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In this issue:

International financial center jurisdictions face challenges in responding to BEPS

Governments, especially those of the G20 countries, have stepped up their efforts to halt the flow of investment and capital to countries with low or no tax regimes, including some international financial centers (IFCs). An IFC generally is described as a low or no-tax jurisdiction that attracts international banks, insurance companies and other corporate entities seeking to avoid the incidence of high taxation.

IFCs, such as Barbados, with economies that depend on income from foreign direct investment may be caught up in the dynamics of proving that income is legitimate when multinational corporations choose these offshore jurisdictions as a venue for their headquarters, and they may face certain challenges in responding to developments relating to the OECD's base erosion and profit shifting (BEPS) initiative.

The global economic crisis continues to affect governments and the business community, and both sectors constantly are seeking ways to retain and build their cash flow. Not surprisingly, G20 countries have introduced legislation designed to prevent multinationals from shifting their profits offshore and to require high net-worth individuals to pay more taxes domestically. New disclosure rules also have been legislated. The US was the first out of the blocks with the FATCA legislation (Foreign Account Tax Compliance Act), followed by the UK and other jurisdictions with similar rules aimed at recouping more taxes for their cash-strapped treasuries.

The OECD's BEPS initiative was launched in response to the expanding concerns of the G20 members about low effective tax rates of multinational companies, perceived tax avoidance by multinationals and offshore tax evasion. BEPS is defined by the OECD as the use of tax planning strategies to exploit gaps and mismatches in tax systems to make profits "disappear" for tax purposes or to shift profits to locations where there is little or no real business activity, but taxes are low, resulting in little or no overall corporate tax being paid. In describing the BEPS initiative, the OECD has said it involves "looking at whether the current rules allow for the allocation of taxable profits to locations different from those where the actual business activity takes place and if not, what could be done to change this."

The OECD has identified 15 specific action plans that are needed for governments to address the above challenges, and design and interpret tax laws and tax treaties (and issued a number of discussion drafts on the actions):

- Address the tax challenges of the digital economy;
- Neutralize the effects of hybrid mismatch arrangements;
- Strengthen controlled foreign corporation (CFC) rules;
- Limit base erosive interest deductions and other financial payments;
- Counter harmful tax practices more effectively, taking into account transparency and substance;
- Prevent treaty abuse;
- Prevent the artificial avoidance of permanent establishment (PE) status;
- Address harmful transfer pricing practices relating to intangibles;
- Address harmful transfer pricing practices relating to risk and capital;
- Address harmful transfer pricing practices relating to other high risk transactions; and
- Develop a multilateral instrument.

The results of the BEPS agenda are likely to fundamentally change the international tax landscape and could have serious implications for developing countries and IFCs.

The BEPS impact

BEPS is expected to result in new and additional tax obligations, especially for countries where the tax systems are not robust. Taxpayers can expect reduced interest payment deductions, potentially unfavorable transfer pricing adjustments, the creation of new PEs and increased scrutiny under anti-avoidance rules. It therefore will be necessary to adapt. Adaptation may take the form of corporate reorganizations, revisions to financing arrangements, updates to transfer pricing documentation or even changes to information technology systems. It is essential for taxpayers to monitor developments both at the OECD and the country levels.

The tax authorities in some countries are analyzing tax data to highlight the key drivers of tax base erosion and, in some cases, are taking action to combat these drivers. The following are examples of some recent actions taken at the country level:

- The Australian Taxation Office is auditing a number of companies to ensure that there is no misuse of the Australian tax rules.
- Canada has reduced its thin capitalization ratio and has restricted foreign-owned companies from obtaining debt that is used to acquire or finance subsidiaries in other jurisdictions.
- China is applying BEPS concepts in transfer pricing cases, and a senior official of the tax authorities has publicly commented on the authorities' increased scrutiny of the appropriateness of intercompany service fees. The Chinese government also has indicated that it will increase its focus in respect of offshore indirect transfers, emphasizing that it will employ all sources of information at its disposal to identify significant unreported transfers.
- France and Mexico have introduced legislation that targets the double nontaxation of interest and mismatches of hybrid instruments; companies may deduct interest expense only where it can be shown that the company earning the corresponding interest income will pay tax on that income. The key focus is to restrict companies from using debt to finance production from exempt or deferred income.
- Spain has introduced a specific anti-abuse rule for hybrid entities, under which deductions for expenses incurred in certain transactions are disallowed; limits are imposed on the deductibility of financing expenses incurred in leveraged buyout transactions; and the CFC rules are applied to more transactions and additional types of income.

IFCs have some additional challenges relating to BEPS. The increased media attention and the inherent challenge of coping with this complex issue have created the unfavorable perception that multinationals often bend the tax rules to their advantage. These companies often are accused of avoiding taxes, especially when they operate in developing countries.

The tax revenue from multinationals contributes significantly to the gross domestic product of IFCs, and these revenues usually form the basis for long-term development. How these jurisdictions respond to the BEPS project will be determined by how nimble they are in dealing with the following issues:

Ineffective tax audit capacity: IFCs often are unable to monitor cross-border tax planning structures to determine if they are consistent with global tax rules.

Limited tax legislation: In most IFCs, especially those in the Caribbean, there is a lack of legislation that deals with certain risks associated with profit shifting, such as transfer pricing and thin capitalization rules.

Access to information: Not all IFCs have sufficiently sophisticated information systems to facilitate the gathering and retention of information to keep pace with the changes in global taxation and information exchange.

Technical know-how: The interpretation and implementation of international tax rules and the resolution of tax disputes demand certain skills. However, the competencies of staff working with the tax authorities in many IFCs may not be up to the required level.

Political will: Governments in IFCs will be faced with the dichotomy of attracting foreign direct investment while facilitating the legislative changes to address BEPS. Where resources are deployed will be dependent on the political will and awareness.

Comments

The results of the BEPS initiative likely will compel IFCs to implement systems that lead to economic substance. No longer will merely incorporating a company and conducting board meetings be an acceptable means of establishing substance. Multinational companies will have to demonstrate that they have sufficient economic substance, in the form of maintenance and management activities, if assets are owned by or attributed to companies located in low or no-tax jurisdictions. The challenge for taxpayers and tax advisors is to ensure that tax structures implemented are coherent, transparent and, most critically, characterized by business substance.

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China:
State council suspends "clean-up" of preferential policies

China's State Council issued a notice (Notice 25) on 11 May 2015 that suspends the "clean-up" of preferential policies (e.g. tax incentives) initiated at the end of 2014 (for prior coverage, see *World Tax Advisor*, 9 January 2015). The clean-up (as set out in Notice 62) required local governments to review and abolish any local incentives that violated central government policies/law, and required State Council approval of incentives that did not violate such policies/law and that were considered essential to the local/regional government. Local governments were required to report the status of these policies to the Ministry of Finance by the end of March 2015.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150109_ib.html

Notice 25 now suspends the clean-up initiative indefinitely, but suggests that it will be reinstituted at a future date. The notice also clarifies the following with respect to preferential policies:

- Policies that were granted by local governments and various departments of the State Council for a specific term will remain in effect for that term; the relevant governments/departments should establish a proper transitional period for policies that were granted without a termination date and need to be abolished, and such policies will remain in effect for the transitional period.

- Policies granted under contracts or agreements with local governments will continue to be valid, and any benefits that already have been granted will not be "clawed back."
- If a local government/department wishes to introduce a new preferential tax policy, the policy must be approved by the State Council, unless otherwise provided by law or regulations. Where approval from the State Council is not required (e.g. for certain nontax preferential policies), a preferential policy generally may not be in the form of a government subsidy linked to tax or nontax revenue contributed by enterprises.

Comments

The purpose of the clean-up was to create a level playing field for investors and enterprises, by mandating that local governments eliminate preferential policies that were identified as being in conflict with or inconsistent with central government policy/law. It was designed to dissuade local governments from engaging in what effectively amounted to "bidding wars" to compete for foreign or local investment.

Notice 62 gave rise to considerable concern and confusion on the part of businesses about the sustainability and future of various incentives (in particular, financial subsidies) granted by local governments; this intensified when some governments discontinued preferential treatment or put the incentive on hold.

Local governments were concerned about the potential negative impact of Notice 62 on investment, and how it would affect the government's credibility. A lack of standards and consistent interpretations made it difficult to determine whether a specific policy conflicted with central government policy, which resulted in some disputes.

Notice 25 is the central government's response to the concerns articulated by the business community and local governments. The notice is particularly welcomed by businesses because it confirms the validity of contractually agreed-upon policies and commits to a "no-claw back" rule for benefits previously granted.

Although the clean-up of preferential policies is suspended, Notice 25 indicates that the regulation of preferential policies will continue, albeit in a more benign manner. Based on Notice 25 and communications with certain government officials, it appears that local governments still have some discretion to grant financial subsidies to certain encouraged businesses, provided the amount of the subsidy is not linked to the tax or nontax revenue contributed by the business (e.g. one-time fixed amount subsidies) and, therefore, these policies are likely to continue.

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Colombia:
Constitutional court rules that loss carryforwards can affect CREE taxable base

In a decision dated 20 May 2015, Colombia's Constitutional Court affirmed the constitutionality of the provision (article 22 of Law 1607/2012) used to calculate the tax base for the income tax for equality (CREE), which applies in addition to the corporate income tax. According to the court, the option to offset tax losses against net income earned in future years is included in article 22, pursuant to the provision in the Colombian tax code (article 147) that permits the unlimited carryforward of losses for corporate income tax purposes.

By declaring this provision constitutional, the court indicated that the option to offset tax losses against future net income to determine the taxable base for the CREE does not conflict with the essential nature of the CREE, which taxes, just as the income tax does, all taxable income received by a taxpayer during the fiscal year. In this sense, since the income tax and the CREE are of a similar nature, the Constitutional Court deemed as fair the inclusion of tax losses as part of the calculation of the taxable base for the CREE, since this same methodology is permitted for corporate income tax purposes.

The Constitutional Court's decision will apply to all situations considered to be within the scope of article 22 of Law 1607/2012, and will remain effective as long as the law is enforceable.

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Costa Rica:
Transition period for imposition of withholding tax on payments abroad expires

A six-month transition period that delayed the application of new withholding tax rules in Costa Rica expired on 28 May 2015. Law No. 8634, which became effective on 27 November 2014, amended the withholding tax rules for certain payments made to nonresidents, including interest payments made to foreign banks.

Law No. 8634 made significant changes to section 59 of the Income Tax Law, under which a 15% withholding tax generally applies to interest payments made to nonresidents, with an exemption for payments to an entity recognized by the Costa Rican central bank as a "first-order financial institution" or an entity normally engaged in international operations, as included on special lists issued by the Costa Rican central bank. Law No. 8634 retains the 15% withholding tax, but abolishes the exemption for interest paid to a first-order bank or an entity normally engaged in international operations, so that such payments now are subject to the 15% withholding tax. The law does not affect the treatment of interest paid on loans to domestic banks, which remains exempt from withholding tax.

As noted above, transition rules allowed taxpayers to continue to apply the tax treatment applicable under the prior law (e.g. to apply a withholding tax exemption, where applicable) for payments of interest, fees and financial costs on outstanding loans, for a period of six months after the new law became effective, i.e. until 28 May 2015; that period now is expired. The 15% rate under Law 8634 applied immediately for any new loans signed after 27 November 2014.

The following table summarizes the withholding tax treatment of various payments:

Payment	Withholding tax
Interest, fees and other financial expenses, as well as lease payments for capital assets paid to nonresident individuals or legal persons	15%
Interest, fees and other financial expenses paid by domestic entities to domestic banks	Exempt
Interest, fees and other financial expenses, as well as lease payments for capital assets paid to foreign banks that are part of a Costa Rican group or financial conglomerate regulated by the Costa Rican Financial System (CONASIFF)	5.5% for the first year Law No. 8634 is in effect, 9% in the second year, 13% in the third year and 15% as from the fourth year
Interest, fees and other financial expenses, as well as lease payments for capital assets, paid to foreign entities that are not part of a Costa Rican financial group or conglomerate and that are regulated (i.e. subject to supervision and inspection) in their home jurisdiction	15%/5% (the 5% rate applies if the interest is paid by a Costa Rican bank)
Interest, fees and other financial expenses paid by domestic entities regulated by the Superintendent of Financial Entities (SUGEF) to foreign entities that are regulated in their home jurisdiction	5.5%
Interest, fees and other financial expenses paid on a loan from a foreign bank that then distributes the payments to other banks that participated in the granting of the loan if the portion of interest, fees and other financial expenses relating to each bank is not separately stated in the contract If the contract separately states these portions and participating banks have connections with Costa Rican financial groups and the foreign entities are part of a Costa Rican financial group or conglomerate	15% 5.5% for the first year Law No. 8634 is in effect, 9% in the second year, 13% in the third year and 15% as from the fourth year
Interest paid to a first-order bank or an entity normally engaged in international operations	15%
Interest, fees and other financial expenses arising from loans from multilateral development banks and other multilateral or bilateral development agencies, and from nonprofit organizations that are not subject to tax	Exempt

In addition to the withholding tax changes, the law repeals the special annual tax of USD 125,000 that applied to offshore entities and certain other entities linked to domestic banks.

Comments

Costa Rican taxpayers should pay close attention to all payments made abroad, to determine if it is necessary to withhold tax on these payments. The exemptions for payments to first-order banks or entities normally engaged in international operations or operations related to financial services generally have been abolished, although the exemptions for multilateral development banks and multilateral or bilateral development agencies have been retained, so it is necessary to identify which entities fall into these categories and the provisions that must be included in relevant documents to support their status as authorized banks.

It also may be necessary to amend the terms of certain loans in which a domestic bank does not act as a direct debtor, primarily in cases where it is involved with other entities in the granting of credit, to separately state each entity's level of participation in the loan transaction to allow for the application of the 5.5% rate, rather than the 15% rate.

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European Union:
Study published on low value consignment relief

On 22 May 2015, the European Commission published a new study (and executive summary) assessing the VAT exemption for the importation of small consignments (known as low value consignment relief (LVCR)).

The current EU VAT directive (implemented by the 28 member states) obliges member states to exempt all business-to-consumer commercial importations of consignments with a value not exceeding EUR 10 from import VAT, although member states can increase this amount up to EUR 22 (and most member states have set their LVCR thresholds at, or close to, EUR 22). The directive allows member states to exclude "mail order" transactions from the relief, but few have chosen to do so. Of those that have excluded mail order transactions from the relief, some have reversed their decision after finding that the administrative cost exceeded the revenue generated.

The study carried out for the commission provides an overview of the legal framework and procedures in place in all member states, and contains an economic analysis of the low value consignments market from 1999 until 2013, including an estimate of the potential VAT foregone by tax authorities due to this exemption. The LVCR has been subject to considerable discussion because the concession for foreign exporters is considered to adversely impact domestic suppliers in respect of their supplies to the EU market, which generally are subject to VAT.

The abolition of LVCR is among the options being considered by the European Commission in its strategy for the EU digital single market (for prior coverage, see *World Tax Advisor*, 22 May

2015. Among other things, the Commission's strategy also contemplates extending the single electronic registration and payment mechanism (the "mini one-stop shop" that currently allows businesses supplying certain e-services to consumers in other member states to account for their intra-EU supplies through an electronic portal in their "home" country) to intra-EU and third-country online sales of tangible goods to private consumers, and considers a range of other "nontax" issues that the Commission believes may be obstacles to cross-border trading. Although some of the proposals contained in the Commission's publications may be relatively uncontroversial, others could prove to be contentious and gaining approval from all 28 member states to the ideas outlined in the Commission's papers may be difficult and time consuming.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150522_7.html

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India:
2015 finance act revises MAT, POEM measures

India's 2015 finance act, enacted on 14 May 2015, made changes to the minimum alternate tax (MAT) and corporate residence rules proposed in the 2015-16 budget (for prior coverage of the budget, see *World Tax Advisor*, 13 March 2015). Unless otherwise provided, the measures in the finance act apply as from 1 April 2015. Although the budget proposed reducing the corporate income tax rate from 30% to 25% for domestic companies, the enacted legislation does not contain any such provision.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150313_1.html

The 2015 budget contained a measure under which the MAT would not apply to capital gains derived by foreign portfolio investors (FPIs), except for short-term capital gains that are not subject to securities transaction tax. The finance act extends the exemption to all foreign companies, rather than just FPIs, and to all capital gains on transactions involving securities. The finance act also extends the MAT exemption to interest, royalties and fees for technical services earned by a foreign company, and to gains arising in the hands of the sponsor on a transfer of shares of a special purpose vehicle to a business trust in exchange for units of the trust. The exemption is prospective in nature, and the applicability of the MAT to foreign companies prior to 1 April 2015 remains uncertain (for prior coverage, see *World Tax Advisor*, 22 May 2015).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150522_ib.html

The finance act introduces the "place of effective management" test, to replace the "controlled and managed" test to determine the residence of a company for tax purposes. Under the budget, a company would have been resident if its place of effective management was in India "at any time" during the year; the enacted finance act eliminates the words "at any time."

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Indonesia:
Income tax incentives modified for investment in certain industries and regions

The Indonesian government issued a regulation on 6 April 2015 (Regulation No. 18 of 2015, or PP-18) that provides a long-awaited revision of the income tax incentive regulation that applies to investments in certain industries and regions. PP-18 applies from 6 May 2015 and revokes guidance issued in 2007 and 2011.

PP-18 makes changes and clarifications to available incentives, including the following:

- It eliminates the requirement of having a capital investment plan of at least IDR 1 trillion to qualify for the tax holiday scheme for investments in specified sectors.
- It clarifies the incentive that permits a reduction of net income by up to 30% of the amount invested, to be spread equally over six years (i.e. 5% per year) starting from the company's start of commercial production. Under PP-18, the amount of investment to be used as the base for calculating the incentive is the capital investment in the form of tangible fixed assets, including land used in the primary business activity.
- It clarifies that the incentive that permits accelerated depreciation of tangible assets also permits accelerated amortization of intangible assets; the previous regulation did not cover the treatment of intangible assets.
- It provides that the incentive that permits an extension of the tax loss carryforward period (normally five years) for up to 10 years may be further extended to apply for an additional two years if the taxpayer fulfils one of the following conditions (in addition to the conditions provided under the prior regulation):
    - The investment is an expansion of an existing business in certain business sectors and/or certain regions, and the investment funds are derived from the after-tax profit earned in the fiscal year before the year in which the business expansion permit is issued;
    - The taxpayer has exported at least 30% of the total sales value, for investments within certain business sectors located outside a bonded zone area;
    - The company employs at least 1,000 Indonesian workers for five consecutive years (the previous regulation provided only an additional one-year loss carryforward for employing at least 500 Indonesian workers for five consecutive years); or
    - The taxpayer disburses 5% of the investment value for research in relation to product development or production efficiency within five years (the previous regulation provided only an additional one-year loss carryforward for this category).

Taxpayers that already have obtained certain tax incentives relating to integrated economic development zones (KAPET) or a specified tax holiday (under Regulation No. 94/2010) are not eligible for incentives under PP-18.

PP-18 provides the following transition rules:

- Taxpayers that obtained a tax incentive under the previous regulation may continue to enjoy the incentive until it expires.
- Recommendations on the eligibility of taxpayers for tax incentives that have been issued under the previous regulation and submitted to the head of the Indonesian Investment Coordination Board (BKPM) will be processed using the guidance under the previous regulation.
- A taxpayer whose principle permit for investment or for investment expansion was issued by the Head of the BKPM after the previous regulation came into force may be processed for a recommendation to receive incentives under PP-18, as long it meets the following requirements:
  - No decision on approval or rejection has been issued on the principle permit under the previous regulation;
  - The requirements for line of business, business classification, product coverage, requirements and location comply with the attachments to PP-18;
  - The taxpayer had not started commercial production at the time PP-18 entered into force; and
  - The recommendation on eligibility for the tax incentive is received within one year after PP-18 enters into force.

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Korea:
VAT to apply to digital services provided by foreign service providers

Korea has revised its VAT legislation so that, as from 1 July 2015, foreign suppliers of digital services to Korean customers will be subject to VAT, regardless of whether they have a presence (i.e. place of business) in the country.

Currently, where digital services (such as applications, games, videos, e-books, etc.) are provided domestically, only domestic service providers are required to register and file VAT returns. Foreign service providers (FSPs) and third-party intermediary providers of digital content do not have any VAT registration or reporting obligations.

Under the revised VAT law, an FSP must register for VAT if it supplies any digital services domestically and will be charged 10% VAT on all sales made to Korean customers.

If an FSP without a place of business in Korea supplies digital services that are activated through a mobile device, computer, etc. to domestic customers, the services will be deemed to be supplied in Korea. In such a case, the FSP will be subject to the simplified VAT registration process and must file VAT returns and make VAT payments on the services through the National Tax Service website. As in the case of regular VAT returns, simplified returns must be filed by the 25th day following each quarter end.

If an FSP supplies Korean customers with digital services using a foreign third-party intermediary, the third party, rather than the FSP, will be deemed to supply the services in Korea and will be subject to the VAT registration, filing and payment requirements.

FSPs and third-party intermediary providers supplying digital services to Korean customers must register for VAT within 20 days from the date they commence supplying such services to Korean customers; providers supplying digital services to Korean customers before 1 July 2015 must register by 20 July 2015.

Penalties may be assessed for failure to comply with the new registration, filing and VAT payment requirements.

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Malaysia:
New tax incentives introduced for principal hubs

The Malaysian government issued detailed guidelines on 6 April 2015 for the new tax incentives to promote the establishment of “principal hubs” in Malaysia. The principal hub incentive scheme, which temporarily reduces the corporate tax rate and provides certain other incentives for qualifying companies, was first announced in the 2015 budget on 10 October 2014. It replaces the incentive schemes for international procurement centers, regional distribution centers and operational headquarters, effective 1 May 2015. (A company currently benefitting from one of these schemes will continue to receive benefits until the end of the incentive period; upon the completion of this period, the company may be eligible to apply for the principal hub incentive scheme and receive a 10% corporate tax rate for a maximum period of five years if it fulfills certain criteria.)

A principal hub is a company incorporated in Malaysia and that uses Malaysia as a base for conducting its regional and global businesses and operations to manage, control and support its key functions, including management of risks, decision making, strategic business activities, trading, finance, management and human resources.

Principal hubs will enjoy a reduced corporate tax rate of 0%, 5% or 10% (rather than the standard corporate tax rate of 25% (for years of assessment 2009-2015), or 24% from year of assessment 2016) for a period of five years, with a possible extension for another five years. The applicable rate depends on whether the company qualifies as a “Tier 1,” “Tier 2” or “Tier 3” principal hub: the 0% rate applies to Tier 1, the 5% rate to Tier 2 and the 10% rate to Tier 3.

The salient eligibility criteria for the incentive, including certain specific criteria to qualify for the different tiers, are as follows:

- The company must be incorporated in Malaysia with paid-in capital of more than MYR 2.5 million.
- The company must carry out at least three of the qualifying services listed in the guidelines:
    - For Tiers 1 and 2, one of the services must involve regional profit and loss management (which focuses on the growth of the company, with direct influence on how company resources are allocated: determining the regional/global direction, monitoring budget expenditure and net income and ensuring every program generates a positive return on investment); and
    - For Tier 3, one of the services must be from the strategic services cluster.
- The company must serve “network companies” (which include “related companies or any entity within the group including subsidiaries, branches, joint ventures, franchises or any other company related to applicants’ supply chain and business with contractual agreements”) in at least three countries outside Malaysia:
    - For Tier 1, the minimum is five countries outside Malaysia;
    - For Tier 2, the minimum is four countries outside Malaysia; and
    - For Tier 3, the minimum is three countries outside Malaysia.
- The company must provide a certain number of employees (including at least 50% Malaysian employees) with high-value jobs (jobs that require a higher and more diverse set of managerial, technical or professional skills, such as management, analytics, communication, problem-solving and proficiency in information technology) that pay a minimum monthly salary of MYR 5,000 by the end of the third year after the company starts to receive principal hub incentives, as well as provide a certain number of employees with key positions that pay a minimum monthly salary of MYR 25,000:
    - For Tier 1, the company must have at least 50 employees with high-value jobs, including at least five employees holding key positions;
    - For Tier 2, the company must have at least 30 employees with high-value jobs, including at least four employees holding key positions; and
    - For Tier 3, the company must have at least 15 employees with high-value jobs, including at least three employees holding key positions.
- The company must exceed the applicable threshold for annual business spending:
    - For Tier 1, the threshold is MYR 10 million;
    - For Tier 2, the threshold is MYR 5 million; and
    - For Tier 3, the threshold is MYR 3 million.
- The company must use local ancillary services, such as logistics, legal and arbitration services and finance and treasury services.
- A goods-based company must expect minimum annual sales of MYR 300 million.

The extension of the incentive for an additional five years requires a minimum increase of 20% of the base number of high-value jobs listed above, and a 30% increase in the base annual business spending listed above.

Other incentives provided to an approved principal hub are as follows:

- A customs duty exemption for goods-based companies on raw materials, components or finished products brought into free zones for production or repackaging, cargo consolidation and integration before distribution to the final consumers;
- No requirements for local equity/ownership;
- Permission for a foreign-owned company to acquire fixed assets for the purpose of carrying out the operations of its business plan;
- Flexibility in foreign exchange administration; and
- Certain permitted posts for expatriates, based on the requirements of the company's business plan and subject to Malaysia's current policy on expatriates.

The relevant application form for the principal hub incentives must be submitted to the Malaysian Investment Development Authority between 1 May 2015 and 30 April 2018.

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Panama:
Tax reform includes changes to withholding tax rules

Law 27, which applies as from 5 May 2015, makes some important amendments to Panama's tax code, including changes to the withholding tax treatment of payments made to nonresidents and the introduction of rules for such persons to qualify for a withholding tax exemption on certain types of income.

Withholding tax

Payments made to nonresidents (whether individuals or entities) are subject to withholding tax where the payments (1) relate to the generation of Panamanian taxable income or the preservation of capital; and (2) are deductible by the payer for Panamanian income tax purposes. Withholding tax generally has not applied if a Panamanian entity treats the payment as a nondeductible expense or if the payments are associated with an exempt or a foreign-source type of income that is not subject to taxation in Panama.

Law 27 does not change the fundamental withholding tax principles, in the sense that the applicability of the tax depends on whether the payment affects the generation of Panamanian taxable income or the preservation of capital and whether the payment is treated as a deductible expense. However, the scope of the withholding tax obligation is extended to apply to all payments made by governmental entities, companies owned 51% or more by the Panamanian government, "noncontributing" entities (i.e. entities not subject to income tax) and taxpayers incurring losses. It appears that the broadening of the scope of the tax will require companies operating under a tax incentive regime to withhold tax on remittances abroad, regardless of whether they earn income subject to tax in Panama; under the principles described above, these companies previously were not required to withhold income taxes. The Finance Ministry is expected to issue guidance that will clarify which types of noncontributing entities are subject to these revised withholding tax rules.

Withholding tax exemptions

Law 27 introduces new requirements regarding income tax on dividends, interest, royalties, fees or similar payments made to nonresidents by persons or entities resident in Panama, when such payments are exempt from withholding tax under any special domestic law. The exemptions will not apply, however, if the recipient of the payment would be able to credit the taxes paid in Panama against the tax payable in its home country if the exemption were not available. The Panamanian tax authorities will allow an exemption only where the recipient of the payments presents a written opinion issued by an independent "tax expert" (a term that is undefined in the law, but that likely will mean an individual who, under the laws of his/her country, is allowed to provide advice on tax matters) in its home country as evidence that withholding tax paid in Panama could not be credited against the tax due in the recipient's country under the domestic law of that country. The same requirement will apply to obtain a partial tax exemption in Panama if the law of the recipient's home country permits only a partial credit for withholding tax paid in Panama.

Law 27 also introduces limitations on the access to tax benefits for branches of foreign companies, which will prevent the application of an income tax exemption in Panama if a foreign tax credit can be claimed in the foreign entity's country of residence for taxes that would be payable in Panama if no exemption applied. As indicated above, the lack of availability of a foreign tax credit will have to be supported by a formal opinion from an independent tax expert.

Other provisions

Other relevant provisions of Law 27 include the following:

Dividends on preferred shares: Panama's tax legislation previously included specific rules applicable to cumulative preferred shares; the treatment of dividends paid from these shares differed from that applicable to the payment of dividends from shares of common stock. Dividends paid on preferred shares by resident companies to other resident companies were exempt from the dividends tax (which generally applies at a 10% rate), but, under certain conditions, the distributing company could take a tax deduction for the dividends. Law 27 repeals the provisions that exempted these shares from dividends tax, as well as the option to take a tax deduction for any distributions made.

Distributions from real estate investment trusts (REITs): According to legislation introduced in 2010, REITs are exempt from income tax and their shareholders are exempt from capital gains tax on disposals of REIT shares if certain conditions are satisfied. However, shareholders are required to pay income tax at a 5% preferential rate (levied via a withholding mechanism) on distributions made by the REIT. Law 27 increases the withholding tax on distributions to shareholders to 10%.

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In brief

European Union: The Court of Justice of the European Union (CJEU) has issued its decision in the *Verder Labtec* case that involves German tax rules establishing a tax liability to be paid in annual installments on hidden (undisclosed) reserves. These rules apply when assets are transferred from a German permanent establishment (PE) belonging to a German undertaking to a PE abroad. The tax is not payable immediately, but rather in annual installments over a 10-year period. The CJEU held that, although the rules violate the freedom of establishment principle in article 49 of the Treaty on the Functioning of the European Union, recovery of tax spread over 10 annual installments is a proportionate measure to attain the objective of preserving the allocation of taxation powers among EU member states.

European Union: The European Parliament has endorsed new rules already agreed with the European Council to ensure that the ultimate owners of companies are listed in central registers in EU countries, and that these registers will be open both to the authorities and to persons with a "legitimate interest," such as investigative journalists. The Fourth Anti-Money Laundering Directive will, for the first time, require member states to keep central registers of information on the ultimate "beneficial" owners of corporate and other legal entities, as well as trusts. These registers were not envisaged in the European Commission's initial proposal, but were included in the course of negotiations. There also are reporting obligations for banks, auditors, lawyers, real estate agents and casinos, among others, on suspicious transactions by clients. Member states will have two years to introduce the central registers. The reporting requirements will have direct effect.

European Union: The EU and Switzerland signed an agreement on the automatic exchange of financial account information, aimed at improving international tax compliance, on 27 May 2015. The agreement upgrades a 2004 agreement that ensured that Switzerland applied measures equivalent to those in the EU savings directive. Under the agreement, the EU and Switzerland will automatically exchange information on the financial accounts of each other's residents, starting in 2018. EU member states will receive, on an annual basis, the names, addresses, tax identification numbers and dates of birth of their residents with accounts in Switzerland, as well as other financial and account balance information. The aim is to address situations where a taxpayer seeks to hide capital representing income or assets for which tax has not been paid. It ensures that Switzerland applies strengthened measures that are equivalent to the EU directive, as upgraded in March 2014. It also complies with the automatic exchange of financial account information promoted by a 2014 OECD global standard. There are provisions intended to limit the opportunities for taxpayers to avoid being reported to the tax authorities by shifting assets or investing in products that are outside the scope of the agreement. Information to be exchanged concerns account balances and proceeds from the sale of financial assets, as well as income such as interest and dividends. The European Commission currently is concluding negotiations for similar agreements with Andorra, Liechtenstein, Monaco and San Marino, which are expected to be signed before the end of 2015.

Peru: Specified Peru-based companies are required to implement e-invoicing (electronic invoice processing involving the automated electronic transfer of billing and payment information between companies and their customers) by 1 July 2015. Companies must comply with certain requirements set by the Peruvian tax authorities (the SUNAT) to become authorized electronic issuers and to properly issue and manage electronic documents. Companies that are not yet required to adopt e-invoicing may wish to do so voluntarily to obtain certain benefits (e.g. to facilitate the tax compliance process and reduce costs associated with the preservation and storage of payment receipts and other supporting tax documentation). The SUNAT likely will continue to issue guidance requiring additional companies (and eventually all companies) to adopt e-invoicing.

Thailand: The cabinet approved a draft act proposed by the Ministry of Finance that would amend the transfer pricing rules in the Revenue Code. The proposed rules would allow revenue officers to adjust the prices (income and expense) of related party transactions that are not concluded on arm's length terms. Parties (two or more companies or juristic partnerships) would be deemed to be related for these purposes if one party has a direct or indirect relationship in the capital, management or control of the other party. Taxpayers (companies or juristic partnerships) engaging in transactions with related parties would be required to prepare contemporaneous transfer pricing documentation within 150 days of the closing date of an accounting period that details the relationship between the parties, and the transfer pricing method adopted in the intercompany transactions and how it was arrived at. Penalties would apply for failure to comply with the documentation requirement or the submission of inaccurate or incomplete documentation.

United Kingdom: The Chancellor of the Exchequer has announced that there will be a Summer Budget on 8 July 2015.

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.

In addition to the developments described below, updated results from the Deloitte "OECD BEPS survey" are now available. In 2014, Deloitte conducted its first survey to gauge the views of multinational companies regarding the increased media, political and activist group interest in "responsible tax" and BEPS, and the expected resulting impact on their organizations. In early 2015, a follow-up survey was conducted to understand how clients' views on the tax landscape have evolved. Since last year's survey, the OECD released seven new deliverables in September 2014, along with several draft reports under its BEPS action plan. Full and summary survey results are available for download on Deloitte.com.
URL: http://www2.deloitte.com/global/en/pages/tax/articles/beps-global-survey.html

Australia: The 2015-16 federal budget, handed down on 12 May 2015, contains certain BEPS-related measures. These include proposals to commence implementation of key BEPS action plan items without waiting for global agreement on the action plan. See the Australia Tax Alert, 14 May 2015.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-14-may-2015.pdf

Caribbean: International financial center jurisdictions with economies that depend on income from foreign direct investment may face certain challenges in responding to developments relating to the BEPS initiative. See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150612_1.html

New Zealand: The tax authorities (Inland Revenue) have announced that they will be sending out an "international questionnaire" to foreign-owned groups (except for banks and insurance companies) with turnover in excess of NZD 80 million per year. The questionnaire is designed to collect key information about financing/debt and transfer pricing issues for nonresident-owned groups of companies operating in New Zealand, information that should help Inland Revenue measure the impact of BEPS on New Zealand. The questionnaire should further enhance existing risk assessment processes of the tax authorities and will feed into policy decisions to keep New Zealand informed as countries move toward implementing measures arising from the OECD BEPS action plan. In the longer term, officials have advised that targeted electronic disclosures will be considered as part of the larger business transformation program currently being undertaken by Inland Revenue.

New Zealand: Inland Revenue's transfer pricing focus for 2015 and 2016 includes, as a main priority, the "significant enterprises segment." This segment is comprised of approximately 560 taxpayer groups, which account for over half of New Zealand's corporate tax base and represent the highest risk of profit shifting due to the extent of their cross-border transactions. With respect to all segments of the corporate population base, Inland Revenue will maintain a special focus on the following:

- Unexplained tax losses incurred by foreign-owned groups;
- Loans in excess of NZD 10 million;
- Payment of unsustainable levels of royalties and/or service charges;
- Material associated-party transactions with no or low-tax jurisdictions;
- Supply chain restructures involving the shifting of any major functions, assets or risks away from New Zealand; and
- Unusual arrangements or outcomes that may be identified in reviewing controlled foreign company disclosures.

OECD: On 8 June 2015, the OECD released a package of measures relating to the implementation of a new country-by-country reporting plan that has been approved by over 60 countries, including many developing countries. According to the release, the implementation package aims to facilitate the consistent and swift implementation of the new transfer pricing reporting standards developed under action 13 of the BEPS action plan and to ensure that tax administrations obtain a complete understanding of the way multinationals structure their operations, while also safeguarding the confidentiality of relevant information. The package includes model legislation that would require the ultimate parent entity of a multinational group to file the country-by-country report in its jurisdiction of residence, including backup filing requirements where that jurisdiction does not require filing. The package includes model legislation and three model competent authority agreements to facilitate the exchange of country-by-country reports among tax administrations.

OECD: Between 15 May 2015 and 4 June 2015, the OECD released discussion drafts on the following BEPS action plan items:

- **Action 6:** Preventing the granting of treaty benefits in inappropriate circumstances; see the OECD Tax Alert, 29 May 2015 and Unites States Tax Alert, 5 June 2015;
  URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-29-may-2015.pdf
  URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-05-june-2015.pdf
- **Action 7:** Definition of a permanent establishment; see the United States Tax Alert, 19 May 2015 and *World Tax Advisor*, 22 May 2015; and
  URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-19-may-2015.pdf
  URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150522_2.html
- **Action 8:** Hard-to-value intangibles; see the OECD Tax Alert, 5 June 2015 and the OECD transfer pricing alert, 8 June 2015.
  URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-05-june-2015.pdf
  URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-009-6-june-2015.pdf

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Australia
Investment manager regime bill introduced into parliament
On 27 May 2015, a bill for the third and final element of the investment manager regime (IMR 3) was introduced into the Australian parliament. The introduction of the bill is the culmination of a lengthy process that spanned over four years and included the release of multiple versions of exposure draft legislation.
Issue date: 28 May 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-28-may-2015.pdf

Brazil
Social contribution on net profits increased for financial institutions
Provisional Measure 675/2015, which increases the rate of the social contribution on net profits (CSLL) for financial institutions from 15% to 20%, was published in Brazil's official gazette on 22 May 2015. The PM will apply as from 1 September 2015.
Issue date: 22 May 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-csll-22-may-2015.pdf

PIS/COFINS exemption on certain financial income reinstated

The Brazilian government enacted a decree on 20 May 2015 that reinstates the exemption from PIS/COFINS (social security contributions on revenue) on certain financial income arising from the fluctuation of foreign exchange rates and amends a decree issued on 1 April that had reinstated the PIS/COFINS on financial income, including income derived from hedging transactions.

Issue date: 22 May 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-pis-cofins-22-may-2015.pdf

OECD

OECD issues discussion draft on hard-to-value intangibles

The OECD on 4 June 2015 released a nonconsensus discussion draft on action 8 of its base erosion and profits shifting (BEPS) plan regarding hard-to-value intangibles.

Issue date: 8 June 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-009-6-june-2015.pdf

BEPS action 8: Hard to value intangibles

On 4 June 2015, the OECD, as part of its work on the action plan to address BEPS, released a discussion draft in relation to developing an approach to price the transfer of “hard-to-value intangibles.” The draft contains an updated section of Chapter VI of the OECD *Transfer Pricing Guidelines*, including a revision of the section on arm’s length pricing when valuation is highly uncertain at the time of the transaction and adding a new section in relation to “special considerations” for hard-to-value intangibles.

Issue date: 5 June 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-05-june-2015.pdf

BEPS action 6: Preventing the granting of treaty benefits in inappropriate circumstances

On 22 May 2015, the OECD, as part of its work on the action plan to address base erosion and profit shifting (BEPS), released a revised discussion draft on action 6 in relation to preventing the granting of treaty benefits in inappropriate circumstances. The draft includes discussions on LOBs, discretionary relief and the treatment of collective investment vehicles.

Issue date: 29 May 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-29-may-2015.pdf

Switzerland

Revised draft legislation on CTR III introduced into parliament

On 5 June 2015, the Swiss federal government published revised draft legislation, along with a detailed commentary, on the Corporate Tax Reform III. The main objective of the reform, which likely will become effective on 1 January 2019, is to align Swiss tax law with international standards and enhance Switzerland’s attractiveness as a location for multinational companies.

Issue date: 8 June 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-switzerland-08-june-2015.pdf

United States

OECD releases a discussion draft on open issues in BEPS action 6: Prevent treaty abuse

The OECD has released a new discussion draft on action 6 of the BEPS action plan, which includes new proposals resulting from the January 2015 public consultation and subsequent meetings of OECD Working Party 1 on Tax Conventions and Related Questions.
Issue date: 5 June 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-05-june-2015.pdf

Treasury releases final substantial business activities regulations under section 7874

On 3 June 2015, the US Treasury and the IRS released final regulations addressing when an expanded affiliated group is considered to satisfy the substantial business activities exception in a foreign country under Internal Revenue Code section 7874(a)(2)(B), and thus whether the anti-inversion rules apply. Although the final regulations are substantially the same as the former 2012 temporary regulations, including retaining the 25%, three-part substantial activities test, they contain several clarifying changes.
Issue date: 4 June 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-04-june-2015.pdf

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