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UK's new Finance Bill to re-introduce previously omitted measures

The UK government confirmed on 13 July 2017 that a new finance bill will be presented "as soon as possible after the summer recess" that will re-introduce changes to tax measures that were withdrawn from the previous finance bill (now Finance Act 2017) as a result of the calling of the general election (for prior coverage, see *World Tax Advisor*, 12

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May 2017). The House of Commons breaks for its summer recess on 20 July 2017, and returns on 5 September.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_ib.html

The policy papers containing updated legislation to be included in the next finance bill were published at the time of the announcement. The UK Financial Secretary to the Treasury provided the following background to these papers: "The Finance Bill to be introduced will legislate for policies that have already been announced. In the case of some provisions that will apply from a time before the Bill is introduced, technical adjustments and additions to the versions contained in the March Bill will be made on introduction to ensure that they function as intended. To maximise certainty about the exact provisions that will apply, the Government is today publishing updated draft provisions."

The key corporate tax papers are those covering:

- Corporate interest expense deduction restriction legislation, which will come into effect from 1 April 2017;
- Carryforward of corporate tax losses rules, which also will come into effect from 1 April 2017; and
- Changes to the hybrid rules, including the removal of local taxes from the definition of overseas taxes that can be taken into account when determining whether there is a mismatch, which will apply as from 13 July 2017.

Updated papers also were published on the substantial shareholding exemption; employment income provided through third parties; inheritance tax on overseas property representing UK residential property; and deemed domicile rules for income tax and capital gains tax.

In the same statement, the UK government confirmed a change in the timetable for the implementation of the *Making Tax Digital* (MTD) program (for prior coverage, see United Kingdom tax alert, 8 March 2017). Businesses above the VAT registration threshold will not be mandated to use the MTD system until April 2019 and then only to meet VAT-related MTD obligations.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-8-march-2017.pdf

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Australia:
GST on foreign suppliers of low value goods delayed

The imposition of goods and services tax (GST) on low value goods (*i.e.* goods valued at AUD 1,000 or less) supplied by foreign vendors to consumers in Australia has been postponed by 12 months, until 1 July 2018 (for prior coverage, see *World Tax Advisor*, 25 November 2016). However, the postponement does not affect the 1 July 2017 commencement of rules imposing GST on offshore supplies of digital products, services, rights and other intangibles to Australian customers. Affected foreign businesses supplying intangibles need to determine whether they should be registered for GST and collect 10% GST from Australian customers for remittance to the Australian tax authorities.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161125_2.html

GST on low value goods

On 19 June 2017, last minute changes were made to the legislation imposing GST on low value goods, to enable the passage of the legislation by both houses of parliament on 21 June 2017. In addition to changing the start date of the new rules, the changes require the government to initiate an independent review of the effectiveness of the vendor registration model and alternative models, with a report and recommendations to be presented to the government by 31 October 2017.

If the vendor registration model is retained following the independent review, affected foreign vendors will have until 1 July 2018 before being required to register for and remit 10% GST on low value goods sold to consumers in Australia.

Under the vendor registration model introduced by the new legislation:

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- Where a supply of low value goods is made through an online market place (electronic distribution platform/EDP) or the consumer in Australia uses a mailbox/redelivery service provider (redeliverer) to facilitate the purchase and/or shipment of the goods to Australia, the GST liability may shift to the EDP operator or the redeliverer.
- Foreign vendors, EDP operators and redeliverers with supplies to Australian customers exceeding AUD 75,000 will be required to register and remit GST on supplies of low value goods for which they are liable. GST registration can be on a full or limited basis.
- Affected foreign businesses will need to apply complex rules to determine whether each supply to an Australian customer involves low value goods, and to address circumstances of potential and actual double GST taxation of imports.
- Detailed information for both GST and customs clearance purposes must be provided to customers at the point of sale and to other entities involved in bringing the low value goods to Australia.

The delayed start date will give affected foreign vendors, EDP operators and redeliverers, as well as international courier/logistics providers, additional time to prepare for implementation of the new rules. However, there may be reluctance to invest heavily in preparations in the short term, pending the outcome of the review of the implementation model, and the government's response to the recommendations.

GST on inbound supplies of intangibles to Australian consumers

Effective 1 July 2017, the GST law requires foreign vendors to remit 10% GST on intangibles supplied to Australian consumers. This measure aims to ensure that supplies of digital products (*e.g.* streaming/downloading of movies, music, apps, games and e-books), as well as other intangibles, receive comparable treatment regardless of whether they are supplied by an Australian or a foreign vendor.

Where affected inbound supplies are made through an EDP, responsibility for the GST liability on the supplies may shift from the foreign vendor to the EDP operator. Broadly, this occurs if the EDP operator controls any of the key elements of the supply (*e.g.* price, terms and conditions, delivery arrangements, etc.).

GST registration is mandatory for suppliers selling more than AUD 75,000 of supplies annually to Australian customers. Foreign vendors and EDP operators affected by these rules have the option of registering for GST on a full or limited basis.

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Belarus:
Penalty waiver granted for failure to withhold from website fees

Belarus' Ministry of Taxes and Duties issued guidance on 4 May 2017, which clarifies that administrative penalties may not apply to Belarusian entities that fail to withhold tax from payments made for sales of their goods and services on websites, online social networks, electronic platforms, etc. ("internet resources") owned by foreign entities that do not have a tax presence in Belarus. In general, the penalty for failure to withhold from fees paid to nonresidents for the use of internet resources will not apply where (i) the Belarusian entity is unable to carry out the withholding requirement because it does not control the payment of the fee, and (ii) the Belarusian entity otherwise remits the tax due.

Fees paid by Belarusian entities (*i.e.* Belarus resident companies and individual entrepreneurs, and registered Belarus permanent establishments of foreign companies) to nonresidents for the use of internet resources are subject to a 15% withholding tax in Belarus, unless the rate is reduced under a relevant tax treaty. The Belarusian payer, as the withholding agent, generally must calculate, withhold and remit the tax to the Belarusian government. To benefit from a beneficial treaty rate or exemption, the foreign recipient of the fees must submit the appropriate tax residence certificate to the Belarusian tax authorities (either directly or through the withholding agent), unless the foreign entity is included in the "SWIFT" international business identifier code directory.

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In practice, fees charged by an owner of an internet resource for use of the website, etc. to sell goods or services are withheld from the sales revenue collected (*i.e.* a Belarusian entity that sells its goods and services via a third party's website or other internet resource usually will receive the proceeds from its electronic sales net of such fees). In this situation, if no treaty exemption applies and the fee is subject to withholding, the Belarusian entity generally is unable to withhold the tax, because it does not control the payment of the fee.

Failure to comply with a withholding obligation in Belarus normally carries a penalty of 20% of the tax due. However, the recent guidance states that the penalty will not apply if the Belarusian entity is unable to withhold due to the above circumstances, but otherwise pays the tax due.

Comments

The letter provides for a waiver of the failure to withhold penalty where a Belarusian entity is unable to withhold tax from fees it pays to nonresidents for the use of internet resources but, nonetheless, satisfies its withholding requirement by paying the tax. Belarusian entities that pay such fees should be aware that the waiver will not apply (and the penalty will be imposed) where the entity could have withheld the tax but failed to do so, even if the entity otherwise pays the tax.

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Italy:
Final legislation includes new NID rules and reduced penalties for PEs

The law decree published by the Italian government on 24 April 2017 was converted into law on 21 June 2017, with some modifications (for prior coverage, see *World Tax Advisor*, 12 May 2017). The final law contains a number of tax measures that are designed to help reduce Italy's budget deficit, and makes the following changes to the law decree that was published in April:
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_7.html

- The amendments to the notional interest deduction (NID) regime that would have calculated the NID based on the equity increases and retained earnings of the prior five years are not adopted;
- The notional interest rates for 2017 and later years are reduced from those that would have applied under the 2017 budget law; and
- A provision that reduces penalties for foreign companies that settle tax liabilities of previously undisclosed Italian permanent establishments (PEs) is newly introduced.

Under Italian law, the April decree was required to be converted into law by the parliament within 60 days of being published: the final law was published in the official gazette on 23 June 2017, with the changes applicable as from 24 June 2017. The provisions included in the April law decree that were converted into law without modification are effective as from 25 April 2017.

Notional interest deduction

The NID regime grants Italian companies (and branches of foreign companies) a tax deduction that generally is calculated by applying a "notional interest rate" to the increase in qualifying net equity (with certain adjustments) for the period ending on or after the 2010 fiscal year.

The April 2017 law decree had included an amendment that would have calculated the NID based on the applicable equity increases and retained earnings of the prior five years, rather than those received/accrued from fiscal year 2010. This amendment was not included in the final law.

The final law sets the notional interest rate at 1.6% for 2017 and 1.5% thereafter (instead of 2.3% for 2017 and 2.7% for 2018 as provided in the 2017 budget and in the April law decree). The 1.6% notional interest rate for 2017 applies

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retroactively as from the beginning of the fiscal year that includes 24 June 2017 and, in determining advance payments, companies must recalculate their prior year's corporate tax by applying the 1.6% rate.

Reduced penalties for PEs

The final law introduces a provision that allows foreign multinationals access to Italy's "cooperative compliance regime" to determine the existence of previously undisclosed Italian PEs, and to settle, with reduced penalties, the PEs' overdue tax liabilities. This provision applies only to multinational groups with total consolidated annual revenue exceeding EUR 1 billion and annual revenue derived from sales carried out in Italy exceeding EUR 50 million. The settlement procedure is not available if the group has been notified by the Italian tax authorities (ITA) or otherwise made aware that it is or will be under audit concerning the potential existence of a PE in Italy.

The settlement procedure reduces the administrative penalties that otherwise would be due on the PE's tax underpayment by 50% and waives any applicable criminal penalties.

Foreign entities that take advantage of the new provision and settle the tax liabilities of their previously undisclosed Italian PEs also will be allowed to join the cooperative compliance program going forward, with the following benefits:

- The avoidance of tax audits and controversies by having the ITA evaluate the proper tax treatment of facts and transactions before the company files the corporate tax return;
- The reduction of otherwise applicable administrative penalties by 50% in cases where the taxpayer has not reached an agreement with the ITA at the conclusion of the advance evaluation process;
- An expedited 45-day deadline for the ITA to respond to advance ruling applications (the deadline ordinarily is 90 days); and
- The elimination of the taxpayer guarantees that normally would be required for refunds of tax credits.

Other provisions

The final legislation adopts with no further changes (but with effect from 25 April 2017) the measures included in the April law decree that:

- Exclude trademarks from the types of IP that can benefit from Italy's patent box regime under transitional rules (which brings the regime in line with the OECD's recommendations under action 5 of the BEPS project);
- Eliminate the definition of the arm's length standard in the Italian tax code as it applies to intercompany cross-border transactions and introduce a new definition that is in line with that in the OECD model treaty;
- Provide that downward adjustments in the Italian tax return (to avoid double taxation as a result of a transfer pricing adjustment by a foreign tax authority) may be made through (i) joint audits carried out in the context of international cooperation activities whose outcomes are shared by the participating countries, and (ii) a specific request by the Italian taxpayer with the Italian competent authority for a correlative (i.e. compensating) adjustment in Italy (but only where the foreign country allows an appropriate exchange of information with Italy); and
- Treat income from "carried interests" as capital income or capital gain (rather than employment income) for tax purposes under certain conditions.

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OECD:
Draft of 2017 update to model tax treaty released

On 11 July 2017, the OECD announced the release of a draft of the 2017 update to the OECD model tax treaty (last updated in 2014), and requested comments on certain provisions of the update by 10 August 2017. A significant portion of the update already has been approved as part of the BEPS project, and the OECD has not requested

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comments on these changes or on other changes that previously have been released for public comments. The update will be submitted to the Committee on Fiscal Affairs and the OECD Council for approval later in 2017.

The OECD has requested comments on the following topics:

- Changes to the commentary to the model tax treaty relating to the meaning of "permanent home available to" and "habitual abode" for purposes of the tie-breaker rule for residence purposes;
- New commentary indicating that registration for value added tax or goods and services tax purposes is irrelevant for purposes relating to the definition of a permanent establishment; and
- Changes to the dividends article and commentary to ensure that dividends paid to a partnership or other tax-transparent entity would be eligible for a reduced withholding tax rate in the source country if they are subject to tax in the residence country at the level of the entity or its members.

The update also includes the following:

- Changes previously approved as part of the BEPS project that are included in the 2015 final reports on BEPS actions 2, 6, 7 and 14, and changes resulting from the follow-up work on those actions;
- Changes to reflect the mutual agreement procedure arbitration provision of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) adopted on 24 November 2016 (for prior coverage, see OECD alert, 30 November 2016); and
  URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-30-november-2016.pdf
- Certain other changes previously released for public comments and "consequential changes" to reflect the contents of the update.

The final version of the update will include changes and additions to the observations, reservations and positions of OECD member jurisdictions and nonmember economies.

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Poland:
Five countries provisionally removed from harmful tax practices list

Poland's Minister of Development and Finance (MOF) issued a decree on 23 May 2017 that includes criteria to determine whether a country will be deemed to engage in harmful tax practices with regard to corporate and personal income tax. Based on these new criteria, five countries have been provisionally removed from Poland's harmful tax practices list.

Inclusion on the list has the following consequences:

- A company resident in a listed jurisdiction will be subject to Poland's controlled foreign company rules.
- In the case of transactions between Polish taxpayers and entities located in listed jurisdictions that are not carried out on arm's length terms and that result in a reduction of the Polish taxpayer's taxable income, the tax authorities may assess the taxable income of the Polish taxpayer as if the transactions were intragroup transactions. Polish taxpayers that enter into transactions with entities located in listed jurisdictions also may be required to prepare transfer pricing documentation.
- The special tax relief for Polish tax residents with foreign-source income that allows the proportional tax credit method to be used to avoid double taxation cannot be applied with respect to income derived from a listed jurisdiction from a business activity, employment or certain other activities carried out by an individual.

The MOF has decided to implement a pilot program for removing certain countries from the list if all of the following criteria are met:

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1. There is a basis for Poland and the other jurisdiction to exchange tax information as a result of a tax treaty, a tax information exchange agreement or the other jurisdiction's signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters;
2. The jurisdiction is ranked "largely compliant" or "compliant" with respect to tax transparency, based on a current OECD peer review; and
3. Poland and the other jurisdiction actually exchange tax information, and the other jurisdiction's cooperation in this regard has received a favorable evaluation by the MOF.

Since the Bahamas, Barbados, Liechtenstein, Saint Kitts and Nevis and Saint Vincent and the Grenadines meet the first two criteria, while the third criterion regarding the actual exchange of tax information will be periodically assessed and verified during the pilot program, the MOF decided to remove these jurisdictions from the harmful tax practices list included in the decree. Once the pilot program is completed, the MOF will make a final assessment as to whether the individual countries have fulfilled the criteria; if the MOF decides in the negative, the country will be re-included on the list.

The following countries and territories are considered to engage in harmful tax practices and, therefore, remain on the list:

Andorra	Hong Kong	Panama
Anguilla	Liberia	Saint Lucia
Antigua and Barbuda	Macao	Samoa
Bahrain	Maldives	Sark
British Virgin Islands	Marshall Islands	Seychelles
Cook Islands	Mauritius	Sint Maarten
Curaçao	Monaco	Tonga
Dominica	Nauru	US Virgin Islands
Grenada	Niue	Vanuatu

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Singapore:
IRAS clarifies use of cost plus method by related party service companies

The Inland Revenue Authority of Singapore (IRAS) has clarified that, beginning with the 2019 year of assessment (YOA), only Singapore companies and permanent establishments that provide "routine" services to related parties (routine service companies) will be allowed to calculate their Singapore taxable income using the "cost plus" method. The arm's length mark-up on routine services under the cost plus method is set at 5%.

Cost plus method

Under the cost plus method, a company's chargeable income is calculated as its total expenditure reported under Singapore financial reporting standards, plus a profit mark-up (which generally is stated as a percentage). Companies adopting the cost plus method are not allowed to claim the following benefits allowed under Singapore tax law:

- Double or enhanced tax deductions on specified expenditures;
- Enhanced deductions and cash payouts under the productivity and innovation credit scheme;
- Capital allowances;
- Qualifying donations; and
- Foreign tax credits.

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Limitation of cost plus method to routine service companies

The IRAS announcement clarifies that only routine service companies will be allowed to use the cost plus method to calculate chargeable income as from the 2019 YOA. Further, the chargeable income of routine service companies under the cost plus method will be based on a 5% mark-up on total expenditure, without further adjustments. Where a routine service company provides services at cost, the IRAS will be able to impute the 5% mark-up and issue a corresponding assessment.

Routine services include those support services listed in Annex C of the fourth edition of the IRAS e-tax guide on transfer pricing guidelines, which generally are in the nature of administrative, technical and/or customer support services. Examples of routine services include accounting and auditing services, database administration, legal services and payroll services.

Comments

The use of the cost plus method should help to reduce tax compliance costs and provide certainty on the amount of assessable income of taxpayers that operate related party cost centers in Singapore. Nevertheless, the cost plus method is an IRAS administrative practice, meaning that the method is not legislated under Singapore tax law, and uncertainties exist regarding its scope and application. For example, clarification is needed on whether the cost plus method will be mandatory for service companies providing routine support services, or whether such companies will be allowed to elect to be taxed under the normal rules for trading companies (and claim special tax deductions and benefits unavailable under the cost plus method). Transitional measures also need to be established for companies that currently use the cost plus method for tax filing purposes, but provide services that are not within the scope of routine support services, since these companies will not be eligible for the cost plus method as from the 2019 YOA.

IRAS is expected to provide additional guidance on the cost plus method in the third quarter of 2017.

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Sweden:
Consultation launched on proposal to restrict deduction of interest expense

On 20 June 2017, the Swedish Ministry of Finance launched a consultation on a proposal that would revise the interest deductibility rules. Restrictions on deductibility would increase the tax base and would allow for a proposed reduction in the corporate income tax rate from 22% to 20%, the latter of which should encourage investment in the country. If approved, the changes are planned to be effective from 1 July 2018, and would apply for financial years commencing after 30 June 2018.

The proposal aims at incorporating the interest deduction limitation rule in article 4 of the EU anti-tax avoidance directive (ATAD), and the Ministry of Finance considers the proposal to be in line with the recommendations under action 4 of the OECD BEPS project. The proposal also is a first step in implementing the rules on hybrid mismatches with third countries that are outlined in the ATAD 2 and the recommendations under BEPS action 2.

Under the proposal, the current rules restricting the deduction of interest expense on intragroup debt would be maintained, with minor changes. The proposal also contains two alternative proposals for the introduction of general interest deduction limitation rules that would be applicable to both intragroup and external loans, as well as a specific limitation on intragroup hybrid arrangements.

A two-step approach would be applied when determining whether interest expense is deductible:

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1. Assess whether a deduction is allowed under the rules applicable to intragroup loans; and
2. Evaluate the deductibility of any interest expense that is not limited under the first step against the general interest deduction limitation rules, which would allow for a deduction of net interest expense amounting to a certain share of an adjusted EBIT or EBITDA (as described below).

Intragroup loans and hybrid arrangements

Under existing rules, interest expense on intragroup loans may not be deducted unless the following requirements are met:

- The corresponding interest income is taxed at a rate of at least 10% in the country in which the beneficial owner is resident, and the "main" reason (defined as 75% or more in the legislative bill) for the loan does not involve obtaining a substantial tax benefit for the group; or
- The loan is obtained for commercial purposes and the recipient of the interest income is resident in another European Economic Area (EEA) country or a country that has concluded a tax treaty with Sweden.

The deductibility rules for interest expense on loans obtained to finance intragroup acquisitions of shares also require the acquisition to be mainly motivated by sound business reasons.

These requirements would be retained under the proposal, with the following modifications:

- There would be no minimum taxation requirement for interest income received by beneficial owners that are resident within the EEA or in a treaty country.
- Where the beneficial owner is resident within the EEA or in a treaty country, or resident in a non-EEA/non-treaty country and the interest income is taxed at a rate of at least 10%, an interest expense deduction would be disallowed if the purpose of the intragroup loan is exclusively or almost exclusively (defined under the proposal as 90% or more) for the group to achieve a substantial tax benefit.
- The deductibility rules for interest expense on loans obtained to finance intragroup acquisitions of shares would require the acquisition to be *substantially* (generally interpreted as 40% or more) motivated by sound business reasons.

The consultation document also includes rules that would restrict the deduction of interest expense in certain cross-border situations (*i.e.* hybrid arrangements). A deduction would be disallowed where interest costs that otherwise are deductible in Sweden also may be deducted in another country, or where there is no taxable interest income in another country corresponding to the interest expense in Sweden, and this treatment results from differences in the classification of the payment or in the underlying financial instrument.

General interest deduction limitation rules

The proposal includes two alternative proposals for a general interest deduction limitation. The alternatives have a number of common features, and temporary limitations on the use of tax losses carried forward would apply along with either alternative.

Alternative 1: 35% of EBIT: Under this alternative, a company's deduction for net interest expense would be limited to 35% of tax EBIT. "Tax EBIT" would be defined as the taxable result of the company before the deduction of net interest expense and net interest costs carried forward, plus interest costs, less interest income and income from Swedish partnerships and foreign legal entities taxed at the level of the owners. Changes in the company's tax allocation reserve would affect tax EBIT. The basis for calculating the tax allocation reserve, currently 25% of the taxable profit, would be adjusted if this alternative is enacted.

Alternative 2: 25% of EBITDA: As an alternative to an EBIT-based limitation, a company's deduction for net interest costs is proposed to be limited to 25% of tax EBITDA, as opposed to 30% of tax EBITDA under article 4 of the ATAD. "Tax EBITDA" would be defined as the taxable result of the company before the deduction for net interest expense and net interest costs carried forward, plus interest costs and tax depreciation (on certain asset classes), less interest income and income from Swedish partnerships and foreign legal entities taxed at the level of the owners. Changes in the company's tax allocation reserve would not affect tax EBITDA.

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Common features of the alternative rules:

- A *de minimis* rule would be introduced, under which net interest expense below SEK 100,000 would be deductible without having to satisfy the general interest deduction limitation rule. For companies that are part of a group, the deduction would be limited to SEK 100,000 for the group as a whole.
- A group ratio rule, suggested under article 4 of the ATAD and BEPS action 4, would not be introduced.
- A company that is not able to fully deduct its net interest costs would be allowed to carry forward the excess for up to six years. However, the right to use the net interest expense carried forward would be restricted following a change of control in the company.
- Tax losses carried forward from prior financial years would be included when calculating tax EBIT/EBITDA. In practice, this implies that interest expense would not generate additional tax losses, as long as the company is not in a tax paying position.
- Group contributions, made and received, would be included when calculating tax EBIT/EBITDA.
- Companies with net interest income would be allowed to deduct other group companies' net interest expense. The deduction would be limited to the net interest income of the company, and would be allowed only where both companies are able to exchange tax-deductible group contributions.

Temporary limitation on utilization of tax losses carried forward: The proposal would introduce a temporary limitation on utilizing tax losses carried forward from previous years, with the period of the limitation depending on whether the EBIT-based or the EBITDA-based interest deduction limitation is adopted. In somewhat simplified terms, the proposed rule would limit the ability to use tax losses carried forward to 50% of the current year's taxable profit. Any tax losses that cannot be utilized would be carried forward and could be utilized in subsequent years when calculating tax EBIT/EBITDA if the conditions for obtaining an interest deduction are fulfilled. The limitation would be applicable for financial years commencing after 30 June 2018 and before 1 July 2020 if the EBIT-based limitation is chosen, and for financial years commencing after 30 June 2018 and before 1 July 2021 if the EBITDA-based limitation is chosen.

The reason for limiting the ability to utilize tax losses carried forward reportedly is that the general interest deduction limitation rules would increase the number of companies that pay corporate tax. Limiting the right to utilize tax losses carried forward during a period of two or three years (for the EBIT and EBITDA-based limitations, respectively) should accelerate the payment of tax without decreasing the value of the actual tax losses carried forward.

Comments in response to the consultation are due by 26 September 2017.

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In brief

Austria: On 29 June 2017, the parliament approved an increase in the research and development (R&D) premium from 12% to 14% of qualified expenditure, with a view to enhancing Austria's position as an attractive location for doing business. The new rate will apply as from 1 January 2018 and will take into account all qualified expenses based on the OECD Frascati Manual for research and experimental development, including investments.

Barbados: On 2 June 2017, the parliament passed the 2017/2018 budget, which includes measures that increase certain taxes, reinstate an amnesty to encourage the payment of overdue VAT and land tax, and introduce a national tax registration initiative. The budget provisions apply as from 1 July 2017 (for prior coverage, see *World Tax Advisor*, 23 June 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170623_3.html

Cyprus: On 30 June 2017, the tax authorities issued a circular addressing the new rules for the taxation of intragroup financing arrangements that apply from 1 July 2017. The circular provides for the application of transfer pricing methodology to such activities based on the arm's length principle as contained in the OECD transfer pricing guidelines. The authorities had announced in February 2017 that the application of the pre-agreed minimum profit

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margins (of 0.125% to 0.35%) for back-to-back loans would be terminated on 30 June 2017 (for prior coverage, see *World Tax Advisor*, 24 March 2017). The new framework laid out in the circular will apply to these and certain other financing arrangements.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170324_3.html

Czech Republic: Legislation containing amendments to the tax laws was published in the Collection of Laws on 16 June 2017. The effective date proposed for the tax package was 1 April 2017; however, due to delays in the legislative process, most of the income tax changes affecting individuals will apply as from 2018, while the changes affecting companies generally are effective as from 1 July 2017. The changes for companies include a number of capital asset-related changes; an extension of the participation exemption regime to corporate profit distributions to a trust fund or a family foundation; and an extension of the advance ruling procedures in relation to the allocation of profits to permanent establishments of nonresidents.

Egypt: The general VAT rate increased from 13% to 14% on 1 July 2017.

Estonia: The parliament enacted a law on 29 June 2017 that will reduce the corporation income tax rate on regular profit distributions from 20% to 14% in certain instances. The lower rate will apply to tax years beginning on 1 January 2018, but only to the amount of a distribution that does not exceed the average profit distribution for the past three years; the 20% rate will apply to amounts exceeding the average profit distribution. Transition rules will apply for two years.

European Union: On 1 July 2017, Estonia assumed the presidency of the council of the EU, a rotating presidency each member of the EU holds for six months.

France: On 26 June 2017, the Supreme Administrative Court (SAC) issued two decisions involving the application of the foreign tax credit. In one case, the SAC requested a preliminary ruling from the French Constitutional Court on whether the rules that deny French companies in loss-making situations the ability to carry forward unused foreign tax credits are in conformity with the constitution. The Constitutional Court must issue its preliminary ruling within three months of the SAC's request. In the second case, in a change of position, the SAC allowed foreign tax credits to reduce the corporate income tax owed on foreign income that was subject to French tax at a rate that was less than the standard 33.33% rate in France.

Gibraltar: The Chief Minister delivered the budget to parliament on 26 June 2017, highlighting the country's strong economic position and resilient job market despite the uncertainty created by Brexit. The budget includes proposed changes to the duty rates on certain imports, but no corporate or individual income tax changes except to increase personal tax allowances for inflation. Although the implementing legislation has not been enacted yet, the budget measures generally are intended to have effect as from 1 July 2017.

India: A public consultation period on draft clarifications to the new place of effective management rules (POEM) closed on 23 June 2017. The POEM rules, which are used to determine the residence of foreign companies in India, became effective on 1 April 2017 (for prior coverage, see *World Tax Advisor*, 11 March 2016). The Central Board of Direct Taxes is expected to issue a final notification within the next few months, with a likely retroactive effective date of 1 April 2017.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_1.html

Italy: Implementing Decree No. 47060, issued on 8 March 2017, provides the procedure regulating ruling requests for the application of the flat-tax regime for new tax resident individuals that is available as from fiscal year 2017 (for prior coverage, see Italy tax alert, 23 December 2016). In an unexpected development, the implementing decree states that it is not mandatory for an individual to obtain a tax ruling to apply the flat-tax regime. Instead, a qualifying individual may exercise the option to elect into the regime though the individual income tax return pertaining to the fiscal year in which he/she becomes tax resident in Italy (*e.g.* an individual that becomes a tax resident in fiscal year 2017 will need to elect into the regime through the income tax return due by 30 September 2018).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-italy-23-december-2016.pdf

Netherlands: On 10 July 2017, the government launched a public consultation on a preliminary proposal to implement the EU anti-tax avoidance directive (ATAD 1). The proposal mainly covers limits on the deduction of interest expense and the introduction of controlled foreign corporation rules (in line with the final reports on action 4 and action 3 of the BEPS project, respectively). Minor changes are proposed to the current exit tax rules. Under the

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ATAD 1, these changes must be transposed into Dutch law by 31 December 2018 at the latest (and be effective as from 1 January 2019). Interested parties may submit comments to the Ministry of Finance until 21 August 2017.

United States: The Internal Revenue Service (IRS) has released revised versions of Form W-8IMY, "Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain US Branches for United States Tax Withholding and Reporting" and its associated instructions. The new version of Form W-8IMY updates the prior version (released on 6 July 2016) to reflect final and temporary IRS regulations published in January 2017, as well as the final qualified intermediary withholding agreement published in IRS Revenue Procedure 2017-15.

BEPS corner

In each issue that provides updates on developments in the OECD BEPS initiative, *World Tax Advisor* includes a "BEPS corner" covering these developments.

Germany: A bill that limits the deductibility of certain related party royalty payments was signed by the president on 27 June 2017 and published in the federal gazette on 4 July (for prior coverage, see *World Tax Advisor*, 12 May 2017). The law targets royalty payments made to nonresidents that result in "low taxation" of the royalty income at the level of the recipient due to the application of an intellectual property regime, where the regime is not based on the "nexus approach" as described in action 5 of the OECD BEPS project. It applies to royalties paid after 31 December 2017.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_6.html

Hungary: The parliament passed country-by-country (CbC) reporting legislation on 15 May 2017. The new rules, which apply as from 1 June 2017, implement the EU directive on the automatic exchange of information on CbC reporting, and require the first CbC reports and notifications to be submitted in Hungary for the first fiscal year beginning on or after 1 January 2016, within 12 months of the last day of the fiscal year-end.

Italy: Draft legislation that brings the patent box regime in line with the BEPS action 5 recommendations was converted into law on 21 June 2017, with effect from 25 April 2017. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_4.html

Netherlands: The government has launched a public consultation on a preliminary proposal to implement the EU anti-tax avoidance directive, and which would include BEPS measures. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_ib.html#Netherlands

OECD: The OECD has requested comments on a draft of the 2017 update to the model tax treaty, which also includes changes previously approved as part of the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_5.html

OECD: On 10 July 2017, the OECD released the 2017 edition of the transfer pricing guidelines, which incorporates the BEPS framework and makes substantial revisions to the 2010 guidelines. See Global Transfer Pricing Alert 2017-028, 12 July 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-028-12-july-2017.pdf

Two discussion drafts on the transfer pricing guidelines were released on 22 June 2017: one discussion draft deals with work in relation to BEPS action 7, and contains additional guidance on the attribution of profits to permanent establishments (see Global Transfer Pricing Alert 2017-027, 26 June 2017); and the other deals with BEPS actions 8-10, and provides proposed revised guidance on the application of the transactional profit split method (see Global Transfer Pricing Alert 2017-026, 23 June 2017).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-027-26-june-2017.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-026-23-june-2017.pdf

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OECD: More countries have signed the Multilateral Agreement on the Implementation of Tax Related Measures to Prevent Base Erosion and Profit Shifting. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_tr.html#OECD

Three more countries have joined the inclusive framework on BEPS: Vietnam joined on 21 June 2017, Barbados on 4 July and Montserrat on 6 July. Under the inclusive framework, all jurisdictions that commit to the BEPS project will participate as BEPS associates of the OECD's Committee on Fiscal Affairs. Joining the BEPS inclusive framework means that the countries must implement the four minimum standards: countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution.

On 29 June 2017, Bahrain signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA). Singapore signed the CRS MCAA on 22 June 2017. The first information exchanges for Bahrain and Singapore are scheduled to take place in September 2018.

On 22 June 2017, Belize, the Cayman Islands, Colombia, Haiti, Pakistan, Singapore and the Turks and Caicos Islands signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports under action 13 of the BEPS project, bringing the total number of signatories to 64.

Sweden: A consultation is being held on proposed changes that would update the interest deduction limitations in light of the EU anti-tax avoidance directive and the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_8.html

United States: The Internal Revenue Service has launched several new webpages on its website that provide useful resources and guidance on country-by-country reporting. See Global Transfer Pricing Alert 2017-029, 19 July 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-029-19-july-2017.pdf

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Tax treaty round up

At the end of each month, *World Tax Advisor* provides an update on recent tax treaty developments, with a focus on items that directly affect the withholding tax rates of the key jurisdictions covered by the Deloitte International Tax Source (DITS). Additional coverage may include stated negotiating priorities and other important tax treaty trends.
URL: http://www.dits.deloitte.com?id=us:em:na:wta:eng:tax

Unless otherwise noted, the developments discussed below are not yet in force.

India-Mauritius: The 2016 protocol to the 1982 treaty entered into force on 19 July 2016 and applies for withholding tax purposes as from 1 April 2017 in India and as from 1 July 2017 in Mauritius. A 5% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate is 15%. A 0% rate applies to interest in respect of debt claims existing on or before 31 March 2017 paid to a bank carrying on bona fide banking business; otherwise, the rate is 7.5%. A 15% rate applies to royalties and a 10% rate applies to fees for technical services.

Indonesia-Netherlands: The 2015 protocol to the 2002 treaty will enter into force on 1 August 2017 and will apply as from 1 October 2017. When in effect, the protocol provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; a 10% rate will apply to dividends paid to a qualifying pension fund; otherwise, the rate will be 15%. A 5% rate will apply to interest paid on a loan made for a period of more than two years or in connection with a credit sale of industrial, commercial or scientific equipment; otherwise, the rate will be 10%. A 10% rate will apply to royalties.

Japan-Latvia: The 2017 treaty entered into force on 5 July 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 10% withholding tax rate on dividends paid to an individual or where the payer company is entitled to a deduction for dividends paid in computing its taxable income; otherwise, the rate will be 0%. A 10% rate will apply to certain contingent interest and interest paid to an individual; otherwise, the rate will be 0%. Royalties will be taxable only in the state of residence of the recipient.

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Japan-Lithuania: When in effect, the treaty signed on 13 July 2017 provides for a 10% withholding tax rate on dividends paid to an individual or where the payer company is entitled to a deduction for dividends paid in computing its taxable income; otherwise, the rate will be 0%. A 10% rate will apply to certain contingent interest and interest paid to an individual; otherwise, the rate will be 0%. Royalties will be taxable only in the state of residence of the recipient.

Mexico-Spain: The 2015 protocol to the 1992 tax treaty will enter into force on 27 September 2017 and will apply for withholding tax purposes as from that date. When in effect, the protocol provides for a 0% withholding tax rate on dividends paid to a company whose capital is wholly or partially divided into shares and that holds directly at least 10% of the capital of the payer company, or paid to a pension fund; otherwise, the rate will be 10%. A 0% rate will apply to interest paid to a pension fund; a 4.9% rate will apply to interest paid on loans granted by a bank or other financial institution (including investment banks, savings banks and insurance companies) and to interest paid on bonds and other debt instruments that are regularly and substantially traded on a recognized stock exchange; otherwise, the rate will be 10%. The withholding tax rate on royalties will not be affected by the protocol.

OECD: The OECD has requested comments on a draft of the 2017 update to the model tax treaty. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_5.html

OECD: The OECD has announced that Mauritius signed the Multilateral Agreement on the Implementation of Tax Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 5 July 2016, followed by Cameroon on 11 July 2017. Seventy jurisdictions now have signed the MLI (a list of the jurisdictions is available through DITS).
URL: https://www.dits.deloitte.com/App/Views/PopUpWindow.html?pageName=taxTreaties

Portugal-Oman: Portugal recently announced that the 2015 treaty entered into force on 26 July 2016 and applies as from 1 January 2017. The 10% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate is 15%. A 10% rate applies to interest, and an 8% rate to royalties.

Spain-Belarus: When in effect, the treaty signed on 14 June 2017 to replace the 1985 treaty between Spain and the former USSR provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. A 5% rate will apply to interest and royalties.

UK-Kyrgyzstan: When in effect, the treaty signed on 13 June 2017 provides for a 5% withholding tax rate on dividends paid to a company that holds directly or indirectly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. A 0% rate will apply to interest paid on the credit sale of equipment, merchandise or services; otherwise, the rate will be 5%. A 5% rate will apply to royalties.

Global tax alerts

OECD

OECD releases new edition of transfer pricing guidelines

On 10 July 2017, the OECD released the 2017 edition of the "*OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*," which incorporates the BEPS framework and makes substantial revisions to the 2010 guidelines.
Issue date: 12 July 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-028-12-july-2017.pdf

OECD releases new discussion draft on attribution of profits to PEs

On 22 June 2017, the OECD released a discussion draft document on the "*Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*," which contains additional guidance on the attribution of profits to permanent establishments under action 7 of the BEPS project.

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Issue date: 26 June 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-027-26-june-2017.pdf

OECD releases third discussion draft on transactional profit splits
On 22 June 2017, the OECD released a discussion draft document on the "*Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*," which deals with BEPS actions 8-10 and provides proposed revised guidance on the application of the transactional profit split method.
Issue date: 23 June 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-026-23-june-2017.pdf

United States
IRS launches country-by-country reporting web pages
The US Internal Revenue Service has launched several new webpages on its website that provide background information and other useful resources and guidance on country-by-country reporting.
Issue date: 19 July 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-029-19-july-2017.pdf

Tax Court declines to follow Rev. Rul. 91-32
On 13 July 2017, the US Tax Court issued its opinion in "*Grecian Magnesite Mining, Industrial & Shipping Co., SA v. Commissioner*," in which the court declined to follow the aggregate approach in Rev. Rul. 91-32 and held that gain on a redemption of an interest in a US partnership was capital gain that was not US source and was not effectively connected with a US trade or business.
Issue date: 18 July 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-18-july-2017.pdf

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