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In this issue:

European Commission releases proposed anti-tax avoidance package

On 28 January 2016, the European Commission released an anti-tax avoidance package that contains proposed measures to prevent aggressive tax planning, boost tax transparency and create a level playing field for all businesses in the EU. The package contains the following:

- Amendments to the administrative cooperation directive to implement country-by-country (CbC) reporting;
- A draft anti-tax avoidance directive;
- Recommendations to EU member states on how to reinforce their tax treaties in an EU-law compliant manner; and
- A communication on an external strategy for effective taxation that presents a stronger and more coherent EU approach to working with third countries on tax good governance matters.

The draft CbC and anti-tax avoidance directives reflect some of the actions in the OECD's base erosion and profit shifting (BEPS) project. The CbC directive is intended to implement CbC reporting to the tax authorities in accordance with BEPS action 13. The anti-tax avoidance directive (sometimes called the "anti-BEPS" directive) is intended to establish a fixed framework for the 28 EU member states to implement certain other BEPS actions (and other tax measures) in a common form, although the draft directive is not entirely in accordance with the actions adopted by the G20 and OECD member countries. The draft anti-tax avoidance directive includes rules addressing hybrid mismatches, limits on the deductibility of interest and controlled foreign company (CFC) rules, as well as measures not in the BEPS action plan, i.e. a general anti-abuse rule (GAAR), a “switch-over” clause and an exit tax.

The European Commission also released a recommendation that member states should include a principal purpose test in their tax treaties (although, the precise text put forward by the Commission differs in some small respects from that put forward under action 6 of the BEPS project).

The communication on an external strategy for effective taxation sets out a coordinated EU approach against third country risks of tax avoidance, to promote international tax good governance.

This article focuses on the two draft directives.

Overview of process and background on draft directives

Direct taxation is the preserve of the EU member states; in other words, individual member states retain sovereign legislative power in the area of direct taxation. Under EU law, in areas where the member states retain sovereignty, harmonization throughout the EU generally is possible only if there is unanimous agreement among the 28 member states. Thus, the enactment of EU directives relating to taxation requires full agreement (or if that is not possible, in some cases a subset of member states may choose to implement a measure under enhanced cooperation rules).

Once a draft proposal has been presented by the European Commission, a number of levels of discussions will take place at the Council of Finance Ministers (ECOFIN), including possible delegation to officials for technical analysis. Then, the president of the Council will facilitate a discussion where member states will raise concerns and possibly make recommendations for changes to the draft directive. In some cases, it may not be possible to find sufficient support at the Council for the directive to be approved (for example, as in the case of the previous draft directive for a common consolidated corporate tax base (CCCTB)).

The draft CbC reporting and anti-tax avoidance directives were expected. Taking into account the final reports issued by the OECD on the BEPS actions, the European Commission’s 2015 announcement of an *Action Plan for Fair and Efficient Corporate Taxation*, a strategy to relaunch the CCCTB and the adoption of the changes to the EU parent-subsidiary directive, the directives appear to be the next step in the efforts to tackle what is perceived to be tax avoidance and the erosion of the tax bases of many countries.
URL:
http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf

CbC reporting to tax authorities

The draft CbC reporting directive operates by amending the existing administrative cooperation directive and largely follows the detailed material from the OECD. It would require EU member states to introduce by 31 December 2016 requirements for multinationals based in the relevant state to file the detailed information set out by the G20/OECD, where turnover exceeds the EUR 750 million benchmark set by the G20/OECD. The filing requirement would apply to fiscal years commencing on or after 1 January 2016, and the details would follow the prescribed framework with two small exceptions. The first is that member states would be required to share information with each other within 15 months of the accounting period (action 13 allows 18 months for the first period). The second area concerns linguistics, which likely will recognize the EU's 23 official languages. The directive also would cover the exact sharing mechanism between member states, using existing communication networks, with more details to be released by the end of 2016. Member states would have freedom to legislate their own penalty regimes, which should be "effective, proportionate and dissuasive."

OECD and G20 countries also would need to exchange information with non-EU members, since the directive would cover only exchanges within the EU.

The draft CbC directive notes that the Commission may additionally propose some public reporting of tax information. In 2015, the Commission conducted a public consultation on corporate tax transparency in the EU, specifically on whether requiring companies to disclose more information about the taxes they pay could help tackle tax avoidance and aggressive tax practices. It is fair to note that the businesses, professional firms and professional bodies responding did not favor public CbC reporting. However, equally unsurprisingly, nongovernment organizations (NGOs) responding did favor its introduction, as does the European Parliament, which has an equal role with the Council of Ministers in legislating in this accounting area.

Anti-tax avoidance directive

The European Commission notes in the introduction to the draft anti-tax avoidance directive that most member states (22 out of 28), in their capacity as OECD members, have committed to implementing the output contained in the final reports on the 15 BEPS actions. According to the Commission, it is "essential for the good functioning of the Internal Market that Member States transpose political commitments under BEPS into their national systems in a coherent and sufficiently coordinated fashion. This should be the way ahead in order to maximize the positive effects for the Internal Market as a whole. If not, unilateral implementation of BEPS would risk national policy clashes and new obstacles in the Internal Market, which would continue to be fragmented in 28 constituent parts and suffer from mismatches and other distortions."

The draft anti-tax avoidance directive proposes action in three areas covered by the BEPS actions:

- Hybrid mismatches (Action 2);
- Interest restrictions (Action 4); and
- CFCs (Action 3).

However, the directive also proposes actions in three areas not reflected in the BEPS action plan:

- Exit taxation;
- "Switch-over" clauses that treat some income/gains as taxable instead of granting an exemption; and
- A GAAR.

The introduction notes that the draft directive is intended to set out principles, leaving the detailed enactment to the member states, taking account of their national legislation. However, it is clear that the principles set out in the draft do not simply reflect the BEPS actions.

Areas covered by BEPS

Hybrid mismatches: The draft directive proposes an anti-hybrid rule for situations where there are differences in the legal characterization of payments or entities between EU member states. The rules would require that when an entity or instrument is classified differently in different member states, the treatment in the state in which the first deduction is claimed should be followed by the second state where either income is received or a second deduction is claimed. This is the opposite of the G20/OECD proposals. The primary rule under BEPS action 2 is that the deduction should be disallowed, with a secondary rule requiring that income be taxed (or a second deduction disallowed) where the primary rule is not adopted.

There is no obvious justification for adopting a different rule for payments within the EU, compared to payments between EU states and third countries. In practice, adopting two different rules for EU and non-EU hybrids potentially could lead to mismatches.

Interest restrictions: The draft directive proposals for interest and other financing costs have their basis in the BEPS action 4 conclusions. The proposed rule starts with the principle that borrowing costs always are deductible to the extent interest or other taxable revenues are generated from financial assets. The directive then proposes that where interest costs exceed finance income, the deduction of financing costs should be restricted to 30% of tax-based EBITDA (earnings before interest, tax, depreciation and amortization). The directive proposes several reliefs:

- A *de minimis* exemption for interest not exceeding EUR 1 million;
- A fallback to a group-wide test, based on the accounting ratio of third-party debt to assets, less 2%; and
- The ability to carry forward excess EBITDA and disallowed interest.

Although the measures in the proposed directive are similar to the final report on BEPS action 4, the definition of the group-wide ratio is more restrictive. It also ignores the "public benefit exemption," understood to have been proposed by the UK and agreed to by Germany. This exemption is designed to allow certain projects financed with third-party debt that provide wider public benefits, such as infrastructure, to be excluded from the wider group limitations.

CFC rules: The G20/OECD agreed that CFC rules should be downgraded to a recommendation, the lower level of the BEPS proposals. BEPS action 3 noted that there are

36 CFC regimes globally and that many countries did not need them, given the nature of their economies. Most EU member states do not have CFC rules, although major countries such as France, Germany, Italy, Spain and the UK do have these provisions.

The draft directive proposes that all 28 member states introduce CFC rules. The proposed legislative text defines a CFC as a company where:

- More than 50% of the shares, profits or assets are controlled by the group;
- The company is based in a non-EU country with a statutory tax rate lower than 40% of the tax rate in the country of the parent company; and
- More than 50% of the income of the company comes from passive sources, such as dividends, interest, royalties, leasing, insurance, banking and other financial services and income from group services.

CFC rules would not be applied to subsidiaries in the EU/EEA, unless the establishment of the entity is wholly artificial or the entity engages in non-genuine arrangements that were put in place for the main purpose of obtaining a tax advantage. The CFC rules would not apply to subsidiaries whose shares are, in short, listed on a recognized stock exchange.

If the CFC rules apply, profits would be apportioned to the parent company only where the CFC does not have the necessary significant people functions to manage its business, and then only to the extent those functions are in the shareholder company.

The draft directive has some similarities to the UK's CFC rules, presumably with the aim of attracting UK support. However, the justification for other countries, such as Ireland, Malta or the Netherlands to adopt CFC rules is not clear, and some countries may lack the necessary resources to develop and manage such rules.

Areas not covered by BEPS

The next three areas are initiatives from the Commission, although each has support from some member states.

Exit taxation: The directive proposes an exit tax on specified transfers of assets or the transfer of residence, requiring the EU member state of origin to levy tax on the fair market value minus the tax book value. For transfers from an EU member state to another EU member state, tax could be paid in installments over a five-year period or until a third-party disposal, if that is earlier. Interest could be charged and, in case of the risk of non-recovery, guarantees could be required. The receiving member state should provide for a step-up to fair market value, as established by the member state of origin, as the starting value of the assets for tax purposes.

It has been a source of frustration to some member states that the Court of Justice of the European Union (CJEU) has ruled that states may not levy exit taxes when a company moves its tax residence to another EU or EEA country. The CJEU's rationale has been that payment of the tax should be deferred until ultimate disposal, although it has allowed the taxing state to levy interest.

However, the provisions of the directive would go much further than cases on the transfer of residence and additionally would provide that tax should be charged where assets are transferred from a head office to a branch. Many member states have long-standing exemptions or deferrals in this situation, and there is no clear reason why the European Commission considers that a new tax charge should be levied.

Switch-over clause: Most member states have tax exemptions for dividend income and for capital gains on the sale of qualifying shareholdings. A small number of states have expressed concern that this favorable exemption should not apply where the overseas company pays a low rate of tax. In response, the Commission has proposed that every member state should adopt a rule whereby dividends and capital gains from low-taxed companies should not be exempt, but instead should be taxable, with a tax credit granted for any overseas tax actually paid. The proposal sets the definition of low tax as a statutory tax rate that is lower than 40% of the tax rate in the relevant member state.

It is not obvious that it is necessary to introduce a switch-over rule across the EU. Clearly, countries that wish to adopt such a rule will need to include anti-conduit provisions to prevent income or gains being routed via a third country.

GAAR: A GAAR is proposed to address gaps that may exist in a country's anti-abuse rules, and the European Commission proposes that all EU member states should adopt a GAAR to counter certain forms of tax avoidance. The draft provides that non-genuine arrangements to avoid corporate tax should be ignored, and defines arrangements as non-genuine to the extent they are not put into place for valid commercial reasons that reflect economic reality.

Studies of the limited numbers of GAARs globally have found that, to be effective, a GAAR needs to be specifically designed to reflect national law. While there may well be sympathy with the overall aim of a GAAR, providing a fixed definition is unhelpful as it may be both broader in scope and narrower in its impact in defeating highly artificial arrangements. Further, those countries with a GAAR will surely wish it to apply more broadly than to just corporate tax, and it would not be coherent to have different GAARs for different taxes.

Comments

Given that many EU member states already have adopted legislation to require action 13 CbC reporting, it would be surprising if this directive were not adopted across the EU. Jurisdictions affiliated with member states, such as the UK's Crown Dependencies and Overseas Territories, are being encouraged to mandate action 13 CbC reporting for multinationals headquartered in the jurisdiction. In this regard, Jersey launched a consultation on 22 January 2016 on proposals to require that Jersey-regulated entities submit CbC reports.

The proposal for an EU anti-tax avoidance directive could be seen as a first step toward harmonization in the context of the fight against base erosion and profit shifting. The European Commission continues to favor the adoption of the CCCTB, despite its rejection by many member states. The Commission intends to propose the adoption of a common corporate tax base (without consolidation) later in 2016, and the standardization put forward in the anti-tax avoidance directive should be viewed in this context.

However, it remains unclear whether the unanimous agreement among the member states is achievable. Many member states do not favor a common tax base and the inclusion of options in the BEPS action plan clearly was designed to provide measures that a wide range of countries could support. Removing those options in the EU may well not be supported by member states. Unfortunately, the EU did not put forward measures in full accordance with the BEPS actions. In addition, the role of the presidency of the EU cannot be underestimated. The Netherlands has indicated that a harmonized approach will not be a priority during the Dutch presidency of the EU (until July 2016). It is unclear how future presidencies will approach the proposed directive.

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Japan’s 2016 tax reform proposals announced

The Liberal Democratic Party and the New Komeito Party released the 2016 tax reform proposals for Japan on 16 December 2015. According to the proposals, the government intends to further promote growth-oriented corporate tax reform by reducing the effective corporate tax rate to below 30%. Other notable proposals include the introduction of transfer pricing documentation requirements based on the OECD recommendations regarding the action plan on base erosion and profit shifting (BEPS), and provisions relating to the consumption tax and individual tax.

This article highlights several key proposals that may affect foreign companies doing business in Japan. It is important to note that these proposals have not yet been enacted, and could change prior to becoming law.

Corporate tax proposals

Reduction of national corporate tax rate: The corporate tax rate was reduced from 25.5% to 23.9% in the 2015 tax reform. The income levy component of the factor-based enterprise tax, which is imposed on ordinary companies with share capital of over JPY 100 million, also was reduced (from a top progressive rate of 7.2% to a top progressive rate of 6%). These rates and the effective tax rate are proposed to be further reduced under the 2016 tax reform, as follows:

Tax year	Corporate tax rate	Income levy of factor-based enterprise tax	Effective tax rate (standard)*
Tax years beginning on or after 1 April 2015	23.9%	6%	32.11%
Proposed: Tax years beginning on or after 1 April 2016	23.4%	3.6%	29.97%
Proposed: Tax years beginning on or after 1 April 2018	23.2%	3.6%	29.74%

Tax year	Corporate tax rate	Income levy of factor-based enterprise tax	Effective tax rate (standard)*
* Local governments may increase the income levy of the factor-based enterprise tax by up to two times the standard rates listed above. Also, companies with share capital of JPY 100 million or less are subject to the regular enterprise tax (and not the factor-based enterprise tax), which does not include a value-added levy or a capital levy, but the tax rate on income is higher than the income levy of the factor-based enterprise tax; therefore, the effective tax rates for such companies will be higher.			

Revision of factor-based enterprise tax rate: In addition to the revised income levy, the rates of the other factor-based levies (i.e. the value-added levy and capital levy) were raised in the 2015 tax reform (from 0.48% to 0.72% and from 0.2% to 0.3%, respectively), and are proposed to be further increased under the 2016 tax reform (to 1.2% for the value-added levy and to 0.5% for the capital levy) for tax years beginning on or after 1 April 2016.

Revision of NOL carryforward system: The limitation on the utilization of net operating losses (NOLs), disaster losses and consolidated NOLs (collectively, “NOLs”) was reduced from 80% to 65% in the 2015 tax reform, and would be further limited in the 2016 tax reform, as follows:

<table>
<tr><th colspan="2">After 2015 tax reform</th><th colspan="2">Proposed revisions</th></tr>
<tr><th>Tax years beginning</th><th>Utilization limit</th><th>Tax years beginning</th><th>Utilization limit</th></tr>
<tr><td>Before 1 April 2015</td><td>80%</td><td>Before 1 April 2015</td><td>80%</td></tr>
<tr><td rowspan="2">From 1 April 2015 to 31 March 2017</td><td rowspan="2">65%</td><td>From 1 April 2015 to 31 March 2016</td><td>65%</td></tr>
<tr><td>From 1 April 2016 to 31 March 2017</td><td>60%</td></tr>
<tr><td rowspan="2">On or after 1 April 2017</td><td rowspan="2">50%</td><td>From 1 April 2017 to 31 March 2018</td><td>55%</td></tr>
<tr><td>On or after 1 April 2018</td><td>50%</td></tr>
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Additionally, the extension of the NOL carryforward period from nine years to 10 years, which was announced in the 2015 tax reform, would be delayed for one year and would apply to tax years beginning on or after 1 April 2018.

The extension of the NOL-related book retention period and the statute of limitations for correction of NOLs also would be delayed to tax years beginning on or after 1 April 2018.

Other corporate tax measures:

- The depreciation system would be revised: the declining balance method no longer would be available for equipment attached to buildings, structures or buildings for mining purposes acquired on or after 1 April 2016. As a result, only the straight-line method would be available for these assets.

- Certain incentives available for machinery acquired in special economic zones would be eliminated or scaled down.
- A number of tax measures would affect corporate reorganizations, including the following:
    - Revisions to the qualification requirements for share-for-share exchanges and share transfers;
    - Clarification of the qualification requirements relating to shareholding continuity; and
    - Revisions to the qualification requirements for contributions in kind.
- Revisions would be made to implement provisions of the Japan-Taiwan tax agreement with respect to taxes on income, after procedures necessary to ensure reciprocity are completed.
- The timing for deducting certain service costs related to stock compensation would be revised. If a company provides certain restricted stock compensation for services performed by individuals in the future, the costs for such services would, in principle, be deductible for the tax year in which the restrictions are removed.

Transfer pricing proposals

The proposals include certain transfer pricing documentation reforms, in response to the OECD/G20 BEPS project final report on action 13:

Country-by-country (CbC) report: Japanese companies that are the ultimate parent company of a Japanese multinational group (MNE group) would be required to provide revenue, profit before tax, income tax paid and certain other information for each tax jurisdiction in which the MNE group operates. These reforms would apply for fiscal years beginning on or after 1 April 2016, and an English language CbC report would have to be provided no later than one year after the fiscal year end of the ultimate parent company of the MNE group. Penalties would apply if the CbC report is not filed by the due date. MNE groups with consolidated revenue of less than JPY 100 billion in the year prior to a given reporting year would be exempt from filing a CbC report for the relevant reporting year.

Master file: Companies that are considered a “constituent entity” (i.e. an entity consolidated in an MNE group under the applicable accounting standards, or that would be consolidated if it were not excluded due to size or materiality grounds) would be required to provide information about their MNE group’s organizational structure, descriptions of businesses, the financial position and certain other information in a Japanese or English language “master file,” which would have to be filed no later than one year after the fiscal year end of the ultimate parent company of the MNE group. These reforms would apply for fiscal years beginning on or after 1 April 2016. Penalties are expected to apply if the master file is not filed by the due date. MNE groups with consolidated revenue of less than JPY 100 billion in the year before a reporting year would be exempt from filing a master file for the relevant reporting year.

Local file: Japanese entities with foreign related party transactions would be required to prepare, maintain and provide a local file to the tax authorities upon request. Local files would have to include certain documents necessary to determine the arm’s length pricing of foreign related party transactions. These reforms would apply for tax filings for fiscal years beginning on or after 1 April 2017, and the documents would have to be prepared by a Japanese entity’s tax return filing date. Presumptive taxation could apply if a company fails to submit the local file or certain other materials requested by the tax authorities within a specified time period after the request. Japanese entities may be exempt from the local file requirements for specific related party transactions, if certain conditions are satisfied.

Consumption tax proposals

Introduction of multiple rate structure: A reduced rate of Japanese consumption tax (JCT) would be introduced when the JCT rate is raised from 8% to 10% on 1 April 2017. Certain supplies of food products and newspapers would be eligible for the reduced rate of 8% (which would consist of a national tax portion of 6.24% and a local tax portion of 1.76%).

To calculate input JCT and output JCT under a multiple JCT rate structure until the qualified invoice system (a tax invoice system similar to the EU-style invoicing system) comes into effect on 1 April 2021, certain transitional measures would be implemented.

Amendments to treatment of business-to-business digital services: In the 2015 tax reform, the place of supply of digital services changed from where the service supplier is located to where the head office or domicile of the recipient is located (for prior coverage, see *World Tax Advisor*, 24 July 2015). This rule would be amended in respect of business-to-business (B2B) digital services provided by foreign suppliers to branches, etc. The affected services and the related JCT implications would be as shown below, and would be applicable for transactions occurring on or after 1 January 2017.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_1.html

Services	Current	Proposed
B2B digital services purchased by a foreign branch, etc., of a Japanese enterprise that are attributable to supplies made outside Japan	Domestic transaction (services are deemed to be received by the Japanese enterprise)	Out-of-scope transaction
B2B digital services purchased by a Japanese branch, etc., of a foreign enterprise that are attributable to supplies made in Japan	Out-of-scope transaction (services are deemed to be received by the foreign enterprise)	Domestic transaction

Individual tax proposals

Clarification of definition of covered assets for exit tax: The definition of securities that are subject to the exit tax that came into effect from 1 July 2015 (for prior coverage, see *World Tax Advisor*, 11 September 2015) would be further clarified. Currently, covered individuals who fulfill the following conditions will be subject to the exit tax:
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150911_6.html

- Hold covered assets of JPY 100 million or more at the point of breaking residency (i.e. exiting Japan); and
- Have stayed in Japan for more than five years in the 10 years up to the point of breaking residency.

As part of the scope of the exit tax, financial assets that are held at the time of exit from Japan are deemed transferred at the time of exit, and unrealized capital gains on these securities and investments are taxed in Japan. The proposed amendment would exclude both qualified and nonqualified stock options from the scope of financial assets, with effect from 1 January 2016. However, stock options acquired for value still would be considered covered assets for exit tax purposes.

Expansion in scope of persons subject to employer equity reporting: Under the current employer equity reporting requirement, Japanese subsidiaries that are owned (directly or indirectly) 50% or more by a foreign entity and Japanese branches of foreign entities are required to submit an annual statement to the national tax office detailing any income realized from equity income (including cash awards, where the underlying value of the award is based on share value) for their tax-resident employees and directors. This statement is due by 31 March of the year following the year of realization.

To increase compliance in tax reporting for employees and directors leaving Japan, the reporting requirement would be expanded to include the following persons:

- Nonresident individuals who are/were employees and directors of Japanese subsidiaries that are owned (directly or indirectly) 50% or more by a foreign entity and Japanese branches of foreign entities; and
- Resident individuals who were employees and directors of Japanese subsidiaries that are owned (directly or indirectly) 50% or more by a foreign entity and Japanese branches of foreign entities.

The exact timing of the change has not yet been announced.

Comments

The corporate tax proposals continue the recent trend of reducing the statutory combined corporate income tax rate, which generally should be beneficial for taxpayers. However, the benefit would depend on a company's specific fact pattern, including the impact of the changes to the non-income based taxes and the reduction in certain tax deductions. Additionally, companies with NOL carryforwards may find it more difficult to utilize these losses in the future.

As illustrated above, the various corporate income taxes and the different bases for calculating taxable income mean that Japan's tax system remains relatively complex. In light of the corporate tax proposals, affected companies may want to consider the following:

- Assessing the impact of non-income based taxes and NOL utilization on their cash tax liability, and whether this could be improved by changes to their capital structure, etc.
- Recalculating their deferred tax assets (DTAs) using the proposed tax rates, and considering the impact of NOL restrictions on DTA recognition.

The transfer pricing proposals largely are consistent with the BEPS final report on action 13. Certain areas (e.g. the applicable penalties) are expected to be further clarified.

Japan's current consumption tax system, with its single rate and no invoicing system, is relatively simple compared to many other jurisdictions around the world. However, the JCT proposals, if enacted, would introduce complexity from both a technical and an administrative perspective, and would be a fundamental change to Japan's consumption tax system.

From an individual tax perspective, the proposed reduction in the scope of financial assets subject to exit tax could reduce the impact of exiting Japan for tax residents who have significant financial assets, especially those holding substantial employee equity awards. With the proposed expansion in the scope of persons subject to employer equity reporting, the tax authorities would have greater ability to track underreporting of (and failure to report) equity income by employees and directors who leave Japan and/or their companies. Employers should start paying closer attention to identify individuals leaving Japan who hold equity-based plans and that experience a taxable event during the year, file the report for these individuals and, where there is a personal obligation for the individual to report foreign equity income, take steps to remind employees of the tax reporting requirement, even after they leave Japan or cease to be employed.

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Chile:
New law modifies 2014 structural tax reform

A law published in Chile's official gazette on 8 February 2016 contains various amendments designed to simplify and clarify the 2014 tax reform law, which has been considered too complicated and has created uncertainty for taxpayers. The 2014 law introduced fundamental, ambitious and complex changes to the structure of the Chilean tax system, including a dual income tax system, a general anti-avoidance rule (GAAR), thin capitalization rules and a one-year repatriation incentive (for prior coverage, see *World Tax Advisor*, 8 January 2016). The modifications made by the 2016 law generally are effective as from the date of its publication, and some changes are retroactive. However the new dual tax regime with the corresponding simplifications will enter into effect on 1 January 2017.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_5.html

This article highlights some of the more important measures included in the 2016 law.

Dual income tax system

The new law sets default presumptions regarding the dual income tax regime that will apply to different types of taxpayers as from 1 January 2017, and restricts the types of taxpayers eligible for the "fully integrated regime." It also temporarily extends the full tax credit available under the "partially integrated regime" to investors in countries that have signed a tax treaty with Chile that has not entered into force as of 1 January 2017, and makes certain other modifications. The new law will not affect the tax rates established by the 2014 tax reform.

Under the existing income tax rules, which will apply until the end of 2016, business income derived by an enterprise in Chile is subject to a 24% first category income tax (FCIT), but such income also is subject to income tax on a cash basis when distributed to the shareholders, at rates that vary depending on whether the shareholder is a resident or a nonresident. Nonresident shareholders are subject to a 35% withholding tax on dividends. The tax paid by the enterprise may be used as a credit against the liability of the shareholders, resulting in an overall income tax rate of 35% on distributed profits for nonresident shareholders.

The dual income tax regime introduced by the 2014 reform provides that, starting in 2017, taxpayers subject to the FCIT may opt between two regimes:

- The fully integrated regime, under which shareholders will be taxed on their share of the profits that are accrued annually by the Chilean entity. The combined income tax rate under the regime will be 35%.
- The partially integrated regime, under which shareholders will be taxed when profits are distributed. The combined income tax rate under the regime generally will be 44.45%; however, foreign shareholders that are resident in a country that has concluded a tax treaty with Chile will be entitled to a full tax credit and thus may benefit from a combined rate of 35%.

Under the 2016 law, the types of taxpayers that may opt for the fully integrated regime include the following:

- Sole proprietorships and single-member limited liability companies;
- Companies (other than stock corporations) and joint tenancies owned exclusively by persons subject to final taxes (i.e. individuals resident in Chile and/or individuals or legal entities that are not resident in Chile);
- Companies limited by shares owned exclusively by persons subject to final taxes; and
- Branches and permanent establishments in Chile.

Stock corporations and companies organized as a special form of joint stock company (*sociedades en comandita por acciones*) will have to use the partially integrated regime, as will companies in which at least one of the owners, members, partners or shareholders is not subject to final taxes.

Certain default presumptions will apply regarding the regime applicable to a taxpayer that may opt to pay taxes under either regime. Sole proprietorships, single-member limited liability companies and qualifying companies (other than stock corporations) and joint tenancies will be taxed under the fully integrated regime, unless they expressly opt into the partially integrated regime. In contrast, companies limited by shares and branches and permanent establishments in Chile will be taxed under the partially integrated regime, unless they expressly opt into the fully integrated regime. Taxpayers that have commenced activities before 1 January 2016 must file the election to opt into a regime on a specified form during the second half of 2016 and, in the case of companies, the form must be accompanied by a public deed containing the unanimous consent of all partners/shareholders.

The new law also makes the following modifications to the fully integrated and partially integrated tax regimes:

- Under a temporary measure, shareholders in countries that have a signed tax treaty with Chile that has not entered into force on 1 January 2017 will be entitled to a full corporate tax credit (and thus to the 35% combined rate) under the partially integrated regime until 31 December 2019.
- Although companies subject to the fully integrated regime may hold participations in companies subject to the partially integrated regime, the reverse is not true, i.e. companies subject to the partially integrated regime will not be able to hold participations in companies subject to the fully integrated regime. Therefore, in the case of a sale of rights or shares to a legal entity incorporated in Chile, the company whose rights or shares are sold will have to start paying taxes under the partially integrated regime starting from the year following the year in which the sale took place. A penalty will be imposed on the new partner or shareholder, in the form of a 40% tax rate on dividends distributed or income accrued in the year in which the partner/shareholder invests in the entity.
- The tax records that taxpayers must retain are simplified under both the fully integrated regime and the partially integrated regime.
- The rules for the imputation of dividends are modified:
    - Under the fully integrated regime, the imputation of dividend distributions will be made at the end of each commercial year.
    - Under the partially integrated regime, dividend distributions first will be imputed to the balance of profits recorded from previous years, and then will be imputed to the balance recorded at the current year end. The income subject to tax will be determined based on the tax basis equity rather than the financial equity, which will prevent the inclusion of components of equity that do not represent profits (such as nontaxable profits or revenues that are exempt from final taxes) before the distribution of other items.

GAAR

The 2014 tax reform introduced a GAAR that applies to tax-motivated transactions executed or concluded as from 30 September 2015 and that allows the Chilean tax authorities to deny tax benefits that arise as a result of abusive or aggressive tax planning.

The 2016 law clarifies the scope of the GAAR, i.e. the GAAR may not be applied to facts, acts, transactions, structures, etc. carried out or concluded before 30 September 2015, even if the relevant item continues to produce effects after that date. However, the GAAR will become applicable if the characteristics or elements that determine the tax effects of the transactions are modified after the GAAR effective date; in that case, the GAAR may be applied to the effects that arise as a result of the modification, to the extent the effects constitute abusive or artificial transactions.

The new law also broadens the range of taxpayers that may request a ruling from the tax authorities on the application of the GAAR to a particular transaction, to include any person (previously, only taxpayers with a direct personal interest in the transaction could apply for a ruling on the application of the GAAR). The tax authorities will publish the rulings on their web site. However, since a direct interest in an actual case no longer is required for a taxpayer to request a ruling, a ruling issued will not be binding on the taxpayer or the tax authorities.

Thin capitalization rules

The following changes are made to the thin capitalization rules as from 1 January 2016:

- The application of the rules is extended to loans that benefit from a reduced withholding tax rate on interest under a tax treaty.
- Short-term liabilities (90 days or less, including extensions) with unrelated parties will be excluded from the computation of the total debt (e.g. trade receivables).
- The rules will not apply to debtors whose activities are qualified as financial activities by the Treasury Department, provided 90% or more of their assets relate to loans or leases with a purchase option granted to unrelated parties for at least 330 days per year (this change does not affect the exemption from the thin capitalization rules that applies to banks, insurance companies and certain other institutions). Indebtedness with related and unrelated parties may not exceed 120% of those assets. Chilean entities that are affiliates of entities resident in a listed tax haven or in a jurisdiction with a preferential tax regime will be not be permitted to benefit from this exemption.

Repatriation and other incentives

Under the new law, the one-year window (for calendar year 2015) for the repatriation of retained earnings at a reduced rate is extended to calendar year 2016, with modifications to the taxable base that enhance the benefits of the regime. The repatriation incentive permits a Chilean entity to pay a substitute tax of 32% (three percentage points lower than the 35% withholding tax otherwise applicable to distributions to nonresidents). Amounts remitted abroad that have been subject to the substitute tax will not be subject to any withholding at the time of the remittance. In addition, the profits that have been subject to the substitute tax may be distributed to shareholders at any time free of withholding tax, without the need to follow any order of imputation (normally, profits subject to withholding must be distributed first).

The 2016 law also repeals a provision that established the timely filing of a sworn declaration with the tax authorities as a requirement for the application of the additional withholding income tax exemption for certain payments abroad (relating to commissions, freight and international telecommunications). This modification is retroactive as from 1 January 2015.

The 2014 tax reform law provided an incentive for medium-sized companies (companies with sales that do not exceed an average of approximately USD 3.5 million in the three prior calendar years) that reinvest profits in the company, in the form of a deduction from the corporate income tax base. The amount of the deduction corresponded to 20% of the reinvested net taxable income in the case of taxpayers subject to the fully integrated regime, and 50% of the reinvested net taxable income in the case of taxpayers subject to the partially integrated regime. The new law increases the deduction for taxpayers subject to the fully integrated regime to 50% of the reinvested net taxable income. The cap on the deduction at a maximum of UF (an inflation-adjusted monetary unit) 4,000 (approximately USD 145,000) remains unchanged under both regimes.

Other changes

- The foreign tax credit rules are simplified and enhanced, and the benefit of the foreign tax credit is extended to tax paid by a subsidiary in a third country on income that flows up to Chile, provided Chile has concluded a tax treaty or exchange of information agreement with the relevant country.
- Changes to the VAT rules include clarification of when certain transactions will be exempt from VAT and when a VAT credit will apply.

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Colombia:
Expert commission submits final report on structural tax reform

Colombia's Commission for Tax Equality and Competitiveness submitted its third and final report to the government with its recommendations for a structural reform of the tax system on 24 December 2015. The commission, whose mandate is to examine the existing tax system and to propose necessary changes, issued its first and second reports on 4 June 2015 and 15 September 2015, respectively (for prior coverage, see *World Tax Advisor*, 24 July 2015 and *World Tax Advisor*, 25 September 2015). The commission's final recommendations now must be analyzed by the government, so that the government can draft a tax reform bill to present to the congress.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_5.html
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150925_ib.html

The most important findings and recommendations in the commission's report are as follows:

- A new tax on business profits should be introduced to replace the income tax, the income tax for equality (CREE) and the CREE surtax, at a rate of between 30% and 35%. The income tax rate currently is 25%, with a 9% CREE levied in addition to corporate income tax and a 6% CREE surcharge levied on net income exceeding COP 800 million.
- The presumptive income tax rate should be increased from 3% to 4%. The presumptive minimum income is calculated annually for income tax and CREE purposes on the taxpayer's net worth held in the year immediately preceding the taxable year.
- The threshold at which individuals should pay income tax should be reduced from the current COP 32 million to COP 1.5 million.

- Dividends should be deemed to be ordinary income subject to taxation; currently, dividends taxed at the corporate level are not taxed again in the hands of the shareholders.
- The existing special tax regime for nonprofit entities is inefficient and should be modified by introducing greater controls and more stringent conditions to qualify for the regime.
- The standard VAT rate should be increased from 16% to 19%, and the rules relating to supplies of zero-rated or exempt goods should be modified.

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Ireland:
Country-by-country reporting regulations issued

On 23 December 2015, the Irish Revenue published regulations (Taxes (Country-by-Country Reporting) Regulations 2015) relating to the implementation of country-by-country (CbC) reporting in Ireland, which applies as from 1 January 2016.

The Finance Act 2015 (released on 23 October 2015 and enacted into law on 22 December 2015) contains provisions that give effect to CbC reporting, in accordance with action 13 of the OECD base erosion and profit shifting (BEPS) project (for prior coverage, see Ireland tax alert, 13 October 2015). The OECD's final report on action 13 contains revised standards for transfer pricing documentation that consist of the following:
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-ireland-13-october-2015.pdf

- A CbC reporting template that includes information such as revenue, profits, income tax paid and taxes accrued;
- A master file that provides the tax authorities with high-level information about a group's global business operations and transfer pricing policies; and
- A specific local file for each jurisdiction that provides the local tax authorities with information on material related party transactions, as well as the basis for a company's transfer pricing policies relating to such transactions.

For accounting periods commencing on or after 1 January 2016, the CbC reporting template requirement applies to Irish-parented multinational groups with annual consolidated group revenue in excess of EUR 750 million. The deadline to file the CbC reporting template is 12 months from the end of the accounting period to which the report relates (e.g. 31 December 2017 for the 31 December 2016 financial year).

Summary of regulations

The regulations outline the approach for CbC reporting for Irish companies where the primary filing mechanism by the ultimate parent company is not in place.

Under the action 13 primary filing mechanism, a CbC report should be filed in the jurisdiction where the ultimate parent entity of a multinational group is resident, and the information will be shared with other tax authorities through automatic exchange protocols, such as those contained in tax treaties and tax information exchange agreements. Where the law of the ultimate parent entity's country does not require that entity to file a CbC report, action 13 provides for a secondary filing mechanism, under which the multinational group can designate a group company to act as a "surrogate parent" entity and file on behalf of the entire group. If it is not possible for the ultimate parent entity or a surrogate parent entity to file a CbC report, action 13 includes guidance on local country filing as a backup mechanism. The new Irish regulations provide additional information on surrogate parent entity filing and the local filing of a CbC report.

Local filing

Section 4 of the regulations outlines provisions for the local filing of a CbC report.

A local entity that is tax resident in Ireland and that is not the ultimate parent company or a surrogate parent company of the multinational group is defined as a "domestic constituent entity" for purposes of the regulations. This entity will be required to file an "equivalent CbC report" with the Irish Revenue if:

- The ultimate parent company of a multinational group is not required to file a CbC report in its home country;
- The home country of the ultimate parent company has not concluded an agreement for the automatic exchange of such reports;
- The home country has such an agreement, but has suspended the automatic exchange of reports or otherwise has failed to exchange the reports automatically; or
- The nominated surrogate parent in the multinational group does not file a CbC report with similar conditions attached.

An equivalent CbC report will be considered a CbC report only to the extent the information required to be included in the report is within the custody or possession of the Irish domestic entity, or that entity has the power to obtain such information.

The equivalent CbC report must be submitted to the Irish Revenue no later than 12 months from the end of the accounting period to which the report relates (e.g. 31 December 2017 for the 31 December 2016 financial year).

Surrogate parent filing

Section 5 of the regulations outlines provisions for a nominated surrogate parent entity of a multinational group to file a CbC report. A local country filing, as detailed in section 4 of the regulations, is not required to be filed where this approach is adopted. The CbC report must be provided to the Irish Revenue no later than 12 months after the end of the accounting period to which the report relates (e.g. 31 December 2017 for the 31 December 2016 financial year).

Comments

Although the overall approach of the regulations is in line with action 13 of the BEPS initiative, there is a key difference with respect to the filing requirements for a local constituent entity. Specifically, the regulations introduce the term “equivalent CbC report,” which is not included in action 13. This report requires only information that the Irish constituent entity has within its possession or has the power to obtain to be included, and thus it may not include relevant information for other group companies that are subsidiaries of the Irish constituent entity. To the extent the local filing takes place in Ireland, consideration should be given to the information that the Irish entity has access to, as well as to the legal and confidentiality issues involved in using this information. It is unclear which entities in the multinational group may be included in the equivalent CbC report, and guidance on how this approach will operate in practice currently is lacking.

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Luxembourg: Tax law changes include expanded tax consolidation and new anti-abuse rules

Changes to Luxembourg’s tax rules approved by the parliament on 18 December 2015 include changes to the scope of the tax consolidation regime, the implementation of the amended EU parent-subsidiary directive (PSD), the repeal of the intellectual property (IP) box regime, the abolition of the minimum corporate income tax, the revision of the net worth tax (NWT) and the expansion of the deferred tax payment regime for exit taxation.

Tax consolidation regime

New measures applicable as from fiscal year 2015 have extended the scope of “vertical” tax consolidation (which already was permitted) and have introduced “horizontal” tax consolidation.

Under the vertical tax consolidation regime, the results of a consolidated group of companies are combined at the level of the Luxembourg resident parent company or Luxembourg permanent establishment (PE) of a nonresident parent company. The new measures allow a Luxembourg PE of a nonresident company subject to a tax equivalent to the Luxembourg corporate income tax to be part of the tax consolidated group as an integrated entity, subject to the conditions under the Luxembourg income tax law.

Horizontal tax consolidation is introduced to comply with a 2014 decision of the Court of Justice of the European Union, in which the court held that a fiscal unity regime was incompatible with the EU freedom of establishment principle where two “sister” companies located in the same EU member state and held by an EU parent company were prevented from forming a horizontal tax consolidation.

Under the new horizontal tax consolidation regime, sister companies with the same direct or indirect EU parent company are permitted to form a tax consolidation without the parent company being part of the consolidation. In such a case, the results of the consolidated companies are grouped and reported by a selected company in the group, not at the level of the nonconsolidated direct or indirect parent (e.g. where a nonconsolidated parent company holds two subsidiary companies (LuxCo 1 and LuxCo 2) that each hold one company (LuxCo 3 and LuxCo 4), the results of the group will be reported at the level of LuxCo 1 or LuxCo 2).

The following requirements must be met to qualify for horizontal consolidation:

- The nonconsolidating parent company must be one of the following:
  - A fully taxable Luxembourg resident company;
  - A company resident in a European Economic Area (EEA) member state and subject to a tax equivalent to the Luxembourg corporate income tax;
  - A Luxembourg PE of a nonresident company subject to a tax equivalent to the Luxembourg corporate income tax; or
  - An EEA PE of a nonresident company, if both are subject to a tax equivalent to the Luxembourg corporate income tax.
- The nonconsolidating parent company must hold, directly or indirectly, at least 95% of the consolidating companies for a minimum period of five years.
- A written request to consolidate must be submitted to the tax authorities, and the nonconsolidating parent company must be included in the request to ensure that it satisfies the five-year holding period condition.

A company cannot simultaneously form part of more than one tax consolidated group. Each member of a tax consolidated group is accountable for the tax liabilities, interest on late payments, charges and penalties of the consolidating parent company or consolidating subsidiary company.

Amended EU PSD

The general goal of the PSD is to prevent the double taxation of profit distributions between EU subsidiaries and their EU parent companies; this is achieved by granting a withholding tax and an income tax exemption for distributions of profits by qualifying subsidiaries to their parent companies. However, the application of the directive may have led to situations where dividends were not taxed in either jurisdiction. To tackle such abuse, the European Council adopted two amendments to the PSD, which were required to be implemented into the domestic laws of the EU member states by 31 December 2015:

- Anti-hybrid loan mismatch provision: To prevent double nontaxation, a cross-border group of EU parent and subsidiary companies using hybrid loan arrangements will be denied a tax exemption for payments received in the member state in which the parent company is resident if the payments are deductible in the member state in which the subsidiary is resident; and

- General anti-abuse rule (GAAR): To prevent misuse of the PSD and to ensure greater consistency in its application in different member states, the tax authorities are allowed to ignore artificial arrangements used for tax purposes. The application of the GAAR should be proportionate and should serve the specific purpose of tackling an arrangement, or a series of arrangements, that are not put into place for valid commercial reasons that reflect economic reality.

To implement these changes, certain provisions of Luxembourg's income tax law (e.g. the participation exemption regime for dividends) and municipal business tax law have been partially amended. The participation exemption for capital gains and the NWT are not affected by these modifications.

IP regime

Under Luxembourg's current IP regime, 80% of the income derived from, or gains on the disposal of, IP rights acquired or created by a Luxembourg company or PE after 31 December 2007 is exempt from income tax. This existing IP regime is repealed as from 1 July 2016 for corporate income tax/municipal business tax purposes, and as from 1 January 2017 for NWT purposes.

The repeal of the regime is in line with the general agreement reached for patent box regimes, under which IP regimes must comply with the new "modified nexus approach" provided in the OECD's final report on action 5 under the base erosion and profit shifting (BEPS) project. The nexus approach is based on a substantial activity requirement, i.e. there must be a direct nexus between the income receiving benefits and the activity contributing to that income.

"Grandfathering" rules (consistent with BEPS action 5) will apply. Taxpayers benefitting from the current Luxembourg IP regime that create, acquire or definitively improve qualifying IP rights before 1 July 2016 may continue to benefit from the regime until 30 June 2021. New entrants also may be admitted to the existing regime until 30 June 2016 if certain conditions are satisfied.

A replacement IP regime is expected to be presented in the near future.

Other changes

Minimum corporate income tax and NWT: The minimum corporate income tax, introduced in 2011, is abolished to bring Luxembourg in line with EU law (based on a letter from the European Commission in which the commission stated that it considered the minimum corporate income tax not to be fully in line with EU law) and replaced by a minimum NWT as from tax year 2016.

The new measures reduce the NWT rate that applies to certain taxpayers (previously 0.5% levied annually on the total taxable assets of Luxembourg companies) and introduces a minimum NWT. As from 1 January 2016, the NWT rate depends on a company's total net assets:

- A rate of 0.5% applies on total net assets up to EUR 500 million (unchanged from the prior rule); and
- A rate of 0.05% applies on total net assets exceeding EUR 500 million.

The NWT calculated at these rates is subject to the minimum NWT requirements. Luxembourg collective entities that own qualifying holding and financing assets exceeding 90% of their total balance sheet, and whose total balance sheet exceeds EUR 350,000, are subject to a minimum NWT of EUR 3,210; the minimum NWT is EUR 535 where the total balance sheet is up to EUR 350,000. Other Luxembourg companies are subject to a progressive minimum NWT, depending on the total balance sheet asset value, with the tax ranging from EUR 535 (for a total balance sheet up to EUR 350,000) to EUR 32,100 (for a total balance sheet exceeding EUR 20 million). The aggregate amount of NWT due by a tax consolidated group is limited to EUR 32,100.

Exit tax: A regime introduced in 2014 allows a resident company that moves its statutory seat and place of central administration to another EEA member state to defer the payment of tax on any unrealized gains on assets until the gains actually are realized, provided certain conditions are satisfied. The new measures expand the scope of the deferred tax payment regime to include transfers to non-EEA member states under the same requirements as the existing regime, provided an international agreement (bilateral or multilateral) that includes an OECD-compliant clause on the exchange of information on request is in force between Luxembourg and the relevant state.

The same regime applies to mergers and demergers. Additionally, if the Luxembourg company transfers its statutory seat to another eligible state and later transfers its seat to an eligible third state, the deferral of the tax payment still will apply, provided all conditions continue to be satisfied and the company commits to pay the tax due when required in the future.

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Mexico:
Extension granted to nonresidents operating under maquiladora shelter regime

Mexico's Miscellaneous Tax Rules for 2016, which were published in the official gazette on 23 December 2015 and apply as from 1 January 2016, include changes to the rules governing nonresidents that carry out operations in Mexico under the maquiladora "shelter regime." Specifically, the miscellaneous rules contain an option for such nonresidents to elect for an additional four-year period to operate in Mexico under the shelter regime without creating a permanent establishment (PE) in Mexico, provided certain requirements are met.

Maquiladoras are foreign-owned Mexican companies that process, transform, assemble or repair imported materials, parts and components into finished goods that subsequently will be exported out of the country. The regime (now governed by the "IMMEX" decree), designed to promote exports and encourage foreign investment, grants certain tax benefits to qualifying maquiladoras and provides protection for the foreign parent company from exposure to Mexican tax (i.e. protection from PE status) as a result of its relationship with the maquiladora.

Changes to the maquila regime over the years have resulted in a more restrictive definition of a maquila, and the 2014 tax reform introduced stricter rules to qualify for benefits, including rules for nonresidents performing manufacturing activities in Mexico through a third party called a "shelter maquila." The maquiladora shelter regime allows nonresidents to provide machinery and equipment for manufacturing services to unrelated parties under the IMMEX program without creating a PE for the foreign parent in Mexico for a four-year period (thereafter, the nonresident will have to register a PE in the country) (for prior coverage, see *World Tax Advisor*, 13 December 2013 and Mexico tax alert, 12 December 2013). The new miscellaneous tax rules allow for an additional four-year extension before permanent registration is required.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/131213_1.html
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-mexico-121213.pdf

The following requirements must be met to qualify for the additional four-year period:

- The initial four-year period has expired.
- The shelter maquiladora submits, on behalf of the nonresident parent company, a notice requesting the extension by 31 December 2016, and it assumes joint responsibility for any tax liability of the nonresident that arises as a result of the shelter activities.
- The shelter maintains separate records of each of the shelter activities it carries out on behalf of the nonresident.
- The shelter calculates the "safe harbor" using the traditional formula for maquiladoras (i.e. the higher of 6.5% of costs and expenses or 6.9% of all assets), and includes in the calculation the value of the inventory and machinery. It must pay a 30% income tax on the highest taxable income derived from the safe harbor calculation, which will be deemed to be paid on behalf of the nonresident. The shelter must provide a receipt evidencing payment of the tax.
- The shelter complies with new reporting obligations, including obtaining a document issued by an international tax firm that certifies the costs and expenses incurred in manufacturing, as well as the value of the assets and inventory used in the manufacturing process.
- The shelter obtains an IMMEX VAT certification at the highest rank possible (i.e. an AAA rank, which demonstrates compliance with tax obligations and that certain other requirements have been met).
- The shelter is fully in compliance with its own maquila tax obligations (e.g. paying tax and filing information returns).

Failure to comply with any of the requirements above will result in the forfeiture of the benefits relating to PE status.

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In brief

Cyprus: Amendments to the tax law that were published in the government gazette on 17 December 2015 aim to improve the competitiveness of Cyprus in attracting foreign investment, harmonize the domestic tax laws with EU legislation and introduce anti-avoidance measures. The group relief rules for taxable losses are expanded to allow a company that is resident in another EU member state to surrender tax losses to a Cyprus resident company, provided the EU company has exhausted all possibilities of carrying forward or surrendering its losses in its state of residence or in another EU member state where an intermediary holding company is based (previously, tax losses could be surrendered only to another Cyprus resident company). Anti-hybrid and general anti-avoidance measures are introduced to implement the amended EU parent-subsidiary directive into Cyprus' domestic law.

Ukraine: Changes to the tax law that became effective on 1 January 2016 affect Ukraine resident employed persons, as well as nonresidents assigned to work in Ukraine. The personal tax rate applied to the total amount of the taxpayer's taxable income and the tax rate on passive income (dividends on shares and/or investment certificates paid by mutual investment institutions, interest, etc.) both reduced from 20% to 18%.

United States: The president released a fiscal year 2017 budget package on 9 February 2016. Similar to his previous budget packages, the new package proposes tax increases primarily targeting multinational corporations, the fossil fuel industry, financial services companies and high-income individuals, to pay for priorities such as tax relief for small businesses and lower- and middle-class individuals. Congressional taxwriters are expected to provide their reactions through hearings scheduled on the proposals.

United States: The Internal Revenue Service (IRS) released a draft Form W-8BEN-E, "Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)," and accompanying instructions on 15 January 2016, which would make several material updates to the June 2014 version of the form. Foreign entities use the form to document their status for purposes of certain US tax provisions, and provide the form to their withholding agents. As a result of the numerous changes and additions to the form, the IRS included a cautionary cover letter emphasizing that the revisions are in draft form and changes are expected. Additionally, the cover letter notes that comments are welcome and will be carefully considered.

BEPS corner

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

European Union: The European Commission has released an anti-tax avoidance package that includes a "BEPS-type" directive. See the article in this issue.

Ireland: The Irish Revenue has published regulations relating to the implementation of country-by-country reporting. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_5.html

Japan: Proposed transfer pricing documentation rules would follow the approach contained in the OECD's final report on BEPS action 13. See the Japan global tax alert, 27 January 2016 and the article in this issue.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-16-002-27-january-2016.pdf
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_2.html

Jersey: On 22 January 2016, the government issued a consultation document inviting comments on the proposed introduction of a country-by-country (CbC) reporting obligation in accordance with action 13 of the BEPS project. The UK published draft regulations in October 2015 that would implement the UK's regime for CbC reporting under the BEPS project; the consultation aims to seek industry views on aspects of the UK regulations that would be included in Jersey's regulations, applicable to accounting periods that begin on or after 1 January 2017.

Luxembourg: The parliament has approved modifications to the intellectual property box regime that are in line with the OECD's final report on BEPS action 5. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_6.html

OECD: On 27 January 2016, 31 countries signed the Multilateral Competent Authority Agreement (MCAA), an international framework that will allow the automatic exchange of information between the tax authorities of signatory jurisdictions. The MCAA, which is designed to further improve transparency by multinationals, should enable consistent and rapid implementation of new transfer pricing reporting standards developed under action 13 of the BEPS action plan (specifically, CbC reporting), and should ensure that tax administrations obtain a complete understanding of the way multinationals structure their operations, while also ensuring that the confidentiality of such information is safeguarded. The countries participating in the first wave are as follows: Australia, Austria, Belgium, Chile, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, Poland, Portugal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland and the UK.

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Japan

Proposed adoption of BEPS action 13 includes new prescriptive transfer pricing documentation rules

On 24 December 2015, the cabinet approved the 2016 tax reform proposal, which includes new transfer pricing documentation rules that follow the three-tier documentation approach contained in the OECD's final report on BEPS action 13.

Issue date: 27 January 2016

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-16-002-27-january-2016.pdf

United States

PATH Act makes major changes to FIRPTA

The US Protecting Americans from Tax Hikes Act, enacted on 18 December 2015, makes major changes to the FIRPTA and FIRPTA withholding tax rules. Among other changes, US real property interests (USRPIs) held by "qualified foreign pension funds" now are exempt from FIRPTA; the threshold of publicly traded REIT stock that a person can hold without the stock being treated as a USRPI increases to 10%; the general withholding tax rate on the proceeds of dispositions and distributions of USRPIs increases to 15%; and the "cleansing rule" is repealed for REITs and RICs.

Issue date: 29 January 2016

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-29-january-2016.pdf

Have a question?
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