loans contracted for the purpose of purchasing a participation in an Aruban resident company. The deduction could not be claimed until two years after the purchase of the shares. As proposed, this measure would also take effect on March 1.

Other proposals relate to the beneficial expatriate regime and would be effective from January 1.

The expatriate regime is valid for four years and can be extended for an additional two years. Eligibility is subject to three conditions:

- the expatriate working in Aruba must provide training for a local employee;
- the expatriate's annual income must be at least AWG 150,000 (about $83,340); and
- the expatriate cannot have resided in Aruba during the previous five years.

To benefit from the regime, an application must be submitted jointly, by both the employer and the expatriate employee.

Under the new expatriate regime, general reimbursements of up to AWG 15,000 (about $8,300) per year, reimbursements for tuition fees of up to AWG 25,000 (about $13,900) per child per year, and housing reimbursements of up to AWG 2,500 (about $1,400) (presumably monthly) are not included in the expatriate's taxable wages in Aruba.

Tax authorities also published individuals' 2013 income tax rates. Schedule 1 applies to married individuals whose spouse does not have any source of income and to those who apply to be taxed on both their own income and their spouse's income. It also applies to divorced individuals who were married for at least five years and to unmarried individuals claiming child allowances. In all other cases, Schedule 2 applies.

♦ *Slim Gargouri, chartered accountant, Sfax, Tunisia*

Cameroon

Budget Amends Corporate Tax Provisions

Cameroonian President Paul Biya on December 21 signed Law 2012-14, which introduces several corporate tax amendments as part of the 2013 budget. Most of the new tax measures apply from January 1.

Under the new rules, expenses incurred in the provision of services to domestic companies by foreign natural or legal persons may be deducted when computing profits subject to the corporate income tax. Previously, Cameroon-based entities were not eligible for the deduction.

Also, the deduction is now capped at 5 percent (as opposed to the previous 10 percent) of the taxable profit. Separate rates apply as follows:

- 2.5 percent levied on turnover of public works companies (instead of the 5 percent rate under the previous regulation); and
- 7.5 percent levied on turnover of engineering offices (instead of the 15 percent rate under the previous regulation).

Donations made to clubs participating in national competitions or to institutions in charge of organizing official sports competitions are allowable expenses but are capped at 5 percent of the taxable profit.

The scope of the VAT was extended to include:

- leasing operations, regardless of the existence of a purchase option;
- commercial subsidies of any value;
- write-offs of commercial debt; and
- commissions received by travel agencies.

For leasing operations, VAT is based on rents invoiced by leasing companies during the lease period and on the sales price at the term of the leasing contract.

Another change is that games of chance are subject to VAT based on the full proceeds. Previously, a 40 percent exemption applied.

Further, an input VAT deduction will be allowed for VAT levied on taxable transactions involving at least XAF 1 million only if the expenses are settled through bank checks or bank transfers. Accordingly, no input VAT deduction will be allowed in the case of cash settlements of such expenses.

VAT credits resulting from export operations must be reimbursed within two months following the date of submission of the refund application. Exporters should submit, along with the refund application, all customs documents showing export sales and payments received on such operations.

A new tax also was introduced on the export of finished wood products at the rate of 5.65 percent levied on the free on board price.

♦ *Slim Gargouri, chartered accountant, Sfax, Tunisia*

Canada

Taxpayer Appeals Break Fee Case to Supreme Court

The taxpayer in *Morguard Corp. v. The Queen* (2012 FCA 306), a case dealing with the tax treatment of a payment Morguard received on the termination of an agreement for a corporate acquisition (commonly called a break fee), has filed an application for leave to appeal to the Supreme Court of Canada.

Canada's Federal Court of Appeal (FCA) rendered its decision in the case on November 21. The FCA concluded that the break fee should be treated as regular income, largely on the basis that the taxpayer ''was essentially in the business of doing acquisitions and take-overs.'' (Prior coverage: *Tax Notes Int'l*, Dec. 3, 2012, p. 890.)

The taxpayer's notice of application states that the FCA erred in law ''by characterizing [the taxpayer's] business as one of acquiring assets.'' It further states that the FCA misinterpreted prior jurisprudence as to the correct approach for distinguishing between income and capital receipts.

After receiving the Crown's reply, the Supreme Court will decide whether to hear the appeal of the case, which addresses an issue that is very important to the Canadian tax community (particularly since the taxpayer believes the FCA has departed from the settled approach for distinguishing between capital and income) and often involves considerable amounts.

♦ *Steve Suarez, Borden Ladner Gervais LLP, Toronto*

Physical Presence Determines Where Duties Are Performed, CRA Says

In a nonbinding technical interpretation[1] released to the public on January 30, the Canada Revenue Agency was asked to consider the withholding obligation arising on remuneration paid by a Canadian employer to a nonresident employee. In this hypothetical scenario, the Canadian employer operated a business that had computer servers physically located in Canada. The nonresident employee was a programmer/analyst who performed his duties from his home country by way of an electronic connection to the employer's Canadian computer servers.

Canada's tax system imposes withholding obligations on payments for services rendered or performed in Canada. Employers are required to withhold and remit tax to the CRA for remuneration paid to their employees, subject to an exclusion for employees who are neither resident nor employed in Canada and whose remuneration does not reasonably relate to employment duties performed in Canada.[2]

Under section 105 of the Income Tax Regulations (Canada) (Regulation 105), any person paying a fee, commission, or other amount to a nonresident for services rendered in Canada is required to withhold and remit to the CRA 15 percent of the payment.

[1]CRA Document 2012-0440411E5, dated Dec. 7, 2012.

[2]*See* regulations 102 and 104(2).

In either case, the CRA may provide a waiver from withholding tax if it can be shown that the nonresident is not subject to Canadian tax on the payment (for example, under a tax treaty).

In light of those rules, the CRA said that while a determination can only be made in light of all relevant facts and circumstances, it believes that a person performs the duties of his employment in the place where he is physically present. As such, if the employee is physically located outside Canada when performing his employment duties, no Canadian tax should be withheld from the remuneration paid to that employee.

That conclusion (which appears to be equally applicable in a Regulation 105 context) substantiates the position that a service delivered through a computer server or similar piece of equipment located in a particular place does not automatically constitute the provision of services in that place. The correct view is that the physical location of the individual providing the services at the time they are rendered dictates where they are rendered. The CRA's statement is a welcome clarification of its administrative position.

♦ *Steve Suarez, Borden Ladner Gervais LLP, Toronto*

Colombia

Sweeping Tax Reforms Take Effect

Colombia's Congress recently approved a comprehensive tax reform that will substantially change the international tax rules for individuals and for companies carrying out business in Colombia. Law 1601 (dated December 26, 2012) consists of 198 articles amending or introducing new provisions to the Colombian Tax Code.[1] The new law entered into force on January 1.

At the domestic level, the tax reform aims to increase companies' competitiveness, tackle the informal (nontaxpaying) segment of the population, and reduce tax rates to encourage tax compliance.

In addition to preserving the existing wealth tax,[2] the tax reform introduced a new equity tax (CREE) for companies and set up two alternative minimum tax

[1]In Colombia, all taxes are governed by a single Tax Code (*Estatuto Tributario*) enacted by way of Decree 624 of 1989.

[2]The wealth tax, which was introduced in 2007, applies to legal and natural persons that are subject to income tax and that had, as of January 1, 2007, assets valued at COP 3 billion (about $1.7 million) or more. The tax rate until 2010 was 1.2 percent. As of 2011, the rate is 2.4 percent for assets valued between COP 3 billion and COP 5 billion (about $2.8 million) and 4.8 percent for assets valued at more than COP 5 billion.