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India's 2016 budget includes BEPS-related measures

The Indian budget for financial year 2016-2017 (1 April 2016 to 31 March 2017), including over 110 proposed amendments to the direct tax law, was presented in parliament on 29 February 2016. Notably, the budget contains various tax proposals relating to the OECD's base erosion and profit shifting (BEPS) project, including the introduction of country-by-country (CbC) reporting and transfer pricing documentation, a patent box regime and an equalization levy on specified digital transactions. In addition, the budget provides that the government will continue working toward the introduction of a single nationwide goods and services tax. The proposed measures generally would apply as from 1 April 2016, unless otherwise noted. The budget is expected to be enacted in May 2016, once it clears the lower house of parliament and is approved by the president.

The major direct tax proposals that would affect companies are summarized below.

BEPS proposals

The budget contains proposals that effectively would implement three of the 15 BEPS actions: action 13 (transfer pricing documentation), action 5 (countering harmful tax practices) and action 1 (addressing the challenges of the digital economy).

CbC reporting: CbC reporting under action 13 would be introduced for an international group (a group that operates in two or more jurisdictions) whose revenue exceeds EUR 750 million (or the equivalent in local currency). The proposals include the introduction of a master file.

If the parent entity of an international group is resident in India, it would be required to furnish the CbC report for the group by the due date for filing the income tax return for the relevant fiscal year (e.g. an Indian parent company would be required to furnish the first CbC report by 30 November 2017 for fiscal year 2016-2017).

An Indian entity belonging to an international group with an overseas parent would be required to furnish the CbC report to the prescribed authority if the parent entity is resident in a country with which India does not have an arrangement for the exchange of the CbC report, or if there is a failure of the country to exchange the information with India even though there is an agreement.

The CbC report would have to be furnished in a prescribed manner and form and would have to contain (in line with the OECD template) aggregate information in respect of revenue, profit and losses before income tax, the amount of income tax paid and accrued, details of capital, accumulated earnings, the number of employees and tangible assets (other than cash or cash equivalents) in respect of each country or territory, as well as details on the residence, main business activities, etc. of each entity in the group.

Penalties would apply for failure to comply with the CbC reporting requirements.

Patent box: A patent box regime would be introduced, with a view to making India a global research and development (R&D) hub, under which a concessional tax rate of 10% would apply to gross royalty income earned from patents developed and registered in India by a person resident in India. The regime would be in line with the “nexus approach” under action 5, so the beneficial rate would not apply to Indian companies whose patents are registered abroad. The 18.5% minimum alternate tax (MAT) would not be levied on such royalty income.

The patent box regime primarily would benefit companies in the life sciences and technology sector (but not software companies, since software is registered as a copyright in India).

Digital economy: An “equalization levy” of 6% would be introduced in the form of a withholding tax on specified income received by a nonresident without a permanent establishment in India from digital transactions relating to online advertising (with an exemption for low-value supplies). Such income would be exempt from any further tax in the hands of the nonresident. The tax board would have the authority to expand the list of services subject to the 6% levy.

General anti-avoidance rule

The 2015 budget deferred the implementation of the general anti-avoidance rule (GAAR) for two years, so the government could review the GAAR and ensure the rules were consistent with the BEPS output (for prior coverage, see *World Tax Advisor*, 13 March 2015). The GAAR would grant the Indian tax authorities broad discretion to recharacterize a transaction aimed at avoiding taxation or that lacks commercial substance, and to ignore an arrangement carried out mainly for the purpose of avoiding tax and to treat it for tax purposes as if the structure did not exist, e.g. by denying a deduction, denying tax treaty benefits, etc. The only reference to the GAAR in the 2016 budget is a statement that it would be effective as from 1 April 2017, which indicates that there may be no further extension before the GAAR is implemented.

URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150313_1.html

With the release of the BEPS final reports, the design of the GAAR may need a re-think. If the rules are to be introduced, it is hoped that guidance on their implementation and interaction with other specific anti-avoidance rules will be provided well before 1 April 2017.

Other proposals affecting companies

- It was announced in the 2015 budget that the corporate tax rate would be reduced from 30% to 25% over a four-year period, although this would be accompanied by base-broadening measures that include the gradual rationalization and elimination of certain tax exemptions and incentives (for prior coverage, see *World Tax Advisor*, 13 March 2015). The tax rate for foreign companies, however, would remain unchanged at 40% (excluding the surcharge and cess). The 2016 budget contains the first step in the rate reduction: the corporate tax rate for smaller companies, i.e. companies whose turnover/gross receipts does not exceed INR 50 million, would be reduced from 30% to 29% (plus the surcharge and cess).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150313_1.html
- Manufacturing companies set up on or after 1 March 2016 would be eligible for a reduced 25% rate (plus the surcharge and cess) if the company does not claim any tax breaks (e.g. investment allowances, accelerated depreciation) or profit-linked or investment-linked deductions.
- Certain new startup businesses set up before 1 April 2019 would be eligible for a tax holiday if certain conditions are satisfied.
- The top tax depreciation rate would be limited to 40% as from 1 April 2017.
- The 20% tax on the buyback of shares would apply to buybacks of unlisted shares undertaken by a company in accordance with any relevant law (currently, the tax is levied only on buybacks undertaken in accordance with section 77A of the Companies Act, 1956). The method of computing the net amount on which the 20% tax is levied also would be amended to address situations where tax might be avoided under tax-neutral reorganization schemes.
- Long-term capital gains arising from a transfer of shares of a private company in which the public has no substantial interest would be taxed at 10% (reduced from the current rate of 20%).
- The holding period for unlisted shares to be regarded as a long-term capital asset would be reduced to two years (from three years).

- Rupee-denominated bonds would be exempt from capital gains tax in the hands of a nonresident investor to the extent of gains arising due to appreciation in the rupee between the date of a bond's issue and the date of its redemption.
- An exemption from dividend distribution tax would be provided for distributions to trusts (REITs and InvITs) if certain conditions are fulfilled.
- The applicability of the MAT to foreign companies would be clarified with effect from 1 April 2001, i.e. the MAT would not apply to a foreign company that is a resident of a country that has concluded a tax treaty with India if the company does not have a permanent establishment in India, nor would it apply to a foreign company in a nontreaty country if the company is not required to register under India's corporate law relating to foreign companies (which requires Indian representative or branch offices of a foreign company to register and obtain a certificate).
- The "place of effective management" (POEM) test for residence, which is to replace the current "control and management" test, would be deferred by one year to 1 April 2017. (POEM is the place where key management and commercial decisions necessary for the conduct of the business of an entity as a whole are made, in substance.) A transition rule would be provided for foreign companies that previously have not been assessed to tax in India.

Compliance-related proposals

- A dispute resolution scheme has been proposed for tax demands arising out of retroactive amendments to the tax law. Under the scheme, taxpayers could voluntarily pay the relevant tax, and interest and penalties would be waived.
- The tax authorities would grant a stay of demand once the taxpayer pays 15% of the disputed demand where an appeal is pending before the Commissioner (Appeals), subject to certain conditions.
- The requirement for nonresidents to obtain a permanent account number (PAN) to avoid a higher rate of withholding tax (the higher of the applicable tax treaty rate or 20%) would be eliminated for certain foreign companies, subject to certain conditions. The budget does not provide any clarity with respect to the obligation of nonresidents to file a tax return in India (which requires a PAN).
- The scope of paperless assessments would be expanded and notices and documents could be issued in electronic form.
- Penalty provisions would be rationalized and penalties would be set at 50% of tax for underreporting of income and 200% of tax for misreporting of income. Penalties would be eliminated in certain cases where the taxes due are paid and the taxpayer does not file an appeal.
- A voluntary disclosure of income scheme would be introduced, under which taxpayers could declare previously undisclosed income and pay a 45% tax (with no further interest and penalties levied). Disclosures could be made between 1 June 2016 and 30 September 2016.
- The time limit for a transfer pricing audit would be extended beyond the limitation period to allow the transfer pricing officer at least 60 days to issue a transfer pricing audit order. This provision would apply as from 1 June 2016.

Australia: New requirements announced to ensure multinational investors pay tax on earnings

The treasurer of Australia announced on 22 February 2016 that the Turnbull government will apply new requirements to multinational companies investing in Australia, to ensure that “companies operating in Australia pay tax on their Australian earnings.” The requirements will be imposed through additional criteria the government will consider when assessing a foreign person’s application to invest in Australia, effective immediately. The treasurer approved the first foreign investment application subject to the new rules on 23 February 2016.

Broadly, multinational companies will be required to comply with Australian tax law, and to provide information to the Australian Taxation Office (ATO) as directed, with respect to investments that require an application to the Foreign Investment Review Board (FIRB). Multinational companies also will be required to advise the ATO if they enter into transactions with nonresidents that could be subject to Australia’s transfer pricing or tax anti-avoidance measures.

The new requirements will be imposed through the specific expansion of the “national interest” considerations that the government considers when assessing an application by a foreign person to invest in Australia. In particular:

- The application must comply with Australia’s tax laws relating to the investment, or any transactions, operations or assets connected to the investment;
- The applicant must use its best efforts to ensure its associates comply with Australia’s tax laws relating to the investment, or any transactions, operations or assets connected to the investment;
- The applicant must provide, and use its best efforts to ensure its associates provide, any documents or information requested by the ATO in connection with the application or the potential application of Australia’s tax laws within the timeframe specified by the ATO;
- The applicant must notify, and use its best efforts to ensure its associates notify, the ATO if it enters into any material transactions or other dealings in connection with the investment to which Australia’s transfer pricing rules or anti-avoidance rules potentially could apply;
- The applicant must pay, and use its best efforts to ensure its associates pay, any outstanding tax debt due and payable at the time of the proposed investment; and
- The applicant must provide an annual report to the FIRB on compliance with these conditions.

If the government identifies a significant tax risk when assessing a foreign investment application, the investor may be required to enter into an advance pricing arrangement with the ATO, seek a ruling from the ATO or comply with other ATO directions. A breach of such conditions may result in prosecution, fines and potential forced divestment of the asset.

These changes add to the existing framework for approval of foreign investment that the government recently enacted and to the actions it has taken to strengthen Australia's foreign investment rules, including transferring the compliance function to the ATO and introducing new and stricter penalties for breaches of the rules.

Comments

The new measures are consistent with recent comments from the Commissioner of Taxation emphasizing that large multinationals must pay their fair share of tax.

The changes are likely to have a significant impact on inbound transactions. Foreign investors should ensure that they understand Australia's regulatory environment and tax rules, and that they are transparent with the ATO in relation to proposed investments in Australia.

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China: Final phase of VAT reform to be implemented

China's Premier Li Ke Qiang announced during the Fourth Session of the 12th National People's Congress on 5 March 2016 that the final phase of the country's value added tax (VAT) reform will be rolled out starting from 1 May 2016. As from that date, property developers, and construction, financial and consumer services, will fall within the scope of VAT and the reform project will be complete.

The VAT reform project, officially launched as a trial program in Shanghai in 2012, aims to consolidate the long-standing dual indirect tax system: VAT historically was levied on the supply of goods and the provision of repair, processing and replacement services at a rate of 13% or 17%, and business tax (BT) was levied on the provision of other services and the transfer of intangibles and real property at rates of 3% to 20%. The coexistence of the VAT and BT systems created a number of issues, such as double (or multiple) taxation because an input tax credit was available for VAT payers, while no such mechanism was available for BT payers. The reform aims to resolve the double taxation issue and to foster the development of specified modern service industries by gradually transitioning these industries from liability to BT to liability to VAT.

The government has issued a series of circulars and bulletins over the past four years that gradually has expanded the reform, both in scope and geographically (and, more recently, guidance that simplifies the input VAT verification process). To date, transportation, postal

services, telecommunications and certain modern service sectors such as information technology (IT), and film and television, have transitioned from BT to VAT. The only sectors that remain subject to BT are property developers and the construction, financial and consumer services sectors.

Next steps

The Ministry of Finance and the State Administration of Taxation (SAT) are expected to issue comprehensive rules on property developers, and the construction, financial and consumer services sectors, in the near future. Although details have not been made public, the following comments made by Premier Li Ke Qiang are relevant:

- The inclusion of property developers and construction, financial and consumer services in the VAT reform on 1 May 2016 should mean that VAT will apply to these sectors as from that date. There had been considerable speculation about the effective date for these sectors, in particular, in light of guidance issued by the Ministry of Housing and Urban-Rural Development on 19 February 2016 urging local construction authorities to complete all construction project pricing adjustments before the end of April 2016.
- Input VAT incurred by general taxpayers on newly acquired immovable property will be fully deductible, which should be welcomed by real estate enterprises that have been concerned about their ability to pass VAT on to their business customers.
- The new rules aim to ensure that there is no increase of the VAT burden for taxpayers.

Since the VAT reform efforts were launched in 2012, there have been many debates and discussions on technical issues relating to the design of the reform, especially with respect to the real estate and financial services sectors. Since the goal is to reduce the tax burden on businesses, it is possible that the BT treatment will be transitioned into the VAT rules, at least initially, so that a service that currently is exempt from BT may be exempt from VAT under the new rules. The applicable VAT rates likely will be 11% for the construction sector and 6% for the other sectors.

Comments

The sweeping VAT reform will have an impact on many aspects of affected businesses, including IT systems, contracts, supplier-customer relations, pricing, etc., and with detailed rules likely to be forthcoming, businesses may have a very short timeframe to fully prepare for implementation. With the premier's announcement, businesses should focus on prioritizing actions and testing so VAT can be passed on to the consumer. Businesses should communicate with their customers to ensure that, commercially, VAT can be charged, and contracts should be reviewed to ensure this is technically allowed. IT systems should be tested and internal controls reviewed to ensure they can handle the issuance of VAT invoices and management of VAT. Although recent guidance issued by the SAT allows a simplification of the input VAT verification, business will need to plan ahead relating to their internal management and understanding of their data.

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Korea: Withholding obligation on foreign secondees clarified

The Korean tax authorities issued guidance on 17 February 2016 that clarifies the upcoming requirement for domestic companies to withhold income tax from the salaries of certain foreign employees seconded to a Korean company (for prior coverage, see *World Tax Advisor*, 9 October 2015).

URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151009_4.html

Currently, a foreign secondee to Korea whose employment costs are not borne by a Korean entity is not subject to income tax withholding. Instead, the individual must either file an annual income tax return to report the income and pay the corresponding income tax, or join a taxpayers' association and have the tax withheld on a monthly basis.

According to a new tax law that will apply as from 1 July 2016 (postponed from the originally scheduled effective date of 1 January 2016), where the employment costs of a foreign secondee to a Korean company are not borne directly by the Korean entity, the Korean entity may be required to withhold income tax at a 17% rate (18.7%, including the local income tax surcharge) on a monthly basis when the Korean entity pays the service fee to the foreign company. The amount subject to income tax withholding will be the amount of the service fee that is attributable to the earned income of the foreign secondee.

The February guidance clarifies that a Korean company that satisfies all of the following conditions will be subject to the new withholding income tax obligation:

- The Korean company paid more than KRW 3 billion per year in service fees to the foreign company dispatching the employees to Korea;
- The Korean company's prior year revenue is KRW 150 billion or more, or its prior year total assets are KRW 500 billion or more; and
- The core business of the Korean company is air transport, construction or the provision of professional, scientific or engineering services.

A foreign company seconding employees to Korea will be able to request a refund of any overpaid income tax under the year-end tax settlement procedure for payroll withholding tax, and will be able to delegate the year-end income tax settlement to the Korean company.

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Luxembourg: Plans for 2017 tax changes announced

The Luxembourg government announced a number of measures on 29 February 2016 that it intends to include in the 2017 tax reform. The final plans for the reform will be released during the prime minister's annual speech on 26 April 2016.

The main changes to be proposed for corporations are as follows:

- The corporate income tax rate would be reduced from the current 21% to 19% in 2017 and 18% in 2018 to enhance competitiveness. The current effective income tax rate is 29.22%, including the corporate income tax, municipal business tax (for Luxembourg City) and the contribution to the unemployment fund; this effective tax rate would decrease to 27.08% in 2017 and 26.01% in 2018.
- To encourage innovative young companies, a reduced corporate income tax rate of 15% would be introduced for corporations whose annual taxable income does not exceed EUR 25,000.
- The recently introduced minimum net wealth tax (that replaces the minimum corporate tax and that applies to all corporate entities whose statutory seat or central administration is in Luxembourg) would be increased from EUR 3,210 to EUR 4,815 for SOPARFIs.
- The utilization of loss carryforwards would be limited to 10 years (currently unlimited), and other restrictions could be introduced.
- To facilitate the transfer of family-owned companies, capital gains derived from immovable property (land or buildings) belonging to the divested business would be exempt if certain conditions are satisfied.
- The 0.24% registration duty levied on the transfer of debt would be abolished.

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Singapore: Transfer pricing guidelines updated

The Inland Revenue Authority of Singapore (IRAS) issued the third edition of the domestic transfer pricing guidelines on 4 January 2016. The updated guidelines, which have been revised mainly to reflect enhancements to guidance on the use of the cost-plus method, the procedure for applying for an advance pricing arrangement (APA) and related party loans, replace the second edition of the transfer pricing guidelines issued on 6 January 2015. The guidelines generally are consistent with the OECD transfer pricing guidelines.

Cost-plus method

The cost-plus method (CPM) focuses on the gross mark-up obtained by a supplier for property transferred or services provided to a related purchaser; it essentially values the functions performed by the supplier of the property or services.

The updated guidelines clarify that, in applying the CPM, the direct and indirect costs used to compute the cost base are limited to the costs of the supplier of goods or services and should take into account an analysis of the supplier's functions performed, assets used and risks assumed in the provision of the goods or services. The methods for determining the cost base should be consistent over time.

If the tested party (i.e. the party to which the transfer pricing analysis is applied) is the supplier of the goods or services and is a taxpayer in Singapore, the cost base also should be determined according to Singapore financial reporting standards.

Adjustments should be made where necessary to ensure that the cost base is at arm's length; as such, the cost base may be adjusted to include costs not reflected in the accounts of the tested party. The updated guidelines include an example of costs that should have been allocated to the tested party, but instead were borne by other related parties in the group. Such costs, although not allocated to the tested party and not reflected in the tested party's accounts, will be included in the cost base of the tested party.

APA procedure

The updated guidelines provide enhancements to the details on the procedure for applying for an APA. The following timeline applies to the APA process:

- The taxpayer should submit prefiling meeting materials at least 10 months before the first day of the covered period, and should initiate the first prefiling meeting at least nine months before the first day of the covered period.
- The IRAS must indicate at least four months before the first day of the covered period whether the APA application may be submitted; the taxpayer then has three months from the receipt of the IRAS' indication to submit an APA application (an extension of the previous time limit). The IRAS must issue an acceptance letter to the taxpayer within one month of receipt of the application.
- The IRAS must inform the taxpayer of its decision on the APA within one month of the competent authorities reaching an agreement.
- The taxpayer and the IRAS will then implement the APA.

The IRAS' acceptance of an APA period and rollback to prior years is subject to taxpayer compliance with the above process, and a taxpayer's failure to comply may result in a change in the period to be covered in a bilateral APA (including a situation where the taxpayer is covered for fewer years than originally intended). For bilateral APAs where applications are required to be submitted to the IRAS and the relevant foreign competent authority, the IRAS' consideration and observation of the timeline under its APA process should not be affected by the filing deadline imposed by the relevant foreign competent authority.

The previous transfer pricing guidelines stated that the acceptance of a mutual agreement procedure (MAP) or APA application is at the discretion of the competent authorities. Where the IRAS or the relevant foreign competent authority rejects a MAP or an APA application, the taxpayer will have to consider other options to manage its transfer pricing risks. The updated guidelines state that the taxpayer may be subject to an audit if the IRAS suspects noncompliance with Singapore tax law.

Related party loans

The IRAS also has clarified that, similar to the application of the arm's length principle to loans granted by taxpayers to a related party, the arm's length principle also should apply to loans received by taxpayers from a related party, or taxpayers that become a debtor of a related party.

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South Africa: 2016 budget announced

South Africa's Minister of Finance delivered his 2016 budget speech to parliament on 24 February 2016, including a number of tax proposals. The minister made specific reference to the OECD base erosion and profit shifting (BEPS) project, noting that the South Africa Revenue Service (SARS) will take an aggressive stance on the evasion of tax through transfer pricing and the misuse of tax treaties, and measures will be introduced to address issues including the inappropriate use of hybrid debt instruments and profit shifting out of South Africa. Country-by-country reporting will be introduced, as will the OECD common reporting system, which will enable the exchange of information between the SARS and foreign tax authorities.

Proposals relevant to multinational companies include the following:

- The percentage of capital gains that is includable in taxable income would be increased from 66.6% to 80% for companies (and from 33.3% to 40% for individuals).
- Measures would be implemented to address mismatches associated with hybrid debt instruments that currently may result in double nontaxation in cases where the issuer of the instrument is a nonresident.
- The proposed withholding tax on service fees payable to nonresidents, which has not yet been implemented, would be replaced by a reporting requirement that would apply to agreements between South African taxpayers and foreign service providers under certain circumstances.
- Certain changes would be made to the rules for controlled foreign companies (CFCs):
 - The "high-tax exemption" from the CFC rules would be modified to prevent taxpayers from benefitting from the exemption in cases where there is no foreign tax payable by the CFC due to tax losses of the CFC's group companies; and

- Collective investment schemes would be excluded from having to apply the CFC rules.
- It would be clarified that previously taxed foreign exchange gains on debts would qualify for a tax deduction if those debts become bad (i.e. uncollectable).
- Various modifications would be made to tax incentives, including proposed improvements to the administration of the research and development allowances and a proposed expansion of the current urban development zone scheme to include more municipalities.
- A special voluntary disclosure program would be introduced that would permit noncompliant taxpayers with certain undisclosed foreign assets and income to normalize their tax affairs before the new OECD global standard for the automatic exchange of financial information enters into effect in 2017. The program would be available from 1 October 2016 to 31 March 2017, and various forms of relief would be available to eligible taxpayers.
- The transfer duty rate that applies to sales of immovable property with a value exceeding ZAR 10 million would be increased from 11% to 13% for property acquired on or after 1 March 2016.
- The proposed carbon tax would remain revenue neutral until 2020. The November 2015 draft bill on the tax would be revised to take public comments and further consultation into account, but there is no indication of postponing the proposed implementation date of 1 January 2017.
- A general anti-avoidance provision would be introduced for customs and excise tax purposes.

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Sweden: Guidance issued on VAT treatment of recharges between VAT group members and overseas establishments

Sweden's tax authorities issued formal guidance on 23 November 2015 that sets out their interpretation of the Court of Justice of the European Union (CJEU) decision in the *Skandia* case. *Skandia* involved the issue of whether VAT is chargeable on the recharge of costs incurred by a head office to a branch in an EU member state where the branch is a member of a VAT group in that member state. The new guidance clarifies the Swedish tax authorities' existing position on the VAT treatment of transactions between a member of a Swedish VAT group and an overseas establishment.

The CJEU ruled on 17 September 2014 that where an EU branch of an overseas entity is part of a VAT group, any supplies of services made by an overseas head office in a non-EU country to that branch are considered to be made to the VAT group as a whole, and hence subject to VAT (for prior coverage, see *World Tax Advisor*, 26 September 2014). It is the responsibility of the VAT group to account for VAT on these supplies under the reverse charge

provisions. The *Skandia* decision may have ramifications for all businesses that have overseas head offices (or branches) and branches (or head offices) in an EU member state that are members of a VAT group in that country and that receive services from the overseas head office or branch. There is likely to be a particularly significant impact on sectors in which companies perform services that are exempt from VAT (e.g. certain financial services), due to the limited ability of companies in these sectors to recover input VAT. In Sweden, only companies in the financial sector may form VAT groups, so the effect of the *Skandia* decision is limited to these companies.

[URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140926_2.html](http://newsletters.usdbriefs.com/2014/Tax/WTA/140926_2.html)

The Swedish tax authorities' guidance sets out the following:

- Only Swedish establishments can be part of a Swedish VAT group.
- If a Swedish establishment (headquarters or branch) is included in a Swedish VAT group, it will be treated as a separate taxable person from all overseas establishments for VAT purposes, regardless of whether the overseas establishments are located in other EU member states or in non-EU countries.
- Transactions between a Swedish establishment included in a Swedish VAT group and overseas establishments (EU and non-EU), therefore, will be treated as supplies for VAT purposes. This analysis will apply to recharges of bought-in services, as well as internally generated services.
- A transaction will be taxable only if a genuine service is supplied and there is a direct link between the service and the consideration received.
- Cost allocation and transfer pricing adjustments can be deemed consideration for these supplies, and where treated as consideration for VAT purposes, such adjustments can be subject to revaluation if the amount does not represent an arm's length value.

Importantly, the guidance does not refer to circumstances involving VAT groups in other EU member states. One interpretation, therefore, that the Swedish tax authorities will disregard the existence of overseas VAT groups and will apply the *Skandia* principles only if a Swedish establishment is included in a Swedish VAT group. However, there is no explicit guidance to this effect, and it is possible that further guidance or case law may be issued to clarify this point.

It also should be noted that the Swedish tax authorities' guidance leaves certain questions unanswered, particularly in relation to what constitutes a "genuine" supply of services and whether there is a direct link between cost allocation/transfer pricing adjustments and a genuine supply. Further consultation likely will be required on these issues, which may require additional guidance to be released.

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In brief

Australia: A bill introduced to the House of Representatives on 10 February 2016 would amend the goods and services tax (GST) legislation relating to business-to-business (B2B) cross-border transactions to reduce the number of nonresidents in the GST system by expanding the GST-free treatment for nonresidents acquiring services and other intangibles from Australian businesses; reducing the number of nonresidents that need to register for GST to recover GST paid on business expenses; and reducing the circumstances that require a nonresident to register for GST in Australia when supplying certain services to Australian businesses. The changes would apply as from the second quarter following Royal assent, so the new rules could become effective as early as 1 July 2016.

Hong Kong: The 2016 budget presented on 24 February 2016 contains long-term directions and immediate measures for various industries, to develop Hong Kong's advantages and gear up for an economic downturn. Immediate reliefs include a one-time tax rebate of 75% of profits tax payable for 2015-16 (up to a ceiling of HKD 20,000); the expansion of the deduction for capital expenditure for the purchase of intellectual property rights to cover new categories; and waivers of the business registration fee and license fees for the tourism and catering industries. The potential use of tax concessions to encourage the aircraft leasing business also will be examined. No change has been proposed to the profits tax rate for 2016-17 (16.5% generally and 15% for unincorporated businesses).

Italy: The tax authorities launched a public consultation on 25 February 2016 on the draft regulations relating to the foreign branch exemption option included in a decree issued in September 2015 (for prior coverage, see Italy tax alert, 23 September 2015). The branch exemption regime, based on similar regimes adopted in other EU member states (e.g. the Netherlands and the UK), allows Italian resident companies to exclude the profits and losses realized through a foreign branch in calculating their taxable income (provided the branch is not located in a "black list" country). An election must be made to benefit from the regime, and once an election is made, it is irrevocable and must be applied to all foreign branches of the Italian company. An Italian company may request a tax ruling on the existence of a foreign branch.

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-italy-23-september-2015.pdf>

Luxembourg: The VAT authorities have confirmed that services provided by independent directors fall within the scope of VAT, which means that such services provided to Luxembourg entities will be subject to a 17% VAT and that an independent Luxembourg director will have to register for VAT purposes. (It should be noted that a Luxembourg company paying director fees to a nonresident director may be directly liable for paying the VAT due under the reverse-charge mechanism.) The additional VAT on directors' fees will affect companies that are entitled to a partial input VAT deduction or that have no right to deduct input VAT (e.g. banks, insurance companies). The Minister of Finance recently confirmed that the direct and indirect tax treatment of director remuneration will be an integral part of the upcoming tax reform expected to become effective on 1 January 2017.

Panama: The government has enacted regulations expanding the types of persons required to act as VAT withholding agents to include enterprises explicitly appointed by the Revenue Office that make annual purchases exceeding USD 10 million, as well as administrators or

issuers of credit and debit cards that manage the processing of payments. The new VAT withholding obligations were intended to enter into effect on 1 November 2015, but were postponed until 1 February 2016 (and withholding agents experiencing sustained technology difficulties may request an additional deferral of two months). The amount to be withheld is 50% of the VAT applicable to the transaction; however, under a transition rule, administrators or issuers of credit and debit cards will withhold 2% of the total sales transaction (1% for food and pharmacy retail activity) from 1 February 2016 to 31 December 2016.

Poland: A bill to impose a new retail sales tax has been published on a government website, but the bill has not yet entered the legislative process. The new tax would apply to certain sales of goods, but not to the provision of services. The proposed rates range from 0.7% to 1.9% (with an exemption available in certain cases). The new tax would be distinguished from the VAT, and although there are a number of questions regarding the technical details, the tax likely would affect entities including foreign-based taxpayers operating under a distance sales scheme in Poland (including sales over the internet). It is estimated that the new provisions will enter into force in April 2016, with some exceptions regarding freight forwarders.

Puerto Rico: The Treasury Department announced on 8 March 2016 that the implementation of a VAT regime will be delayed to 1 June 2016 and that the sales and use tax regime will continue to apply until the effective date of the VAT. According to guidance issued in December 2015, the VAT regime was to apply as from 1 April 2016, unless the effective date was extended by the treasury department. The standard VAT rate will be 10.5%, a zero rate will apply to export sales (both goods and services) and certain supplies will be exempt.

Russia: The Supreme Court issued a decision on 14 January 2016, in which it declined to consider the appeal in *Oriflame Cosmetics, LLC* (for prior coverage, see *World Tax Advisor*, 25 September 2015). The lower courts had affirmed the tax authorities' disallowance of a profits tax deduction for royalties paid by a Russian company to a foreign affiliate under a sublicensing agreement, on the grounds that the taxpayer's activities in Russia reclassified it from a separate legal entity to a permanent establishment of the foreign affiliate. However, the Supreme Court's basis for approving of the lower court rulings was that the taxpayer did not provide sufficient evidence to satisfy its burden to prove that the relevant franchise agreement was concluded for sound economic reasons and to explain the reasons for setting the license payments at the relevant amounts. The ruling does not contain any direct indication that the Supreme Court considered the Russian company's activities to create a permanent establishment in Russia.

[URL: \[http://newsletters.usdbriefs.com/2015/Tax/WTA/150925_9.html\]\(http://newsletters.usdbriefs.com/2015/Tax/WTA/150925_9.html\)](http://newsletters.usdbriefs.com/2015/Tax/WTA/150925_9.html)

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.

Australia: The treasurer has announced that the government will apply new requirements to multinational companies investing in Australia, to ensure that “companies operating in Australia pay tax on their Australian earnings.” See the article in this issue.

URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_2.html

G20: Following their 26-27 February 2016 meeting, the G20 finance ministers issued a communique endorsing the OECD’s proposal for a new framework that would allow all interested countries and jurisdictions to participate in the implementation of the BEPS project as BEPS “associates” (for prior coverage, see *World Tax Advisor*, 26 February 2016).

URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160226_bc.html

India: The 2016 budget includes BEPS-related proposals, such as the introduction of country-by-country reporting and transfer pricing documentation, a patent box regime and a levy on certain digital transactions. See the article in this issue.

URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_1.html

South Africa: The Minister of Finance noted in his 2016 budget speech that the South Africa Revenue Service will take an aggressive stance on the evasion of tax through transfer pricing and the misuse of tax treaties. See the article in this issue.

URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_7.html

United Kingdom: The regulations that will give effect to the OECD CbC reporting measures set out in BEPS action 13 become effective on 18 March 2016. See the 9 March 2016 United Kingdom alert in this issue.

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-007-9-march-2016.pdf>

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United Kingdom

UK issues country-by-country reporting regulations

The UK’s *Taxes (Base Erosion and Profit Shifting) (Country-by Country Reporting) Regulations 2016 SI 2016 No 237* were laid before parliament on 26 February 2016, and will apply from 18 March 2016. The regulations require certain multinational enterprises (MNEs) to report annually to the UK tax authorities (HMRC) details of revenue, profit, taxes and other measures of economic activity for each tax jurisdiction in which they do business. This information will help HMRC and tax administrations in relevant countries to assess whether MNEs may have engaged in actions intended to erode the tax base or shift profits to low-tax jurisdictions. The information will be automatically shared with other relevant tax jurisdictions in accordance with international agreements governing the exchange of information as set up by the OECD.

Issue date: 9 March 2016

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-007-9-march-2016.pdf>

United States

US Tax Court rules for IRS on question of aggregation in transfer pricing adjustment

On 29 February 2016, the US Tax Court rejected the taxpayer's motion for summary judgment in the case of *Guidant LLC v. Commissioner*, 146 T.C. No. 5 (2016). The case will now be resolved on the full record as developed at trial.

Issue date: 8 March 2016

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-006-8-march-2016.pdf>

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