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Rulings clarify scope of FTS income under India’s tax treaties with the UK and the US

Two recent rulings provide some clarity regarding what constitutes “fees for technical services” (FTS) income under India’s tax treaties with the UK and the US; the Indian authorities concluded in both cases that the services did not constitute FTS.

In the first ruling, issued on 30 June 2015, the Bangalore Bench of the Income Tax Appellate Tribunal (ITAT) concluded that fees earned by a foreign company for the provision of business development, marketing and “support” services to its associated entities in India may not be taxed as FTS under article 12(4)(b) of the India-US tax treaty because such services do not result in a transfer of technology. Although the ITAT did not determine whether a dependent agent permanent establishment (PE) existed in India, it concluded that no taxable profits could be attributable to the nonresident, absent a finding that the dependent agent PE (if one existed) had been paid less than an arm’s length remuneration.

In the second ruling, issued on 29 July 2015, the Authority for Advance Rulings (AAR) addressed whether payments made for the provision of managerial services and assistance in

procuring raw materials by a nonresident could be considered FTS and, therefore, taxable under article 13 of the India-UK tax treaty. The AAR concluded that under the treaty, as amended in 1994, services must be in the nature of technical or consultancy services and must “make available” technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design to be considered FTS. In this case, the AAR held the services did not fall within the definition of FTS and, accordingly, the payments were not subject to withholding tax in India.

Background

The scope of FTS under India’s domestic law is broad, with FTS defined to mean consideration for the provision of managerial, technical or consultancy services, as well as consideration for the provision of services of technical or other personnel. In contrast, some of India’s tax treaties (including the treaties with the UK and the US) provide for a truncated definition of FTS, such that FTS is defined to include payments for technical or consultancy services that “make available” technical knowledge, experience, skill, etc., or consist of the development and transfer of a technical plan or design; managerial services are not within the scope of FTS. To the extent services do not fall within the scope of FTS under such treaties, they can escape tax in India provided the nonresident does not have a PE in India. The issue as to whether services fall under the FTS clause has been the subject of considerable litigation in India.

Ruling of the ITAT

The case before the Bangalore ITAT involved ABB Inc., a US company that provided business development, marketing and other support services to its associated entities in India. The associated entities paid ABB Inc. fees for the support services and withheld Indian tax on the payments. On its Indian income tax return, ABB Inc. claimed that the fees earned for its services were taxable exclusively in the US, and not in India, because the fees did not constitute FTS under article 12(4)(b) of the India-US tax treaty.

The Indian assessing officer (AO) took the position that ABB Inc. was providing technical services to its related entities and making technical knowledge available to them. Therefore, the AO concluded that ABB Inc.’s earnings were FTS that were taxable in India under the Income Tax Act-1961. On appeal, the Dispute Resolution Panel confirmed the AO’s position. ABB Inc. then filed an appeal.

The ITAT held that there must be a transfer of technology or know-how for the “make available” clause in the definition of FTS under the India-US treaty to be satisfied. Payments qualify as FTS only if the services enable the recipient to acquire sufficient knowledge to apply the technology independent of the service provider, even if the services provided are in the nature of technical services. There was no actual transfer of technology in this case because the services did not enable the recipient to use the knowledge or know-how on his/her own in the future without the aid of the service provider. As a result, the consideration received by ABB Inc. for its services was not taxable in India.

Ruling of the AAR

The case before the AAR involved Measurement Technology Limited, a UK company engaged in the development and supply of safety explosion protection devices. It is a wholly-owned subsidiary of MTL Instruments Group Ltd., UK. The applicant entered into two agreements with MTL India, also a subsidiary of MTL Instruments Group Ltd., UK, to provide management services (e.g. monitoring financial and operational progress of activities, engaging in human resource matters and quality and design reviews), as well as procurement services (e.g. reviewing global sourcing requirements of raw materials and providing logistics support and resolution of technical issues with supplies). The applicant took the position that the services it provided under the management services and procurement services agreements were routine managerial services and could not be classified as technical or consultancy services within the scope of FTS.

The Indian tax authorities took the position that the services rendered by the applicant under both agreements were in the nature of technical services, and thus FTS, and that the applicant essentially was providing management consultancy services through its analysis of the project and submitting a detailed report containing technical details and plans that were made available to MTL India.

The AAR agreed with the applicant. In reaching its conclusion, the AAR referred to its 2009 ruling in the *Invensys Systems* case, which involved a similar fact pattern (the definition of FTS under article 12 of the India-US treaty is similar to the wording of article 13 of the India-UK treaty). The AAR held that even though some of the services rendered may be in the nature of technical or consultancy services, they are deemed to fall within the scope of managerial services if the predominant nature of the services is taken into account. The AAR also observed that, in providing its services, the applicant did not make available any technical knowledge of enduring benefit that would have enabled the employees of MTL India to apply the knowledge on their own in the future. Accordingly, the AAR held that the fees received from MTL India were not considered FTS under article 13 of the India-UK tax treaty or under Indian domestic law and, therefore, they were not subject to withholding tax in India.

Comments

The use in India of specialized support services provided by a head office frequently has given rise to issues relating to the taxability of such services, and the *ABB Inc.* decision and the Measurement Technology Limited ruling are two of many recent decisions involving the “make available” clause of various Indian tax treaties, as it relates to FTS.

The decision of the Bangalore ITAT confirms that, if the nature of support services rendered does not “make available” technical knowledge to the service recipient, in the absence of a PE, the fees are not liable to tax in India. The ruling should provide a basis to support taxpayers that have taken the position that cross-charges of management fees are not subject to withholding tax under the India-US treaty (or another Indian tax treaty containing similar provisions).

The AAR ruling highlights the fact that the definition of FTS under the India-UK tax treaty is narrower in scope, since it specifically does not include managerial services, and the scope of

FTS under the treaty is further narrowed because of the “make available” condition in respect of technical and consultancy services. Further, the ruling emphasizes that managerial services may overlap with technical services or consultancy services, so it is important to classify the services only after determining their predominant nature. Arguably, a similar interpretation of FTS could be taken with respect to some of India’s other tax treaties (e.g. the treaties with Australia, Canada, Netherlands and the US).

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Brazil: Decision issued on interest on net equity

Brazil’s Superior Court of Justice has ruled that interest on net equity (INE) distributed between two Brazilian entities must be computed for the purposes of the PIS and COFINS taxes (social security contributions on revenue) as financial income at the level of the recipient.

Under Brazilian law, a Brazilian company generally is allowed to make INE payments to its quota holders (legal entities) based on the application of the public long-term interest rate (TJLP) calculated on the Brazilian subsidiary’s previous-year positive net equity; the payments are limited to the greater of 50% of the current pretax earnings or 50% of retained earnings and treated as a deductible expense for corporate income tax purposes. According to the current rules, although certain financial revenue continues to be exempt from PIS/COFINS, the INE is taxed at the 9.25% rate under the “noncumulative regime.” The superior court has held that the INE is not entirely compatible with the profit/dividend concept for tax purposes and, therefore, should be treated as taxable interest.

The decision is relevant to the base erosion and profit shifting (BEPS) environment and the recent changes made to the EU parent-subsidiary directive limiting the use of hybrid instruments where payments are treated as a deductible expense at the level of the payer company and as exempt income in the member state of the recipient, although some of Brazil’s tax treaties (e.g. the treaties with Belgium, Chile, Israel, Mexico, Peru, Portugal, South Africa, Turkey, Ukraine and Venezuela) already address the INE treatment under the interest article.

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European Union: CJEU rules bitcoin currency exchange transactions are VAT-exempt

The Court of Justice of the European Union (CJEU) issued a decision on 22 October 2015, in the Swedish case of *Skatteverket v David Hedqvist*, concluding that no VAT is due on the exchange of a “traditional” currency into “bitcoin” (and vice versa), which means that bitcoin receives the same VAT treatment as real currency, i.e. a VAT exemption. The CJEU held that, although services providing for the exchange of traditional currency with bitcoin constitute a supply of services for consideration, these services are exempt from VAT under the EU VAT directive provision (article 135(1)(e)) that requires member states to grant a VAT exemption for financial transactions involving “currency, bank notes and coins used as legal tender.”

The rapid expansion of the digital economy and the appearance and development of virtual currencies, such as bitcoin, are challenging current tax systems because tax legislation often has failed to keep pace with technological developments. This has resulted in considerable uncertainty as to how transactions involving the use of virtual currency should be treated for VAT purposes. The CJEU decision may provide some clarity, at least for transactions in the EU.

Background

The case involved a private individual who provided services consisting of exchanging Swedish crowns for bitcoin, and vice versa. The taxpayer made a margin (commission) trading traditional currencies for bitcoin. Since bitcoin generally is unregulated by governments, a dispute arose between the taxpayer and Swedish tax authorities with respect to the tax treatment of the services performed.

The taxpayer took the position that the activities should be treated in a manner similar to traditional currency exchange transactions and, thus, the activities should be exempt from VAT. According to the Swedish tax authorities, however, bitcoin is not a legal currency recognized by governments, so the exchange services should be treated as taxable for VAT purposes.

According to the CJEU, transactions involving nontraditional currencies should be considered VAT-exempt financial transactions to the extent such currencies have been accepted by the parties to a transaction as an alternative to legal tender and have no purpose other than to serve as a means of payment. To interpret article 135(1)(e) of the VAT directive as covering only transactions involving traditional currencies would deprive it of part of its effect. On this basis, the CJEU concluded that the VAT exemption under the directive covers the supply of services consisting of the exchange of traditional currencies for units of bitcoin virtual currency, and vice versa.

Comments

Although this case involves only the exchange of currency used as legal tender for bitcoin, the CJEU decision should be of interest to any person providing any form of exchange services

within the EU. In addition, businesses that pay or receive payment in bitcoin should review the potential impact of the decision from a VAT perspective.

It is unclear how tax authorities outside the EU will treat such transactions. The tax authorities in Australia and Switzerland already have confirmed that bitcoin should be treated in the same way as currency for VAT and goods and services tax purposes, while other tax authorities, such as the Canada Revenue Agency, may have different views about the indirect tax treatment of such services. Differing tax treatment by various countries may give rise to issues for businesses providing bitcoin exchange services on a global basis.

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European Union: Commission determines rulings constitute illegal state aid

The European Commission issued two decisions on 21 October 2015, concluding that Luxembourg and the Netherlands have granted selective tax advantages to Fiat Finance and Trade and Starbucks, respectively, and that these are illegal under EU state aid rules. The Commission has ordered Luxembourg and the Netherlands to recover the unpaid tax from the companies, estimating that the amounts at stake are between EUR 20 and EUR 30 million for each company. The precise amounts now must be determined by the Luxembourg and Dutch tax authorities on the basis of the methodology established in the Commission's decisions. The Commission has concluded that, in each case, a tax ruling issued by the respective national tax authority artificially lowered the tax paid by the relevant company. The Commission's decisions also mean that the companies may no longer continue to benefit from the tax treatment granted by the rulings.

These decisions are likely to be appealed. While they are technically directed at the EU member states concerned, i.e. Luxembourg and the Netherlands, the parties named as recipients of illegal state aid also are entitled to appeal. In the absence of an appeal, member states have two months from the issuance of the decisions to make their own calculations and begin recovery.

It should be noted that the Commission's announcement expressly states that "tax rulings as such are perfectly legal. They are comfort letters issued by tax authorities to give a company clarity on how its corporate tax will be calculated or on the use of special tax provisions."

The "further background" section of the Commission's press release states that: "The Commission also has three ongoing in-depth investigations where it raised concerns that tax

rulings may give rise to state aid issues, concerning Apple in Ireland, Amazon in Luxembourg, and a Belgian tax scheme.” The decisions on Apple and Amazon are expected before the end of 2015.

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France: Social surtaxes to be brought in line with EU law

To align French social surtaxes levied on investment income with EU law, the National Assembly has approved a measure in the Social Security Financing Act for 2016 that would change the allocation of social surtaxes in the French budget, and the government issued a press release on 20 October 2015 regarding refunds of social surtaxes incorrectly levied in the past. The Senate now must consider the measure on the allocation of social surtaxes, with a final vote on the Social Security Financing Act expected by the end of December 2015.

Under current law, taxpayers that are subject to French income tax (residents or nonresidents) are liable to social surtaxes at a flat rate of 15.5% on certain French-source investment income. Residents are subject to social surtaxes on all investment income (dividends, interest, rental income and certain capital gains), while nonresidents are subject to social surtaxes only on rental income and certain capital gains.

In February 2015, the Court of Justice of the European Union (CJEU) held that investment income should not be subject to French social surtaxes if the taxpayer falls within the scope of a social security regime in another EU member state because EU law prohibits an EU resident from being required to contribute to the social security systems of more than one member state. The French Administrative Supreme Court already has recognized the CJEU ruling, confirming that the principles enunciated by the CJEU must be applied and, therefore, social surtaxes should not be levied in France on investment income if the recipient is subject to another EU social security system.

Although the French tax authorities initially had informed taxpayers that social surtaxes would remain payable while the government was considering its position, the recent press release states that affected taxpayers are entitled to receive a refund of social surtaxes unduly levied. Taxpayers who are not subject to the French social security regime but who are subject to the social security regime of another EU or European Economic Area member state, or an equivalent Swiss regime, may request refunds of social security contributions paid on or after 1 January 2013. The French statute of limitations rules are complex and depend on the type of income concerned, so affected taxpayers should consider consulting their tax advisors for guidance.

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International: Trans-Pacific Partnership agreement announced

On 5 October 2015, the negotiating countries in the Trans-Pacific Partnership (TPP) announced the conclusion of an important trade agreement. In addition to essentially creating a free-trade zone that would cover approximately 40% of the world's economy and a central hub for further Asia-Pacific regional integration, the TPP aims to create a new set of rules and regulations that are more aligned with the realities of global commerce. The TPP also aims to give the World Trade Organization and multilateralism renewed purpose.

The TPP includes preferential rates for trade and tariff and nontariff barrier reductions for goods and services, as well as provisions on minimum standards for the protection of intellectual property, regulatory transparency, workers, the environment, etc.

The TPP includes 12 Pacific rim countries, including Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US and Vietnam, and the agreement includes a provision encouraging more countries to join the TPP. The agreement must be ratified by the TPP countries before it will enter into force.

The road ahead for the agreement remains challenging. The 12 negotiating countries and their respective domestic lawmaking authorities must ratify the agreement before it is incorporated into law, and ratification is not assured in some TPP countries. It will be important for all interested stakeholders, including businesses, to monitor the ratification process and comment on the benefits that the TPP could provide, including benefits for customs purposes.

It is important to note that additional agreements between the EU and some TPP countries (e.g. Canada, Japan, the US, Vietnam, etc.) may be concluded in the foreseeable future to support EU exporters.

As noted above, it may take some time before the agreement is ratified by all the TPP countries. Affected businesses should keep track of the progress toward ratification and assess in advance how the treaty would affect supply chains and the competitiveness of products in foreign markets.

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Luxembourg: Electronic filing available for corporate income tax returns and certain other returns

On 29 October 2015, Luxembourg's Minister of Finance announced a new electronic filing tool for corporate income tax, municipal business tax and net worth tax returns (collectively, "tax returns") in Luxembourg. Resident companies now may submit their income tax returns electronically, following a similar procedure to the electronic filing process for VAT returns.

Electronic filing is available for Luxembourg resident commercial companies with a "LuxTrust" certificate (the certification used to allow users to access sensitive information in a secure manner) or an electronic identification card that can be used to authenticate the electronic return. Such companies may submit their tax returns via the interactive "MyGuichet" online portal, either by using the online assistant submission tool or by providing a completed form in XML format. A step-by-step electronic filing guide is available on the portal, and the online assistant provides explanations regarding the documentation that is required in PDF format. Some frequently asked questions on electronic filing are available on the Luxembourg tax authorities' web site.

For each submission, the information must be validated, the relevant annexes and attachments must be transmitted and the tax return must be signed electronically. For confidentiality and security purposes, the tax return must be signed by using the LuxTrust product.

Correspondence with the Luxembourg tax authorities also can be carried out through the portal.

Electronic filing is available for tax returns as from tax year 2014, and gradually will become mandatory.

The new method for the electronic submission of tax returns is part of the government's program to modernize services offered by the state. The procedure is expected to be less time-consuming, more environmentally friendly and much more flexible than the paper filing method.

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Netherlands: Fiscal unity regime to be amended

On 16 October 2015, the Dutch State Secretary of Finance submitted a bill to parliament that would make changes to the fiscal unity rules to bring the regime in line with decisions of the Court of Justice of the European Union (CJEU) and the Dutch tax court of Amsterdam.

The Dutch fiscal unity regime offers a number of benefits: entities within the group can offset profits and losses; intragroup transactions are ignored; and tax compliance is facilitated because the group can submit a consolidated tax return. Since only one company will exist for Dutch corporate income tax law purposes, losses incurred by one company in the fiscal unity can be offset against the profits of another company. Various requirements must be met to form a fiscal unity, one of which generally requires that group companies be Dutch residents.

The CJEU ruled in the *SCA Group Holding* case on 12 June 2014 that the Dutch fiscal unity regime is incompatible with EU law, and that there is no valid justification for the regime (for prior coverage, see EU tax alert, 12 June 2014). The CJEU specifically held that EU law is violated to the extent the Dutch rules do not allow:

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-eu-120614.pdf>

- A Dutch parent company to form a fiscal unity with its Dutch “sub-subsidiary” in cases where the sub-subsidiary is held by a nonresident intermediary company (i.e. Dutch rules allow a fiscal unity only where the intermediary also is established in the Netherlands and is included in the fiscal unity, or where it is established in another EU member state but has a permanent establishment (PE) in the Netherlands); or
- Dutch resident “sister” companies that have a common nonresident parent company to form a fiscal unity (i.e. Dutch rules allow sister companies to form a fiscal unity with each other only if their joint parent company also is Dutch, or where the parent is established in another EU member state but has a Dutch PE to which the shares in the sister companies are allocated). The proposed rules would allow “horizontal” consolidation.

Shortly after the CJEU decision was issued, the State Secretary announced that a fiscal unity between indirectly held companies that are established in the Netherlands would be permitted. The bill would codify this policy, but it also would be broader in scope.

The proposed bill would extend the fiscal unity regime to include the following situations:

- Where a Dutch parent company holds shares in a Dutch sub-subsidiary through one or more intermediary companies established in the EU/European Economic Area (EEA); and
- Where an EU/EEA parent company holds shares in at least two subsidiaries established in the Netherlands.

The draft bill presented to parliament would make the following changes to the fiscal unity rules in the Corporate Income Tax Act:

- Under both the domestic legislation of the EU/EEA member state in which a connecting company is located and the relevant tax treaty concluded between the Netherlands and that EU/EEA member state, a top-level holding company (i.e. the company that holds the shares of Dutch sister companies) or an intermediary company (that holds the shares of a Dutch lower-tier subsidiary) would have to be considered established in that state. The nonresident intermediary company (or companies) or top-level holding company (as applicable) would have to be subject to (and not exempt from) a tax on profits (which could not be optional) in its capacity as a subject of the country of establishment.
- The top-level company would be required to hold the *full* legal and economic ownership of at least 95% of the shares in sister companies, i.e. an arrangement involving split ownership no longer would lead to a fiscal unity. If (a part of) the shares are converted into depositary receipts for shares, the new holding requirement no longer would be satisfied. Arrangements existing at the time the bill was submitted would be granted a transition period of two years after the submission to comply with the new rules.
- If horizontal consolidation is applied, the Dutch (sub-)subsidiaries would have to designate a sister company to be considered the “parent company” for fiscal unity purposes. Such a company would have to close its books on the date of consolidation. A decision by the top-level holding company to sell the shares in this (sub-)subsidiary would dissolve the entire fiscal unity; deconsolidation also would take place if the company designated as the parent company no longer is considered to be part of the fiscal unity.

Deconsolidation generally could be avoided only if, immediately subsequent to the event that otherwise would result in deconsolidation, another company would be established, included within the fiscal unity and considered to be the new parent company from that moment onward. A delegation provision is included in the bill, under which, in certain cases, a fiscal unity could change the identity of a top-level holding company without this being considered to result in a deconsolidation of the fiscal unity. The explanation to the bill indicates that this is subject to a requirement that the companies that compose the fiscal unity otherwise could not be changed.

- The explanatory memorandum to the bill discusses various combinations of fiscal unities, and potential switches between different types of fiscal unity. The basic assumption is that the fiscal unity could be maintained, unless the parent company changes.
- The requirements for participating in a regular fiscal unity with a Dutch PE would be amended. Currently, if the shares in a subsidiary are allocated to a Dutch PE, that PE is required to be able to act as the parent company of the fiscal unity. This requirement no longer would apply. The proposed amendment may have been motivated by CJEU case law, under which the Netherlands may not treat a domestic PE less favorably than a domestic company. If a fiscal unity between domestic sister companies is possible, the same must be true for a domestic nonresident taxpayer, or, in other words, the same treatment must apply for a domestic company and a domestic PE. A delegation provision has been included in the bill that would permit a fiscal unity to be continued in cases where a nonresident taxpayer stops earning taxable profit through a Dutch PE in the Netherlands (including a cessation of the PE).
- The bill provides for various anti-abuse rules, to avoid situations such as the double utilization of the same losses. The regime for liquidation losses and the limitation on the

interest deduction relating to certain participations also would be amended. The extent of the related implications cannot fully be determined at this point.

Future amendments

This bill does not provide for amendments related to the recent CJEU decision in *Groupe Steria* (for previous coverage, see EU tax alert, 3 September 2015). Based on that decision, under the “per-element” approach, the Netherlands may have to extend any “side effects” (including potential benefits) of applying the fiscal unity regime, which currently are limited to domestic relationships, to include situations involving residents of other EU member states. In other words, if entering into a fiscal unity would grant more preferential treatment to certain elements of the corporate income tax regime in domestic situations, the fiscal unity regime – to the extent of the more favorable treatment of these elements – would be incompatible with EU law. As a result, the fiscal unity regime may require further amendments in the future.

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-europeanunion-3-september-2015.pdf>

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In brief

European Union: The EU and Liechtenstein have signed a new tax transparency agreement. Under the agreement, Liechtenstein and EU member states will automatically exchange information on the financial accounts of their respective residents as from 2017.

European Union: On 27 October 2015, the European Commission adopted its 2016 work program. There are 23 actions, including an action plan on VAT that aims to improve efficiency and eliminate VAT fraud. The Commission intends to withdraw a number of former proposals, including those on the EU standard VAT return, reforming VAT on insurance and financial services and the original common consolidated corporate tax base directive (since there is now a new proposal for a common base). There will be “a set of measures to enhance transparency of the corporate tax system and fight tax avoidance, including by implementing international standards on base erosion and profit-shifting.”

India: The Karnataka High Court has overruled a ruling from the authority for advanced rulings (in *Columbia Sportswear Company*) and has held that activities of an Indian liaison office (or representative office) of a US company that are limited to purchases of goods in India for export do not result in a permanent establishment in India under the India-US tax treaty, and that no income can be attributed to such activities in India under India’s Income-tax Act. The

liaison office's activities included identification of a competent manufacturer, price negotiation, discussion of materials to be used, quality control and testing of products and coordination with the supplier and customers, and the court opined that all these activities were necessary for the purchase of goods.

India: On 27 October 2015, the government announced that it has established a committee that is charged with coming up with recommendations to simplify the provisions of the Income Tax Act 1961 (ITA). The committee will study and identify provisions in the ITA that lead to tax litigation due to differing interpretations, affect the ease of doing business in India and require simplification in light of existing jurisprudence. The committee also will suggest alternatives and modifications to existing provisions to bring about more predictability and certainty in the tax law. The committee has an ambitious target of completing its first report by 31 January 2016.

India: The broad-based service tax (VAT on services) will increase from 14% to 14.5% on 15 November 2015 as a result of the introduction of a 0.5% Swachh Bharat cess on all services that are subject to the service tax. The Swachh Bharat cess will be used to fund the Clean India Mission, a national campaign to clean the infrastructure of the country. The 2015-16 budget had proposed a maximum 2% cess, but the government decided to set the rate considerably lower, at 0.5%. This effectively increases the service tax rate to 14.5%.

Indonesia: The Indonesia National Single Window was officially launched on 30 September 2015 to serve as single electronic platform that will standardize and integrate information related to the handling of customs documentation and import and export licensing, with new features and services to enhance trade facilitation. The portal is expected to integrate trade-related data from all ministries and state institutions and eventually will be integrated with the ASEAN Single Window, which is scheduled for implementation in December 2015.

OECD: Representatives of more than 100 countries and jurisdictions endorsed the new OECD International VAT/GST Guidelines on 5-6 November 2015. The endorsement is seen as an important step toward ensuring that consumption taxes on cross-border transactions are effectively paid in the jurisdiction in which products are consumed, while minimizing the risks that uncoordinated tax rules will distort international trade. The final package includes recommended rules for the collection of VAT on cross-border services (including internet downloads) to private consumers (business-to-consumer (B2C) guidelines). The guidelines recommend that foreign sellers register and remit tax on sales of e-books, apps, music, videos and other digital goods in the jurisdiction in which the final consumer is located. The guidelines also include a recommended mechanism to ensure the effective collection of VAT by the tax authorities from foreign sellers, thus helping governments to protect VAT revenue and leveling the playing field between domestic and foreign suppliers.

OECD: On 30 October 2015, the OECD released an updated list of common reporting standard (CRS) jurisdictional commitments. This list outlines the jurisdictions that have committed to undertaking their first information exchanges by 2017 and 2018, and notes several jurisdictions that have not indicated a timeline or that have not yet committed. The Cook Islands and Panama, previously included in the jurisdictions that have not indicated a timeline, now have committed to undertaking their first information exchanges by 2018, according to the updated list. There are no additional changes to the list at this time, but these

and other updates relevant to CRS can be monitored through the links and information provided on the OECD Automatic Exchange Portal.

On the same date, the OECD Global Forum for Transparency and Exchange of Information for Tax Purposes published the results of its updated “phase 1” and “phase 2” reviews, which resulted in an upgrade of the initial ratings for Cyprus, Luxembourg and the Seychelles from “non-compliant” to “largely compliant.” Latvia and Liechtenstein also received “largely compliant” ratings following their phase 2 reviews, while Columbia received a “compliant” rating and Costa Rica and Samoa received “partially compliant” ratings.

Slovenia: A “certified cash register” system will apply as from 2 January 2016, under which all legal persons and individuals that carry out cash (or cash-equivalent) transactions and are required to keep books and records will have to use certified tax registers (unless specifically exempted by statute). The certified cash registers will be electronically connected to the tax authorities’ central information system, so invoices can be verified and saved on a real-time basis. The Ministry of Finance has clarified that where payment is made through a payment service provider, the invoice will not be subject to the fiscal verification procedure.

Spain: On 30 July 2015, the government published a draft royal decree related to a new “submission of information” (SII) procedure, under which VAT taxpayers would be required to upload their VAT ledgers to the tax authorities’ website, generally within four days of the issuance of an invoice. Under the draft decree, the SII would be mandatory for companies that are registered in the monthly VAT register, corporate VAT groups and large businesses (i.e. businesses whose total invoices over the last year exceeded EUR 6,010,121.04); other companies would be permitted to voluntarily apply the SII system. The SII would provide the tax authorities with reliable and immediate data that would help to expedite VAT audits. The SII is expected to be effective as from 1 January 2017.

Thailand: The corporate income tax rate will be permanently reduced from 30% to 20% of net profits for accounting periods starting on or after 1 January 2016. The draft amendment has been approved by the Thai Cabinet and currently is undergoing the legislation process.

BEPS corner

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

Italy: Implementation rules for the new patent box regime have been published, and generally are in line with the “nexus approach” described in the OECD final report on action 5 of the BEPS project (countering harmful tax practices more effectively, taking into account transparency and substance). See Italy tax alert, 24 October 2015.

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-italy-24-october-2015.pdf>

Spain: The 2016 finance bill includes amendments to the patent box regime to bring the current rules in line with the nexus approach described in the OECD final report on BEPS action 5. See Spain tax alert, 6 November 2015.

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-spain-6-november-2015.pdf>

United Kingdom: The government has launched a consultation on the proposals under action 4 of the BEPS project (interest deductions and other financial payments). Comments will be accepted until 14 January 2016. Additionally, the tax authorities (HMRC) have published a consultation document on the patent box, which follows the Forum on Harmful Tax Practices setting out, as part of the BEPS project, a new framework that will apply as from 1 July 2016 to tax regimes that offer preferential treatment to income from intellectual property. Comments are invited by 4 December 2015. Because of the agreed timetable, HMRC plans to publish draft legislation in December informed by the consultation process, rather than publish a response document and then draft legislation. A response to the consultation will be published in spring 2016, along with any necessary changes to be made to the draft legislation, including changes responding to comments on the December draft.

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Italy

Implementation rules issued for new patent box regime

Implementation rules for Italy's new patent box regime were published in the official gazette on 21 October 2015, following the issuance of a decree on 30 July 2015. The patent box rules apply as from 2015 for calendar-year taxpayers. The regime grants a partial exemption from corporate income tax and the local tax on productive activities for income derived from certain intangible assets.

Issue date: 24 October 2015

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-italy-24-october-2015.pdf>

Luxembourg

Largely compliant rating received from Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes released the results of its updated "phase 2" peer review for Luxembourg on 30 October 2015, which resulted in a "largely compliant" rating for the country. Luxembourg has implemented various measures to demonstrate its commitment to promoting tax transparency and it now shares the same rating as countries such as Germany, Italy, the Netherlands, the UK and the US.

Issue date: 30 October 2015

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-luxembourg-30-october-2015.pdf>

Spain

Changes to patent box will bring the regime in line with OECD nexus approach

Spain's 2016 finance bill, which received parliamentary approval via Law 48/2015 of 29 October 2015, includes amendments to the patent box regime to bring the current rules in line with the "nexus approach" endorsed in the OECD final report on action 5 of the BEPS project.

Issue date: 6 November 2015

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-spain-6-november-2015.pdf>

United States

Final and temporary rules issued on treatment of dividend equivalents under section 871(m)

On 17 September 2015, the US Treasury and the IRS released final and temporary regulations under section 871(m) on dividend equivalents. The final regulations generally retain the framework set forth in the 2013 proposed regulations by testing the "delta" of notional principal contracts and equity-linked instruments referencing US equities to determine whether such contracts give rise to dividend-equivalent payments subject to US gross basis tax and withholding tax. Significant changes include a postponed effective date and an increase in the delta standard.

Issue date: 28 October 2015

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-28-october-2015.pdf>

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