AP Photo/Nikolas Giakoumidis

Greek riot police watch some of the estimated 30,000 protestors in Athens on March 11; rioters staged a nationwide strike against the government's austerity plan.

Sarkozy in which he hopes to gather support for an aid plan to reduce Greece's borrowing costs.

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India

NEWS ANALYSIS

2010 Budget Increases Uncertainty for International Business

Indian Finance Minister Pranab Mukherjee on February 26 announced the 2010-2011 budget, which proposes to widen the tax brackets for individual taxpayers but offers few benefits for the international business community.

The announcement came amid signs of a recovering economy and a marked reduction in the national deficit. Last year India was one of the few countries to achieve a near 7 percent growth rate despite the financial crisis. With the economic outlook remaining optimistic, the government has decided to pursue the three-pronged objective of pushing the GDP growth rate back to 9 percent levels, ensuring balanced and inclusive development, and improving the quality of governance. Mukherjee said India's economic development has shifted the focus of economic activity to nongovernment actors, ''bringing into sharper focus the role of Government as an enabler.'' Hence, this year's budget attempts to encourage enterprise and creativity in the Indian economy. The government has focused its efforts on encouraging investment in infrastructure, education, and clean technologies and on liberalizing the legal regime governing the financial sector.

There is great enthusiasm on the domestic front over a proposal to widen the existing tax brackets for individual taxpayers. The maximum marginal tax rate would remain at 30 percent. Corporate tax rates would

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also remain at 30 percent for residents and 40 percent for nonresidents. However, the minimum alternate tax is proposed to be increased from 15 percent to 18 percent.

But from the international business community's perspective, the budget provides little. Some of the proposals may even add to the prevailing uncertainty in India's business and investment climate. The Indian tax authorities' recent aggressiveness, whether in relation to withholding taxes or in targeting offshore mergers and acquisitions, has already been a subject of international scrutiny. This article examines the impact of India's new budget proposals on international business with a focus on some of the legal and policy-level issues that have to be addressed by the government.

Direct Taxes Code

With Mukherjee's confirmation that the government intends to implement the Direct Taxes Code (DTC) starting April 1, 2011, the ghost of the draft DTC seems to be very much alive. Released for public comment on August 12, 2009, the draft DTC proposed a number of radical changes to India's tax regime. The DTC in its current form is also fraught with ambiguities and legislative drafting errors that are bound to make conditions more uncertain for foreign investors. (For the draft DTC, see *Doc 2009-18233* or *2009 WTD 154-17*; for prior coverage, see *Doc 2009-18233* or *2009 WTD 154-17*.)

Below is a brief analysis of some of the controversial policy proposals particularly relevant to cross-border business. Many of these proposals may not only face constitutional challenges, but may also fail to conform with principles of customary international law. These aspects and other legislative drafting issues should be carefully examined by an independent committee of experts before the draft DTC is presented to Parliament. Recent news reports suggest that the government is planning to present a new draft of the DTC for limited public review.

GAAR

The proposed general antiavoidance rule framework provides the tax authorities unlimited powers to disregard specific legal entities or individual steps in a series of transactions, to recharacterize and reallocate income between parties, to recharacterize legal instruments used in transactions, and even to disregard provisions of tax treaties signed by India. (For related analysis, see *Tax Notes Int'l*, Feb. 1, 2010, p. 451, *Doc 2010-1385*, or *2010 WTD 20-10*.)

The introduction of the GAAR in India would have the effect of reversing India's time-honored allegiance to form over substance. The Supreme Court of India in its landmark decision in *Azadi Bachao Andolan*, [2003] 263 ITR 706, while upholding the validity of the so-called Mauritius route,[1] made it clear that all individuals may arrange their affairs in a manner that will reduce their overall tax burden. (For related analysis, see *Tax Notes Int'l*, Oct. 5, 2009, p. 63, *Doc 2009-20490*, or *2009 WTD 190-8*.) Now, thanks to the excessive discretion conferred under the GAAR provisions, tax authorities may challenge any bona fide commercial transaction that has even a minor element of tax planning. A broadly worded antiavoidance provision of this sort would likely capture most cross-border investment structures and would have a negative impact on India's international relations. It is not surprising that countries such as the U.S. and the U.K. have rejected the GAAR in favor of judicially developed antiavoidance principles. If India chooses to adopt the GAAR, the rules for its operation should be clearly established so that taxpayers can plan their activities with sufficient certainty. And, like in Canada, GAAR cases should be scrutinized by a higher body or tribunal that would guarantee a judicious application of focus on the facts and circumstances of each case.

Tax Treaty Override

In an attempt to replicate the American later-in-time doctrine, the DTC has proposed that on application of both domestic law and tax treaty provisions, only the provision that is later in time will prevail. Consequently, on enactment of the DTC, every tax treaty signed by India would automatically be overridden. The Indian government could then attempt to renegotiate some of its existing tax treaties to its advantage.

The proposed later-in-time principle is a drastic shift from the current regime under which the provisions of domestic tax law (as opposed to the treaty) would apply only to the extent they are more beneficial to the taxpayer. This proposal conflicts with the constitutional mandate that ''the State shall endeavour to . . . foster respect for international law and treaty obligations in the dealings of organised people with one another.''[2] It also derogates from the principle of *pacta sunt servanda*[3] espoused by the Vienna Convention on the Law of Treaties. The government has also ignored the U.S. jurisprudence regarding the later-in-time doctrine, which makes it clear that courts would attempt to harmonize the provisions of an international agreement and domestic law with a view to give effect to both.[4]

Change in Residency Rules

[1]The Mauritius route refers to investments made in India from countries such as the U.S. by setting up intermediary entities in Mauritius that can benefit from the favorable capital gains tax treatment under the India-Mauritius tax treaty.

[2]Article 51, Indian Constitution.

[3]''Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'' Article 26.

[4]Third Restatement of Foreign Relations Law of the United States (1987). It is also accepted that the later-in-time principle

(Footnote continued on next page.)

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The DTC proposes that even if a foreign company is partly controlled or managed from India, it would become a tax resident of India and hence liable to tax on its worldwide profits.

Taxation of Offshore Transfers

Under the DTC, offshore transactions leading to an indirect transfer of shares or any underlying capital asset in India may trigger capital gains tax obligations in India. However, the DTC provides no clarity on the scope of the term ''indirect transfer.''

Taxation of Offshore Interest

Under the DTC, interest payable by a foreign entity on offshore leverage used to finance acquisitions in India may also be taxable in India.

Offshore Services Now Subject to Indian Tax

In a marked deviation from India's existing source rules, the budget proposes to tax nonresident services even when no part of the services is rendered within India.

Under India's domestic tax law, a nonresident is taxable only on income arising from sources within India. For example, business profits earned by a nonresident are taxed in India only to the extent attributable to a business connection (or a permanent establishment) of the nonresident in India. Managerial, technical, or consultancy services provided by a nonresident to a resident of India would be considered to have an Indian source only if the services are rendered within India. If the services are rendered by a nonresident outside India, they would normally fall outside the Indian tax net. However, the budget proposal deems income from those offshore services to be of Indian source and hence liable to tax in India.

The proposal is likely to affect several cross-border service models, including engineering, procurement, and construction (EPC) contracts; turnkey projects; international financial services; and professional service providers. For example, consider a standard cross-border EPC arrangement involving offshore supply of drawings and designs; offshore procurement and supply of equipment; and onshore construction, installation, and commissioning of equipment. The income earned by the nonresident contractor should be taxable only to the extent the onshore services are provided in relation to the project. However, income from offshore services, including supply of technical designs, would ordinarily not be taxable in India. Offshore services provided by a nonresident outside India lack the required degree of territorial nexus to justify taxation in India. This position was accepted by the Supreme Court in the landmark case *Ishikawajma-Harima Heavy Industries*, [2007] 288 ITR 408 (SC).

The principle of territorial nexus was further elaborated by the Bombay High Court in its recent decision in *Clifford Chance*, (2009) 176 Taxman 458, in which income earned by a U.K. law firm from services provided by its partners from outside India in connection with an Indian project was held to be nontaxable in India. The court identified a dual test for taxability of such services in India: use of services in India and rendition of services in India. The doctrine of territorial nexus requires that both tests be met for the service to be subject to taxes in India.[5] (For the ruling in *Clifford Chance*, see *Doc 2009-72* or *2009 WTD 2-15*; for related coverage, see *Doc 2009-36* or *2009 WTD 3-6*.)

The budget proposal seems to reject the jurisprudence on territorial nexus that was established by the Supreme Court. It has ignored the fact that this principle is ingrained within India's constitutional system. The extraterritorial operation of India's tax law contemplated in the budget proposal also conflicts with customary international law principles of sovereignty and comity of nations. To quote the U.S. Court of Appeals in *Timberlane Lumber* (9th Cir. 1976), 549 F.2d 597, domestic interests are sometimes ''too weak and the foreign harmony incentive for restraint too strong to justify an extraterritorial assertion of jurisdiction.'' Clearly, India lacks the jurisdiction to tax an offshore transaction sans any direct, substantial, and foreseeable nexus with the territory of India.

The proposal is also likely to create tax credit issues. Questions arise as to whether a foreign service provider can get credit in its country of residence for taxes paid in India, due to the application of an inconsistent source rule.

Another concern with this and several other proposals in the budget is its retroactive operation. The modification of India's source rule for offshore services is proposed to apply from 1976. Therefore, subject to the domestic law of limitation, the tax authorities could pursue many already completed transactions. This would only increase uncertainty and lead to a tremendous amount of litigation.

Tax Trap for Foreign Investors

Last year the 2009-2010 Finance Act introduced a provision to tax gifts received by individuals. Under the

means a state may not repudiate its international obligations and that it is subject to the consequences of violating any international obligation.

[5]A similar view was adopted more recently by the Bangalore bench of the Income Tax Appellate Tribunal in *M/s Bovis Lend Lease (India) Pvt. Ltd.*, 2009-TIOL-666-ITAT-BANG, in which it was held that income from offshore administrative, legal, and accounting services provided by a Singapore entity was not taxable in India. (For prior coverage, see *Doc 2009-24653* or *2009 WTD 215-6*.)

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provision, individuals were subject to tax on the receipt of property without consideration or for consideration less than the fair market value of the property.

This year a similar provision has been introduced for companies that buy or receive shares for less than their market value. Under the proposed amendment, the difference between the market value of shares and the consideration paid would be taxed as other income in the hands of the investor. Investors that are publicly listed companies are excluded from the proposed provision, as are transfers for which the difference between fair market value and transfer price is less than INR 50,000 (about $1,090). Exceptions have also been provided for transfers that take place during specified kinds of mergers and demergers.

No exception has been provided for acquisitions, so the change could significantly affect all future investments since it introduces indirect transfer pricing requirements on share transfers even when the transfer is between unrelated parties. While the proposed provision does not differentiate between Indian and cross-border acquisitions, there may be unique issues in a cross-border context. For example, foreign investors may need to examine the availability of a foreign tax credit in their country, keeping in mind that Indian tax would be paid under the residuary category of other income. It may be possible to use the relevant credit provision of an applicable tax treaty. However, when the benefit conferred by a tax treaty relates to capital gains (like with the treaty benefit available to Mauritius residents), the proposed amendment would continue to apply to impose tax, as it relates to a residuary head of other income and not capital gains.

Below are some other situations for which investors should consider the adverse tax implications of the proposed amendment. Some of these issues could be resolved through adequate valuation guidelines. However, no valuation rules have been prescribed. This leaves the revenue authorities with the discretion to question a wide range of transactions on the grounds of shares having been transferred at a value below fair market value. It is also unclear how these proposed provisions would apply in situations when the consideration is indeterminable. In fact, the proposed amendment appears to allow for a backdoor entry for domestic transfer pricing among unrelated parties.

Investment by FVCIs

The Indian exchange control regime specifies pricing restrictions relating to the acquisition and disposal of investments by foreign investors. These pricing restrictions may be compared to the fair market value requirement imposed by the proposed income tax amendment. The pricing restrictions do not apply to some kinds of investments, such as those made by foreign venture capital investors' (FVCI) entities. This is a conscious move by the exchange control regime to bolster venture capital investments in Indian companies.

However, the proposed income tax amendment provides no exceptions for investments made by FVCIs. Therefore, although FVCI entities may be permitted to invest at a lower price under the pricing guidelines, they may violate the tax law if they attempt to do so. Consequently, the difference between the fair market value and the purchase price would be subject to tax in India.

Mergers

A merger of two foreign companies resulting in the transfer of shares of an Indian company is not subject to capital gains tax in India if requirements regarding continuity of shareholder interests are met. Otherwise the reorganization would be taxable as capital gains in the hands of the transferor company. However, the proposal may also result in the taxation of the acquirer company on the difference between the fair market value and the transfer price, which does not seem to be the intention of the legislature.

Stock Repurchase by an Indian Company

Distributions made on a stock repurchase are typically considered capital gains in the hands of the shareholder in India. However, if the proposed amendment is applied, the Indian entity could be taxed on the shares bought back if the repurchase price is not equal to the fair market value of those shares. If the shareholder is an entity situated in a jurisdiction such as the U.S., it could consider checking the box for the Indian entity to attempt to receive credit for taxes paid by the Indian entity. However, there is some uncertainty as to the availability of this credit because of differences in characterization of income by the two countries.

Transfer of Shares Between a Parent and Sub

Transfers of shares between a parent and its subsidiary are not subject to capital gains tax, but the proposed amendment could have tax implications in India for the recipient entity.

Other Roadblocks

India has long recognized only the traditional investment forms of companies, trusts, and partnerships. Last year the first Indian hybrid entity, the limited liability partnership, was introduced as a structural alternative for doing business in India. Unlike Indian companies, which continue to be taxed under the classical model, with tax being levied separately on profits of the company (corporate tax) and then on distribution/declaration of dividends (dividend distribution tax), LLPs were to be subject to tax as partnerships — that is, with a single level of tax at the LLP level and no tax on distributions to partners. And unlike a corporate entity, an LLP is not subject to minimum alternate tax.

Because of that beneficial tax treatment, it was anticipated that investors would consider converting companies to LLPs sometime soon. No moves have been

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made in that regard, as investors are still awaiting government clarification on whether foreign investment in an LLP is permitted without prior approval from the Reserve Bank of India.

This year's budget has introduced provisions enabling tax-free conversion of private and public unlisted companies into LLPs. However, these provisions are actually a new roadblock to investment in Indian LLPs. The budget proposals prescribe requirements for when the tax-free treatment may be permitted, one of which is that the converting company should not have total sales, turnover, or gross receipts of more than INR 6 million (about $130,000) in any of the preceding three years. Considering the low threshold, it is questionable how many companies would be able to take advantage of the proposed tax benefit.

Other restrictions would also be imposed on LLPs. For example, the partners could not receive any distributions from the LLP, either directly or indirectly, for a period of three years from the date of conversion into an LLP. This would effectively impose a lock-in on the profits of the company, which are carried over to the LLP on conversion. The flexibility with which partners could be introduced into the converted LLP entity would also be restricted. If the requirements are not met, the budget would restrict the allowance of accumulated loss and unabsorbed depreciation to the converted entity.

Also, while the budget seeks to clarify the tax treatment of a company converting into an LLP, it fails to clarify whether the shareholder will be taxed on acquiring an interest in the LLP. That said, these proposals really have no impact on the use of LLPs as a structural alternative.

Expiration of Tax Incentives

The budget indicates no intention to extend the tax holiday now provided to 100 percent export-oriented units and units set up in software technology parks, hardware technology parks, and free trade zones. Such incentives have prompted several foreign companies to make substantial investments in India's technology sector, making the country a leading software and business process outsourcing hub. These incentives are expected to expire in the fiscal year ending on March 31, 2011.

Foreign entities benefiting from the incentives may have to rework their holding structures in light of this development and should probably consider alternative options such as the special economic zone regime, which is not limited by a sunset clause.

Service Tax Implications

The current service tax rate of 10 percent would remain unaltered. Service tax is an indirect tax payable by the service provider, with the incidence of tax passed on to the recipient of the service. Services provided by a nonresident to a resident of India are treated as import of service and subject to service tax at ordinary rates. The recipient (importer) of service must pay service tax due on the consideration paid to the nonresident. The export of services from India, however, is exempt from service tax.

The budget clarifies the service tax exemption available to service exports. There has been much controversy over the applicability of the exemption, which is restricted to services that are ''used outside India.'' In the context of information technology and cross-border movement of intangibles, it can be difficult to determine the place of use of services. With the proposed amendment, the service tax exemption should be available to most services as long as the recipient is outside India.

The budget would bring a few additional services into the service tax net. Copyright licenses related to cinematographic films and sound recordings would be subject to service tax. Currently only intellectual property licenses in the nature of trademarks, designs, patents, and other similar rights are subject to service tax. Considering some of the recent billion-dollar deals with major Hollywood production houses and other big-ticket transactions in the music industry, it is worth considering the increase in product costs resulting from the additional service tax.

Also noteworthy is the proposed service tax levy on commercial rentals with retroactive effect from June 1, 2007. It seems the proposal seeks to override the recent Delhi High Court decision in *Home Solution Retail India Ltd. v. Union of India,* [2009] 20 STT 129, holding that the act of renting property was not a taxable service. The government would be free to claim service tax for all rental payments from the last two years, along with any applicable interest and penalties. Because of its widespread impact, this amendment is likely to result in much litigation. (For prior coverage, see *Tax Notes Int'l*, May 4, 2009, p. 378, *Doc 2009-9415*, or *2009 WTD 79-9*.)

Conclusion

Because of the Indian government's frequent use of retroactive amendments over the years, taxpayers can never be certain whether their current transactions will be taxed sometime in the future. Even the highest courts have held retroactive tax levies to be unconstitutional.[6]

But what good is judicial scrutiny if the government also overrides decades of jurisprudence? Amending a legal provision merely because the courts have ruled

[6]A constitutional bench (five judges) of the Supreme Court in *Lohia Machines*, [1985] 152 ITR 308, made it clear that fiscal amendments imposing a retrospective levy are constitutionally invalid.

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against the tax department is unjustifiable, especially when the amendment conflicts with constitutional provisions.

Because of the uncertainty it would create, completely restructuring the proposed DTC seems appropriate. The task would ideally be undertaken by an independent committee of experts in the fields of law, economics, public policy, accountancy, and legislative drafting.

The government should also show due respect to principles of international law and the sovereign rights of other states when establishing its fiscal boundaries.

♦ *Mahesh Kumar, Nishith Desai Associates, Mumbai, and Shreya Rao, Nishith Desai Associates, Bangalore*

Independent Storage Facilities Are PEs, Ruling Authority Says

Storage facilities provided by independent service providers in India to a Singapore-based equipment supply company constitute fixed-place permanent establishments, according to India's Authority for Advance Rulings (AAR).

The February 25 ruling, requested by Seagate Singapore International Headquarters Private Ltd., is based on article 5 of the India-Singapore income tax treaty.

Background

Seagate, which manufactures and sells hard disk drives, supplies disks to original equipment manufacturers (OEMs) in India. To better manage the product supply chain, Seagate entered into agreements with independent service providers (IndSPs) in India, wherein the IndSPs store the disks in India on behalf of Seagate and, when an OEM places an order for the disks, the IndSPs deliver them on a timely basis on behalf of Seagate.

Generally, in the supply chain, an OEM puts in a purchase order for Seagate disks. Seagate then ships the disks to the IndSPs in India. The IndSPs, acting as importers, clear the disks at the customs port and store them in a bonded warehouse. The IndSPs provide the necessary security bond to clear the goods through customs without paying customs duty. The ownership of the disks remains with Seagate.

When an OEM places a request order for the disks with one of the IndSPs, that IndSP clears the goods from the bonded warehouse and delivers them to the OEM. The IndSP then informs Seagate of the delivery. Seagate issues a sale invoice for the disks delivered to the OEM, which makes the payment against the sale invoice directly to Seagate. The IndSPs pay the applicable sales tax and file returns in connection with the sale of disks by Seagate to the OEMs.

The IndSPs then submit their own invoices to Seagate for the warehousing and supply-related services performed in India (the warehouses are either owned or leased by the IndSPs and are under their operational control and supervision).

Under the key terms of the service agreement between Seagate and the IndSPs in India, the IndSPs provide Seagate with specific earmarked spaces in warehouses at specified locations in India, along with related supply logistics services. Seagate has access to the warehouses for purposes of inventory, inspection, audit, and so on. The IndSPs establish the necessary electronic operating systems to support data interchange between Seagate and the IndSPs and furnish inventory reports, delivery advice, etc. The IndSPs also comply with Seagate's warehouse security requirements and obtain insurance coverage as required by Seagate for its warehoused products.

Seagate does not maintain any office or other place of business in India.

Seagate's Arguments

Seagate maintained that the IndSPs are unrelated parties providing independent warehousing and supply-related logistics services. The warehouses at issue are not owned or leased by Seagate; therefore, they should not be considered as a fixed place of business of Seagate under article 5(1) of the India-Singapore income tax treaty, Seagate said.

Furthermore, Seagate said, the IndSPs are independent and have no authority to conclude any contracts on Seagate's behalf. As such, the IndSPs cannot be classified as a dependent-agent PE under article 5(8) of the tax treaty, it said.

Seagate thus argued that it does not have a PE in India and that no part of its business profits can be taxed in India. In the event that a PE is found to exist, Seagate argued that the arm's-length fees paid to the unrelated IndSPs for their role in India should ensure that no further profits of Seagate are taxable in India.

AAR's Ruling

The AAR found that the warehouses where Seagate's products are stored constitute a fixed place of business of Seagate in India. A distinct earmarked place with a certain degree of permanence from where any business activity is conducted is sufficient to constitute a PE under article 5(1) of the treaty, and it is not necessary that the fixed place be owned or leased by Seagate, the AAR held.

While the warehouses at issue are a place of business of the IndSPs, considering the scope of services provided by the IndSPs, the warehouses also constitute a fixed place of business of Seagate from where its

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sales activities in India are conducted, the AAR said. The outsourcing of the warehousing and supply operations to the IndSPs does not automatically mean that Seagate does not carry on any business in India from a fixed place, it ruled.

Having found a fixed-place PE under treaty article 5(1), the AAR did not rule on whether the IndSPs constituted an agency PE of Seagate.

The AAR concluded that in computing Seagate's profits attributable to the fixed-place PE under article 7 of the tax treaty, the fees paid to the IndSPs are fully deductible. The AAR did not rule on whether any further profits of Seagate are subject to tax in India because of the PE.

Comments

While the attribution of profits to the PE must be based on a functional and factual analysis, when one considers the fact that the IndSPs charge Seagate an arm's-length fee for the storage and logistic services provided in India, it may be a zero-sum game for Seagate's Indian PE.

♦ *Shrikant S. Kamath, tax consultant, Mumbai*

Liechtenstein

Bank to Appeal Ruling in Tax Cheat Case

Fiduco Treuhand AG (previously LGT Treuhand AG), a former subsidiary of Liechtenstein's LGT Bank, announced on February 8 that it will appeal a February Landgericht (Liechtenstein district court) ruling awarding a former client €7.3 million (plus interest) in damages, according to media reports.

German citizen Elmer Schulte filed a lawsuit accusing the bank of negligence for its failure to warn him that data revealing his hidden assets had been compromised when former LGT employee Heinrich Kieber stole data on account holders and sold it to German (and other national) authorities. Schulte was convicted of tax evasion in 2008 in a German court, reportedly receiving a €7.3 million fine in lieu of prison time. (For prior coverage, see *Tax Notes Int'l*, Feb. 22, 2010, p. 646, *Doc 2010-2977*, or *2010 WTD 28-3*.) The case had been keenly watched as a possible prelude to other lawsuits from disgruntled former LGT clients whose names appeared in the stolen data.

Schulte also is planning to appeal the Landgericht ruling, arguing that the award is too low and that his three other claims alleging that he received bad counsel from the bank should not have been dismissed, according to a February 10 report on sueddeutsche.de. Schulte alleges that LGT Treuhand bank employees invested his assets in so-called black funds in tax havens such as the Cayman Islands and Luxembourg without adequately advising him of their actions.

Despite the attention the case has received, LGT Bank (which will pay the fine on behalf of Fiduco Treuhand) expressed little concern that the case will open the floodgates to other, similar lawsuits if the ruling is not overturned.

''We view this as an exceptional case,'' LGT Bank spokesman Christof Buri said in a February 8 Associated Press report.

However, as many as 30 other cases are being prepared, according to the sueddeutsche.de report, including a new case against Fiduco Treuhand AG. That case, filed by Christian Merz, a lawyer representing an unnamed Köln woman convicted of tax evasion in Germany, seeks €395,000 in damages, according to a February 10 *Süddeutsche Zeitung* report. Merz's firm, Wagner and Joos, reportedly has forged an alliance with two Liechtenstein firms, one of which includes former Liechtenstein Justice Minister Heinz Frommelt.

The Schulte and Fiduco appeals will go to the Liechtenstein Supreme Court (Oberster Gerichtshof). No schedule has been announced, but such appeals can take months or even years to complete.

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Malaysia

Corporate, Individual Rates to Drop After GST Implementation

The Malaysian government has said it will start to lower corporate and individual income tax rates after the country's new 4 percent goods and services tax is implemented in mid-2011, according to Malaysian media reports. (For prior coverage of the Malaysian GST, see *Tax Notes Int'l*, Dec. 7, 2009, p. 741, *Doc 2009-26196*, or *2009 WTD 228-5*; for analysis of the tax, see *Tax Notes Int'l*, Dec. 14, 2009, p. 851, *Doc 2009- 26566*, or *2009 WTD 233-8*.)

Deputy Finance Minister Chor Chee Heung said the gradual reduction of the corporate and individual income tax rates once the broad-based GST is in place is the long-term objective of the government, according to a March 4 report from Bernama, a Malaysian state news agency. ''I don't think we have a timeline for it,'' he added.

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