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Final OECD BEPS reports released: An overall perspective

On 5 October 2015, ahead of the G20 Finance Ministers' meeting in Lima, Peru on 8 October, the OECD Secretariat published 13 final reports and an explanatory statement outlining consensus actions under the base erosion and profit shifting (BEPS) project. These reports include and consolidate the first seven reports presented to, and welcomed by, the G20 Leaders at the Brisbane Summit in 2014. (The OECD press release, explanatory statement and final reports can be accessed at http://www.oecd.org/ctp/beps.htm.)
URL: http://www.oecd.org/ctp/beps.htm

Sixty-two countries have collaborated in the G20/OECD-led BEPS project, and they have agreed to continue working together until at least 2020. Many more countries participated in shaping the outcomes through regional structured dialogues. Regional tax organizations, such as the African Tax Administration Forum, the *Centre de Rencontre des Administrations Fiscales* and the *Centro Interamericano de Administraciones Tributarias*, joined international organizations, including the International Monetary Fund, the World Bank and the UN, in contributing to the work.

There will be some more policy developments in 2016 and 2017, but the main activity will be in monitoring adoption of the BEPS measures. The monitoring group could be extended as other countries outside the project are invited to join. There is a precedent here, in the form of the

Global Forum on Transparency and Exchange of Information for Tax Purposes, which now includes 127 countries and jurisdictions.

The G20/OECD working group notes that "although measuring the scale of BEPS proves challenging given the complexity of BEPS and the serious data limitations, today we know that the fiscal effects of BEPS are significant." The group estimates that BEPS has cost some 4%-10% of annual corporate tax revenues.

There are two significant questions on the BEPS actions: when will they be implemented, and which countries will implement the actions. The explanatory statement sets out the various levels of agreement:

> "All OECD and G20 countries commit to consistent implementation in the areas of preventing treaty shopping, country-by-country reporting, fighting harmful tax practices and improving dispute resolution. Existing standards have been updated and will be implemented, noting however that not all BEPS participants have endorsed the underlying standards on tax treaties or transfer pricing. In other areas, such as recommendations on hybrid mismatch arrangements and best practices on interest deductibility, countries have agreed a general tax policy direction. In these areas, they are expected to converge over time through the implementation of the agreed common approaches, thus enabling further consideration of whether such measures should become minimum standards in the future. Guidance based on best practices will also support countries intending to act in the areas of mandatory disclosure initiatives or controlled foreign company (CFC) legislation. There is agreement for countries to be subject to targeted monitoring, in particular for the implementation of the minimum standards. Moreover, it is expected that countries beyond the OECD and G20 will join them to protect their own tax bases and level the playing field."

The EU may decide to implement BEPS actions across the 28 member states. In June 2015, the European Commission published a communication on a *Fair and Efficient Corporate Tax System in the European Union*, which aims to set out how the BEPS measures can be implemented within the EU. The Council of Finance Ministers may choose to adopt BEPS measures across the EU.

Initial actions to take effect

The first actions to take effect will relate to the new transfer pricing approach (actions 8-10). Both the OECD and the UN model tax treaties require the use of arm's length pricing, and the OECD's *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* provide the main guidance on application globally. The new consolidated version of the guidelines will not be published until 2017, but tax authorities already are starting to use material released in the public consultation in their approaches to open cases. The new approach will require that multinationals start afresh with their functional analysis. The aim is to ensure that "transfer pricing rules secure outcomes that see operational profits allocated to the economic activities which generate them." This will mean that entities must be able to control the risks that give rise to potential rewards and, additionally, that mere legal ownership of an intangible asset is not sufficient to generate a significant return. "Capital-rich entities without any other relevant economic activities ("cash boxes") will not be entitled to any excess profits," which includes interest.

The next action to take effect will be country-by-country reporting to tax authorities, set out in action 13. There is a fixed template with very clear guidance on its use. All the main parent company countries have committed to this, so other countries will receive the benefit of additional information for risk assessment, provided they have a double tax treaty or a tax information exchange agreement with the parent company country or have signed the multilateral *Convention on Mutual Administrative Assistance in Tax Matters*. Some nongovernment organizations may complain that not all developing countries will get the information, but it should be noted that there are 127 countries in the *Global Forum on Transparency and Exchange of Information for Tax Purposes*, and 80 or so have signed the *Administrative Assistance Convention*. The first data (for December year-end groups with global sales of GBP 586 million; EUR 750 million; USD 840 million) must be delivered to tax authorities by 31 December 2017, which will, in turn, distribute the data by 30 June 2018. Multinationals are busy with their systems work on gathering the necessary data.

The final action to take early effect covers those countries with patent box or other intellectual property regimes. In the future, patent box incentives may be granted only where the related R&D is conducted in the same country. The UK is expected to present legislation quickly to introduce the new regime from June 2016 and to close the existing patent box regime; it is expected that group transfers into existing boxes will not be allowed after 31 December 2015. There are indications that Germany, Ireland and the US may introduce their own BEPS-compliant intellectual property regimes.

Actions likely to take effect from 2017 or later

Two important actions – hybrid mismatches and interest restrictions – will require national legislation. The OECD working party looking at these issues has provided over 400 pages of guidance to help countries legislate to counter hybrids (an instrument or entity which, through different treatment in two countries, achieves two deductions for the same economic expense or one deduction without equivalent income recognition). The approach to hybrids will mean that they will no longer be effective, even if only one country enacts the anti-hybrid rules. The basic approach is to disallow the expense, with a secondary rule to tax the income where the payer country does not counter the deduction. One of the challenges is obtaining sufficient information to establish that there is a hybrid effect. The UK has indicated it will consider legislation from 1 January 2017; few other countries have yet offered public support, although some (e.g. France) consider that hybrids already are ineffective under their current law.

The recommendations for interest restrictions provide that countries should limit interest deductions to a fixed percentage of earnings before interest, tax and depreciation (EBITDA). The cap should be in the range of 10%-30%. Countries optionally may offer a "fall-back" of a group-wide ratio of third-party net interest expense, should this be higher. There are other options put forward, including a *de minimis* limit to exclude low levels of debt and the ability to carry forward and back excess interest. Additionally, third-party debt to finance public-benefit projects may be excluded, subject to certain conditions. Australia already has indicated that it will not implement this action, and it seems that Germany and certain other European countries consider that their existing rules broadly satisfy the action. The US Congress and the

Treasury Department both would like to limit interest deductions, but Congress is not expected to legislate, except as part of wider corporate tax reform. It is thought likely that the UK will issue a consultation later this autumn on how this action might be implemented in the UK.

Actions requiring amendments to double tax treaties

The multilateral instrument is intended to allow the effective modification of many treaties, and will be negotiated during 2016. The initial conference to negotiate the convention starts on 5 November 2015, under the chairmanship of the UK, supported by vice-chairs from China and the Philippines. Over 90 countries and jurisdictions have indicated they will participate in the negotiation. The multilateral instrument must be completed by the end of 2016 and then will be available for countries to ratify. It is expected that there will be significant flexibility within the instrument, such that participating countries may make different choices.

The areas to be covered by tax treaty changes are permanent establishments (PEs) (taxable presence); treaty abuse; and dispute resolution. There also is a small change to cover aspects of hybrid mismatches.

The wide-ranging PE changes are intended to lower the threshold for recognizing a taxable presence. The first area is reducing the importance of the place where a contract is legally entered into. Action 7 notes: “As a matter of policy, where the activities that an intermediary exercises in a country are intended to result in the regular conclusion of contracts to be performed by a foreign enterprise, that enterprise should be considered to have a taxable presence in that country unless the intermediary is performing these activities in the course of an independent business. The changes to Art 5(5) and 5(6) and the detailed Commentary thereon address commissionaire arrangements and similar strategies by ensuring that the wording of these provisions better reflect this underlying policy.”

The second area for change limits the use of exemptions “to ensure that profits derived from core activities performed in a country can be taxed in that country.” The exemptions in article 5(4) of the OECD model treaty will be modified to ensure that each of the exceptions included therein is restricted to activities that are otherwise of a “preparatory or auxiliary’’ character. There also is an anti-fragmentation rule to limit multinationals from splitting activities to avoid a taxable presence.

Additionally, to provide greater certainty about the determination of profits to be attributed to the PEs that will result from the changes and to take account of the need for additional guidance on the issue of attribution of profits to PEs, follow-up work on attribution of profits issues will be carried out with a view to providing the necessary guidance before the end of 2016, which is the deadline for the negotiation of the multilateral instrument.

The treaty abuse action springs from concern that double tax treaties could be used to make available treaty benefits in circumstances not intended by the treaty signatories. Countries have agreed to include anti-abuse provisions in their tax treaties, including a minimum standard to counter treaty shopping (routing payments via a treaty country to reduce taxes). They also agree that some flexibility in the implementation of the minimum standard is required, since these provisions need to be adapted to each country’s specificities and to the circumstances of the negotiation of bilateral conventions. The approaches put forward are limitation on benefits rules (currently used by Japan and the US) and principal purpose tests (currently used by many other countries, including the UK). Collective investment vehicles (widely-held funds) will be able to qualify for treaty benefits in some circumstances. There also will be optional specific measures.

The dispute resolution action is most important. The explanatory statement notes: “Double taxation would harm multinationals which have contributed to boosting trade and investment around the world, supporting growth, creating jobs, fostering innovation and providing pathways out of poverty. Double taxation would also increase the cost of capital and could deter investment in the economies concerned.”

The measures developed under action 14 aim to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP) where cases are settled between countries. The OECD’s statistics on the MAP show that there were over 4,600 cases at the end of 2013 between OECD members and four partner countries, including 1,900 new cases in the year.

The new minimum standard will ensure that treaty obligations related to the MAP are fully implemented in good faith and that MAP cases are resolved in a timely manner, and also will ensure that taxpayers can access the MAP when eligible.

Additionally, there will be a “robust peer-based monitoring mechanism that will report regularly through the Committee on Fiscal Affairs to the G20.” This type of mechanism has worked well in the *Global Forum on Transparency and Exchange of Information for Tax Purposes*, and it is intended that this will help ensure consistent application of the MAP in the future.

Twenty countries, covering 90% of reported open MAP cases, have said that they will add mandatory binding arbitration to their tax treaties, using the “last best offer” approach. This requires the independent arbitrator to choose between one of the proposals put forward by the countries, rather than making his or her own decision. The mechanism for adding arbitration presumably would be the multilateral instrument, although the US (one of the 20) has not yet decided to participate in the negotiations.

Further work

The G20/OECD will undertake more work in 2016 on several actions:

- Harmful tax practices: Revision of criteria, expanding participation of non-OECD countries;
- Treaty abuse: Treaty entitlement of certain funds;
- Interest: Finalization of the design of the group ratio carve-out, special rules for banking and insurance;
- PEs: Profit attribution rules; and
- Transfer pricing: Financial transactions, use of the profit split method.

Additional coverage of the final BEPS reports can be found on the Deloitte tax@hand global tax app or the tax@hand website.
URL: http://www2.deloitte.com/global/en/pages/tax/articles/deloitte-tax-at-hand-mobile-app.html?id=us:em:na:wta:eng:tax:100915
URL: http://www.taxathand.com/

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Indonesia:
Thin capitalization rules reintroduced

Indonesia's Minister of Finance (MOF) issued a regulation on 9 September 2015 (PMK-169) that reintroduces thin capitalization rules; the regulation applies as from fiscal year 2016. The new rules are aimed at curbing offshore loans and preventing excessive borrowing from related parties, and were issued specifically in response to a sharp increase in offshore loans by companies operating in Indonesia and the OECD's base erosion and profit shifting (BEPS) initiative. According to the latest data from Bank Indonesia, the country's foreign debt stood at USD 304.3 billion at the end of the second quarter of 2015, and included USD 169.7 billion of private sector external debt. The country's foreign debt, according to Reuters' data, is approximately 14% higher than it was a year ago, and the number of offshore loans has nearly doubled since 2010.

Thin capitalization rules originally issued in October 1984 disallowed the deductibility of borrowing costs for corporate income tax purposes if a debt-to-equity ratio of 3:1 was exceeded. In March 1985, the MOF deferred the implementation of the rules, based on its view that the rules would hamper the investment climate in Indonesia. Those measures have been revoked in light of the issuance of PMK-169. It also should be noted that a circular letter issued by the Directorate General of Tax (DGT) in 2013 on intercompany funding authorizes the MOF to determine the debt-to-equity ratio of companies for tax calculation purposes (although the circular letter is silent on what is considered a "reasonable" debt-to-equity ratio), and the circular letter is not expressly revoked by PMK-169.

PMK-169 provides a prescribed debt-to-equity ratio; definitions of debt and equity, as well as the cost of borrowing; exemptions for certain sectors; rules regarding foreign private debt; and other compliance requirements.

Debt-to-equity ratio and definitions

PMK-169 sets the debt-to-equity ratio at 4:1; any borrowing costs on debt that exceeds the ratio will not be tax deductible for corporate income tax purposes.

PMK-169 applies to related and third-party debt and to debt from domestic and foreign sources. However, it is silent on whether nondeductible borrowing costs can be carried forward or deducted in a subsequent tax year.

PMK-169 defines "debt" to include both short-term and long-term debt, as well as interest-bearing trade payables. The regulation, however, is unclear as to whether the imposition of a penalty for late payment of a trade payable would be considered an interest-bearing trade payable. PMK-169 relies on the prevailing principles of accounting or financial standards in relation to its definition of equity, and thus includes non-interest-bearing loans from a related party within the definition. The regulation also specifically provides that shareholder equity, share premiums, retained earnings and non-interest-bearing loans from related parties are considered equity for its purposes.

The calculation of debt or equity will be based on the following:

- The average debt or equity balance at the end of each month in the relevant tax year; or
- The average debt or equity balance at the end of each month of a portion of the relevant tax year.

PMK-169 emphasizes that, for taxpayers with zero or negative equity, the entire borrowing cost expense will be disallowed for income tax calculation purposes. Thus, taxpayers with negative retained earnings will need to be cautious, as this situation could reduce the amount of the deductible borrowing cost expense.

Cost of borrowing

PMK-169 defines "cost of borrowing" to include the following:

1. Interest;
2. Discounts and premiums in connection with the debt;
3. Additional costs incurred in relation to the arrangement of borrowings;
4. Finance charges on finance leases;
5. Guarantee fees; and
6. Foreign exchange differences arising from loans in foreign currencies (as long as the differences are adjustments to the interest expense and other borrowing costs referred to in items (2) through (4) above).

Taxpayers will need to take into account the exchange rate volatility with respect to foreign debt, in light of the fact that the Indonesian rupiah has been depreciating drastically over the past two years. If the rupiah continues to fall from its current level, a company's borrowings could increase, which would affect the debt-to-equity ratio.

PMK-169 reiterates that, in addition to complying with the debt-to-equity ratio, a taxpayer must be able to demonstrate that related-party borrowing costs are on arm's length terms.

Exemptions

The 4:1 debt-to-equity ratio is applicable to all taxpayers established or domiciled in Indonesia, except for certain entities that are subject to special rules:

- Banks;
- Financing institutions;
- Insurance and reinsurance companies;
- Mining, oil and gas enterprises that are subject to production-sharing agreements and contracts of work, or coal contracts of work, that specifically include a provision on the debt-to-equity ratio (if the contract is silent on the applicable ratio, or the contract has expired, the provisions under PMK-169 will prevail);

- Companies subject to final income tax; and
- Infrastructure companies.

Foreign private debt

In addition to complying with the prescribed debt-to-equity ratio under PMK-169, taxpayers with foreign private debt also must submit a report to the DGT that sets out the amount of the debt. Failure to comply will result in a disallowance of the borrowing costs associated with the foreign private debt. The DGT will issue a separate implementing regulation outlining the procedure for reporting foreign private debt.

Comments

The intention of the DGT with respect to its issuance of PMT-169 is clear: to limit the erosion of an Indonesian company's tax base through the payment of excessive interest on related-party debt. Tightening up the thin capitalization rules is one way Indonesia can play its part in tackling the issues identified in the BEPS initiative.

The tighter rules also mean that the Indonesian tax authorities potentially will be able to collect more tax from companies whose debt-to-equity ratios exceed the prescribed limit. With BEPS as one underlying reason for the new rules, in addition to the DGT's plan to make 2016 the year of tax law enforcement in Indonesia, the tax authorities may use PMK-169 to collect more tax revenue to support the current fiscal year's increased budget.

PMK-169 is likely to have an impact on domestic and foreign companies doing business in Indonesia. The new regulation will require taxpayers to review existing funding arrangements to determine the proper characterization of borrowing costs for Indonesian tax purposes. Taxpayers should conduct a full review of their intercompany financing arrangements and prepare robust transfer pricing documentation to support the deductibility of such expenses.

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Italy:
Deadline to participate in voluntary disclosure program extended

A decree approved by the Italian government on 29 September 2015 extends the deadline to participate in the voluntary disclosure program from 30 September 2015 to 30 November 2015. Taxpayers may submit the accompanying report and related information and documentation by 30 December 2015 (for prior coverage, see *World Tax Advisor*, 27 February 2015).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150227_1.html

The voluntary disclosure program generally allows individual taxpayers to benefit from reduced penalties if they voluntarily disclose undeclared foreign income and assets. However, taxpayers must disclose undeclared income before the beginning of any tax audit activity. In addition to a significant reduction of the applicable administrative penalties (similar to the program for correction of tax violations), the voluntary disclosure program generally provides taxpayers protection from the potential criminal penalties.

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Korea:
Government proposes introduction of BEPS transfer pricing and other measures

The Korean Ministry of Strategy and Finance announced proposed revisions to the tax law on 6 August 2015 that include measures to implement transfer pricing documentation requirements and country-by-country (CbC) reporting, introduce changes to the foreign-invested company rules, impose withholding tax on foreign employees seconded to work in Korea and modify the rules relating to VAT on the supply of cross-border digital services. The proposals also include measures that would aim to strengthen the economy and to simplify the tax system.

Transfer pricing documentation/CbC reporting

The International Tax Coordination Law (ITCL) would be amended to implement the transfer pricing documentation and CbC reporting measures recommended by the OECD under action 13 of the base erosion and profit shifting (BEPS) project. Although the filing requirements relating to the master file and local reports would not become effective until sometime in 2016, and the CbC reporting would be introduced gradually, multinational enterprises (MNEs) fulfilling certain transaction size and asset requirements (to be regulated via a presidential decree) would be required to submit a comprehensive report of their cross-border related party transactions by the date the 2016 corporate income tax return is due, or face a penalty of up to KRW 10 million. The comprehensive report would have to contain information on management and the current status of the company's cross-border transactions, including the following:

Description	Main contents
Report I (Master file)	Comprehensive legal ownership structure and locations of subsidiaries or offices of the MNE Details of the top five goods or services that account for 5% of the MNE group's revenue Explanation of any major business restructuring, share acquisition, sale of the business, etc.
Report II (Local file)	Detailed explanation of the business and strategies of local subsidiaries Description of the major related parties and circumstances leading to related party transactions List of related parties involved and their relationship, by type of related-party transaction

Foreign-invested company rules

Several changes are proposed to the Tax Incentive Limitation Law (TILL), which provides for certain corporate tax exemptions/reductions in tax for qualifying foreign-invested companies. Currently, a foreign-invested enterprise is entitled to a reduction of income tax, up to a limit based on certain criteria relating to the amount of the investment and a limit based on certain criteria relating to employment.

Amount of exemption: To further encourage the creation of employment by foreign-invested companies, it is proposed to revise the available tax reduction as follows:

<table>
<tr><th colspan="2">Description</th><th>Current</th><th>Proposed</th></tr>
<tr><td rowspan="2">Investment amount</td><td>Seven-year exemption</td><td>70% of the foreign investment amount</td><td>50% of the foreign investment amount</td></tr>
<tr><td>Five-year exemption</td><td>50% of the foreign investment amount</td><td>40% of the foreign investment amount</td></tr>
<tr><td rowspan="2">Employment basis amount</td><td>Seven-year exemption</td><td rowspan="2">Employment basis amount* (capped at 20% of the foreign investment amount)</td><td>Employment basis amount* (capped at 40% of the foreign investment amount)</td></tr>
<tr><td>Five-year exemption</td><td>Employment basis amount* (capped at 30% of the foreign investment amount)</td></tr>
<tr><td colspan="4">* Sum of KRW 20 million for each new employee that has graduated from a technical high school, KRW 15 million for each new young employee and KRW 10 million for each other new employee.</td></tr>
</table>

Delay in making investment: Currently, if an initial investment (including a capital increase) is not made within three years from the date the Korean tax authorities grant the tax exemption/reduction to a foreign-invested company, the grant will be deemed to be revoked. To further strengthen the rule, which is designed to discourage delays in making investments, under the new proposals, a foreign-invested company that does not commence business within five years from the date the exemption/tax reduction notice is granted would be deemed to commence business on the last day of that period.

Limit on indirect investment by Korean persons: The TILL would be revised to restrict indirect investments made by a Korean person through a foreign-invested company. Under the existing version of the TILL, if a Korean investor directly or indirectly owns 10% or more of the shares of a foreign company, the tax exemption/reduction for foreign-invested companies will not apply to investment amounts from the foreign company corresponding to the shareholding ratio of the domestic investors in the foreign company, or to investment amounts equivalent to loans extended by the foreign-invested company. Under the proposed revision, the shareholding threshold would be reduced from 10% to 5%, and the tax exemption/reduction would be denied where the Korean shareholder exercises substantial influence over the foreign company.

Taxation of high-income employees

Foreign assignees to a Korean company who are paid by a foreign company outside Korea and whose relevant employment costs are not borne by a Korean entity currently are not subject to monthly income tax withholding. In this case, the foreign assignee either must file an annual income tax return to report the income and pay the corresponding income tax, or voluntarily pay monthly income tax withholding through a taxpayers' association and benefit from a 10% tax credit. According to the proposed changes that would apply as from 1 January 2016, where the relevant employment costs are not borne by the Korean entity, the Korean entity would be required to withhold income tax on a monthly basis, at a rate of 17% (18.7%, including the local income tax surcharge), when the Korean entity pays the service fee to the foreign company. The amount subject to income tax withholding would be the amount of the service fee identified as attributable to the earned income of the foreign assignee. The new withholding requirement would be applicable to high-income earning assignees whose income exceeds a certain income threshold, and excess monthly income tax withholding would be refunded upon filing the year-end income tax settlement.

Foreign financial account reporting

Currently, Korean nationals who have resided in Korea for less than one year in the previous two years are not subject to foreign financial account reporting. According to the proposals, the time required to qualify for exemption from foreign financial account reporting would be decreased from one year to 183 days. The new residence requirement would be effective for 2016 foreign financial account reporting that would be due in June 2017.

Value added tax

Several changes are proposed to the Korean VAT rules:

VAT on supply of cross-border electronic services: As from 1 July 2015, a foreign supplier that provides electronic services (e.g. games, audio or video files, software, etc. activated through mobile communication devices or computers) in Korea using information communication networks must register for VAT and is subject to a 10% VAT (for prior coverage, see *World Tax Advisor*, 12 June 2015). Under the proposals, VAT on electronic services would not apply where the foreign supplier provides electronic services to a Korean company (i.e. business-to-business or "B2B" transactions) in relation to its VAT taxable business. The proposal would apply as from the tax period in which the change is enacted.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150612_8.html

Zero-rated treatment for certain services: Supplies of certain goods or services to a nonresident currently are zero-rated (e.g. legal, accounting and tax services; advertising; market research; management consulting services; employment agency services; administrative support services, etc.). It is proposed that for transactions entered into on or after 1 July 2016, zero-rating would apply only if the country in which the nonresident is resident grants similar treatment.

Deferral of import VAT: Currently, a taxpayer is required to pay import VAT to the customs office at the time the declaration is made for the import of goods. Under the proposals, an export small or medium-sized enterprise (SME) that meets certain requirements (to be regulated via a presidential decree) would be entitled to a deferral of the import VAT payment; instead, the import VAT could be settled by offsetting the import VAT against the input VAT credit when filing the VAT return. The amended rule would apply to goods imported on or after 1 July 2016.

Changes to domestic rules

The following changes are proposed to the domestic tax rules:

- The loss carryforwards of a company that is not classified as a SME would be limited to 80% of the taxable income for the current fiscal year. Under the current rules, corporate income tax losses may be carried forward for 10 years to offset future profits without limit.
- The reasons for denying or cancelling a tax consolidation would be expanded to include situations in which the consolidated parent company becomes wholly owned by another domestic company (except for a nonprofit), and certain clawback provisions would apply if approval to file a consolidated return is denied or cancelled. Currently, the Korean tax authorities may deny approval to file a consolidated tax return in the following cases: (1) the fiscal year of a member of the group differs from the fiscal year of the consolidated group; (2) a company that is not wholly owned by the parent company is included in the group; or (3) a company that is wholly owned by the consolidated parent is not included in the consolidated group.
- A taxpayer would be able to request an extension of the due date for filing a corporate income tax return up to three days before the original due date for the filing the return (currently two weeks) if the external audit is not completed.
- Several changes would be made to the business restructuring rules.

The proposals will be enacted once approved by the National Assembly, which is expected to occur before the end of 2015.

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Korea:
Voluntary amnesty program introduced

On 1 September 2015, the Korean government announced the implementation of a six-month voluntary disclosure program for Korean tax residents and domestic corporations to report previously undeclared foreign assets and income.

The amnesty program will be available from 1 October 2015 through 31 March 2016. Participating taxpayers that declare and pay overdue taxes will be exempt from various tax penalties and criminal prosecution (unless criminal activities are involved), except for an additional late payment interest charge of 0.03% per day on overdue amounts, and will avoid having their names publicly disclosed.

Taxpayers wishing to participate in the amnesty program must submit a declaration form (along with supporting documentation) to the relevant National Tax Service regional office during the program's applicable six-month period, along with the tax due and late payment interest charge. Taxpayers may request a prequalification examination by 31 January 2016 to determine program participation eligibility. An installment payment option is available if the tax payment due exceeds KRW 100 million.

Given that tax information sharing agreements relating to the US Foreign Account Tax Compliance Act (FATCA), certain tax information exchange agreements and the OECD common reporting standards are soon to come into effect, the National Tax Service should start to receive information on Korean-owned financial accounts from the US beginning in 2016, and from approximately 50 other nations (including the British Virgin Islands, the Cayman Islands and the UK) beginning in 2017. The Korean government has decided to give noncompliant taxpayers an opportunity to voluntarily declare their foreign assets and income, and to avoid penalties and possible prosecution.

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Namibia:
Bill presented to parliament includes tax rate changes

The Namibian Minister of Finance presented an income tax bill to parliament on 23 September 2015 that contains a number of measures that would affect cross-border business, including changes to the corporate income tax rate and certain withholding tax rates. If approved, the bill will become effective on the date it is published in the government gazette. The following are some of the more important proposals:

- **Corporate income tax rate:** The corporate income tax rate would be reduced from 33% to 32% for companies (other than mining and manufacturing companies). The rate reduction would apply retroactively for years commencing on or after 1 January 2015.
- **Withholding tax:**
    - Penalties and interest would be imposed for the late payment or nonpayment of withholding tax on dividends.
    - A 10% withholding tax would be introduced on interest payments made to a nonresident (except for interest payments made by the state or a Namibian bank to a foreign bank). "Interest" would include any interest or related charges, discounts or premiums payable on financial arrangements, amounts that represent compensation for a lending arrangement and deferred interest. Failure to withhold and remit the tax would result in the imposition of penalties and interest.
    - In the future, the withholding tax rate on royalty payments made to nonresidents for the use of copyrights and trademarks would be a fixed 10% rate (the rate currently is linked to the corporate tax rate). Failure to withhold and remit the tax would result in the imposition of penalties and interest.

    - The withholding tax rate on certain services (e.g. management, consulting, technical and administration services) provided by nonresidents and on director's fees earned by nonresident directors would be reduced from 25% to 10%. The bill also would clarify that a "resident person" for purposes of the withholding tax on services includes any company doing business in Namibia, including a branch of a foreign company.
- **Tax administration:** The bill contains a number of provisions related to the collection of taxes, persons who are liable for taxes and the power of the tax authorities to collect tax debts. The tax authorities also would be allowed to issue a certificate to the Ministry of Home Affairs to prevent a taxpayer from leaving the country until outstanding taxes are paid or a satisfactory payment arrangement for such taxes is made.

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In brief

European Union: The European Commission has published the responses to the public consultation on further corporate tax transparency. The consultation, launched on 17 June 2015, sought views on whether requiring companies to disclose more information about the taxes they pay on a country-by-country (CbC) basis could help tackle aggressive tax avoidance in the EU. The Commission received 282 responses: 48 nongovernmental organizations and nine trade union bodies favored public CbC reporting, as did most of the 137 individuals. None of the 39 business associations or bodies favored going beyond current EU public transparency and CbC reporting to tax authorities under BEPS action 13, nor did 14 companies.

European Union: The European Commission has launched a consultation about ways to simplify the VAT payment regime for cross-border e-commerce transactions in the EU. The Commission is seeking views on the current VAT rules for business-to-consumer cross-border supplies of goods and services, the implementation of the 2015 changes to the VAT place-of-supply rules and the "mini one-stop shop" and the commitment by the Commission in "A Digital Single Market Strategy for Europe." This consultation also is part of the ongoing assessment of the new rules for VAT payments on cross-border telecommunications, broadcasting and electronic services that apply as from 1 January 2015. Responses to the consultation are sought by 18 December 2015.

Greece: In a press release dated 28 September 2015, the Ministry of Finance announced the commencement of the first phase of the abolition of the 4%, 9% and 16% reduced VAT rates that apply on the Greek islands (for prior coverage, see *World Tax Advisor*, 24 July 2015). As from 1 October 2015, the reduced VAT rates will be abolished on six islands (Mykonos, Naxos, Paros, Rhodes, Santorini and Skiathos) and replaced with the reduced rates of 6%, 13% and 23% that apply on the mainland. The reduced VAT rates will be abolished on the remaining islands in two additional phases (as from 1 June 2016 for the second group and as from 1

January 2017 for the third group).The existing reduced VAT rates will continue to apply until the date of abolition.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_2.html

India: On 24 September 2015, the Indian government announced its decision to amend the minimum alternate tax (MAT) provisions in the tax law retroactively, with effect from 1 April 2001, to provide relief from the MAT to foreign companies that are residents of a country that has concluded a tax treaty with India and that do not have a permanent establishment (PE) (as defined under the treaty) in India (for prior coverage, see *World Tax Advisor*, 11 September 2015). The relief from the MAT also will be extended to foreign companies that are residents of nontreaty countries and that are not required to register under the relevant provision of the Indian company law (foreign companies without an office or PE in India are not required to register under the company law). The Supreme Court has dismissed the appeal in the *Castleton Investments Ltd.* case, which involved the applicability of the MAT to foreign companies without a PE or place of business in India.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150911_ib.html

Japan: New rules on the Japanese consumption tax (JCT) entered into effect on 1 October 2015. The place of supply for cross-border digital services now is the office ("office" for JCT purposes means the registered head office) or domicile of the recipient, rather than the office or domicile of the supplier. As a result, supplies of digital services made to Japanese customers are subject to JCT. Supplies are classified as business-to-business or business-to-consumer transactions, which will affect which party accounts for the JCT due (for prior coverage, see *World Tax Advisor*, 24 July 2015).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_1.html

Jersey: The government has confirmed that the tiebreaker rule in domestic legislation on corporate tax residence will continue to apply to companies managed and controlled in the UK, but incorporated in Jersey, even after the UK main rate of corporation tax falls below 20% (that rate is scheduled to be reduced to 19% in April 2017 and 18% in April 2020). To ensure clarity, a measure will be included in the 2016 Jersey budget to amend the law and reduce the applicable tax rate from 20%. If the tiebreaker rule ceased to have effect for the UK, companies managed and controlled in the UK and incorporated in Jersey could become tax resident in both jurisdictions, which could result in unintended consequences.

Switzerland: SuisseTax, the new e-filing platform for Swiss VAT returns, became available to all Swiss VAT-registered companies on 8 September 2015. Swiss taxpayers now have the option to electronically submit their Swiss periodic VAT and corrective returns (including the annual reconciliation return) and to extend the deadline for submitting VAT returns.

United Kingdom: The UK tax authorities (HMRC) published guidance on 25 September 2015 on the UK Supreme Court's decision in *Anson (formerly Swift) v. HMRC*. The brief confirms that HMRC will continue with its existing practice to treat US LLCs as companies, on the grounds that the decision in *Anson* was specific to the facts and findings determined by the First-Tier Tribunal on the interpretation of foreign law and relevant LLC agreement and need not be applied more generally. As a result, where US LLCs have been treated as companies within a group structure, HMRC will continue to treat the US LLCs as companies, and where a US LLC has itself been treated as carrying on a trade or business, HMRC will continue to treat the US LLC as carrying on a trade or business. Individuals claiming double tax relief and relying on *Anson* will be considered on a case-by-case basis.

United Kingdom: The tax authorities (HMRC) released draft automatic exchange of financial account information guidance notes on 14 September 2015 that provide further clarity on obligations for UK financial institutions under the UK's automatic exchange of information legislation. The guidance is intended to help UK financial institutions understand the application of the US FATCA, UK FATCA and the OECD Common Reporting Standards (CRS) and to provide updates on certain key issues previously raised with the HMRC. HMRC has stated that the guidance does not replace or override the CRS commentary, but brings together the key concepts and provides additional guidance for UK-specific issues, including cases where there are differences between the CRS, FATCA and crown dependencies and overseas territories agreement (CDOT) rules. This guidance is specific to the application of US FATCA, UK FATCA and the CRS for UK financial institutions; CRS-specific guidance for crown dependency financial institutions will be issued in due course.

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.

European Union: The European Council reached a political agreement on a proposed directive aimed at improving transparency regarding tax rulings, which is in line with developments in the OECD and the BEPS project. See the European Union tax alert, 7 October 2015.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-europeanunion-7-october-2015.pdf?id=us:em:na:wta:eng:tax:100915

European Union: The European Commission has published the responses to the public consultation on further public transparency and country-by-country reporting to tax authorities under BEPS action 13. See *In brief* in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151009_ib.html

Indonesia: Thin capitalization rules that were reintroduced on 9 September 2015 were issued, in part, in response to the BEPS initiative. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151009_2.html

Korea: Proposed amendments to the tax rules include measures to implement transfer pricing documentation requirements and country-by-country reporting. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151009_4.html

New Zealand: The government has confirmed that BEPS policy work is a priority and it is a certainty that changes will be made to domestic law in some areas. A discussion paper covering goods and services tax on cross-border services, intangibles and goods already has been released, as well as proposals to broaden the application of nonresident withholding tax on related-party debt. Additional discussion documents are expected to be issued in the first half of 2016 on the following:

- Hybrid mismatch arrangements: Exploring whether New Zealand should amend its rules to further prevent nontaxation of income or double deductions of expenditure through the use of hybrid instruments or entities; and
- Interest limitation rules: Proposals to stop profit shifting by limiting the interest expenses that are deductible to a percentage of EBITDA or a group-wide ratio.

Norway: The 2016 budget presented to parliament and a “white paper” on other potential tax changes include certain proposals related to the BEPS project. See the Norway tax alert, 7 October 2015.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-norway-7-october-2015.pdf?id=us:em:na:wta:eng:tax:100915

OECD: On 5 October 2015, the OECD published 13 final reports and an explanatory statement outlining consensus actions under the BEPS project. These reports include and consolidate the first seven reports presented to the G20 Leaders at the Brisbane Summit in 2014. See the article in this issue. For additional coverage, see the OECD tax alert, 7 October 2015 focusing on action 7 (preventing the artificial avoidance of PE status), the OECD tax alert, 6 October 2015 focusing on action 4 (interest deductions and other financial payments), the OECD Global TP alert, 6 October 2015 focusing on transfer pricing aspects of the BEPS reports and the United States tax alert, 6 October 2015 focusing on several key non-transfer pricing reports.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151009_1.html
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URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-6-october-2015.pdf?id=us:em:na:wta:eng:tax:100915

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URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-016-6-october-2015.pdf?id=us:em:na:wta:eng:tax:100915
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-6-october-2015.pdf?id=us:em:na:wta:eng:tax:100915

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Brazil
Social contribution on net profits increased for financial institutions
The provisional measure that increases the rate of the social contribution on net profits (CSLL) for financial institutions, was converted into law and published in Brazil’s official gazette on 7 October 2015. The original version of PM 675 was modified to provide for a regressive CSLL rate for the period 2015-2019. The attached alert was drafted by the Brazilian international tax practice.
Issue date: 7 October 2015
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-7-october-2015.pdf

European Union
ECOFIN agrees on directive for exchange of information on rulings
On 6 October 2015, ECOFIN, the Council of Finance Ministers, reached agreement on a proposed directive that would require the automatic exchange of information within the EU on certain tax rulings. The directive, which is aimed at improving transparency regarding tax rulings, is in line with developments in the OECD and its work on BEPS. Finalization of the directive is expected by the end of 2015, with transposition into the national law of the EU member states by 1 January 2017.
Issue date: 7 October 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-europeanunion-7-october-2015.pdf

France
Finance bill 2016 released
On 30 September 2015, the French government released the proposed 2016 finance bill, which includes measures to eliminate the 10.7% surtax on corporate taxpayers by the end of 2016, revise the transfer pricing documentation rules and transition to a “pay as you earn” system for individuals.
Issue date: 1 October 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-1-october-2015.pdf

Norway

2016 budget and white paper presented

On 7 October 2015, the Norwegian government presented the 2016 budget to parliament that includes several important tax proposals, and the Ministry of Finance issued a “white paper” on other potential tax changes, including the introduction of rules that would implement measures under the OECD’s BEPS project.

Issue date: 7 October 2015

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-norway-7-october-2015.pdf

OECD

BEPS action 7: Preventing the artificial avoidance of PE status

One of the final BEPS reports issued on 5 October 2015 is a report on preventing the artificial avoidance of permanent establishment (PE) status (action 7), which introduces changes to the model treaty. The report builds on proposals put forward in the G20/OECD’s discussion drafts from October 2014 and May 2015 and updates the definition of PE (taxable presence) in article 5 of the OECD model tax treaty and associated commentary.

Issue date: 7 October 2015

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

BEPS action 5: Countering harmful tax practices more effectively taking into account transparency and substance

One of the final BEPS reports issued on 5 October 2015 is a report on action 5, which establishes minimum standards with regard to both determining whether preferential regimes take sufficient account of the need to reward only substantial activities, and ensuring that there is transparency in relation to rulings. It also sets out minimum standards for domestic law provisions in respect of intellectual property regimes, such as patent box regimes.

Issue date: 8 October 2015

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

BEPS action 4: Interest deductions and other financial payments

One of the final BEPS reports issued on 5 October 2015 is a report on action 4, which sets out a best practice approach for countries to prevent erosion of the tax base through the use of interest expense. The final report recommends an approach based on a fixed ratio rule, with a potential range of ratios to take into account that not all countries are in an equivalent position. The fixed ratio approach can be supplemented by a worldwide group ratio rule, as well as certain targeted rules. Notably, the report acknowledges the need for transition and grandfathering provisions.

Issue date: 6 October 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-6-october-2015.pdf

Transfer pricing aspects of BEPS reports

The 186-page final transfer pricing report and the 70-page documentation and country-by-country reporting report provide guidance on a multitude of transfer pricing topics.

Issue date: 6 October 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-016-6-october-2015.pdf

United States

OECD releases final BEPS reports

On 5 October 2015, the OECD released the 2015 final reports on the BEPS project. These reports cover the seven topics that were the subjects of the 2014 deliverables approved last fall, and finalize subsequent discussion drafts on the remaining eight BEPS actions. The 2015 final reports recommend changes to domestic laws, the OECD model tax treaty and the OECD transfer pricing guidelines.

Issue date: 6 October 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-6-october-2015.pdf