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International Tax

# World Tax Advisor

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## Japan’s tax authorities clarify new JCT rules on digital services

Digital services and content provided by foreign enterprises to customers in Japan will be subject to Japanese consumption tax (JCT) starting on 1 October 2015 (for prior coverage, see *World Tax Advisor*, 23 January 2015 and *World Tax Advisor*, 27 February 2015). For business-to-business (B2B) supplies, the tax will be collected under a reverse charge mechanism, but foreign suppliers that make business-to-consumer (B2C) supplies will need to account for JCT. In both cases, there will be specific invoicing requirements. On 29 May and 3 June 2015, the National Tax Agency (NTA) published circulars and related guidance to provide clarification on the new JCT rules.
**URL:** http://newsletters.usdbriefs.com/2015/Tax/WTA/150123_5.pdf
**URL:** http://newsletters.usdbriefs.com/2015/Tax/WTA/150227_ib.pdf

JCT currently is levied at a rate of 8% on the transfer or lease of assets in Japan, or the provision of services in Japan. The tax rate is scheduled to increase to 10% on 1 April 2017. Digital services (e.g. the sale of e-books, the provision of music streaming, etc.) supplied by a foreign provider, however, fall outside the scope of the JCT. The new rules, enacted by the

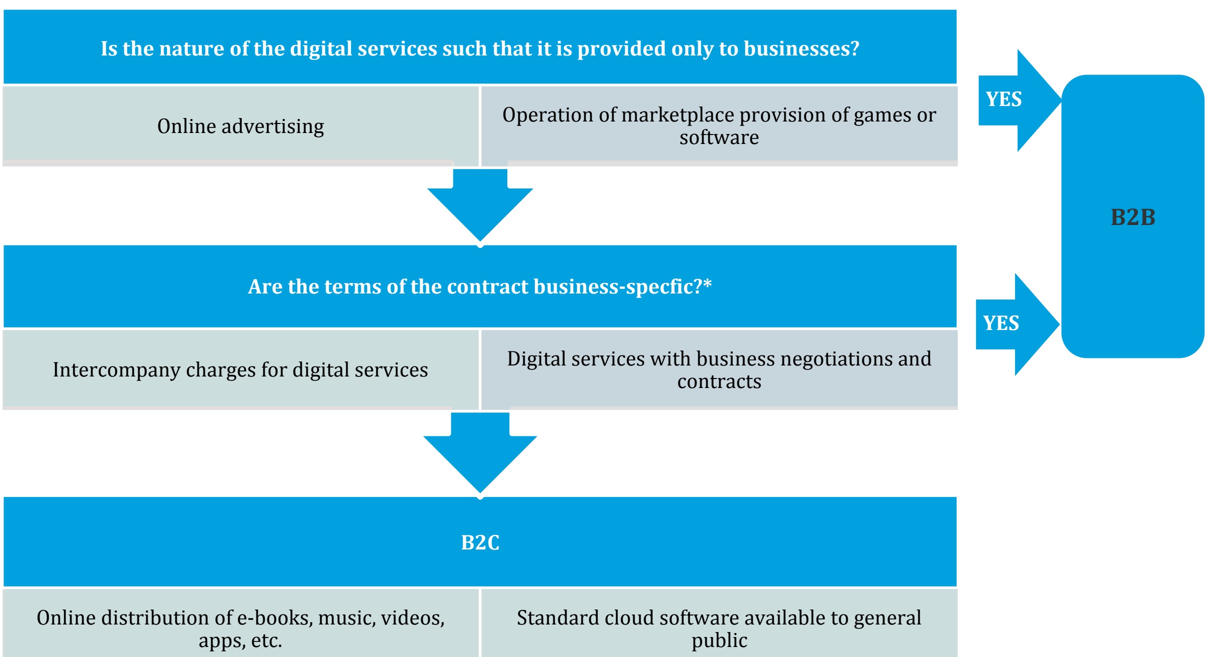
Japanese Diet on 31 March 2015, provide that the place of digital services will be deemed to be the place where the recipient is located (i.e. Japan), so such supplies will be brought into the JCT net at a rate of 8%.

The new rules create a host of tax, business and systems implications that need to be addressed by affected taxpayers.

**Classification as B2B or B2C service**

The JCT implications under the new rules will differ depending on whether a supply is a B2B service or a B2C service. Classification of a transaction will be based on the nature of the service provided or the terms of the service contract, not the recipient's status as a business or as an individual. The law defines B2B services as digital services supplied exclusively to businesses, taking into account the nature of the services, the terms of the contract and other factors; B2C services are services other than B2B services.

The following chart illustrates how to determine whether a service should be considered a B2B service or a B2C service:




* Even when the relevant terms clearly state that the services are intended exclusively for businesses, the distribution of e-books, music, software and games, etc., via the internet should be treated as a B2C supply if it is not practically possible for the supplier to prevent purchases by individuals. In other words, *all digital services that are available to individual consumers (e.g. downloadable software) effectively would be treated as B2C services, even if businesses are the main consumers of such services*.

As noted above, where the supply is a B2B supply, JCT will be collected under the reverse charge, i.e. the Japanese business customer will be responsible for filing and paying the applicable JCT to the NTA. Where the supply is a B2C supply, however, the foreign service provider will be required to file a JCT return and pay JCT through a tax representative located in Japan.

### Scope of digital services

The new JCT law defines digital services as any service provided via a telecommunications network. The NTA guidance contains a number of examples of digital and nondigital services:

| Digital services | Nondigital services |
|---|---|
| • Online distribution of e-books, e-journals, music, videos, software, mobile apps, etc.<br>• Cloud software and storage<br>• Online advertising<br>• Online marketplace or auction websites for selling products<br>• Online English lessons<br>• Consultation services continously provided via phone or email* | • Telecommunication services (e.g. telephone, fax, etc.)<br>• Software development<br>• Management of assets located outside Japan (including internet banking)<br>• Data collection and analysis<br>• Support for lawsuits filed outside Japan |

* It appears that this category of digital services is expected to include e-learning services or online exam services. If the category is interpreted broadly, services such as help desk services, call centers and email-based legal advisory services could fall within the scope of digital services. Consultation services that culminate in a report delivered via email (e.g. the delivery of a business strategy report supplied by a foreign consultancy firm) are not expected to fall within this category, although further guidance is awaited.

### Registration

Although foreign suppliers will not be required to register for JCT purposes under the new rules, where a Japanese business receives B2C services from a foreign service provider, an input tax credit will not be available for JCT paid by the Japanese business on the supply (i.e. the Japanese business will not be able to credit its input JCT against its output JCT liability), unless the foreign supplier has registered for JCT purposes in Japan.

The NTA guidance provides some details on the registration application process. Applications for registration can be made as from 1 July 2015, by downloading the form from the NTA website. The form is available only in Japanese, and there is no e-filing option. Although suppliers must be JCT taxpayers to be registered, once registered they will have a JCT filing/payment obligation. (An enterprise will be considered a JCT taxpayer and will have a JCT filing/payment obligation if it has JCT taxable sales exceeding JPY 10 million in its base period (i.e. the fiscal year two fiscal years before the current fiscal year).

### Other considerations

The NTA guidance also clarifies the following:

- The determination that a consumer is located in Japan should be made using reasonable and objective means, such as matching the address provided by the

customer with the country where the customer's credit card was issued, the customer's IP address or the customer's billing address; and
- For a supplier providing a digital service to a Japanese branch of a foreign company, the supply should be considered to take place outside Japan, and therefore outside the scope of the JCT.

**Comments**

The NTA guidance provides specific examples to clarify the distinction between B2B and B2C digital services. However, the guidance also raises some questions, especially regarding the types of services that will be categorized as "consultation services continuously provided by phone or email." Since it is unclear whether the NTA will issue further guidance before the October effective date, foreign suppliers that provide such services should discuss the implications of providing this type of service with their tax advisors.

In addition, since Japan's rules focus on the nature of the service or the terms of the service contract, rather than the status of the consumer (corporate or individual), foreign suppliers may discover that their services are considered B2C supplies, requiring them to charge JCT, even though they mainly provide digital services to business consumers. This may affect business operations, pricing strategy and systems.

With the effective date of the new rules only a few months away, foreign suppliers should start reviewing their digital service offerings in Japan and work with their tax advisors to assess how they will be affected by the new JCT rules.

— Chikara Okada (Tokyo)
Partner
Deloitte Japan
chikara.okada@tohamatsu.co.jp

Naoko Hattori (Tokyo)
Associate
Deloitte Japan
naoko.hattori@tohamatsu.co.jp

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## Greece makes significant changes to tax law

Law 4334/2015, published in Greece's government gazette on 16 July 2015, introduces significant changes to the income tax code, the solidarity surcharge on individuals, the VAT regime, the insurance premium tax and the luxury tax. The relevant changes, which were made as a result of the recent bailout deal, include the following:

**Income tax code**

**Tax rate on business income:** The corporate income tax rate for legal entities keeping double-entry books and for not-for-profit entities keeping simplified accounting books is increased from 26% to 29%. The rate increase applies retroactively to profits derived in accounting periods commencing as from 1 January 2015.

**Advance payment of corporate income tax:** The advance payment of corporate income tax is increased from 80% to 100% of the income tax due for profits derived in accounting periods commencing as from 1 January 2015.

The advance payment requirement applying to partnerships, not-for-profit legal entities, civil for-profit and not-for-profit companies, civil law societies and joint ventures of partnerships is increased from 55% to 75% of the tax due for profits derived in accounting periods commencing between 1 January 2015 and 31 December 2015.

## Solidarity surcharge

The solidarity surcharge (imposed on all individual taxpayers in Greece) rate is increased for income exceeding EUR 30,000 and derived as from 1 January 2015, and a new rate has been added for income exceeding EUR 500,000. The following table shows the applicable rates for fiscal years commencing as from 1 January 2015.

| Total taxable income (EUR) | Solidarity surcharge rate |
|---|---|
| 0-12,000 | 0% |
| 12,001-20,000 | 0.7% |
| 20,001-30,000 | 1.4% |
| 30,001-50,000 | 2% |
| 50,001-100,000 | 4% |
| 100,001-500,000 | 6% |
| > 500,001 | 8% |

## VAT

The relevant changes to the VAT regime, which generally apply as from 20 July 2015, include the following:

- The super-reduced VAT rate of 6.5% is reduced to 6%. The standard and reduced VAT rates of 23% and 13%, respectively, remain unchanged.
- Certain categories of goods and services are reclassified to be subject to higher VAT rates (from 13% to 23%, or from the former 6.5% rate to 13%).
    - The rates on hospitality and hotel accommodation will increase to 13% from 1 October 2015, while the rates on catering and restaurant services will increase to 23%.
    - The super-reduced rate still applies to books, magazines, newspapers and certain types of medicine and vaccines, as well as theater tickets and hotel accommodations (for hotel accommodations up to 30 September 2015).
- Certain VAT-exempt services are reclassified as subject to VAT (e.g. services of private educational coaching centers (other than private schools) and language centers are subject to the standard 23% rate).
- The reduced VAT rates that apply to transactions with certain Greek islands (16%, 9% and 4%, after the reduction of the general super-reduced rate to 6%) will be phased out, beginning as from 1 October 2015 for certain islands that are relatively developed in terms of tourism and have a relatively high income per capita, and as from 1 June 2016 or 1 January 2017 for less developed or distant islands, respectively.
- Banks will be required to withhold the VAT amount that corresponds to payments or transactions that must be settled though the banking system (i.e. wholesale transactions for amounts greater than EUR 3,000 and retail transactions for amounts greater than EUR 1,500), carried out principally through credit or debit cards, e-banking, bank

deposit payments for invoices or bank checks. Banks will be required to provide certificates to VAT payers for VAT reporting purposes.

Suppliers of goods or services that have been subject to the reduced VAT rates of 13% or 6.5% should confirm whether they will be affected by the reclassifications.

**Insurance premium tax**

Effective 16 July 2015, the new law increases insurance premium tax on claimable premiums and insurance rights recognized under an insurance policy agreement. While the rates on life and fire insurance remain unchanged, the rates on car and other types of insurance are increased from 10% to 15%. Additionally, all exemptions from the insurance premium tax are abolished (e.g. the exemption applying to vessels/aircraft), except for life insurance exceeding a 10-year term, for which the exemption remains intact. It should be noted that the insurance premium tax applies to all insurance companies that cover risks or insurance liabilities within Greece, including foreign insurance companies.

The Ministry of Finance is expected to issue additional guidance to clarify several practical issues, including how to avoid the double remittance of VAT (once with the VAT return and once with the bank's repayment) when an invoice is paid in the month following the month of its issuance.

**Luxury tax**

The luxury tax imposed on private yachts that exceed five meters in length is set at 13% on the imputed income derived due to the ownership of the boat (with an exemption for sailboats and yachts/boats exclusively made of wood in Greece).

The luxury tax rate on passenger cars with engine capacity over 2500 c.c., aircraft, helicopters, gliders and swimming pools is increased from 10% to 13%, also imposed on the imputed income deemed to be derived by the owner.

These changes apply to income acquired as from FY 2014 (income tax returns filed in 2015 and thereafter). If a tax return already has been filed for FY 2014, the luxury tax will be reassessed in accordance with the new provisions.


— Maria Trakadi (Athens)
Partner
Deloitte Greece
mtrakadi@deloitte.gr

Stelios Kyriakides (Athens)
Partner
Deloitte Greece
stkyriakides@deloitte.gr

Kyriaki Dafni (Athens)
Senior Manager
Deloitte Greece
kdafni@deloitte.gr

## Australia:
## Investment Manager Regime law enacted

On 25 June 2015, Australian legislation containing the third and final element of the Investment Manager Regime (IMR 3), including a number of last-minute changes, received Royal Assent and is now enacted law. The law generally applies as from the 2015-16 income year (the year ended 30 June 2016), although taxpayers may elect to apply certain provisions in prior years.

### IMR 3, as enacted

The enactment of the IMR 3 is the culmination of a lengthy process commencing in December 2010. The first two elements of the IMR (IMR 1 and 2) were enacted in 2012. The IMR 3 legislation follows a bill that was introduced into parliament in May 2015 (for prior coverage, see Australia Tax Alert, 28 May 2015).
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-28-may-2015.pdf

The stated objective of the IMR is to encourage particular kinds of investment made into or through Australia by certain nonresidents that have wide membership, or that use Australian fund managers. This is achieved by providing nonresidents with an Australian income tax exemption for income or gains in respect of the disposal of their investments that otherwise might be sourced in Australia and subject to Australian tax.

Between the introduction of the IMR 3 bill into parliament in May 2015 and final passage by parliament, a number of changes were made to improve the operation of the IMR, which are summarized below:

- In respect of indirect concessions involving an independent Australian fund manager, a sub-underwriting fee may qualify for the IMR concession under certain circumstances. This provision does not apply in the case of direct concessions.
- The revised explanatory memorandum for the law provides some clarification on the scope of eligible income.
- In applying the “widely held” tests, participation interests of fund managers that relate to entitlements to remuneration may be disregarded (subject to certain conditions), whether the fund manager is an independent Australian fund manager or an independent foreign fund manager.
- Certain aspects of the finalized IMR rules may be applied on an optional basis for periods up to 30 June 2011, covered by enacted IMR 1, to ensure that the IMR 1 rules operate as intended. (However, the indirect concession is not available for this period.) The concessional amendments dealing with the residence of a limited partnership also will apply for periods up to 30 June 2011.

### Comments

The IMR should be welcomed by nonresidents, such as hedge funds investing in Australia and funds that engage independent Australian fund managers. Funds should consider undertaking an IMR review to determine whether they qualify for the IMR concession for any year (including prior years) in which income or gains from investments otherwise might be subject to

Australian tax. In addition, fund managers should consider whether funds should establish or make greater use of Australian fund managers, and whether any other operational aspects of the fund may need to be reviewed in light of the finalization of the IMR.

— Vik Khanna (Melbourne)
Partner
Deloitte Australia
vkhanna@deloitte.com.au

David Watkins (Sydney)
Partner
Deloitte Australia
dwatkins@deloitte.com.au

Mark Hadassin (Sydney)
Partner
Deloitte Australia
mhadassin@deloitte.com.au

Julian Cheng (Sydney)
Partner
Deloitte Australia
jcheng@deloitte.com.au

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## China:
## New guidance issued to stimulate technological innovation

China's Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued two sets of guidance on 11 June 2015 (Circulars 62 and 63) that contain tax incentives designed to stimulate technological innovation. Both circulars apply retroactively as from 1 January 2015.

### Circular 62

Circular 62 expands the scope of preferential tax policies previously piloted in the Beijing Zhongguancun National Independent Innovation Demonstration Zone (NIIDZ) to all other NIIDZs, the He-Wu-Beng Independent Innovation Comprehensive Pilot Zone (in Anhui province) and the Mianyang Science and Technology City (in Sichuan province) (collectively, the "application areas"). (There are seven NIIDZs across the country: Beijing Zhongguancun, Chang-Zhu-Tan (in Hunan province), Shanghai Zhangjiang, Shenzhen, South Jiangsu, Tianjin Binhai and Wuhan Donghu (in Hubei province)).

The incentives are as follows:

- **Deferred payment of individual income tax (IIT) on stock awards:** Stock awards granted to employees generally are subject to IIT at the time the awards are granted, with the taxable amount calculated by reference to the fair market value of the stock awarded. For stock awards granted by high-new technology enterprises (HNTEs) registered in the application areas to their qualifying technical employees, Circular 62 allows the IIT to be paid in installments over a five-year period if an employee has difficulty in settling the tax liabilities immediately (subject to the approval of the responsible tax authorities).
- **Deferred payment of IIT on capitalization of undistributed profits or reserves:** The conversion of undistributed profits or reserves to capital generally is considered a dividend distribution, and thus triggers a 20% IIT for individual shareholders. Where such a capitalization is made by a small or medium sized high-new technology enterprise (SMHNTE) registered in an application area, Circular 62 allows the IIT to be

paid in installments over a five-year period if an individual shareholder has difficulty in settling the tax liabilities immediately (subject to the approval of the responsible tax authorities). The deferred payment option is not available where a SMHNTE is listed on a Chinese stock exchange or quoted on the National Equities Exchange and Quotations.

- **Deduction granted to corporate partners of venture capital partnerships investing in unlisted SMHNTEs:** The Enterprise Income Tax (EIT) law grants a deduction to venture capital companies that invest in unlisted SMHNTEs, provided the investment has been held for at least two years (i.e. 24 months). Qualifying venture capital companies may deduct 70% of the investment amount from their taxable income. Circular 62 expands the incentive to corporate partners in a venture capital limited partnership registered in the application areas that invests in unlisted SMHNTEs. Since a partnership is not a taxable entity itself, Circular 62 allows the deduction to pass through to a corporate partner and offset the taxable income allocated to the partner from the partnership. However, the deduction must be calculated by multiplying 70% of the investment made by the partnership to the SMHNTE by the investment ratio of the partner in the partnership.
- **Expanded scope of "technology transfer" for EIT incentive:** The first RMB 5 million of income derived by a Chinese resident company from a transfer of technology in a tax year is tax-exempt, with the remainder subject to a 50% reduction in the EIT rate. The MOF and the SAT have interpreted the term "technology transfer" to mean a transfer of "ownership" of or a "worldwide exclusive licensed right to use qualifying technology for a period of five years or more." Circular 62 removes the words "worldwide exclusive licensed," suggesting that the scope of a qualifying technology transfer is broadened for companies registered in the application areas.

### Circular 63

The general limit for the deduction of employee education expenses is 2.5% of the total deductible employee salaries and remuneration (with any excess available for carry forward to future years), increased to 8% for HNTEs in certain areas. Circular 63 expands the scope of the 8% limit so that it applies nationwide, and all HNTEs now may apply the higher limit. This change should make HNTE status more advantageous from a tax perspective, given that HNTEs already enjoy a reduced enterprise income tax rate of 15% (rather than the statutory rate of 25%).

— Julie Zhang (Beijing)
Partner
Deloitte China
juliezhang@deloitte.com.cn

Rachel Yun Yun Ma (Shanghai)
Manager
Deloitte China
rachma@deloitte.com.cn

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## Colombia:
## Expert commission releases first report on tax system

On 4 June 2015, Colombia's Ministry of Finance published the first report of the Commission for Tax Equality and Competitiveness (Commission), which was formed to assess the existing tax system and to propose appropriate changes. The salient findings in the commission's report are as follows:

- The tax system is not efficient or effective for collecting taxes, which results in insufficient tax revenue.
- There is considerable inequality in the system; taxpayers in similar economic circumstances may not pay similar amounts of tax.
- Many taxes in Colombia are regressive and require lower-income taxpayers to pay a greater proportion of their income in tax than individuals with higher levels of income. The lack of progressivity in the tax structure impedes economic efficiency. This is compounded by Colombia's fiscal policy, which does not ensure that income is redistributed efficiently.
- The complexity of the tax system (e.g. multiple tax regimes and numerous deductions, exemptions, etc.) makes it difficult for taxpayers to comply with the rules, which leads to high levels of noncompliance and tax avoidance and creates problems for the tax authorities in carrying out tax audits.
- Companies in Colombia are subject to a high tax burden (25%, plus the 9% income tax for equality (CREE)), which discourages foreign investment, but only a small percentage of individuals are taxed on income and wealth.
- Revenue from indirect taxes is low because of multiple tax rates and a tax regime that complicates tax management and compliance. These factors may lead to tax evasion and fraud.
- The VAT regime is based on production rather than consumption, and the inability to deduct VAT on the purchase of capital assets negatively affects several sectors of the economy, such as agricultural industries.
- There are a number of shortcomings in the industry and commerce tax, a local tax levied on gross revenue (rather than net income) derived from industrial, commercial and service activities carried out in a municipality. For example, income allocation is based on where the business is carried out (which may be inaccurate and misleading when business activities are carried out in more than one location), and there are additional compliance costs for companies operating in two or more municipalities.
- There are too many local taxes with no unified legal framework, and these factors impair efficiency and economic competitiveness.

According to the report, improvements to the Colombian tax system are needed for national and local level national taxes (such as the corporate and personal income taxes, wealth tax, VAT and the tax on financial transactions), as well as local taxes (such as the property tax). The report proposes to introduce new taxes to replace the wealth tax and the tax on financial transactions, or to broaden the tax base of the wealth tax and revise the rates of the financial transactions tax (progressive removal of the levy) to improve the tax system.

— Mario Andrade Perilla (Bogota)
Partner
Deloitte Colombia
maandrade@deloitte.com

Oscar Jimenez (Bogota)
Manager
Deloitte Colombia
ojimenez@deloitte.com

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## Mexico:
## New administrative rules published

New administrative rules published in Mexico's official gazette on 2 July 2015 include the following:

- An updated list of countries that are considered to have a broad exchange of information agreement with Mexico, with the following countries added to the list:
    - Greenland and Faroe Islands, as from 1 January 2013;
    - Aruba, Curacao, Montserrat, St. Maarten and Turks and Caicos, as from 1 January 2014; and
    - Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Guernsey, Isle of Man and Jersey, as from 1 January 2015.
- Clarification of the calculation of the 30% foreign ownership requirement of machinery and equipment (M&E) used by a maquiladora (for a company to qualify as a maquiladora for income tax purposes and avoid being deemed a permanent establishment of its foreign principal, the nonresident receiving maquiladora services must own at least 30% of the M&E used in the maquiladora's operations, and other requirements must be met). The ownership percentage must be calculated on the last day of the relevant fiscal year, by dividing the net tax value of the M&E by the net tax value of the total M&E used in the maquila operations, including property of the maquila that is owned by third-party nonresidents or leased from third parties. Maquiladoras that complied with their transfer pricing obligations under the maquila rules as of 31 December 2009 have until 1 January 2016 to comply with the 30% requirement; in all other cases, they must have complied by 31 December 2014.
- Clarification of the rules regarding information returns (for prior coverage, see *World Tax Advisor*, 26 June 2015).
  **URL:** http://newsletters.usdbriefs.com/2015/Tax/WTA/150626_6.pdf

— Eduardo Barron (Mexico City)
Partner
Deloitte Mexico
edbarron@deloittemx.com

Eduardo Rueda (New York)
Senior Manager
Deloitte Tax LLP
eruedaherrera@deloitte.com

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## New Zealand:
## New tax treaty with Canada in force

On 2 July 2015, the New Zealand Minister of Revenue announced that the new tax treaty with Canada entered into force on 26 June 2015, replacing the 1980 treaty. The new treaty was signed on 3 May 2012, and the accompanying protocol on 12 September 2014. The treaty is effective for withholding taxes from 1 August 2015; for other provisions, the agreement is effective for income years beginning on or after 1 April 2016 for New Zealand and 1 January 2016 for Canada.

Key changes include reduced withholding taxes on dividends, interest and royalties, and amendments to the permanent establishment (PE) article.

### Withholding tax rates

One of the key features of the updated tax treaty is reduced withholding tax rates on dividends, interest and royalties, which should help New Zealand businesses compete in Canada and encourage Canadian investment in New Zealand. A summary of these changes are as follows:

| Income | 1980 treaty | New treaty |
|---|---|---|
| Dividends (beneficial ownership < 10%) | 15% | 15% |
| Dividends (beneficial ownership ≥ 10%) | 15% | 5% |
| Interest | 15% | 10% |
| Royalties (generally) | 15% | 10% |
| Royalties (relating to copyright or production of artistic work, but excluding royalties relating to film or television broadcasting work) | 15% | 5% |

**Dividends:** The standard withholding tax rate on dividends will remain at 15%, but it will reduce to 5% where the beneficial owner is a company that holds directly at least 10% of the voting power of the company paying the dividends.

**Interest:** The withholding tax rate on interest will be reduced from 15% to 10%. However, where interest is derived by a financial institution that is unrelated to and dealing independently with a payer, the interest may not be taxed in the state in which the interest arises.

Consistent with New Zealand's treaties with Australia and the US, the interest article contains an approved issuer levy (AIL) clause, which provides that interest arising in New Zealand will be charged at 10% (as opposed to 0%) if the payer of the interest has not paid the AIL.

**Royalties:** The general withholding tax rate for royalties will be reduced from 15% to 10%; however, a 5% rate will apply to the following types of royalties:

- Copyright royalties and other like payments in respect of the production or reproduction of a literary, dramatic, musical or other artistic work (excluding royalties in respect of motion picture films and royalties in respect of works on film, videotape or other means of reproduction for use in connection with television broadcasting); and
- Royalties for the use of, or the right to use, computer software or a patent, or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement).

### Permanent establishment

The new treaty makes the following changes to the PE article:

- A PE will arise only if a building site, construction, installation or assembly project lasts more than 12 months (six months under the 1980 treaty).
- An enterprise will be deemed to have a PE in a contracting state if the enterprise carries on activities in connection with the exploration or exploitation of natural resources, including standing timber for more than 183 days in a 12-month period, or if it operates substantial equipment in the other state.

- Consistent with New Zealand's other recent tax treaties, a new section provides that, subject to certain exceptions, an enterprise will be deemed to be carrying on a PE in the other contracting state if it performs services in the other contracting state:
    - Through an individual who is present in the other state for more than 183 days in a 12-month period, and more than 50% of the gross revenue attributable to active business activities of the enterprise during this period is derived from the services performed in that other state by the individual; or
    - For a period or periods exceeding 183 days in a 12-month period, and the services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that other state.

— Veronica Harley (Auckland)
Associate Director
Deloitte New Zealand
vharley@deloitte.co.nz

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## United States: New guidance on FBAR penalties issued

The US Internal Revenue Service (IRS) issued guidance dated 13 May 2015 to its examiners for determining, calculating and assessing penalties for failure to comply with the Foreign Bank and Financial Account Report (FBAR) requirements. The guidance contains new documentation and approval requirements for IRS examiners.

Under the FBAR rules, a US citizen or resident that has a financial interest in or signatory authority or other authority over a "reportable foreign financial account" (i.e. a foreign financial account the aggregate balance of which is over USD 10,000 at any time during the calendar year) must file a form (foreign bank account report, which was renamed the FinCEN Report 114 in 2013). As from 1 July 2013, the form must be filed electronically by 30 June of each year. The FBAR filing requirement is separate from the annual income tax return filing requirement, and no extensions to file are granted.

The IRS explains in the new guidance that the FBAR penalty procedures were developed to ensure consistency and effectiveness in the administration of the penalties, and that such penalty determinations are adequately supported and asserted in a fair and consistent manner.

The guidance contains a discussion on determining the penalties for willful and nonwillful FBAR violations. For willful violations, examiners should consider the facts and circumstances of the case in determining the amount of the penalty and should clearly state the years for which an FBAR violation is deemed to be willful. However, the guidance does not address how willfulness is to be determined or the evidence required to make that finding. As a result, it appears that the willfulness guidelines in the Internal Revenue Manual (IRM) have not been modified.

The guidance emphasizes that, for each year for which it is determined that there was a willful FBAR violation, an examiner must fully develop and adequately document in the examination work papers his/her analysis regarding willfulness. Where violations span multiple years, the examiner will recommend a penalty for each year for which the FBAR violation was willful. The total penalty for all years under examination generally will be limited to 50% of the highest aggregate balance of all unreported foreign financial accounts during the years under examination; the penalty for each year will be determined by allocating the total penalty amount to all years for which the FBAR violations were willful, based on the ratio of the highest aggregate balance for each year to the total of the highest aggregate balances for all years combined, subject to the maximum penalty limitation for each year. The examiner may recommend a penalty that is higher or lower than 50% of the highest aggregate account balance of all unreported foreign financial accounts, based on the facts and circumstances, but the total penalty amount may not exceed 100% of the highest aggregate balance of all unreported foreign financial accounts during the years under examination.

For nonwillful violations, the guidance advises the examiner to first determine if the mitigation threshold conditions in the IRM apply to automatically reduce the amount of the penalty based on the aggregate balance of the accounts. There are no other guidelines for reducing the amount of the USD 10,000 penalty. However, the guidance notes that, when handling nonwillful FBAR violations for multiple years, an examiner has the discretion to impose a penalty for a single year or a penalty for each year at issue. If multiple accounts are involved, an examiner has the option of imposing one penalty per year, regardless of the number of accounts involved, or imposing a separate penalty for each account. However, the total amount of the penalties for nonwillful violations may not exceed 50% of the highest aggregate balance of all unreported foreign financial accounts for the years under examination. The guidance provides that “a nonwillful penalty will not be recommended if the examiner determines that the FBAR violations were due to reasonable cause and the person failing to timely file correct and complete FBARs later files correct and complete FBARs.”

The IRS guidance was released one month after a district court ruled that the IRS lacked an administrative record that established an adequate basis for the assessment of FBAR penalties.

The guidance is effective upon issuance, and applies to all open cases in which an FBAR penalty is being considered.

— John Keenan (Washington, DC)
Director
Deloitte Tax LLP
jkeenan@deloitte.com

Anne Oliver (Washington, DC)
Senior Manager
Deloitte Tax LLP
anneoliver@deloitte.com

Andrew Brewster (Washington, DC)
Manager
Deloitte Tax LLP
anbrewster@deloitte.com

## Vietnam:
## Tax treaty signed with US

On 7 July 2015, Vietnam and the US signed an income tax treaty, the first treaty between the two countries. The treaty marks a positive and substantive development in bilateral economic relations since the normalization of relations between the two countries 20 years ago.

The treaty generally follows the US model income tax treaty, with some modifications based on provisions in the UN model treaty. The following are some of the main features of the treaty:

**Permanent establishment:** The treaty provides for an expanded definition of permanent establishment (PE), including the creation of a services PE if services, including consultancy services, are provided for more than six months in any 12-month period. A building site, construction, exploration, assembly or installation project, or related supervisory activities, will constitute a PE if the site, project or activities last more than six months. Vietnam's other tax treaties provide that a construction PE covers only a limited category of construction and installation activities, and the threshold in the US model treaty is 12 months.

**Transfer pricing:** The associated enterprise article applies the same principle of many other tax treaties with respect to transactions between associated enterprises, i.e. a corresponding (downward) adjustment to profits to be made in the US where an upward adjustment to profits has been made in Vietnam, and vice versa. This aims to eliminate the double taxation that otherwise would arise.

**Dividends:** The dividends article limits the source country's right to tax dividends to a rate of 15%, with a reduced rate of 5% applying where the beneficial owner is a company that owns directly at least 25% of the voting stock of the payer company if that company is a US resident, or 25% of the capital of the payer company if that company is a tax resident of Vietnam. A 5% withholding tax rate will be imposed on dividends paid to individuals.

The 15% rate will apply to dividends paid by a US Real Estate Investment Trust (REIT) or a Vietnamese Real Estate Investment Fund (VREIF) only if the dividends: (1) are paid to a pension fund (or an individual) that holds an interest of 10% or less in the REIT or VREIF; (2) are paid with respect to publicly traded stock to a company that holds a 5% or less interest in the stock of the REIT or VREIF; or (3) are paid to a company that holds a 10% or less interest in a diversified REIT or VREIF (i.e. where the value of no single interest in real property exceeds 10% of its total interests in real property).

US tax resident recipients of dividends will not need to apply the treaty for Vietnam-source dividends since Vietnam does not levy withholding tax on dividends paid to foreign entities under its domestic law.

**Interest:** The interest article limits the source country's right to tax interest payments to a 10% withholding tax rate. The source country's tax exemption can be granted if the interest is paid by the source country itself or by the central bank, a political subdivision or a local authority thereof.

Since Vietnam imposes only a 5% withholding tax on interest paid to a nonresident, that rate would apply to US recipients of interest, rather than the treaty rate.

**Royalties:** The royalties article limits the source country's right to tax royalty payments to a maximum withholding tax rate of 5% or 10%, depending on the category of the royalty. The 5% rate will apply to payments made for the use of, or the right to use, industrial, commercial or scientific equipment (excluding payments for the rental on a bareboat basis of ships or aircraft, if such ships or aircraft are operated in international traffic by the lessee; or payments for the use, maintenance or rental of containers (e.g. trailers and barges), except to the extent those containers are used for transport. The 10% rate will apply payments for the use of, or the right to use, a copyright of literary, artistic, scientific or other work (including cinematographic films, films or tapes used for radio or television broadcasting), a patent, trademark, design or model, plan, secret formula or process.

**Gains from the alienation of property:** Under Vietnam's domestic law, the net gains from the disposal of shares and capital interests in a Vietnamese company by an offshore entity are subject to a corporate income tax rate of 22%. If the share disposal relates to shares in a Vietnamese public joint stock company, a tax rate of 0.1% applies on the gross sales proceeds instead of the 22% tax rate on the net gains. For nonresident individuals, a tax rate of 0.1% is imposed on the gross sales proceeds. Under the treaty, gains derived by a US resident from the sale of shares of a company in Vietnam will be tax exempt in Vietnam if the property of the company does not consist principally (directly or indirectly) of real property in Vietnam.

The treaty follows a similar approach to the capital gains provisions in Vietnam's other treaties. However, these other treaties (or Vietnam tax authorities' interpretations of them) typically define "principally" by a threshold of 50%, whereas the treaty with the US lowers the threshold to 30%.

**Personal income tax:** The term "resident" in the treaty aligns with Vietnam's rules on personal income tax. The tax assessment year will be the western calendar year in the case of an individual who is present in Vietnam for 183 days or more within one western calendar year (i.e. from 1 January to 31 December) or a 12 month period from the first arrival day of the US individual (first tax assessment year). Tax residents of Vietnam are subject to personal income tax on their worldwide income, irrespective of where the income was paid, earned or charged.

| **Overview of certain requirements for benefits under the treaty** | | |
|---|---|---|
| **Income types** | **Tax treaty relief in Vietnam** | **Treaty requirements** |
| Business profits | Tax exemption | • Business profits of a US enterprise must not be generated via a PE in Vietnam<br>• PE determination should be carefully assessed because PE interpretations in Vietnam often result in disputes with the tax authorities |
| Interest | Tax exemption | • Interest paid by Vietnam or by the central bank, a political subdivision or a local authority thereof |

| Overview of certain requirements for benefits under the treaty | | |
|---|---|---|
| **Income types** | **Tax treaty relief in Vietnam** | **Treaty requirements** |
| Royalties | Tax rate reduced from 10% to 5% | • Royalty payments made for the use of, or the right to use, industrial, commercial or scientific equipment (with some exceptions) |
| Capital gains | Tax exemption | • The ratio of the value of real property to the total property in the Vietnamese company must not exceed 30% |
| Dependent personal services | Tax exemption | • A US individual must be present in Vietnam for a period not exceeding 183 days (in the aggregate) in any 12 month period commencing or ending in the taxable year concerned; and<br>• The remuneration must be paid by, or on behalf of, an employer who is not a resident of Vietnam; and<br>• The remuneration must not be borne by a PE or a fixed base which the employer has in Vietnam |

**Comments**

The tax treaty still must go through the ratification process of both countries before it can enter into force. Although it currently is unknown when the new treaty will enter force, companies that may be affected should begin to assess the impact of the treaty. Companies that have engaged in, or plan to engage in, cross-border transactions with Vietnam or companies that have US-resident employees on short-term assignments in Vietnam should review their business models with a view to obtaining benefits under the new Vietnam-US tax treaty.

— Thomas McClelland (Ho Chi Minh City)
Partner
Deloitte Vietnam
tmcclelland@deloitte.com

Tuan Bui (Hanoi)
Partner
Deloitte Vietnam
tbui@deloitte.com

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## Vietnam:
## New guidance issued on corporate tax rules

Vietnam's government issued a circular on 22 June 2015 that provides guidance on certain aspects of the corporate income tax, and, in particular, amends and supplements the rules on tax incentives, deductible expenses and the determination of taxable income. Among the most significant measures contained in the circular are:

- A change in the timing of the recognition of services income. Services income will be recognized when the relevant service is partly and/or fully completed, rather than when the service provider receives payment from the service recipient, as under the current rules.
- A change in the timing of the recognition of income derived by Vietnamese enterprises from overseas investment. Such income will be recognized when it is remitted to Vietnam, rather than when the income arises, as under the current rules. Also, it no longer will be possible to set off losses arising from overseas investment against income derived from Vietnamese sources, and vice versa.
- Supplementary guidance on the application of the corporate income tax incentive for enterprises operating in preferential areas. Where such an enterprise derives income from a location that is outside its (original) preferential area, but the location concerned also is in a preferential area, the income still may qualify for the incentive, depending on the timing and availability of the corporate tax incentive with respect to the latter (i.e. nonoriginal) location.
- Supplementary clarification on the setoff of carried-forward losses arising from one business activity against profits arising from another business activity.
- A change in the treatment of both realized foreign exchange losses and unrealized foreign exchange losses arising on the revaluation of accounts payable. Such losses will be treated as financial expenses, rather than operating expenses incurred in the principal business activity, as under the current rules.

The new rules are effective from 6 August 2015 and will apply for 2015 and subsequent corporate income tax years.

— Thomas McClelland (Ho Chi Minh City)
Partner
Deloitte Vietnam
tmcclelland@deloitte.com

Tuan Bui (Hanoi)
Partner
Deloitte Vietnam
tbui@deloitte.com

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## In brief

**China:** The General Administration of Customs is considering the possibility of expanding the pilot customs voluntary disclosure program (VDP) that has been introduced in certain local customs offices to apply on a nationwide basis. Guidance may be issued in mid-2016 that would establish a consistent nationwide approach to the VDP. The pilot VDP currently applies in the following Customs offices: Beijing, Dalian, Gongbei, Hangzhou, Nanjing, Nanning, Qingdao, Shanghai, Shenzhen, Tianjin, Wuhan and Xiamen.

**Hong Kong:** The Inland Revenue (Amendment) (No. 2) Ordinance 2015, published in the official gazette on 17 July 2015, extends the profits tax exemption under the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 to nonresident private equity funds. This new legislation has been widely anticipated by industry and tax practitioners, and is expected to boost the private equity industry in Hong Kong. The legislation is effective as from 17 July 2015, and applies retroactively to transactions carried out from 1 April 2015 (for prior coverage, see *World Tax Advisor*, 27 March 2015).
**URL:** http://newsletters.usdbriefs.com/2015/Tax/WTA/150327_ib.html

**India:** The Supreme Court has held that payments made to a foreign company for activities that are inextricably connected with prospecting, extracting or producing mineral oils (including natural gas and petroleum) are eligible for the concessional tax rate (effective rate of approximately 4.2% of gross revenue) that applies under India's domestic law to income earned by foreign entities from certain services relating to oil, rather than being treated as fees for technical services that are subject to tax at a rate of 40% of net income. The court explained that the appropriate tax treatment of the payments is based on the dominant purpose of the contract with the foreign company.

**Spain:** A royal decree issued on 10 July 2015 contains a number of new rules relating to transfer pricing, including new country-by-country (CbC) reporting obligations and other amendments to the reporting and documentation obligations of taxpayers. The CbC reporting obligations and the other transfer pricing reporting and documentation requirements for entities and groups with an aggregate net turnover of EUR 45 million or more will apply for tax periods beginning as from 1 January 2016. Another decree issued on the same day reduces the withholding tax on dividends and interest paid to a nonresident (as well as capital gains derived by a nonresident), the withholding tax on royalties paid to a resident of the EU/EEA and the branch profits tax from 20% to 19.5% for payments made between 12 July 2015 and 31 December 2015. The rate will further reduce to 19% on 1 January 2016 (for prior coverage, see Spain Tax Alert, 2 December 2014).
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-spain-021214.pdf

**United Kingdom:** The Supreme Court has allowed the taxpayer's appeal in *Anson (formerly Swift) v. HMRC*, restoring the decision of the First-tier Tribunal (FTT) (for prior coverage, see United Kingdom Tax Alert, 11 August 2011). The case concerns an individual member of a US Delaware limited liability company (LLC) that received a distribution from the company. He had paid US tax on his share of the LLC profits as they arose and claimed relief for the US tax paid against his UK income tax liability. The issue was whether the taxpayer was entitled to double taxation relief for US tax paid on the profits of the LLC on the grounds that, for US tax purposes, the LLC was a transparent entity. The UK tax authorities took the position that the LLC was a corporate entity that had paid the equivalent of a dividend, and so the taxpayer had not been taxed on the same income in the UK. The UK Supreme Court essentially held that the findings of fact made by the FTT were decisive: "Questions about whether the members had a right to the profits, and if so, what is the nature of that right, were questions of non-tax law, governed by Delaware law. The FTT's conclusion was a finding of fact. Domestic tax law then fell to be applied to the facts as so found." Since the FTT concluded that the members of that particular LLC had an interest in the profits of the LLC as they arose, double tax relief was due. The *Anson* decision is based on the specific findings of fact – not every US LLC will be identical, which is likely to affect their status. The UK tax authorities have not yet commented on the potential application of the decision, but are expected to do so.
**URL:**
https://www.taxpublications.deloitte.co.uk/tis/dtp.nsf/0/2BA64113E18E1418802578E9004FB3D3/$file/U%20K%20%20Alert%2011%20Aug%2011.pdf

## BEPS corner

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

**Australia:** The Board of Taxation has released the terms of reference for two consultations that stem from the 2015 federal budget and that relate to BEPS issues. The first is a consultation on Australia’s anti-hybrid rules that will focus on the issues covered by action 2 of the OECD’s BEPS initiative (neutralizing the effects of hybrid mismatch arrangements), with the Board scheduled to report back on the issue by March 2016. The second is a consultation on the development of a new voluntary code for greater public disclosure of tax information by businesses, particularly large multinationals, with the Board scheduled to report back by May 2016.

**European Union:** On 8 July 2015, members of the European Parliament (MEPs) voted in favor of a country-by-country (CbC) reporting measure as part of the shareholder rights directive amendments. The measure would require some multinational enterprises to publish information on their taxes paid on a CbC basis. The amended directive provides that “large undertakings” and “public-interest entities” (e.g. listed companies, insurance firms and companies designated by EU member states as having “significant public relevance”) would be required to publish information on profits or losses before tax, taxes on profits or losses and public subsidies received. A final decision on the amended directive will be made during a meeting between the MEPs, the European Commission and the European Council.

**European Union:** On 26 June 2015, the European Parliament’s Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE Committee) published letters from several EU member states (including Belgium, Ireland, Luxembourg, the Netherlands, Switzerland and the UK) replying to the committee’s requests for information about each country’s tax rulings practices. The TAXE committee (created in February 2015) previously sent requests to member states for information about tax rulings they had issued since 1991 and actions they had taken or planned to take to increase corporate tax transparency and limit BEPS. The member states also were asked to share information regarding noncooperative tax jurisdictions and their current international tax treaties.

**European Union:** A hearing recently was held before the European Commission on Bulgaria’s complaint under article 259 of the Treaty of the Functioning of the European Union (TFEU) against Greece. Specifically, Bulgaria argued that Greece’s 26% withholding tax on deals and transactions sourced to Bulgaria violates several principles of the TFEU (e.g. free movement of goods, services and capital, the freedom of establishment, legal certainty, nondiscrimination and proportionality). Greece asserted that its withholding tax rate had been developed on the basis of recommendations issued by OECD and the European Commission related to the introduction of measures against the lowering of the tax base and the transfer of profits/BEPS. The European Commission opinion is expected to be announced on 18 August 2015.

**OECD:** On 7 July 2015, the OECD held a public consultation in Paris on transfer pricing matters related to BEPS actions 8, 9 and 10. See OECD Transfer Pricing Alert, 14 July 2015.
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-010-14-july-2015.pdf

**OECD:** The OECD, in response to a request of the G20 Development Working Group, has issued for public comment a paper regarding the design and implementation of tax incentives to attract investment in low-income countries. A common concern among low-income countries during consultations with developing countries on BEPS is how tax incentives erode their tax bases. Submissions on the paper are due 5 August 2015.

**Spain:** A royal decree contains a number of new rules relating to transfer pricing, including new country-by-country reporting obligations. See "In brief" item in this issue.
**URL:** http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_ib.html

**United States:** The US Treasury Department has released draft amendments to the 2006 US model tax treaty, which provide a glimpse into Treasury's thinking on BEPS. See United States Tax Alert, 10 July 2015.
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-10-july-2015.pdf

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## Tax treaty round up

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

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

**Austria-Turkmenistan:** When in effect, the treaty signed on 12 May 2015 to replace the 1981 treaty between Austria and the former USSR provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. A 10% rate will apply to interest and royalties. However, the protocol to the treaty contains a most favored nation clause to the effect that, should Turkmenistan apply a rate lower than 10% under a tax treaty with an EU member state, that lower rate (including a zero rate) also will apply for purposes of the treaty with Austria. This provision will cease to have effect five years after the new Austria-Turkmenistan treaty enters into effect.

**Colombia-France:** When in effect, the treaty signed on 25 June 2015 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership), that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 15%. The rate also will be 15% for dividends paid by a Colombian company from profits that have not been taxed at the corporate level. Where dividends are paid out of tax-exempt income or gains derived from immovable property by an investment vehicle that distributes most of its income or gains annually, to a shareholder that holds, directly or indirectly, at least 10% of the capital of the payer, the dividends may be taxed at the domestic rate applying in the source state. A 0% rate will apply to interest paid with respect to indebtedness in connection with the sale on credit of any industrial, commercial or scientific equipment; a credit sale of any goods and merchandise from one enterprise to another; interest paid between financial institutions; and interest on all bank loans or credit granted for a period of at least three years; otherwise, the rate will be 10%. Pension funds may be entitled to the reduced withholding tax rates on dividends and interest under the treaty, provided specific conditions are satisfied. A 10% withholding tax rate will apply to royalties.

**Egypt-Mauritius:** The 2012 treaty entered into force on 10 March 2014 and applies as from 1 January 2015 in Egypt and as from 1 July 2015 in Mauritius. The treaty provides for a 5% withholding tax rate on dividends paid to a company that holds, directly or indirectly, at least 25% of the capital of the payer company; otherwise, the rate is 10%. A 10% rate applies to interest and a 12% rate applies to royalties.

**France-Andorra:** The 2013 treaty entered into force on 1 July 2015 and will apply from 1 January 2016. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. A 0% rate will apply to interest paid in connection with the sale on credit of goods or merchandise or the supply of services, and to interest paid between financial institutions; otherwise, the rate will be 5%. A 0% rate will apply to copyright or similar royalties (other than royalties concerning computer software, cinematograph films and other means of image or sound reproduction); otherwise, the rate will be 5%.

**Hungary-Bahrain:** The 2014 treaty entered into force on 19 June 2015 and will apply as from 1 January 2016. When in effect, the treaty provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership that is not liable to tax); otherwise, the rate will be 5%. Income from debt claims and royalties will be taxable only in the state of residence of the recipient.

**Hungary-Liechtenstein:** When in effect, the treaty signed on 29 June 2015 provides for a 0% withholding tax rate where dividends are paid to a company (other than a partnership that is not liable to tax) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. Interest and royalties will be taxable only in the state of residence of the recipient.

**Hungary-Luxembourg:** When in effect, the treaty signed on 10 March 2015 to replace the 1990 treaty provides for a 0% withholding tax rate where dividends are paid to a company (other than a partnership that is not liable to tax) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. Interest and royalties will be taxable only in the state of residence of the recipient.

**Malta-Moldova:** The 2014 treaty entered into force on 17 June 2015 and will apply as from 1 January 2016. When in effect, the treaty provides that where dividends are paid by a Malta company to a Moldova company, the Maltese tax on the dividends may not exceed the amount chargeable on the profits out of which the dividends are paid. The rate will be 5% for dividends paid by a Moldova company to a Malta company. The rate on interest and royalties will be 5%.

**Mexico-Turkey:** The 2013 treaty entered into force on 23 July 2015 and will apply as from 1 January 2016. When in effect, the treaty provides for a 5% withholding tax rate where dividends are paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. A 10% rate will apply to interest paid to a bank; otherwise, the rate will be 15%. The rate on royalties will be 10%.

**Netherlands-Zambia:** When in effect, the treaty signed on 15 July 2015 to replace the 1977 treaty provides for a 5% withholding tax rate where dividends are paid to a company that holds directly at least 10% of the capital of the payer company or to a pension fund; otherwise, the rate will be 15%. The rate on interest will be 10% and the rate on royalties will be 7.5%.

**New Zealand-Canada:** See article in this issue.
**URL:** http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_7.html

**New Zealand-Samoa:** When in effect, the tax treaty signed on 8 July 2015 will replace the existing tax information exchange agreement. The treaty provides for a 5% withholding tax rate where dividends are paid to a company that holds directly at least 10% of the voting power of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%. The term "royalty" is defined to include "the use of, or the right to use any industrial, scientific or commercial equipment," which runs against the recent trend of moving the taxation of rental or leasing of equipment to fall under the business profits article. The treaty also contains a limitation on benefits provision, under which treaty benefits will not be granted if one of the principal purposes of an arrangement or transaction is to receive treaty benefits. The new treaty does not contain a nondiscrimination article.

**Singapore-Thailand:** When in effect, the treaty signed on 11 June 2015 will replace the existing treaty dating from 1975. The treaty provides for a 10% withholding tax rate on dividends. A 0% withholding tax rate will apply to interest paid to a financial institution or insurance company; a 10% rate will apply where interest is paid for indebtedness arising as a result of a credit sale by a resident of that other contracting state for equipment, merchandise or services, unless the sale is between persons not dealing with each other at arm's length; otherwise, the rate will be 15%. A 5% rate will apply to royalties paid for the use of, or the right to use, a copyright of literary, artistic or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting; and an 8% rate will apply to royalties paid for a patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate will be 10%.

**United States:** Intergovernmental agreements to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) were signed between the US and India (on 9 July 2015), Georgia (on 10 July 2015) and the Philippines (on 13 July 2015).

**Vietnam-United States:** See article in this issue.
**URL:** http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_9.html

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## Brazil

### New FATCA-compliant financial reporting requirements enacted

The Brazilian government enacted Normative Ruling 1,571/15 on 3 July 2015, which establishes a new financial information return for reporting financial information on entities and individuals, including information necessary to comply with the US FATCA. The new return must be completed by financial institutions for periods starting on 1 December 2015 and it will replace the existing "DIMOF" return as from January 2016; however, financial institutions required to report information under FATCA will have to file their first returns by 15 August 2015.

Issue date: 8 July 2015

**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-8-july-2015.pdf

## European Union

### CJEU AG issues opinion on Dutch dividend withholding tax cases

Advocate General (AG) Jääskinen of the Court of Justice of the European Union has issued his opinion in three joined cases involving the Dutch dividend withholding tax provisions. According to the AG, withholding tax imposed on a nonresident may not exceed the full individual income tax burden of a resident taxpayer. Where this is not achieved even after a tax credit has been granted by the residence state under the provisions of a tax treaty, it is then the responsibility of the source state to ensure that the impact of the withholding tax is "neutralized."

Issue date: 29 June 2015

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

## OECD

### OECD provides update on transfer pricing issues at July public consultation

On 7 July 2015, the Secretariat of the OECD provided an update on the status of various transfer pricing matters in connection with actions 8, 9 and 10 of the BEPS action plan.

Issue date: 14 July 2015

**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-010-14-july-2015.pdf

## United Kingdom

### Summer budget 2015 announced

The UK Chancellor of the Exchequer gave his first budget of the new Conservative government on 8 July 2015. The budget includes a number of measures that would affect foreign-owned multinational groups.

**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedkingdom-8-july-2015.pdf

Issue date: 8 July 2015

## United States

### Treasury releases draft amendments to the 2006 US model income tax convention

The US Treasury Department released five draft amendments to the 2006 US model income tax treaty, as well as draft technical explanations of most of the amendments.

Issue date: 10 July 2015

**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-10-july-2015.pdf

**Have a question?**
If you have needs specifically related to this newsletter's content, send us an email at clientsandmarketsdeloittetax@deloitte.com to have a Deloitte Tax professional contact you.