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International Tax

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In this issue:

Chile's new rules on taxation of foreign passive income

One of the changes introduced by Chile's 2014 tax reform is the adoption of certain standards proposed by the OECD base erosion and profit shifting (BEPS) project aimed at combating international tax evasion. To this end, a controlled foreign company (CFC) regime has been introduced to regulate passive income earned by Chilean companies abroad. The regime aims to prevent the deferral of tax on foreign-source income by requiring Chilean resident taxpayers to include in their current taxable income certain types of passive income earned by nonresident foreign entities that are deemed to be CFCs.

Although the CFC regime will come into effect on 1 January 2016, certain reporting requirements on investments abroad must be fulfilled by 30 June 2015.

Application of regime

A foreign entity will be considered a CFC if a Chilean taxpayer holds, directly or indirectly, 50% or more of the foreign entity's capital, profits or voting rights; can elect the majority of the foreign entity's directors; or has unilateral powers to amend the foreign entity's bylaws. A foreign entity generally will be deemed to be controlled (irrespective of the participation or rights involved) if it is established, headquartered or resident in a low or no-tax country or territory (although companies established in OECD member jurisdictions will be excluded from this presumption).

In addition, for the CFC regime to apply, the foreign entity will have to earn income defined as “passive,” which includes interest (unless the foreign entity is a bank or financial entity regulated in the relevant country), capital gains and royalties. Any form of distribution or accrual of profits derived from the CFC’s participation in other entities also will be considered passive income. However, it is important to note that an exception will be provided if the distribution or accrual comes from another company controlled, directly or indirectly, by the CFC that is not headquartered or resident in Chile and the passive income is not earned in the company’s main line of business or activity. For example, if a Chilean taxpayer holds an indirect participation in a nonresident operating entity, the income from that operating entity will not be recognized as received or earned by the Chilean taxpayer and will not be subject to taxation in Chile in accordance with the CFC provisions.

Determination of income

Passive income received or earned by the CFC will be considered to be received or earned by the Chilean taxpayer at the close of the relevant fiscal year, in proportion to the taxpayer’s participation in the CFC.

Expenses incurred to generate the passive income will be deductible, and the income will be determined in the currency of the country in which the CFC is located and then converted into Chilean pesos using the exchange rate at the end of the fiscal year in Chile. If the passive income accounts for 80% or more of the CFC’s income, its total income will be deemed passive. If the passive income accounts for 10% or less of the CFC’s income or does not exceed UF 2,400 (the UF is an inflation-adjusted monetary unit, and the threshold currently is equivalent to about USD 96,000), it will not be taxed in Chile under the CFC rules.

Information required

New obligations will be imposed on Chilean taxpayers under the CFC regime. These include requirements to keep detailed and up-to-date records of the passive income calculated in the country of the CFC, the dividends or earnings from the CFC and the taxes paid or owed on this income abroad. The Chilean tax authorities will issue a resolution specifying the precise information that must be maintained in these records and may request formal clarification of information from taxpayers to oversee and enforce compliance with the rules.

In guidance issued on 16 March 2015, the tax authorities require Chilean taxpayers that have certain investments abroad (e.g. equity interests, shares or other forms of participation in the ownership or profits of a foreign company in which the investor directly or indirectly holds any percentage) to file an affidavit when the direct or indirect amount of such investments exceeds USD 1 million at any time during the relevant business year. The affidavit must be filed annually by 19 March for transactions that took place during the preceding business year. By way of exception, taxpayers that are required to file in tax year 2015 with respect to transactions undertaken in 2014 will have until 30 June 2015.

The affidavit will need to contain information on the entity that received the investment; the amount(s) invested; dividends; withdrawals; interest, commissions and other benefits obtained; the profit or loss on the sale or redemption of the relevant stock or equity interest; the dissolution and liquidation of the companies or entities that received the investments; and the taxes paid abroad and any tax credit limits associated with those taxes. Failure to file the affidavit will be subject to a penalty of up to one annual tax unit (currently approximately USD 850).

Comments

The introduction of the new CFC regime means that investments made in other countries will need to be reviewed closely because Chilean investors that have decided to invest abroad without necessarily seeking a deferred tax benefit will be subject to the new rules on passive income if, for example, they keep cash surpluses (from dividends) abroad that generate passive income from investments made in those countries.

— Hugo Hurtado (Santiago)
Partner
Deloitte Chile
hhurtado@deloitte.com

Brazil:
Change to corporate income tax return obligation affects reporting requirements for companies

Brazil's previous corporate income tax return (known as the DIPJ) was replaced by a new reporting obligation called the Tax and Accounting Information Disclosure (ECF) as from fiscal year 2014 (for prior coverage, see the Brazil tax alert, 24 September 2013). The filing deadline for the ECF is the last business day of September, so the first ECF returns will be due in September 2015 (the filing deadline for the DIPJ was the last business day of June). This article summarizes some of the relevant reporting requirements and considerations for companies in implementing these requirements.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-240913.pdf

The ECF is a comprehensive accounting and tax reporting filing obligation for corporate income tax (IRPJ) and the social contribution on net profits (CSLL) that integrates accounting, tax and economic information. It applies to legal entities subject to the actual taxable income regime (*Lucro Real*), the deemed profit regime (*Lucro Presumido*) and the arbitrated profit regime (*Lucro Arbitrado*), as well as to legal entities that are tax exempt (including silent partnerships).

Companies are required to prepare and file the ECF electronically. The new reporting obligation is more complex and requires more granular information than the DIPJ. This additional information will allow the Brazilian tax authorities to perform an electronic consistency review simultaneously with the ECF filing, and should increase the efficiency of electronic tax audits.

One important difference between the ECF and the DIPJ relates to penalties that apply to entities that have elected the actual taxable income regime (less severe penalties are imposed on entities that have not elected the actual taxable income regime). The penalty for errors or omissions in the DIPJ was BRL 20 (approximately USD 7) for every 10 errors and omissions, or 2% per month of the corporate income tax due. In contrast, the penalty for failure to file the ECF will be 0.25% of the entity's net profit in the period, limited to BRL 5 million for entities with gross revenue greater than BRL 3.6 million. For filing incorrect information, the penalty may be 3% of the commercial/financial transaction omitted or incorrectly reported per field.

Companies should consider the following points in implementing the new ECF reporting requirements:

- The ECF must be completely integrated with the accounting books and financial information of the Brazilian company.
- The ECF must be prepared and submitted electronically, following the same procedures that companies are adopting in regards to the SPED system (the Brazilian Public Digital Bookkeeping System).
- The ECF must be prepared in accordance with the information previously filed by the taxpayer for purposes of its monthly accounting statements (ECD), but requires more detailed information (i.e. monthly financial information, monthly corporate income tax (IRPJ and CSLL) calculations with descriptions of itemized deductions and corresponding accounting entries).
- The ECF must be consistent with the ECD and with other financial information provided to the Brazilian tax authorities via the SPED system.
- The ECF incorporates the corporate taxable income calculation book that must be electronically filed (e-LALUR) in the SPED system.
- In contrast to the DIPJ, which was prepared on tax return software provided by the tax authorities and compatible with most operating systems, companies may have difficulty complying with the new ECF layout and the relevant electronic system validations, and with completing the delivery of files, until any issues are resolved.

— Cristina Berry (São Paulo)
Partner
Deloitte Brazil
caberry@deloitte.com

Marcelo Natale (São Paulo)
Partner
Deloitte Brazil
mnatale@deloitte.com

Andre Illipronti (New York)
Senior Manager
Deloitte Tax LLP
aillipronti@deloitte.com

OECD:
Discussion draft on cost contribution arrangements released

The OECD, as part of its work on the action plan to address base erosion and profit shifting (BEPS), released a discussion draft on 29 April 2015 proposing revisions to Chapter VIII of the *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* on cost contribution arrangements (CCAs). The proposed changes would update and expand guidance for ensuring that the application of a CCA within a multinational group is consistent with the arm's length principle.

As with other discussion drafts on BEPS actions, the proposals do not represent a consensus view from the G20/OECD governments involved, but are designed to provide preliminary but substantive proposals for public analysis and comment.

The discussion draft proposes a significant change to the transfer pricing of CCAs by stipulating that contributions made by participants would need to be assessed, in almost all cases, by reference to "value." This is a change from the current guidance, which leaves open the question of whether cost or value should be used. This change is proposed to ensure that the transfer pricing outcomes under CCAs are consistent with those relating to intangibles developed outside CCAs and with developments in relation to the control and management of risk, presumably relating to concerns about minimally functional entities that provide funding for the development of intangibles.

Most CCAs to date have been based on costs, in part because of the accessibility of similar arrangements between third parties that are based on costs (e.g. joint ventures in the oil and gas and pharmaceutical industries).

The discussion draft does not make any reference to transitional arrangements, so businesses may need to apply a value-based assessment of contribution in relation to existing multi-year arrangements.

Cost contribution arrangements

The discussion draft sets out guidance for application of the arm's length principle to CCAs undertaken by companies within multinational groups. A CCA would be defined for this purpose as a contractual arrangement to share the contributions and risks involved in projects to create direct benefits for the businesses of each of the participants. There would be two broad categories of CCAs:

- *Development CCAs* for the joint development, enhancement, maintenance, protection or exploitation of intangible or tangible assets, where each participant will receive a share of the rights in the developed intangible or tangible asset; and
- *Services CCAs* for obtaining services.

The discussion draft acknowledges several commercial reasons for companies within multinational groups to enter into CCAs, such as to spread risk, utilize different skill sets, achieve economies of scale and avoid complex intragroup licensing arrangements for intangible assets. The draft also would establish the methods to be employed to share contributions among the participants in a manner consistent with what would have been agreed upon between independent parties in similar circumstances (i.e. under the arm's length principle). For a CCA to satisfy the arm's length principle, each participant's proportionate share of the overall contributions to the CCA would be required to be consistent with its proportionate share of the overall expected benefits.

The first step in evaluating an arrangement would be to determine the participants of the CCA. Since a CCA is premised on expected mutual benefit and on all participants sharing not only the contributions to, but also the risks of, the CCA activities, each participant would be required to have a reasonable expectation that it will benefit from the CCA activity itself (and not just from performing part or all of that activity). In addition, each participant would be required to have the capability and authority to control the risks associated with the CCA (in accordance with the principles set out in Chapters I-III of the OECD transfer pricing guidelines, including in relation to risk).

It would be necessary to estimate each participant's expected benefits from the CCA. This could be based on the anticipated additional income generated, costs saved or other benefits received by each participant. In practice, a relevant allocation key, such as sales; units used, produced or sold; or number of employees could be appropriate to reflect the participants' proportionate shares of expected benefits. To the extent that benefits of a CCA activity are expected to be realized in the future, and not only in the year the costs are incurred, the allocation of contributions should take account of projections about the participants' shares of those benefits. Particularly in the case of development CCAs, projections may be subjective and uncertain, and it could be appropriate for a CCA to provide for possible adjustments to proportionate shares of contributions over the term of the CCA on a prospective basis to reflect changes in circumstances that result in changes in shares of benefits.

Where the value of a participant's contributions is not consistent with its share of expected benefits, balancing payments could be required. However, making minor or marginal adjustments or general adjustments based on evidence from a single year could be inappropriate, as CCAs can be long-term projects where costs and benefits need to be measured over a period of years.

Changes in the participants of a CCA could trigger a reassessment of the proportionate shares of a participant's contributions and expected benefits. In the case of a new entrant contributing to a CCA, arm's length compensation would be required in the form of a buy-in payment. Conversely, a participant withdrawing from a CCA could be entitled to a buy-out payment to reflect a disposal of its interest. Such payments would be based on value rather than cost (as they are under the current transfer pricing guidelines).

Contributions by or for a participant of a CCA, including any balancing payments, buy-in payments or buy-out payments, would continue to be treated for tax purposes in the same manner as they would be under the rules of the tax system applicable to each participant if the contributions were made outside of a CCA. The character of the contribution would depend on the nature of the activity being undertaken by the CCA (e.g. whether it is capital or revenue in nature) and will determine how it is treated for tax purposes.

The guidance remains broadly unchanged in terms of its recommendations for structuring and documenting CCAs (e.g. conditions for participants eligible to join a CCA, terms to be included and information that should be documented at the outset and throughout the duration of the CCA).

Comments

The simplicity and ease of application that arises from using costs (which are readily identifiable to businesses and readily auditable by tax authorities) would be eliminated in favor of a more subjective approach based on value. This would have wide-reaching consequences and would introduce considerable complexity for businesses that are not engaging in BEPS (e.g. where the participants in the CCA do not involve low-tax jurisdictions or minimally functional entities). In essence, the proposals mean that CCAs would have the same difficulties as profit splits, including the complexities of applying and agreeing on the outcome with multiple tax authorities. The result would be an increase in the compliance burden for companies and additional costs for tax authorities that must understand and audit the arrangements, with a significant potential for disputes and double taxation where tax authorities do not share the same view.

Comments on the discussion draft are invited by 29 May 2015; a public consultation will be held on the draft and other transfer pricing topics at the OECD on 6/7 July 2015.

— Bill Dodwell (London)
Partner
Deloitte United Kingdom
bdodwell@deloitte.co.uk

Alison Lobb (London)
Director
Deloitte United Kingdom
alobb@deloitte.co.uk

Peru:
Nonresidents must obtain certification of tax basis for indirect transfers of shares

Peru's Ministry of Economy and Finance published a decree on 18 April 2015 that repeals the provision in the capital gains tax (CGT) regulations that exempted nonresident taxpayers from the requirement to obtain a tax basis certification from the Peruvian tax authorities when determining the amount subject to tax on indirect transfers of shares of Peruvian legal entities.

As from 19 April 2015, the same general process that applies to direct transfers of shares by a nonresident also applies to indirect transfers that fall within the scope of the Peruvian tax net: the nonresident transferor of shares of another nonresident entity that owns a Peruvian legal entity must submit an application to the Peruvian tax authorities requesting a "Certificate of Invested Capital" to support the tax cost basis (amount paid) for the shares that are intended to be transferred. This certification must be issued before the agreed-upon consideration is paid by the transferee; otherwise, the nonresident transferor will not be allowed to offset its tax basis against the gain on the shares that are transferred, and, thus, the applicable CGT will be imposed on the gross amount of the sales proceeds.

Background

According to rules introduced in 2011, capital gains derived from certain indirect transfers of the shares of a Peruvian legal entity are subject to Peruvian tax, generally at a rate of 30% (or 5% if the shares of the nonresident entity are recorded in the Peruvian Public Securities Registry and traded through the Lima stock exchange (LSE)). These rules subsequently were

revised to facilitate compliance by taxpayers and to enable the Peruvian tax authorities to monitor transactions and collect tax due. However, the revised CGT rules continued to give rise to practical implementation issues, and additional guidance was necessary to provide more legal certainty to investors and ensure compliance. (For prior coverage, see *World Tax Advisor*, 22 November 2013.)
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/131122_6.html

Scope of indirect transfers: Capital gains derived from an indirect transfer of the shares of a Peruvian legal entity are subject to Peruvian tax if the conditions in 1) or 2) below are satisfied:

1. The shares of a nonresident entity that owns, directly or indirectly, shares of a Peruvian company are transferred and either:
    a. The market value of the shares of the Peruvian company owned directly or indirectly by the nonresident entity is equal to 50% or more of the market value of all of the shares representing the equity capital of the nonresident entity ("50% market value rule") for the 12-month period before the transfer, and there has been a transfer (or transfers) of shares representing 10% or more of the equity capital of the nonresident entity within the relevant 12-month period (in the event of an audit, the tax authorities have the burden of demonstrating that these conditions are satisfied); or
    b. The nonresident entity is resident in a tax haven or low-tax jurisdiction, unless it can be demonstrated that the conditions in a) above are not satisfied (in the event of an audit, the taxpayer has the burden of demonstrating that these conditions are not satisfied).
2. The nonresident entity issues new shares as a result of a capital increase (generated by a new capital contribution, the capitalization of credits or a reorganization) and allocates the shares a value below their market value. This provision will apply only if at least one of the circumstances described in 1) above is present. Under this CGT anti-avoidance measure, the nonresident entity will be deemed to have transferred the shares issued as a result of the capital increase.

Payment of tax and reporting obligations: If a transaction falls within the scope of an indirect transfer taxable in Peru, CAVALI (the Peruvian clearing and settlement institution) will act as a withholding agent for transfers carried out through the LSE. As from 1 January 2014, an information reporting requirement applies to nonresident investors participating in indirect transfers on the exchange. In all other cases, unless there is a Peruvian transferee that acts as a withholding agent, the nonresident transferor must self-assess the tax. Where the transfer is not carried out through the LSE and a Peruvian transferee acts as a withholding agent, that transferee is jointly and severally liable with the nonresident transferor for the payment of any CGT that may arise from the indirect transfer, and the tax authorities can audit and seek collection directly from the transferee.

A distinctive feature of the CGT regime is that, under specific circumstances (i.e. if, in the 12-month period before the transfer, the Peruvian company whose shares are transferred and the nonresident transferor are economically related), the Peruvian issuer company is jointly and severally liable with the nonresident transferor for the payment of CGT, even if the transaction is carried out through the LSE, and the Peruvian tax authorities can seek collection of the tax due directly from the Peruvian issuer company. Additionally, the current provisions require resident legal entities to notify the Peruvian tax authorities when their shares or participating interests are transferred indirectly, in accordance with the reporting rules issued to facilitate compliance and collection of the applicable CGT.

Determination of potential CGT liability

Under the current rules, the taxable base for purposes of the CGT on indirect transfers is determined by taking into account the market value of the shares in the nonresident legal entity that are transferred (identified following the procedure specified by the regulations), multiplied by the percentage identified when applying the 50% market value rule. The tax basis of the shares in the nonresident legal entity transferred is the value obtained by applying the percentage determined when applying the 50% market value rule to the total tax basis available under Peruvian provisions.

It should be noted that the tax basis considered in the calculation must be supported by documents issued abroad according to the tax rules of the relevant jurisdiction, or by any other documents that accurately support the amount claimed as the tax basis.

Rules prior to the decree: Before the 18 April decree, the CGT regulations provided that there was no obligation to obtain a Certificate of Invested Capital for an indirect transfer of shares. Consequently, it was only necessary for the nonresident taxpayer (or any local party considered jointly and severally liable with the nonresident, either as the Peruvian transferee or the Peruvian company whose shares were transferred) to retain evidence of the amount invested in the shares that supports a valid tax basis for purposes of the calculation.

In practice, the absence of further guidelines regarding the requirements and the type of documentation necessary to support the tax basis in the foreign shares created certain uncertainty for investors that need to know the amount that the Peruvian authorities will recognize as the tax basis for purposes of determining the tax liability.

Effect of the decree: As a consequence of the decree, once a potential transaction has been identified as an indirect transfer, the nonresident transferor generally will need to submit a formal application to the Peruvian tax authorities for a Certificate of Invested Capital for the basis of the foreign shares to be transferred, before the transaction is carried out. This application will trigger a preliminary audit by the authorities, and until the certification is issued, it is not possible to offset the transferor’s basis against the gain from the transfer.

If a certificate is obtained, the nonresident transferor will be taxed only on the difference between the market value of the shares and their certified cost (i.e. on the net capital gain). In the absence of this certification, the 30% tax rate would apply to the total sales proceeds. Thus, in practice, the Certificate of Invested Capital must be requested before implementing the transaction, taking into account that the certification process takes approximately two months. The certificate is valid for only 45 days from its issuance, and only as long as the tax basis in the shares remains the same (if it changes, a new certificate must be obtained).

Based on other provisions in Peruvian law, a Certificate of Invested Capital will not be required if the indirect transfer is made through the LSE.

Comments

The new requirement to obtain a Certificate of Invested Capital for indirect transfers before the date of the transaction should eliminate some of the uncertainty for nonresident investors seeking to accurately manage their tax compliance obligations. However, this measure also will increase the administrative burden and costs associated with tax compliance for indirect transfers of shares, since nonresident transferors now will have to wait until the Peruvian tax authorities issue the certificate to complete the transaction and must incur the costs associated with the request (e.g. costs of translation of relevant documents into Spanish, validation of documents by the Peruvian consulate, appointment of a Peruvian representative, preparation of an application letter for the certificate).

Before this new requirement, any assessment issued by the tax authorities would have calculated the CGT on indirect transfers on a net basis, as long as proper supporting documentation was submitted upon request, even if the transaction and the CGT were not timely reported and paid, respectively. Now the Peruvian tax authorities will apply the 30% tax rate to the entire consideration (with no reduction for the taxpayer's basis) if the Certificate of Invested Capital is not timely obtained, regardless of whether there is other sufficient supporting documentation on record. Thus, it appears that the new rule is designed to encourage the voluntary reporting of transactions involving the indirect acquisition of Peruvian shares and, therefore, to facilitate the Peruvian tax authorities´ collection of the applicable income tax.

Nonresident taxpayers wishing to dispose of investments in companies holding Peruvian shares, or evaluating a corporate reorganization or any other foreign transaction that would require the indirect transfer of Peruvian shares, should take this new requirement into consideration to accurately assess the associated tax costs, and the tax risks involved if the transaction falls within the scope of an indirect transfer.

— Ana Luz Bandini (Lima)
Partner
Deloitte Peru
abandini@deloitte.com

Francisco Prados (Lima)
Senior Manager
Deloitte Peru
frprados@deloitte.com

Sweden:
Government proposes restrictions on participation exemption

A memorandum issued by the Swedish Ministry of Finance on 22 April 2015 includes proposals to introduce restrictions on the application of the domestic participation exemption to prevent companies from using structures that do not reflect economic reality; it also would extend the Tax Avoidance Act to cover the Swedish withholding tax regime. The proposal relating to the participation exemption would implement the recently amended EU parent-subsidiary directive (PSD) into Swedish law.

If enacted, the proposed rules would apply as from 1 January 2016.

Participation exemption and PSD

Under the domestic participation exemption, dividends paid to a Swedish (or nonresident) company on “business-related shares” generally are tax-exempt. Shares are deemed to be business related if they are unlisted or, if listed, the shares held by the company receiving the dividends represent 10% or more of the total number of votes of the payer company. In the case of listed shares, the recipient company must hold the shares for at least 12 months.

The PSD, which is designed to prevent the double taxation of dividends and profit distributions between members of a corporate group in different EU member states, provides for a tax exemption for such payments made by qualifying EU subsidiaries to EU parent companies.

The PSD was amended in 2014 to address hybrid financial mismatches due to the interaction of different national tax systems within the EU, specifically where hybrid loan structures are used to achieve nontaxation of payments between affiliated entities in two EU member states because a loan is treated as debt in the member state of the debtor (subsidiary) and as equity in the member state of the lender (parent company). An anti-abuse clause inserted in the revised PSD provides that the withholding tax exemption will not apply to dividends paid to an EU parent company to the extent the payment is deductible by the payer subsidiary located in another member state. Accordingly, a cross-border group of parent and subsidiary companies using hybrid financing arrangements will be denied a tax exemption for payments received in the member state in which the parent company is resident if the payments are deductible in the member state in which the subsidiary is resident. According to the PSD, the member state of the parent company must tax such profits where they are deductible by the subsidiary and refrain from taxing the profits if they are not deductible by the subsidiary. Member states are required to implement the anti-hybrid rule into their domestic legislation by 31 December 2015.

Proposed changes

The minister has proposed that neither the Swedish participation exemption nor the PSD would apply to dividends paid to a Swedish company in cases where the dividends may be deducted as interest by the payer company. The proposal goes further than the PSD because the participation exemption would be denied even if the payer is resident outside the EU.

Also as part of implementing the amended PSD, the minister has proposed to include certain Romanian and Polish entities as entities whose shares should be deemed to be held for business purposes under Sweden’s participation exemption.

Currently, the Tax Avoidance Act does not apply to withholding tax and the anti-avoidance in the withholding tax regime is not compliant with the PSD. The minister now has proposed to eliminate the latter anti-avoidance rule and include it in the Tax Avoidance Act to comply with the amended PSD. In essence, the act deems tax avoidance to occur when a legally valid transaction is used to avoid or circumvent the tax rules to gain a substantial tax benefit unintended by the legislature.

Comments

The anti-abuse rule in the PSD is not intended to be applied if there is no double nontaxation or if double taxation arises. EU member states do have the option to impose more stringent anti-abuse rules, but the minimum standards in the revised PSD must be applied. According to the proposed Swedish rules, dividends treated as deductible interest in the payer country would be taxable in Sweden even if the nonresident payer company is unable to utilize the interest deduction.

Although the proposed amendment to Sweden's participation exemption is designed to comply with the amended PSD, the new restriction would apply irrespective of the extent of the Swedish company's participation in the payer company, and irrespective of where the company is resident (i.e. even if the payer subsidiary is an entity resident outside the EU). It also should be noted that hybrid mismatch arrangements are one of the action plan items for the OECD under the base erosion and profit shifting (BEPS) project.

The Swedish government's "preparatory work" to the above proposal refers to the general anti-abuse rule in the revised PSD. (The general anti-abuse provision adopted by the European Council on 27 January 2015 aims to prevent misuses of the directive and ensure more consistency in its application; the clause requires governments to refrain from granting the benefits of the directive where there is an arrangement, or a series of arrangements, that are not "genuine" and have been put in place to obtain a tax advantage.) This reference makes genuine substance of the recipient company an important factor from a Swedish perspective when considering whether the Tax Avoidance Act could apply to dividends distributed from Sweden. It therefore is necessary to determine whether an arrangement is put into place for valid commercial reasons that reflect economic reality. According to the amended PSD, the tax authorities should undertake an objective analysis of all relevant facts and circumstances to determine if valid substance exists.

If the proposal is enacted as currently drafted, there may be an increase in the number of challenges by the tax authorities against structures, including challenges where a foreign holding company owns shares in a Swedish limited liability company; however, the proposal may be revised before it is adopted, so it will be necessary to wait for the final legislation to understand the full scope of the rules.

— Sara Bolmstrand (Stockholm)
Director
Deloitte Sweden
sbolmstrand@deloitte.se

Sara Springman (Stockholm)
Consultant
Deloitte Sweden
sspringman@deloitte.se

In brief

European Union: The Court of Justice of the European Union has published proposals for a reform of the EU court system that would aim to enhance overall efficiency of the system and provide structural and sustainable changes to address the increase in the number and complexity of cases. It is proposed to increase the number of judges of the General Court from

27 to 56 over a three-year period. The proposal has been approved, in principle, by the Council of the EU and now is being considered by the European parliament.

India: The 2015 budget contained a measure that would exempt foreign portfolio investors (foreign entities/individuals that invest in Indian-traded securities after obtaining a license from the Securities and Exchange Board of India) from the minimum alternate tax (MAT) on certain income, but a lack of clarity in the proposal is spurring the tax authorities to assess MAT for past years. A modified version of the measure is included in the Finance Bill 2015, which was approved by the lower house of parliament on 30 April 2015. The bill addresses some of the ambiguities from the original proposal, but provides no relief in respect of claims raised for prior years.

Israel: Draft guidelines from the tax authorities would require certain foreign businesses “with substantial business activities” in Israel over the internet to register for VAT in Israel. The draft refers only to the provision of services (and not to the sale of goods). According to the draft, it may be argued that a business activity takes place in Israel in certain situations where services are provided to Israel residents. If adopted, the draft could require, for example, a foreign company that operates a search engine to register for VAT purposes in Israel with regards to its income from advertising directed to Israeli customers.

Poland: The Court of Justice of the European Union (CJEU) has ruled that a Polish partnership limited by shares (PLS) is a capital company for purposes of the EU capital duty directive and, therefore, is exempt from capital duty. A PLS has individuals as general partners, but it also issues shares that can be traded on a stock exchange. During the proceedings, the Polish government pointed out that a PLS is not included in Annex 1 to the directive, which lists capital companies. However, according to the CJEU, a company’s characteristics are decisive in determining whether the company should be classified as a capital company, and not simply whether the entity is listed in the annex. The court also ruled that the purpose and wording of the capital duty directive supports an interpretation of the term “capital company” that includes all types of entities that could raise capital within the internal market.

Singapore: The Inland Revenue Authority of Singapore (IRAS) has issued a revised goods and services tax (GST) e-tax guide that clarifies its position on fund management services provided to funds (other than trust funds). Previously, the IRAS’s position was that if a fund had no other permanent establishment (PE) in Singapore and relied wholly on a Singapore fund manager to administer the fund, the fund would be deemed to have a PE in Singapore through the fund manager, and so GST would need to be charged on the fund management fees. However, because the fund would not be registered for GST, it would not be able to recover any of the GST. The IRAS has now clarified that, prior to 1 April 2015, such funds may take advantage of a concession so that GST need not be charged, and that on or after 1 April 2015, GST is not chargeable on services supplied by Singapore fund managers if certain conditions are fulfilled. There may be grounds to recover GST charged on past fund management services.

BEPS corner

In the first issue of each month, the *World Tax Advisor* includes a monthly "BEPS corner" that provides updates on developments in the OECD's base erosion and profit shifting (BEPS) initiative.

Chile: One of the changes introduced by Chile's 2014 tax reform is the adoption of certain standards proposed by the BEPS project aimed at combating international tax evasion. To this end, a controlled foreign company regime has been introduced to regulate passive income earned by Chilean companies abroad. See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150508_1.html

China-Hong Kong: In line with the BEPS initiative, a new protocol to the 2006 double taxation arrangement includes an anti-avoidance provision under which treaty benefits for dividends, interest, royalties and capital gains will be denied if the main purpose for entering into the arrangement is to take advantage of these benefits. See *World Tax Advisor*, 24 April 2015.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150424_2.html

OECD: On 29 April 2015, the OECD released a discussion draft proposing revisions to Chapter VIII of the *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* on cost contribution arrangements (CCAs). The proposed changes update and expand guidance for ensuring that the application of a CCA within a multinational group is consistent with the arm's length principle. See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150508_3.html

OECD: On 16 April 2015, the OECD released a public discussion draft on improving the availability and analysis of data on BEPS (Action 11 of the BEPS action plan). The OECD is seeking to establish methodologies for governments to collect and analyze data and ensure that tools are available to monitor and evaluate the effectiveness of counter-BEPS measures. A number of potential "indicators" are outlined to assist in tracking the scale and economic impact of BEPS over time, such as high profit margins in territories with low tax rates. The paper also analyzes a number of studies undertaken to date, which indicate the presence of BEPS activity. A range of existing data sources are assessed, and the conclusion is that their significant limitations mean that, at present, any economic analysis of the scale and impact of BEPS is severely constrained. One of the key challenges is disentangling real economic effects (such as those from tax incentives designed to encourage business investment, such as R&D tax credits) from the effects of artificial BEPS-related behaviors.

From a business perspective, it is positive that currently there are no proposals for any additional data to be collected from taxpayers. Instead, any further work on the analysis of BEPS data will be based on existing sources, such as tax return filings. The paper identifies "best practices" for governments to make better use of existing data already collected. The discussion draft also confirms the distinction between relocations of business activity to take advantage of, for example, differences in countries' tax rates (which are not BEPS), and artificial arrangements put in place to exploit those differences in tax rates (which are BEPS).

The discussion draft proposes overcoming some of the limitations through use of different methods and processing of additional data. Comments should be submitted to OECD by 8 May 2015, and there will be public consultation meeting on 18 May.

OECD: For additional coverage of the OECD discussion draft on BEPS Action 3 (strengthening CFC rules), see the US tax alert, 14 April 2015.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-14-april-2015.pdf

Sweden: A memorandum issued by the Ministry of Finance on 22 April 2015 would introduce restrictions on the application of the domestic participation exemption, including restrictions related to hybrid mismatch arrangements (one of the action plan items under the BEPS project). See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150508_5.html

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Australia
Tax transparency rules to take effect in 2015
Tax transparency rules requiring the public disclosure of certain information relating to the tax affairs of large corporate entities in Australia were passed in 2013, and the Australian Taxation Office is expected to publish the first tranche of company information on its website at the end of 2015. The rules, which are designed to discourage large corporate tax entities from engaging in aggressive tax avoidance practices, represent a paradigm shift from the long-standing position that taxpayer information is confidential.
Issue date: 4 May 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-4-may-2015.pdf

United States
Proposed regulations address the PFIC status of foreign insurance companies
On 23 April 2015, the US Treasury and the Internal Revenue Service issued proposed regulations clarifying the circumstances under which certain investment income of a foreign insurance company is excluded from the definition of passive income under section 1297(b)(2)(B) of the Internal Revenue Code. As a result, the proposed regulations indirectly address the passive foreign investment company (PFIC) status of such foreign insurance companies and the US federal income tax consequences to US investors in such arrangements. Treasury and the IRS also have requested comments on the proposed rules.
Issue date: 27 April 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-27-april-2015.pdf

2014 US competent authority statistics reveal significant increase in demand and inventory, more expected to come in 2015
The Internal Revenue Service (IRS) on 16 April 2015 released competent authority statistics for the 12-month period from 1 January 2014 to 31 December 2014. The report contains

statistics on cases handled by both the IRS advance pricing and mutual agreement program and the treaty assistance and interpretation team, and includes information on requests received, cases resolved and pending cases.
Issue date: 4 May 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-007-4-may-2015.pdf