Deloitte.

International Tax

World Tax Advisor

21 August 2015

In this issue:

China's SAT issues guidance on tax administration of enterprise reorganizations

Guidance issued by China's State Administration of Taxation (SAT) on 24 June 2015 (Bulletin 48) is designed to promote mergers and acquisitions and reorganizations between enterprises, and to clarify issues arising from current practices. Bulletin 48 makes major changes to guidance issued in 2010 (Bulletin 4); although Bulletin 4 remains in effect, a number of its procedural guidelines are repealed or amended. Bulletin 48 applies to enterprise reorganizations completed in 2015 and subsequent years, as well as to reorganizations for which the agreements have been signed, but the transactions have not yet been completed.

Background

The Ministry of Finance and the SAT issued two sets of guidance in 2009 and 2010 (Circular 59 and Bulletin 4), to introduce special tax treatment (i.e. tax deferral) that may allow (1) a carryover of the tax basis of an acquired business to achieve tax deferral for the transferor; or (2) recognition of the relevant income on an installment basis for Enterprise Income Tax (EIT) purposes. A reorganization generally must satisfy the following conditions to qualify as a special reorganization and thus qualify for the special tax treatment (additional conditions will need to be satisfied in the case of cross-border reorganizations):

- The reorganization has a bona fide commercial purpose, and the primary purpose of the reorganization is not to reduce, avoid or defer the payment of tax;
- For share or asset acquisitions, at least 50% of the total equity of the target company, or the total assets of the transferor, is transferred in the reorganization;
- There is no change in the original business operating activities of the target business for 12 months after the reorganization;
- At least 85% of the total consideration received by the transferor is in the form of equity; and
- The major transferor does not transfer the acquired equity for 12 months after the reorganization.

To elect for the special tax treatment, taxpayers were required to obtain advance approval from the tax authorities and submit certain documents to demonstrate that the relevant conditions were satisfied.

Highlights of Bulletin 48

Bulletin 48 replaces the procedural rules under Bulletin 4 with a combination of an annual filing requirement and post-transaction monitoring. Although the bulletin abolishes the advance approval requirement, it retains the commercial justification requirements and introduces new – and more comprehensive – documentation requirements.

Elimination of advance approval requirement, and other administrative measures: In May 2015, the State Council announced that the approval requirement no longer was conducive to promoting corporate restructurings, so it abolished that requirement to obtain the special tax treatment. One of the purposes of Bulletin 48 is to implement the Council's new policy and revise the administration of enterprise reorganizations that qualify for the special tax treatment. Under Bulletin 48, an enterprise no longer has to obtain advance approval (through filing with, or obtaining advance confirmation from, the tax authorities) to enjoy the special tax treatment. Instead, the parties involved in the reorganization must submit a specific form ("Form for Special EIT Treatment on Enterprise Reorganizations") to the competent tax authorities at the time the annual EIT return is filed.

Additionally, Bulletin 48 requires the competent tax authorities to strengthen the post-filing monitoring and management of special reorganizations, mainly through the following measures:

- For special reorganizations where the relevant income is recognized on an installment basis for EIT purposes (e.g. a qualifying debt restructuring or the use of assets for an outbound capital contribution), the tax authorities must set up a system to track the relevant records and compare and analyze them annually, including information on the relevant tax basis of the equity acquired and the income reported by the taxpayer in the tax returns.

- The tax authorities must focus on subsequent transfers and disposals of the assets or equity obtained through special reorganizations; specifically, they must compare and analyze the tax basis of the assets (equity) at the time they were acquired through a special reorganization and at the time they are subsequently transferred or disposed of, as well as the tax basis reported in the relevant tax returns.

Clarification and amendment of certain key concepts: Bulletin 48 clarifies and amends certain concepts, including the following:

- **Parties involved:** Bulletin 4 states that the "parties involved in the enterprise reorganization refer to the following enterprises…"; however, for an enterprise reorganization that involves a shareholder who is an individual, Bulletin 48 explicitly provides that the parties involved in an enterprise reorganization also include individuals. Based on this amendment, when determining whether the conditions for special tax treatment are fulfilled (such as the requirement to acquire at least 50% of the shares of the company in a share acquisition), it appears that the shares sold by shareholders who are individuals also may be counted. However, even if the conditions for special tax treatment are met, only corporate transferors may enjoy the special tax treatment – transferors who are individuals still must file and pay the relevant individual income tax (IIT), since the special tax treatment provided by the EIT law is not available under the IIT law.
- **Bona fide commercial purpose:** Bulletin 48 requires an explanation of the bona fide commercial purpose of a special reorganization, including information on the following: (1) type of reorganization; (2) substantive consequences of the reorganization; (3) changes regarding the tax attributes and tax treatment of the parties involved in the reorganization; (4) changes regarding the financial positions of the parties involved in the reorganization; and (5) information about the participation of nonresident enterprises in the reorganization.
- **Date of reorganization:** The date of a reorganization is an important concept regarding the EIT treatment of an enterprise reorganization, since it affects the determination of the date on which the liability to pay tax arises and the year in which the tax return filing to report the reorganization must be made. Bulletin 48 has, to some extent, modified the rules for determining the date of reorganization for various forms of reorganizations. It increases the emphasis on the effective date of the reorganization agreement and the date on which the parties involved record the relevant accounting treatment, and clarifies that "the year in which the reorganization is completed" is the tax year in which the date of reorganization falls.
- **"Step" transactions:** Bulletin 48 requires the parties involved in a special reorganization to report whether there have been other equity or asset transactions related to a reorganization within the 12-month period before the reorganization, and to explain whether such transactions should be considered as a single reorganization for tax purposes. The bulletin indicates that an enterprise may treat a series of transactions taking place within a consecutive 12-month period as a single reorganization transaction for tax purposes. For example, assume that Company A, a Chinese tax resident, issues new shares in December 2015 in exchange for 40% of the shares in Company B, and it issues new shares again in June 2016 in exchange for an additional 15% of the shares

in Company B. Based on these transactions, the percentage of the equity acquired would not yet reach the threshold (i.e. 50%) for application of the special tax treatment by the time the 2015 annual EIT return is due. However, because the estimated final percentage of the equity to be acquired (i.e. 40% + 15%) will exceed the threshold, the parties involved are allowed to apply the special tax treatment when they report the first step of the transaction with the 2015 annual filing, provided the other required conditions are fulfilled.

Increase in required documents/information to be filed: Bulletin 48 provides a new set of forms that must be filed with the tax authorities when a taxpayer elects to take the special tax treatment. Compared to the forms provided for under Bulletin 4, the information/documents to be provided in/with the forms required under new bulletin is more comprehensive and detailed. Given the similarities between the information/documents required for different types of special reorganizations, the form for an equity transfer is used as an example to illustrate the new requirements in Bulletin 48:

- Bulletin 48 eliminates the reference to “other documents as required by the tax authorities” from the list of documents to be filed, to be more transparent and increase consistency as to the documents the local tax authorities should request.
- In addition to explaining the commercial purpose of the transaction, the taxpayer is required to explain the acquisition plan and provide basic information on the equity acquisition in a statement.
- Valuation reports issued by competent valuation agents no longer are the only documents permitted to substantiate the fair market value of the equity (or other nonmonetary assets) transferred (or paid); taxpayers may provide other documents to support the fair market value of the relevant assets.
- Bulletin 48 requires a statement certifying that the parties involved have reached consensus on electing the special reorganization treatment, and the statement must be stamped with the company chop/seal of all the parties.
- Bulletin 48 requires the disclosure of any other equity or asset transactions within the 12 consecutive months before the reorganization, and the taxpayer must explain whether such transactions constitute step transactions of a single reorganization and, therefore, whether it has treated them as one transaction for tax purposes.
- The taxpayer is required to provide a list of temporary differences between the tax basis and the book value of certain assets (equity). The tax authorities have been focusing on the correlation between accounting records and tax records; even before the issuance of Bulletin 48, some tax authorities had required taxpayers to submit similar documentation.

Comments

The main feature of Bulletin 48 is that an enterprise now may claim special reorganization treatment for a transaction without having to obtain the advance approval from the competent tax authorities that previously was required. However, the repeal of the advance approval mechanism creates uncertainty as to whether an election of the special reorganization treatment made by an enterprise may be challenged by the tax authorities.

Bulletin 48 instructs the tax authorities to set up a tax basis tracking system for special reorganizations and to perform periodic follow-ups regarding the relevant information, which may indicate that special reorganizations could become an area of focus in future tax inspections and audits. Considering the change in policy, parties involved in a reorganization should pay special attention to the potential tax risks and should consider taking the following actions:

- Evaluate whether the relevant conditions for electing the special tax treatment are fulfilled. If there is any ambiguity, the taxpayer may explore the possibility of seeking guidance from, or an advance discussion with, the competent tax authorities.
- Prepare and maintain proper documentation (relevant legal and transaction documents, financial records and tax data) for filing and future inspection. If allowed, an enterprise also may consider setting up special ledgers to account for the special reorganization and, to the extent possible, comparing the data with that held by the tax authorities, so that any discrepancies can be timely identified and remedied. Such actions should enable the enterprise to be better prepared when dealing with tax inspections.
- Seek cooperation from the other parties involved in the reorganization, and ensure all parties take consistent actions.

From a procedural perspective, Bulletin 48 should benefit taxpayers. However, questions and inconsistencies in applying the special reorganization rules in practice remain unaddressed, such as how to determine whether a commercial purpose is bona fide. Additional guidance is anticipated from the SAT to clarify the application of the special reorganization rules.

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Australia:
Draft legislation on CbC reporting and transfer pricing documentation released

As the finalization of the base erosion and profit shifting (BEPS) deliverables looms closer (expected in October 2015), countries are beginning to focus on the implementation stage. The Australian government made it clear in the 2015-16 budget announced on 12 May 2015 that Australia would be among the first movers on a number of BEPS actions (for prior coverage, see Australia tax alert, 14 May 2015). Consistent with that promise, on 6 August 2015, the government released exposure draft (ED) legislation to give effect to:
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-14-may-2015.pdf

- The OECD standards under action 13 on country-by-country (CbC) reporting, as well as the transfer pricing (master file/local file) documentation; and
- Increased penalties for multinational entities that entered into tax avoidance or profit shifting schemes (as announced in the budget, the maximum administrative penalties would be doubled for large companies).

The measures would apply to entities with annual global revenue of AUD 1 billion (about EUR 750 million) or more.

Under the documentation standards, the Australian Taxation Office (ATO) would receive the following information on companies that operate in Australia:

- A CbC report showing information on the global activities of the multinational, including the location of its income and taxes paid;
- A master file containing an overview of the multinational's global business, its organizational structure and its transfer pricing policies; and
- A local file that provides detailed information about the local taxpayer's intercompany transactions.

These reports would provide the ATO with a global picture of how multinationals operate, with a view to helping the ATO identify multinational tax avoidance.

The third element of the package is the multinational anti avoidance law, in respect of which the government released an ED in May 2015 that would tax nonresidents in certain circumstances where the nonresident is attempting to avoid having a permanent establishment in Australia and hence, to not be liable to Australian tax on business profits (for prior coverage, see Australia tax alert, 11 May 2015).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-11-may-2015.pdf

The ED does not prescribe the specifics that would be required to be reported under the CbC and transfer pricing reporting rules. Instead, it would create a regime that would require taxpayers to file an "approved form" (that is expected to be consistent with the final OECD BEPS recommendations).

According to the OECD model for CbC reporting, a group will file the CbC report with the tax authorities in the jurisdiction in which the ultimate parent entity is resident, although the OECD acknowledges that "backup filing requirements" may be required. The ED has been drafted on the basis that the CbC and transfer pricing reporting rules will apply to both Australian-headquartered groups and Australian subsidiaries of multinational groups headquartered outside of Australia. That is, subject to exceptions, the starting point is that an Australian subsidiary of a multinational group headquartered outside of Australia will be required to file with the ATO the group's CbC report, the master file and its own local file.

Having been drafted on that broad basis, the ATO would have the power to exempt specific companies and classes of entities from some or all of the filing requirements. The explanatory materials indicate that Australian subsidiaries of multinational groups headquartered outside of Australia "may" be exempted, provided the ultimate parent entity is complying with effective CbC reporting rules in its home jurisdiction, and the relevant tax authorities are sharing the reports.

The new CbC and transfer pricing reporting rules would apply to income years starting on or after 1 January 2016, and would require the relevant documentation be filed with the ATO by the end of the following year of income (e.g. by 31 December 2017 in respect of the year commencing on 1 January 2016). Although the first filing submission dates are some way off, taxpayers will need to ensure that appropriate systems are in place to capture relevant data before the start of the first affected year.

Submissions on the ED are due by 2 September 2015.

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Brazil:
New federal tax amnesty program introduced

The Brazilian government published rules (Provisional Measure (PM) 685) on 22 July 2015 that introduce a new federal tax amnesty program, called the “Tax Litigation Reduction Program,” or PRORELIT. The amnesty allows taxpayers to use “credits” that are based on previous loss carryforwards to repay their tax debts. Applications to participate in the PRORELIT program must be made by 30 September 2015.

On 29 July 2015, the federal tax authorities, in conjunction with the Minister of Finance, issued further guidance (Ordinance 1,037/2015) on the PRORELIT program application process.

Overview of PRORELIT program

Under the PRORELIT program, federal tax debts that currently are being litigated in the administrative or judicial system may be offset by credits based on the aggregate amount of tax losses incurred on or before 31 December 2013 and reported to the Brazilian tax authorities by 30 June 2015. The tax credits are equivalent to 34% of the amount of the tax losses concerned (40% in the case of financial institutions).

Where tax due has been suspended as a result of administrative or judicial proceedings, the taxpayer must file a formal request with the relevant forum to dismiss the proceedings and the taxpayer must formally waive any rights based on such proceedings.

After fully utilizing credits based on its own accumulated tax losses, a taxpayer may use credits based on tax losses carried forward by controlling and controlled entities in the same corporate group (both direct and indirect ownership qualify), provided the group structure was in place between 31 December 2014 and the date the taxpayer opts to pay its tax debts using the loss carryforwards of companies within the group. Accumulated tax losses also may be used in situations where the controlling party has less than a 50% ownership interest in the controlled party, provided the controlling party (through a shareholder agreement) holds the majority of the voting rights in the controlled party or the right to elect the majority of its board of directors.

The rules establish an order of priority for setting off credits based on accumulated losses: the taxpayer's own losses must be utilized first, followed by the losses of group companies.

A taxpayer must make a cash payment equal to at least 43% of the consolidated tax debt; the outstanding debt balance may be paid through the use of credits based on accumulated tax losses. Payment must be made by the last business day of the month in which the taxpayer files its application to participate in the amnesty.

Federal tax debts withdrawn from legal proceedings and administrative and judicial appeals that were included in previous amnesty payment programs are not within the scope of the PRORELIT program, even if the Brazilian taxpayer's participation in the previous amnesty was terminated. Additionally, unlike previous federal amnesty programs, the PRORELIT program does not provide for any reduction in interest or penalties.

Application process

Ordinance 1,037/2015 provides that, to apply to participate in the PRORELIT program, a taxpayer must submit a specific form (Payment of Debts Subject to Tax Litigation or RQD), which can be found in one of the annexes to the ordinance. The taxpayer must register on the online system of the Brazilian federal tax authorities (*e-CAC*) and submit the RQD electronically; once the form is submitted and accepted, the taxpayer will be assigned an identifying number. Additionally, the RQD must be filed with the tax authorities in the place where the taxpayer is domiciled (typically the place of business) by 30 September 2015.

The following also must be submitted electronically through the *e-CAC* system:

- Proof of cash payment representing at least 43% of the tax debt;
- The total amount of credits from accumulated tax losses that will be used to repay the tax debt (based on the template provided in the annex);
- Copies of the corporate bylaws or articles of incorporation, which demonstrate that the assigning entities have power to assign such tax losses in cases where a taxpayer is using credits based on tax losses carried forward by controlling or controlled entities in the same corporate group; and
- Formal proof of having filed a timely request to extinguish any judicial proceedings concerning the tax debt in question (for the termination of administrative proceedings, taxpayers should use the templates provided in the annex).

The tax authorities will review the tax credits from accumulated losses indicated by the taxpayer on the RQD for the settlement of the taxpayer's tax debts under the PRORELIT program. If they determine that the taxpayer has overstated the amount of tax credits, the taxpayer will be notified and will have 30 days to pay the remaining balance (in cash).

The tax debt is deemed to be liquidated as from the date the taxpayer submits the RQD; the tax authorities have five years from that date to analyze the liquidation.

Comments

Although PM 685 is effective as from 22 July 2015 (and the ordinance applies from the date of issuance), the Brazilian Congress still must vote on the PM within four months from the date the PM was published, and may either approve, reject or amend its terms. PM 685 will remain in force for two months and will expire automatically if it is not extended for an additional two-month period, or if the Congress does not vote on the PM within the four-month period.

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Cyprus:
Amendments aim to enhance competitiveness of tax system

Two key changes to Cyprus' tax law that were published in the government gazette on 16 July 2015, and generally apply as from that date, aim to improve Cyprus' competitiveness in attracting foreign investment and high net worth individuals. These are the introduction of a notional interest deduction (NID) for companies, and the introduction of the concept of domicile for individuals for purposes of the Special Defense Contribution (SDC) Law.

Introduction of NID

The Income Tax Law (ITL) has been amended to introduce a NID on qualifying equity. Under the NID rules, companies resident in Cyprus and nonresident companies that have a permanent establishment in Cyprus are entitled to a NID on equity. The NID is a tax-allowable deduction against the taxable profits of a company.

The NID is calculated by multiplying the "reference interest rate" by the amount of the "qualifying equity" used by the business in carrying on its activities. For purposes of the amended law:

- The reference interest rate is the 10-year government bond rate (as of 31 December of the tax year preceding the relevant tax year) in the country in which the new equity is invested, plus a 3% premium. The minimum rate is the 10-year Cyprus government bond rate as of 31 December of the tax year preceding the relevant tax year, plus a 3% premium.
- Qualifying equity is the equity introduced into the business on or after 1 January 2015 in the form of issued share capital and share premiums (provided these are fully paid).

The amended law provides that any new equity introduced into a company on or after 1 January 2015 that directly or indirectly originates from reserves existing as of 31 December 2014 but that does not relate to the financing of new assets used in the business is deemed not to be qualifying equity.

The NID granted on qualifying equity cannot exceed 80% of the taxable profit calculated before allowing the NID. In the case of a taxable loss for the year, the NID is not available.

The new provisions that allow companies to fund their operations from their own equity/capital and obtain a tax-allowable deduction (the NID) have been introduced to encourage the investment of new equity into Cyprus tax resident companies and, thus, to promote the development of the Cyprus economy. The current standard corporate income tax rate is 12.5% and, depending on the level of capitalization of a company, the NID could reduce the effective tax rate to as low as 2.5%.

Introduction of "domicile" concept in SDC law

In accordance with the ITL, an individual who spends more than 183 days in Cyprus during the tax year (a Cyprus tax resident) generally would be subject to both income tax and special defense tax on certain income.

With the introduction of the domicile concept in the SDC Law (but not in the ITL), Cyprus tax resident individuals (as defined in accordance with the provisions of the ITL) that are considered "non-domiciled" in Cyprus are exempt from the special defense tax. Therefore, non-domiciled individuals migrating to Cyprus would suffer no tax on either dividend income or interest income (since such types of income are subject only to special defense tax).

For the purposes of the SDC Law, an individual has a "domicile in the Republic" if he/she has a domicile of origin in Cyprus based on the provisions of the Wills and Succession Law (i.e. domicile of the father at the time of birth), subject to a few exceptions.

The amended law also provides that, regardless of the domicile of origin, an individual who is resident in Cyprus (as defined in accordance with the provisions of the ITL) for at least 17 out of the last 20 years before the relevant tax year will be deemed domiciled in Cyprus.

The new concept of domicile aims to attract expatriate high net worth individuals with investment-source income to reside in Cyprus.

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European Union: CJEU rules on VAT deduction for holding company on acquisition of shares in subsidiaries

The Court of Justice of the European Union (CJEU) issued its decision on 16 July 2015 in the joined cases of *Larentia & Minerva* and *Marenave Schiffahrt*, regarding the input VAT incurred by holding companies on the acquisition of shareholdings in subsidiaries. The CJEU held that such input VAT should be recoverable in full, provided the holding companies are actively managing the subsidiaries. The court also held that, unless national legislation seeks to prevent abuse and combat tax evasion or avoidance, it cannot restrict the right to form a VAT group solely to entities with legal personality. The CJEU followed the opinion of Advocate General Mengozzi issued on 26 March 2015.

Background

Larentia & Minerva (GmbH & Co. KG) and Marenave Schiffahrt (AG) are German holding companies that engaged in both "active" and "passive" holding company activities, i.e. the companies provided management and/or consultancy services to entities they had acquired and they also engaged in typical holding company activities, such as the acquisition, holding and disposal of shares. Activities of active holding companies fall within the scope of a VAT taxable supply, whereas passive activities do not. Larentia and Marenave claimed full VAT deductions for the costs incurred to acquire their subsidiaries, on the grounds that the costs were incurred on the basis of a taxable supply of services.

The German tax authorities allowed only a partial deduction for the input VAT. The authorities took the position that a holding company providing management or other services to its subsidiaries (an "active" holding company) should be considered to be performing both an economic activity (i.e. the provision of such management/other services) and a noneconomic activity (i.e. the mere receipt of dividend income or loan interest). The authorities concluded that the VAT incurred on share acquisition costs by an active holding company is recoverable only proportionally, to the extent the holding company is carrying out actual economic activities; the part of the VAT that is attributable to simply acquiring and holding shares is not recoverable.

Following appeals, the German Federal Tax Court referred the cases to the CJEU to determine how the proportion of recoverable VAT should be calculated, and whether Germany's VAT rules that preclude partnerships from forming/joining VAT groups are permissible.

CJEU decision

The CJEU held that VAT incurred by holding companies that make charges for managing their entities should be recoverable, subject to any restriction resulting from any exempt supplies they make. The court ruled that, where a holding company involves itself in the management of the acquired entities, the input VAT incurred on the acquisition of the shares will be regarded as a general expenditure of the holding company. Thus, the input VAT need not be apportioned between the economic and noneconomic activities of the holding company (i.e. "pro rata" treatment does not apply) and the VAT is, in principle, deductible in full (unless the holding company makes exempt supplies, in which case the partial deduction rules apply). However, where a holding company does not involve itself in the management of the acquired entities, the input VAT incurred with respect to the acquisition of shares in those subsidiaries will be recoverable only to the extent of the economic activities (i.e. management/other services) performed by the holding company (i.e. pro rata treatment applies).

On the issue of Germany's VAT rules precluding partnerships from forming/joining VAT groups, the CJEU held that, unless national legislation aims to prevent abuse and/or combat tax evasion or avoidance, it cannot restrict the right to form a VAT group solely to entities with legal personality (thereby excluding, for instance, partnerships) and that are linked to the controlling company of that group in a relationship of subordination.

However, the CJEU also held that the VAT grouping rules in the directive do not have "direct effect," with the result that a taxpayer cannot invoke the rules directly against its member state of residence, even if the national legislation is not compatible with the directive.

This decision should have an impact in jurisdictions where the national rules thus far have been restrictive on the input VAT recovery for holdings and on the conditions for VAT grouping, although the full impact of the decision on the tax authorities' policies is unclear.

Taxpayers that are affected by the questions referred to the CJEU in the joined cases should consider keeping their VAT assessments open.

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Italy:
Tax authorities adopt stricter approach to application of NID regime

The Italian tax authorities issued guidance on 3 June 2015 that clarifies the application of the anti-avoidance rules under the notional interest deduction (NID) regime. The guidance adopts a new approach to determining whether a contribution is "tainted" because it may result in a duplication of the NID benefit, but allows the Italian taxpayer to request a ruling from the tax authorities to demonstrate that no duplication exists. Because the guidance is an interpretation of the 2012 NID implementation rules, the new approach potentially could apply on a retroactive basis.

Introduced in 2011, the NID is designed to encourage businesses to strengthen their capital structure and to provide more equal tax treatment to companies that are funded with equity, as opposed to debt. To this end, the NID grants Italian companies (and branches of foreign companies) a tax deduction that corresponds to a notional yield return on qualifying capital increases. The NID is computed on the amount of qualifying equity, which is determined by applying the notional yield to the increase in the qualifying book net equity, as recorded in the financial statements for the period ending on or after calendar year 2010. If any notional yield exceeds net taxable income of the relevant year, the excess is carried forward and may be used to offset the net taxable income of a subsequent tax period. The NID rate is set periodically by the Minister of Finance (the rate is 4.5% for the tax year ending on 31 December 2015 and 4.75% for the tax year ending on 31 December 2016).

The NID legislation contains specific anti-avoidance provisions to prevent duplication of the NID benefit within the same group of companies (e.g. at the level of the Italian contributing entity and the Italian entity receiving the contribution). For example, the NID is not available where a nonresident entity makes a contribution to an Italian company in the following cases:

- The nonresident contributing entity is ultimately controlled by an Italian resident entity (and they both belong to the same group as the Italian entity receiving the contribution); or
- The nonresident contributing entity is resident in a jurisdiction included on Italy's black list (generally a country that engages in a limited exchange of information with Italy).

The ITA clarifies in the new guidance that a look-through approach will be used to determine whether the nonresident contributing entity is controlled by an Italian resident entity or is a resident of a black list jurisdiction. The guidance provides, in particular, that a contribution will be deemed to be "tainted" for purposes of the NID if it is made *directly or indirectly* by a resident of a black list jurisdiction. A contribution will be deemed to be made indirectly by a resident of a black list jurisdiction if it is made by a resident of a non-black list jurisdiction in which a black list jurisdiction resident holds a direct or indirect participation (even through a minority stake).

This new rule could have a detrimental impact on multinationals and nonresident funds with Italian investments, since the presence of even one black-listed shareholder could result in the contribution being "tainted" and, thus, disallowed for NID purposes. To mitigate the impact of this new approach, the guidance provides that an Italian entity receiving a contribution can request a ruling from the Italian tax authorities and rebut the presumption that the contribution is tainted by producing evidence that the contribution can be traced to a resident of a non-black list jurisdiction and that there is no duplication of the NID benefit.

Nonresident companies and funds with Italian investments that have benefited from the NID regime in the past should assess whether the new look-through approach potentially could jeopardize the NID benefit. Although obtaining an advance ruling could prove be administratively burdensome, such entities nevertheless should consider filing a ruling request with the Italian tax authorities.

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Luxembourg:
Intergovernmental agreement with the US transposed into domestic law

On 24 July 2015, Luxembourg promulgated the law transposing the 2014 intergovernmental agreement (IGA) with the US, which implements the US Foreign Account Tax Compliance Act (FATCA), into its domestic law. The final version of the law contains some changes to prior versions to include proposals made by the Finance and Budget Commission relating to data protection.

The IGA requires Luxembourg financial institutions to provide information regarding assets held by (deemed) US citizens or residents (and income realized on such assets) to the Luxembourg tax authorities, which will then transmit the information to the US Internal Revenue Service (IRS).

Following the publication of the law, the Luxembourg tax authorities released final guidance (Circular Letters ECHA 2 and ECHA 3) on 31 July 2015 on FATCA obligations. Circular Letter ECHA 2 explains the legal classification, reporting and diligence obligations of Luxembourg Reporting Financial Institutions (RFIs), and Circular Letter ECHA 3 contains the technical details of the reporting format to be used by Luxembourg and the US.

Key provisions of the law and the circular letters are as follows:

- **Flexibility to opt for IGA or IRS regulation principles:** The law and Circular Letter ECHA 2 reconfirm certain principles and flexibilities relating to the IGA, including the option to apply the definitions contained in IRS regulations instead of the definitions contained in the IGA.
- **Classification of Luxembourg entities:** Circular Letter ECHA 2 provides guidance on the classification principles to be applied to Luxembourg SOPARFIs, SPFs and securitization vehicles.
- **Detection of US indicia and change in circumstances:** Circular Letter ECHA 2 provides useful examples of how the detection of US indicia should be handled, how a change in circumstances following year-end may affect the status of an account and as from when (and for which reportable period) an account becomes a reportable US account (or ceases to be a reportable US account). Circular Letter ECHA 2 also details how the closure of accounts should be approached with respect to the classification of the holder and reporting.
- **Registration with the Luxembourg tax authorities:** Under the law, there is no requirement to register with the Luxembourg tax authorities. However, Circular Letter ECHA 3 requires a third-party service provider acting as a data depositor to have a Luxembourg "matriculation" number (which can be obtained from the Luxembourg tax authorities).
- **Deadline for reporting and nil returns:** The law provides that the annual deadline for an RFI to report to the Luxembourg tax authorities is 30 June of the year following the calendar year to which the reporting relates. As previously announced, the deadline relating to 2014 reporting is postponed to 31 August 2015 (after previously having been postponed to 31 July 2015) by the Luxembourg tax authorities. As a result, there is time left to transmit relevant 2014 data electronically through the "E-File" (operated by Fundsquare) or "SOFiE" (operated by Cetrel). Nevertheless, urgent action is required since it generally takes one week to set up the secure data channel, and reportable persons must receive advance notice to comply with Luxembourg's data privacy and protection obligations (see below).

  RFIs still will be required to file a nil return with the Luxembourg tax authorities, even if they do not have any US reportable accounts. Circular Letter ECHA 2 provides an exception to this rule in the case of a sponsoring entity that does not hold reportable US accounts, as long as the sponsored entity does not have its own global intermediary identification number (GIIN).
- **Data protection:** The law explicitly provides that an RFI is a data controller (within the meaning of the 2002 Luxembourg Data Protection Act), and thus must inform any reportable person, in advance of the data being transmitted to the Luxembourg tax authorities, that personal data relating to the person will be collected and transferred under the terms of the Luxembourg-US IGA. The law also specifies the information that

must be included in this communication (e.g. that the RFI is a data controller; that the data will be reported to the Luxembourg tax authorities and that the latter will transmit this data to the US IRS; that the person concerned is obliged to respond to queries of the RFI in respect of FATCA, and the consequences of not responding; and that the person concerned has the right to access and correct the data transmitted). The RFI also should ensure that the data collected is not stored for a longer period than necessary for the purposes of applying the IGA (or any other applicable statute of limitations). Additionally, both the Luxembourg tax authorities and the RFI must inform a reportable person in the event of a security breach related to the person's data, where the breach could cause harm to the individual. The RFI will need to ensure that these obligations are appropriately carried out in advance of the 31 August 2015 due date.

- **Tax audits and penalties:** The law provides that the Luxembourg tax authorities will verify that an RFI has procedures into place to meet the automatic exchange of information obligations under the IGA, and that an RFI applies due diligence in respect of these obligations. The tax authorities also will verify that an RFI does not implement mechanisms to circumvent its exchange of information obligations. Circular Letter ECHA 2 contains an example of such avoidance (e.g. an RFI immobilizes its bearer securities with a depository institution that is not a reporting financial institution).

  An RFI may be subject to a fine up to EUR 250,000 for failing to comply with the due diligence procedures or failing to meet its automatic exchange of information obligations. In the case of failure to file, or late, incomplete or incorrect reporting, an RFI may be subject to a penalty of up to 0.5% of the amount that should have been reported, with a minimum penalty of EUR 1,500. Additionally, since an RFI is a data controller under the Data Protection Act, administrative sanctions may be imposed by the National Data Protection Commission and criminal penalties also may apply (e.g. imprisonment up to one year and a fine up to EUR 125,000).

Next steps

The legal framework for applying the Luxembourg-US IGA is now complete – the IGA has been transposed into Luxembourg law, the law has been published in the official gazette and additional guidance has been issued through Circular Letters ECHA 2 and ECHA.

The Luxembourg government now must transpose the amended EU directive on the mandatory automatic exchange of information for tax purposes into domestic law because RFIs in Luxembourg (and other affected persons) must be ready to apply the provisions of this directive as from 1 January 2016 (with new reporting obligations under the directive to apply as from 2017 (reporting on calendar year 2016)). The terminology used in Circular Letter ECHA 2 already is aligned with the terminology of the directive.

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Netherlands:
Supreme Court rules SICAV not entitled to refund of dividend withholding tax

The Netherlands Supreme Court issued a decision on 10 July 2015, concluding that a Luxembourg fund for collective investment (SICAV) is not entitled to a refund of Dutch dividend withholding tax because a SICAV is not comparable to a Dutch financial investment institution (FII). The court followed the 19 March 2015 opinion of the Netherlands Advocate General (AG).

Facts of the case

In 2007 and 2008, a Luxembourg SICAV received Dutch portfolio dividends, on which a 15% Dutch dividend withholding tax was levied. Since a SICAV is exempt from corporate income tax in Luxembourg, it was not able to credit the Dutch dividend withholding tax against its corporate income tax liability.

The SICAV requested a refund of the withholding tax from the Dutch tax authorities on the grounds that a SICAV was comparable to a Dutch FII. A Dutch FII would be subject to dividend withholding tax, but under the law applicable in the years at issue, an FII would be entitled to a refund of the tax; as a result, an FII effectively would not be subject to withholding tax in the Netherlands. The SICAV argued it should be subject to the same treatment, and that the different treatment of Luxembourg SICAVs and Dutch FIIs constitutes an infringement of the free movement of capital principle in the Treaty on the Functioning of the European Union. After the Dutch tax authorities denied the refund request and rejected the EU arguments raised by the SICAV, the SICAV filed an appeal with the Dutch courts, with the case eventually reaching the Supreme Court.

Supreme Court decision

In a briefly worded decision, the Supreme Court agreed with the opinion of the AG and held that the SICAV was not entitled to a refund of the Dutch dividend withholding tax because a SICAV is not comparable to a Dutch FII.

To ensure that investors participating in a collective investment vehicle, such as an FII, are subject to the same tax treatment as they would have been had they made the investment directly, a Dutch FII is subject to a 0% corporate income tax rate (provided certain conditions are fulfilled, including some distribution requirements) and the Dutch dividend withholding tax levied on dividends paid by a Dutch company to an FII is eliminated by a refund; however, tax is withheld when the FII itself pays out dividends to FII participants, so that only the participants bear a withholding tax burden.

Under Dutch law, a nonresident individual that invests in a Dutch resident entity is not entitled to a refund of dividend withholding tax, i.e. the tax levy is a final levy. When a nonresident individual invests in the Netherlands via an FII, the Dutch dividend withholding tax on the dividend distribution by the FII is considered a final levy. If a nonresident individual uses a nonresident investment fund (such as a SICAV) to invest in the Netherlands, the Dutch dividend withholding tax levied on the investment fund also is a final levy. Thus, the nonresidents are subject to the same withholding tax treatment whether they invest in a Dutch resident entity directly or through a resident or nonresident investment fund.

Comments

The consequences of the Supreme Court's decision could be far-reaching. If interpreted broadly, it would mean that nonresident investment institutions, such as SICAVs, never will be entitled to a Dutch dividend withholding tax refund. It is unfortunate that the Supreme Court did not refer the case to the Court of Justice of the European Union (CJEU) to request a ruling on the factors that should be taken into account in determining comparability, and whether the tax position of individual investors must be considered. In 2012, the CJEU ruled in the *Santander* case, which involved different withholding tax treatment of resident and nonresident investment vehicles (and which the CJEU held constituted a restriction of the free movement of capital), that the tax circumstances of individual investors in the investment vehicle (e.g. whether the investors were subject to tax on dividends received from the investment) are not relevant. The Dutch Supreme Court, however, did not refer to *Santander* in its decision.

The Supreme Court also did not refer to cases that are pending before the CJEU that involve the issue of comparability in a dividend withholding tax situation (e.g. *Miljoen* and *Société Générale*). In those cases, CJEU AG Jääskinen recently opined that the combined levy of dividend withholding tax and individual income tax in domestic situations should be compared to the dividend withholding tax as a final levy in cross-border situations (for prior coverage, see EU tax alert, 29 June 2015). In the case of a Dutch FII, the combined tax levy would be lower than the 15% dividend withholding tax on a distribution to a SICAV, thus potentially infringing EU law.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-europeanunion-29-june-2015.pdf

The Supreme Court's decision is disappointing, and could have an enormous impact on pending dividend withholding tax refund requests. The Dutch tax authorities likely will begin to reject refund requests on the basis of this decision.

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Portugal:
New regime applicable in Madeira Free Trade Zone

A new regime for the Madeira Free Trade Zone (MFTZ) that amends the tax incentives code was published in Portugal's official gazette on 1 July 2015. The new regime introduces some significant changes, particularly with respect to the taxation of shareholders of MFTZ entities.

Madeira's FTZ offers a range of tax incentives for certain commercial activities carried out in the zone, including international trade, e-business and telecommunications activities, the ownership and licensing of intellectual property rights, real estate activities or the holding of shares. (Prohibited activities include intragroup activities, where the main activity of the entity consists of head office activities or consulting activities for business and management; and financial and insurance activities, where this is the main activity of the entity.)

The new regime applies until 31 December 2027 for entities licensed to operate in the MFTZ from 1 January 2015 through 31 December 2020. Entities licensed to operate in the MFTZ under the previous regime also may apply for the new regime, provided the relevant requirements are met. An application for a license must be submitted (in Portuguese) to the Madeira Development Company to operate in the MFTZ and qualify for the benefits discussed below.

Reduced corporate tax rate

As under the previous regime, entities licensed to operate in the MFTZ are subject to Portuguese corporate tax at a rate of 5% (one of the lowest rates in the EU) on eligible taxable income and gains.

The new regime sets limits on the benefits to be granted by imposing "ceilings" of taxable income on which the 5% rate is applied. The ceilings are based on the number of jobs created (the number of jobs required to be created remains unchanged). A (new) cap also is set on the tax benefits, at one of the following amounts:

- 20.1% of annual gross value added;
- 30.1% of annual personnel costs; or
- 15.1% of annual turnover.

Withholding tax exemption

The regime provides for a personal income tax or corporate tax exemption for nonresident recipients of dividends/profits and interest (or other forms of remuneration) on shareholder loans (as well as allowances or capital advances) paid to shareholders of MFTZ entities, provided the shareholders are not resident in listed tax haven jurisdictions. These exemptions do not apply to Portuguese resident shareholders, except for entities licensed to operate in the Industrial Free Zone of Madeira or entities carrying out air or sea transport activities.

Tax exemptions established under previous regimes – including withholding tax exemptions on royalties and payments for services – remain unchanged.

Capital gains tax exemption

The general Portuguese corporate tax treatment of gains on the sale of shares (i.e. an exemption if certain conditions are fulfilled) also applies to the disposal of holdings in companies in the MFTZ and to the disposal of shareholdings held by such companies. The exemption is not available if the shareholders are resident in a tax haven jurisdiction or in certain other cases.

Tax credit

Entities licensed to operate in the Industrial Free Zone of Madeira may benefit from a 50% reduction in the amount of tax due (in addition to the 5% corporate tax rate), provided certain conditions are fulfilled, under the same terms as under the previous MFTZ regime (in effect until the end of 2020).

Additional benefits

- Entities licensed to operate in the MFTZ under the new regime can benefit from up to 80% relief from stamp duty, municipal taxes on the ownership and transfer of real property and other regional and municipal surcharges and duties. The previous regime did not set a cap on such potential relief.
- Madeira, as part of Portugal, is part of the EU, which provides entities licensed to operate in the MFTZ access to EU directives. Licensed entities also may benefit from Portugal's tax treaty network (although some restrictions may apply in certain cases).

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Sweden:
Tax authorities clarify when employee working at home can create a PE

The Swedish tax authorities published a statement on 16 March 2015 that clarifies their position on circumstances where an employee who works from his/her home in Sweden can create a permanent establishment (PE) for a foreign enterprise.

The Swedish definition of a PE, as included in the Income Tax Act, mainly conforms to the definition in the OECD model treaty, with some deviations (e.g. the PE exemptions are not included in the domestic definition of a PE.) A foreign enterprise is considered to have a PE in Sweden if it carries on business wholly or partly from a fixed place of business in Sweden; a business is considered to be "fixed" if it has a certain degree of permanence. A PE can be created even if there is no fixed place of business in Sweden, such as when the business operations in Sweden are carried out through a dependent agent.

The tax authorities' statement clarifies that a foreign company may be deemed to have a PE in Sweden if one of its employees works out of a home office in Sweden. Such a determination must be based on the facts and circumstances of the particular case, with the following factors taken into account:

- The actual circumstances (i.e. not only what is agreed on in a relevant contract);
- Whether the employee has an office/workplace in another country where he/she can work;
- Whether there is an explicit or implicit agreement that the employee should work from home; and
- The amount, type and permanency of work carried out from the employee’s home.

A PE normally will not be created if an employee works at home in a limited capacity, but if the employee works at home several days a week for an extended period of time, a PE may be deemed to exist if the other conditions for creating a PE are fulfilled. If a foreign enterprise rents an office or a room in the employee’s home on a long-term basis, a PE could arise even if the employee does not work there every day or for full days.

Comments

Foreign enterprises that currently do not have a PE in Sweden should examine the implications of having an employee working from his/her home office in Sweden, since this may create a PE risk for the foreign enterprise in Sweden.

The fact that an employee is working for a foreign enterprise from his/her home in Sweden will not automatically create a PE for the foreign enterprise. If the employee normally works at the office of the foreign enterprise in another country, but only occasionally works from home (i.e. one day a week or less), no PE should arise in Sweden. If the employee works from home more than occasionally and there is an explicit or implicit condition that the work is to be performed from home, a PE could arise, although a determination would have to be made whether the work carried out in the home is part of the core business of the foreign enterprise or whether it is considered to be of a preparatory or auxiliary nature.

The main consequence of a PE in Sweden is that the foreign entity would be subject to (corporate) income tax in Sweden in relation to profits that would be allocated to the PE based on the arm’s length principle. It also would have an impact on the employer’s reporting liabilities and could lead to increased employer social security charges.

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In brief

Austria: The 2015-2016 tax reforms enacted on 7 July 2015 include an increase in the withholding tax rate from 25% to 27.5% from 1 January 2016 on dividends paid by an Austrian company to an individual shareholder.

Brazil: Regulations (Normative Ruling (NR) 1,575/15) published in Brazil's official gazette on 28 July 2015 provide additional guidance regarding certain aspects of the law (Law 12,973/14) that introduced measures to update the tax rules to account for differences with Brazilian GAAP and for the transition to IFRS and made certain other broad changes to the tax rules, such as the repeal of the transition tax regime (RTT) as from 1 January 2015 (for prior coverage, see Brazil alert, 15 May 2014). Initial guidance on Law 12,973/14 (NR 1,493/14), published in September 2014, clarified the mechanisms that apply to the corporate taxable income computation and how to account for such differences to ensure tax neutrality (for prior coverage, see *World Tax Advisor*, 26 September 2014). NR 1493/14 was later revoked in November 2014 by. NR 1515/14, which provided much more detailed guidance on the relevant issues (for prior coverage, see *World Tax Advisor*, dated 12 December 2014). NR 1,575/15 now amends NR 1,515/14 and provides further guidance to taxpayers regarding the maintenance of tax neutrality.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-160514.pdf
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140926_4.html
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/141212_4.html

Chile: Law 20,848, published in the official gazette on 25 June 2015, creates a new foreign investment statute replacing the current statute that has been the main route for foreign direct investment in Chile since 1974 (DL 600). The new statute will become effective on the later of 1 January 2016 or the date on which the new foreign investment agency is in place. Nevertheless, foreign investors will be entitled to request the conclusion of new foreign investment contracts subject to the rules of DL 600 (with certain adjustments) even after the new statute enters into operation, but only during the four years following 1 January 2016. Holders of foreign investment contracts that are signed and in force before the new statute enters into effect will remain subject to the rules contained in DL 600 until the rights granted expire (for prior coverage, see *World Tax Advisor*, 27 March 2015).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150327_2.html

Denmark: New rules that apply with effect from 1 March 2015 align the exit tax rules applicable to self-employed individuals (that apply when they relocate their businesses abroad) with the exit tax rules that apply to companies. The rules introduce a general exit tax on all kinds of assets, gains on the sale of which would have been taxable had the assets been disposed of while the individual was subject to tax in Denmark. The rules also allow self-employed individuals to defer the payment of the exit tax and to pay the tax in installments over a seven-year period.

Greece: The tax authorities issued a circular on 5 August 2015, which clarifies that, while the increase in the solidarity surcharge (imposed on all individual taxpayers in Greece) for income exceeding EUR 30,000 and derived as from 1 January 2015 will apply retroactively, payroll providers are not required to withhold the retroactive surcharge. Instead, the individual will be required to pay the remaining surcharge at the time the tax return is filed for calendar year 2015 (for prior coverage, see *World Tax Advisor*, 24 July 2015).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_2.html

OECD: The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has published new peer review reports for 12 countries or jurisdictions. Phase 1 reports on Albania, Burkina Faso, Cameroon, Dominican Republic, Lesotho, Pakistan and Uganda assessed their legal and regulatory frameworks for transparency and exchange of information on request. They were assessed to have legal frameworks in place to enable them to move to the next stage of the review process, which will assess exchange of information practices. The Global Forum also reviewed exchange of information practices through Phase 2 peer review reports on Lithuania and St. Maarten. Both were given a rating for compliance with the individual elements of the international standard and an overall rating; Lithuania received an overall rating of "compliant," and St. Maarten a rating of "partially compliant." A supplementary review concluded that changes to its legislation now enable the Marshall Islands to move to Phase 2. Austria, which was rated partially compliant in July 2013, has since implemented a number of recommendations, leading to an upgrade of its overall rating to "largely compliant." The supplementary report on the British Virgin Islands concluded that its overall rating should be upgraded from "noncompliant" to largely compliant.

Panama: Executive Decree 263 of 2015 entered into force on 20 June 2015 and implements the measures of Law 27 of 2015, including important amendments relating to the withholding tax treatment of payments made to nonresidents (for prior coverage, see *World Tax Advisor*, 12 June 2015). Among other provisions, Law 27 extended the withholding tax obligation to apply to all payments made by certain types of taxpayers, including "noncontributing entities" (i.e. entities not subject to income tax). The decree clarifies that this term refers specifically to nonprofit organizations, and not to individuals or entities whose income is exempt due to an international treaty, an agreement with the government or certain incentive regimes (e.g. the multinational headquarters regime, the Panama Pacific Area regime and the free zones).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150612_10.html

Taiwan: The Ministry of Finance has published a ruling to provide guidance on determining the profits attributable to certain onshore logistics activities performed in a free trade zone (FTZ) in Taiwan by a foreign enterprise that has difficulty in allocating its onshore and offshore costs and expenses in cross-border transactions. The ruling clarifies that, regardless of the industry, foreign enterprises performing onshore logistics activities (including importing, storing and delivering goods) may use a 12% profit rate as the "contribution rate" to calculate their Taiwan-source income. If the foreign enterprise also carries out manufacturing activities in Taiwan, the contribution rate will be 12% (onshore logistics activities rate), plus the contribution rate attributable to onshore manufacturing activities (determined based on the ratio of onshore manufacturing costs to total manufacturing costs). The ruling is expected to encourage foreign enterprises in FTZs to perform more value-added logistics services in Taiwan.

Thailand: The application of the 7% VAT rate will remain in effect for another year (i.e. until 30 September 2016). A standard rate of 10% is provided under the revenue code, but the rate was scheduled to be reduced to 7% until 30 September 2015.

World Customs Organization: On 24 June 2015, the World Customs Organization (WCO) published a new guidance document (the WCO Guide to Customs Valuation and Transfer Pricing) that seeks to reduce the burden on businesses endeavoring to satisfy dissonant transfer pricing and related party customs value rules by encouraging a more consistent approach among customs authorities with respect to accurately determining duty liabilities. Guidance is provided on navigating and interpreting the rules governing the relationship between customs valuation and transfer pricing in related party transactions, and the guide considers two key areas that often are the subject of confusion and debate: (1) the extent to which information found in transfer pricing documentation can be useful to customs in determining whether the price declared for imported goods has been influenced; and (2) how transfer pricing adjustments should be accounted for when determining final customs values.

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.

Australia: The government has released exposure draft legislation that would give effect to the OECD standards under BEPS action 13 on country-by-country reporting, as well as transfer pricing documentation. See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150821_2.html

Brazil: On 22 July 2015, the Brazilian government published a provisional measure that requires taxpayers to disclose information on certain tax-planning transactions, in response to the OECD's BEPS action 12 (mandatory disclosure rules). See Brazil tax alert, 27 July 2015.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-27-july-2015.pdf

OECD: On 7 August 2015, the OECD released three new reports to help jurisdictions and financial institutions implement the global Standard for Automatic Exchange of Financial Account Information in Tax Matters. The standard, developed at the OECD under a mandate from the G20, calls on governments to obtain detailed information from their financial institutions and exchange that information automatically with other jurisdictions on an annual basis. The three reports are as follows:

- **Common Reporting Standard Implementation Handbook:** The handbook provides practical guidance to assist government officials and financial institutions in the implementation of the standard. It sets out the necessary steps for implementation and will help financial institutions and governments implement the standard more efficiently by promoting the consistent use of optional provisions, identifying areas for alignment with the US Foreign Account Tax Compliance Act (FATCA) and addressing the operational and transitional challenges resulting from the staggered implementation of the standard. The handbook contains answers to frequently asked questions (FAQs) received from business and governments, with a view to furthering the effective implementation of the standard. The handbook is intended to be a "living" document and will be updated on a regular basis.
- **Offshore Voluntary Disclosure Programs:** This document contains practical experience from 47 countries in relation to their voluntary disclosure programs. The guidance on the design and implementation of such programs has been updated, particularly taking into account the view of private client advisers. The limited time left until the automatic exchange of information under the standard becomes a reality will, in many instances, be the last window of opportunity for noncompliant taxpayers to voluntarily disclose. This is therefore a crucial time to update the publication and reflects the OECD policy of encouraging countries to examine voluntary compliance strategies that enable noncompliant taxpayers to come forward.

- **Model Protocol to the Tax Information Exchange Agreements (TIEAs):** This report provides the basis for jurisdictions wishing to extend the scope of their existing TIEAs to cover the automatic and/or spontaneous exchange of tax information.

United States: On 29 July 2015, a discussion draft proposal for a US innovation box was released by senior members of the US House of Representatives. See US tax alert, 30 July 2015.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-30-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.

Cyprus-Guernsey: The 2014 treaty entered into force on 4 March 2015 and will apply as from 1 January 2016. When in effect, the treaty provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

Hong Kong-Italy: The 2013 tax agreement entered into force on 10 August 2015 and will apply as from 1 January 2016 for Italy and as from 1 April 2016 for Hong Kong. When in effect, the treaty provides for a 10% withholding tax rate on dividends, a 12.5% rate on interest and a 15% rate on royalties.

Indonesia-Netherlands: When in effect, the protocol to the 2002 treaty signed on 30 July 2015 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; a 10% rate will apply to dividends paid to a qualifying pension fund whose income generally is exempt from tax in the contracting state under whose statutory provisions it is recognized and controlled; otherwise, the rate will be 15%. A 5% rate will apply where interest is paid on a loan made for a period of more than two years or in connection with a sale of industrial, commercial or scientific equipment on credit; otherwise, the rate will be 10%. The withholding tax rate on royalties will not be affected by the protocol.

Netherlands-Kenya: When in effect, the treaty signed on 22 July 2015 provides for a 0% withholding tax rate on dividends paid to a company whose capital is wholly or partially divided into shares and that holds directly at least 10% of the capital of the payer company or to a qualifying pension fund; otherwise, the rate generally will be 15% on dividends paid by a Netherlands resident company and 10% on dividends paid by a Kenyan resident company. However, dividends paid by a Netherlands resident company whose capital is divided into shares to a Kenyan resident individual with a qualified shareholding in the payer company may be taxed in accordance with the Netherlands' domestic law. A 0% rate will apply to interest paid to a qualifying pension fund; otherwise, the rate will be 10%. The rate on royalties will be 10%.

Panama: A new administrative ruling published on 29 July 2015 sets out the requirements for a nonresident recipient of Panama-source income to claim an exemption from, or a reduced rate of withholding tax under, Panama's tax treaties. According to the ruling, a Panamanian withholding agent must submit an application to the tax authorities (which includes specific information and other documentation on the recipient of the income). The tax authorities will examine the application and issue a decision as to whether treaty benefits will be granted. Panama currently has tax treaties with the following countries: Barbados, Czech Republic, France, Ireland, Israel, Korea, Luxembourg, Mexico, Netherlands, Portugal, Qatar, United Arab Emirates, Singapore, Spain and the UK.

Poland-Ethiopia: When in effect, the treaty signed on 13 July 2015 provides for a 10% withholding tax rate on dividends, interest and royalties.

Switzerland-Liechtenstein: When in effect, the treaty signed on 10 July 2015 to replace the existing treaty dating from 1995 provides for a 0% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company for at least one year before the dividends are paid, or where the recipient of the dividends is a pension fund, contracting state, political subdivision or local authority thereof. The rate in all other cases will be 15%. The withholding tax rate on interest and royalties will be 0%.

United Kingdom-Zambia: The treaty signed in 2014 to replace the current treaty dating from 1972 entered into force on 20 July 2015 and will apply as from 1 January 2016. When in effect, the treaty provides for a 15% withholding tax rate where dividends are paid out of income (including gains) derived directly or indirectly from certain immovable property by an investment vehicle that distributes most of this income annually and whose income from such immovable property is exempt from tax; otherwise, the rate will be 5%. The rate on interest will be 10% and the rate on royalties will be 5%.

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 Turkey (on 29 July 2015), Slovakia (on 31 July 2015) and Portugal (on 6 August 2015).

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Brazil

Tax planning disclosure requirement introduced – BEPS Action 12

The Brazilian government published rules (PM 685) on 22 July 2015 that include the introduction of a new requirement for taxpayers to disclose transactions that are carried out to reduce, eliminate or defer taxes. PM 685 is the first response of the Brazilian government to any of the action items under the OECD's BEPS initiative. Action 12 (mandatory disclosure rules) will require taxpayers to disclose potentially aggressive or abusive tax planning arrangements.

Issue date: 27 July 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-27-july-2015.pdf

United States

Notice 2015-54 limits ability to transfer property to a partnership tax free

On 6 August 2015, the US IRS and Treasury published Notice 2015-54, modifying the rules applicable to the contribution of built-in gain property to a partnership. Under the notice, a US transferor is required to recognize any built-in gain on the transfer of property to the partnership, irrespective of Internal Revenue Code section 721, unless certain conditions are satisfied. The provisions of the notice are effective for transfers occurring on or after 6 August 2015.

Issue date: 7 August 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-7-august-2015.pdf

Innovation box discussion draft released; robust international tax reform debate expected

International tax reform is being considered by the US Congress as a mechanism to fund a long-term highway construction program, while also amending US international tax rules to make the tax code more competitive. As part of this effort, a discussion draft proposal was released on 29 July 2015 for a US innovation box that would provide for lower tax rates on income generated from certain types of intellectual property.

Issue date: 30 July 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-30-july-2015.pdf

Tax Court invalidates cost sharing rule in *Altera* decision

On 27 July 2015, the US Tax Court struck down the requirement in the 2003 cost sharing regulations that participants in a qualified cost sharing arrangement share stock-based compensation costs.

Issue date: 28 July 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-011-28-july-2015.pdf elqTrack=true

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.