finance companies may be appropriate in some circumstances.

The remaining parts of the draft legislation are expected to be published in January 2012 and the new regime will apply, at the earliest, from the summer of this year.

2. Anti-Avoidance: Taxation of Remuneration Provided Through Third Parties

New "disguised remuneration" rules have recently been introduced in the UK to counter the avoidance of employment-related income tax and social security contributions via the use of third parties (such as employee benefit and other trusts).

The legislation is very broad in scope, however, and potentially catches many other arrangements that generally would not be thought of as being for tax avoidance. Any arrangement involving the provision of rewards or recognition or loans in connection with an individual's employment should be carefully reviewed in light of the new rules if made by a party other than the individual's employer.

The broad scope of the rules can be illustrated by the treatment of a loan from a private equity fund to a manager of a portfolio company (for example, to fund a co-investment arrangement). Under the new rules, the fund is likely to be regarded as a third party, and the full amount of the loan may be taxable (and subject to payroll withholding) when

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made, regardless of whether the loan is repayable in full and is otherwise on arm's-length terms. In that case, there would also be no refund of the tax upon repayment of the loan.

It is understood, based on the stated policy objectives behind the new rules, that they are not intended to apply to carried interest. Instead, in this respect, the government announced in 2010 a planned consultation on "geared growth" schemes. Given the broad scope of the disguised remuneration rules, however, and the fact that the geared growth review appears to have slipped from the government's agenda (with no revised launch date currently planned), there is currently some uncertainty with respect to the potential application of the rules to carried interest.

Whether the disguised remuneration rules apply to carried interest, at least as a technical matter even if that is not the intention from a policy perspective, may depend on whether the acquisition of carry occurs on the establishment of a carry partnership, a subsequent transfer of carried interest to an existing or incoming executive or in the context of a simultaneous investment and withdrawal by executives. In the event that a charge technically arises under the new rules in respect of the acquisition of carried interest, the mechanism afforded under the rules providing credit for the amount paid by the executive and/or any general employment earnings charge should neutralize any charge under the disguised remuneration rules to income tax and social security contributions. In any event, the potential application of the new rules to carried interest should be considered on a case by case basis.

3. Statutory Residence Test

Under current UK law, there is no clear definition for when an individual will be regarded as resident in the UK. There is also no clear definition in relation to the related concept of "ordinary residence". This has resulted in an unsatisfactory situation where complicated facts and circumstances for internationally mobile individuals must be interpreted in light of a large body of case law. The result is significant uncertainty in some cases.

The UK government has recently begun a consultation process contemplating the possibility of enacting legislation containing rules to more clearly establish residence (and ordinary residence). It has been proposed that the residence test will center around time spent in the UK, as well as other connecting factors (like family, accommodation and place of work), and would be tailored to apply differently to people leaving the UK and people coming to the UK.

If enacted in the manner proposed in the government's consultation process, the test would conclusively treat individuals as non-resident where, for example, they were not resident in the UK in all of the previous three tax years and they were present in the UK for fewer than 45 days in the tax year in question.

Draft legislation is expected to be published at the time of the 2012 Budget, with the test to be introduced with effect from April 6, 2013.

4. Recommendation for a U.K. General Anti-Avoidance Rule

In November 2011, leading UK tax counsel Graham Aaronson concluded an 11 month independent review on the feasibility of a General Anti-Avoidance Rule ("GAAR") for the UK tax system. Mr. Aaronson's report (which includes illustrative draft legislation) recommends the introduction of a narrowly focused GAAR which initially would apply to the main UK direct taxes – income tax, capital gains tax, corporation tax and petroleum revenue tax.

The illustrative draft GAAR is designed to target only "abnormal arrangements" contrived to achieve an "abusive tax result". Accordingly, it contains a number of safeguards designed to ensure that responsible tax planning is effectively protected. These include explicit protection for:

- 'reasonable tax planning' (which exists "if it can reasonably be regarded as a reasonable exercise of choices of conduct afforded by tax legislation" -- with the burden of proof placed on the UK tax authority); and

- arrangements which are entered into without any intent to achieve an advantageous tax result.

The report also envisages administrative safeguards against abuse of the GAAR, including the publication of statutory guidance as to the GAAR's scope, the introduction of an independent advisory panel, a requirement that any use of the GAAR be authorized by a senior tax official and the introduction of special rules regarding the admissibility of evidence in relation to the GAAR.

If the GAAR applied, the tax result would be determined either by computing the tax which is "reasonable and just" or, in the case of a transaction which has a commercial purpose, by computing the tax as if the parties had entered into hypothetical non-abusive arrangements.

The draft GAAR is only illustrative. If the UK government proceeds, the legislation could be significantly altered before enactment, even if it follows the principles suggested in the report. The UK government will consider the report and respond fully in the 2012 Budget (due to be delivered on March 21, 2012). The government has also announced that it is committed not to introduce a GAAR without further formal public consultation.

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Please do not hesitate to contact Anne-Sophie Coustel in Paris (phone: +33 1 40 74 68 00), Daniel Weyde in Frankfurt (phone: +49 69 97 10 30), Vania Petrella in Rome (phone: +39 06 69 52 22 00) or Richard Sultman in London (phone: +44 207 614 22 00) with any questions you may have on the foregoing.

CLEARY GOTTLIEB STEEN & HAMILTON LLP

Office Locations

NEW YORK
One Liberty Plaza
New York, NY 10006-1470
T: +1 212 225 2000
F: +1 212 225 3999

WASHINGTON
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
T: +1 202 974 1500
F: +1 202 974 1999

PARIS
12, rue de Tilsitt
75008 Paris, France
T: +33 1 40 74 68 00
F: +33 1 40 74 68 88

BRUSSELS
Rue de la Loi 57
1040 Brussels, Belgium
T: +32 2 287 2000
F: +32 2 231 1661

LONDON
City Place House
55 Basinghall Street
London EC2V 5EH, England
T: +44 20 7614 2200
F: +44 20 7600 1698

MOSCOW
Cleary Gottlieb Steen & Hamilton LLC
Paveletskaya Square 2/3
Moscow, Russia 115054
T: +7 495 660 8500
F: +7 495 660 8505

FRANKFURT
Main Tower
Neue Mainzer Strasse 52
60311 Frankfurt am Main, Germany
T: +49 69 97103 0
F: +49 69 97103 199

COLOGNE
Theodor-Heuss-Ring 9
50688 Cologne, Germany
T: +49 221 80040 0
F: +49 221 80040 199

ROME
Piazza di Spagna 15
00187 Rome, Italy
T: +39 06 69 52 21
F: +39 06 69 20 06 65

MILAN
Via San Paolo 7
20121 Milan, Italy
T: +39 02 72 60 81
F: +39 02 86 98 44 40

HONG KONG
Bank of China Tower
One Garden Road
Hong Kong
T: +852 2521 4122
F: +852 2845 9026

BEIJING
Twin Towers – West (23rd Floor)
12 B Jianguomen Wai Da Jie
Chaoyang District
Beijing 100022, China
T: +86 10 5920 1000
F: +86 10 5879 3902

BUENOS AIRES
CGSH International Legal
Services, LLP-
Sucursal Argentina
Avda. Quintana 529, 4to piso
1129 Ciudad Autonoma de Buenos Aires
Argentina
T: +54 11 5556 8900
F: +54 11 5556 8999

SÃO PAULO
Cleary Gottlieb Steen & Hamilton
Consultores em Direito Estrangeiro
Rua Funchal, 418, 13 Andar
São Paulo, SP Brazil 04551-060
T: +55 11 2196 7200
F: +55 11 2196 7299