Deloitte.

International Tax

World Tax Advisor

Connecting you globally.

13 May 2016

In this issue:

Australia's tax authorities target cross-border profit-shifting arrangements 1
Brazil: Ultimate beneficiary disclosure required 5
France: Temporary additional depreciation mechanism to be extended 7
Hungary: Updated tax audit guidelines released 8
India: Supreme Court clarifies definition of fees for technical services 9
Italy: Changes made to patent box ruling procedure 10
Puerto Rico: US district court holds AMT provisions unconstitutional...................................... 10
Taiwan: Focus on e-commerce tax issues to intensify 11
In brief.. 12
BEPS corner.. 15
Are You Getting Your Global Tax Alerts? 16

Australia's tax authorities target cross-border profit-shifting arrangements

The Australian Taxation Office (ATO) released four taxpayer alerts on 26 April 2016 that identify certain issues of concern to the ATO, as a result of the active review of certain arrangements used by multinationals and large companies operating in Australia. The ATO wants to ensure these companies pay the "right amount of tax" on income earned in Australia.

A taxpayer alert provides a summary of ATO concerns about a significant, emerging or recurring higher-risk tax issue. The alerts are intended to provide an "early warning" to taxpayers and advisers that a type of arrangement may be subject to increased scrutiny or the subject of further guidance from the ATO.

The four taxpayer alerts address the following:

- Interim arrangements in response to the Multinational Anti-Avoidance Law (MAAL);
- Inappropriate recognition of internally generated intangible assets and revaluation of intangible assets for thin capitalization purposes;

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

- Arrangements involving related party foreign currency-denominated financing, in conjunction with related party cross-currency interest rate swaps; and
- Cross-border leasing arrangements involving mobile assets.

A summary of the ATO alerts follows.

Multinational Anti-Avoidance Law

The MAAL was enacted with effect from 1 January 2016, to broadly target certain cases where there has been an avoidance of permanent establishment (PE) status by a foreign entity, the foreign entity makes supplies to Australian customers and there is a relevant "principal purpose" to obtain a tax advantage (for prior coverage, see *World Tax Advisor*, 11 December 2015).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151211_3.html

Some taxpayers are restructuring into MAAL-compliant arrangements, and the ATO has raised concerns about two particular forms of arrangement that it sees as being "artificial and contrived," rather than "commercially and economically realistic":

- **Offshore agent for Australian entity:** One scheme involves the foreign and Australian entities "swapping their roles via contracts" that purport to make the Australian entity the distributor of the products or services to Australian customers. The foreign entity acts as an agent (disclosed or undisclosed) of the Australian entity, collecting the sales revenue from Australian customers on behalf of the Australian entity. The arrangement purports to result in no supply being made by the foreign entity and, potentially, in the foreign entity becoming a PE of the Australian entity in the foreign entity's jurisdiction. The ATO is concerned where this type of contractual arrangement occurs despite no changes being made to the underlying functions performed by the entities.
- **Royalty payment restructured to a distribution fee:** The other arrangement deals with upstream aspects of the supply chain. Where a foreign entity makes supplies to Australian customers and pays a royalty connected to such transactions, the application of the MAAL may result in the royalty being subject to Australian withholding tax. The ATO is concerned by some restructurings of the arrangements, under which the royalty is recharacterized as a distribution fee that arguably is not subject to Australian withholding tax.

The ATO indicates that it has a range of potential concerns regarding both types of arrangements, including that the arrangements may not be legally effective or commercially viable. A range of measures could potentially be applied to challenge the arrangements, including the general anti-avoidance rule (GAAR) and the transfer pricing rules. The ATO states that taxpayers and advisors that put forward these types of arrangements will be subject to increased scrutiny.

Financing arrangements

Two of the four taxpayer alerts address financing arrangements – one deals with the Australian thin capitalization rules and the other with related party foreign currency loans, in conjunction with related party cross-currency interest rate swaps.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

Thin capitalization: Australia's thin capitalization rules permit a general safe harbor debt amount of up to 75% of the value of a taxpayer's Australian assets (net of nondebt liabilities) before interest deduction limitations will apply. The relevant asset values typically are taken from a taxpayer's financial statements. However, the thin capitalization provisions permit taxpayers to recognize and/or revalue certain intangible assets in circumstances where the asset would not otherwise qualify for recognition/revaluation under the applicable accounting standards. In both cases, the result is that the asset value can be increased, thus increasing the thin capitalization safe harbor amount.

The ATO indicates that it has a number of concerns with these provisions, including that certain items that are being recognized fall outside the scope of the intangible asset recognition criteria under the applicable accounting standards. Based on its compliance activities, the ATO is concerned by the recognition of items such as the following:

- Market-related items, such as "customer relationships" or "customer loyalty";
- Human resource items, including "skilled staff," "management" or "key employees/training";
- Organizational resource items, including "internal policies," "internal meeting protocols," "procedures" and "manuals"; and
- Assets not owned and controlled by the taxpayer.

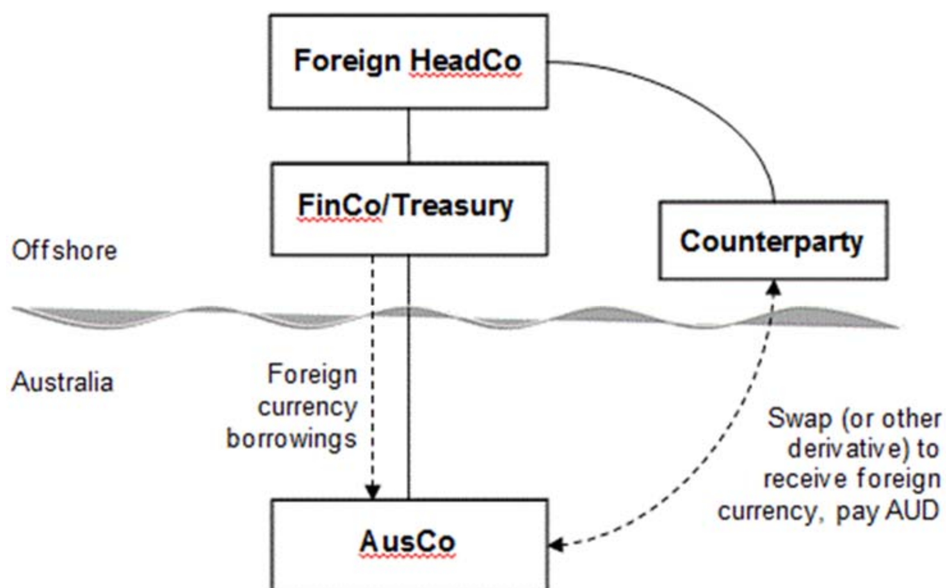
The ATO also is concerned that taxpayers may be applying unsupportable or questionable assumptions to support their revaluations.

The ATO has obtained external advice on the application of relevant accounting standards, and is considering its ability to substitute alternative asset valuations. Further accounting and legal guidance is expected from the ATO.

Related party cross-currency interest rate swaps: The taxpayer alert outlines the following arrangement as an area of focus:

- An Australian entity borrows from offshore in a "low interest rate currency" (a currency other than AUD);
- The Australian entity enters into a swap or other derivative arrangement with an offshore related party, under which the Australian entity is required to pay amounts in a "higher interest rate currency" (e.g. AUD) and is entitled to receive payments in the foreign currency in which the loan is denominated; and
- Where there is a net payment by the Australian entity under the swap or other derivative, these payments represent additional financing costs that are not in the legal form of interest.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.



The ATO notes that some taxpayers assert that these arrangements have been entered into for accounting or ease of capital extraction purposes.

The ATO is concerned that these arrangements achieve artificial thin capitalization, withholding tax and transfer pricing outcomes. In particular, the ATO observes that the funding may have been implemented in an excessively complex manner for Australian tax purposes, rather than in a simpler manner more appropriate in the circumstances (such as funding by AUD loans, foreign currency loans (without swaps) or equity-inclusive funding).

The ATO considers that such arrangements may be open to challenge, including whether the swap/derivative payments are deductible, whether the transfer pricing rules may operate to adjust the tax outcomes and whether the GAAR may apply. The ATO is expected to issue further details as it continues to develop and refine its technical position.

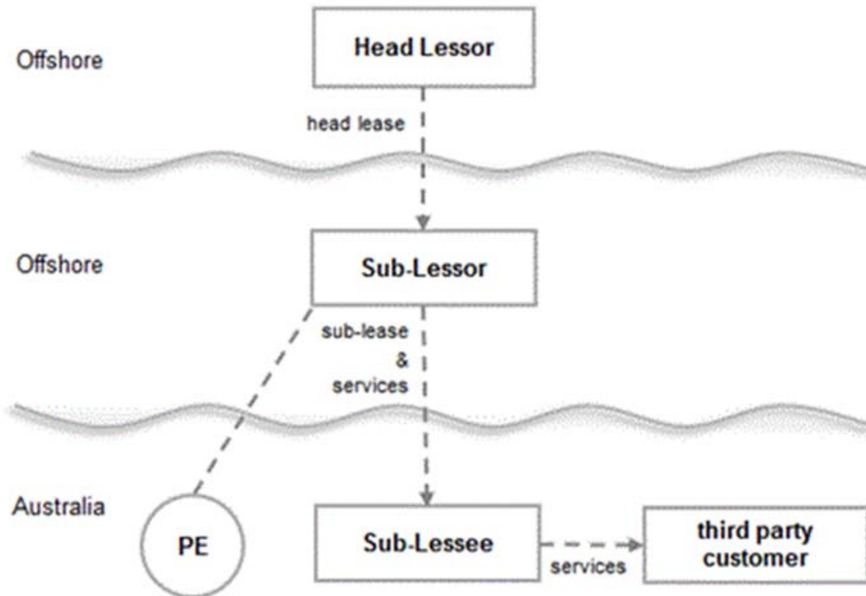
Cross-border leasing involving mobile assets

The ATO will focus on lease-in, lease-out (LILO) arrangements involving the following circumstances:

- A foreign head lessor owns substantial equipment and leases it to a related foreign party (the sub-lessor), who subleases the asset to a related Australian party (the sub-lessee);
- The Australian sub-lessee provides services to an Australian customer; and
- The sub-lessor has a PE in Australia under the relevant tax treaty.

An example of a LILO arrangement is depicted as follows:

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.



The ATO is concerned that the sub-lessor may have been introduced into the arrangement to obtain favorable benefits under a tax treaty that may be subject to challenge under the GAAR, and whether the transfer pricing rules are being appropriately applied to achieve an arm's length return to the Australian tax system. The ATO is expected to issue guidance on transfer pricing and profit attribution issues associated with certain cross-border leasing arrangements.

Comments

The taxpayer alerts reflect the ATO's general views in connection with arrangements that necessarily involve complex facts and complicated areas of the tax law. However, the ATO has clearly identified such arrangements as significant, emerging or recurring higher-risk tax issues. Taxpayers that have entered into these or similar arrangements should contact a tax adviser.

— Vik Khanna (Melbourne)
Partner
Deloitte Australia
vkhanna@deloitte.com.au

Mark Hadassin (Sydney)
Partner
Deloitte Australia
mhadassin@deloitte.com.au

Claudio Cimetta (Melbourne)
Partner
Deloitte Australia
ccimetta@deloitte.com.au

Jonathan Hill (New York)
Client Service Executive
Deloitte Tax LLP
jonhill@deloitte.com

Brazil:
Ultimate beneficiary disclosure required

A new normative instruction (NI) published on 9 May 2016 makes changes to the national registry of legal entities (CNPJ) for Brazilian and foreign legal entities, particularly concerning

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

the disclosure of ultimate beneficiaries. The NI, which applies as from 9 May 2016, consolidates comments arising from a recent public consultation on this topic and replaces a normative ruling issued in 2015.

The CNPJ is a federal taxpayer ID registration that must be obtained by Brazilian legal entities and foreign legal entities that have assets or rights in Brazil.

The new NI requires certain legal entities to disclose to the Brazilian tax authorities the complete chain of ownership up to the ultimate beneficiaries, as well as the legal representatives of owners. The changes are in line with the OECD and G-20 initiatives to combat money laundering and tax avoidance.

The definition of “ultimate beneficiary” comprises the following:

- An individual who directly or indirectly ultimately controls, owns or exercises significant influence over an entity (defined as an individual who owns more than 25% (or 20% for certain qualified investors) of the entity’s capital (directly or indirectly, on its own or together with related parties); exercises his/her power to elect the majority of the administrators; or has the power to make corporate decisions (the rules also define “related parties” for these purposes)); and
- An individual on behalf of whom a transaction is executed by the entity concerned.

The new disclosure requirements are mandatory for the following:

1. Brazilian and foreign investment clubs and funds, and their quota holders;
2. Foreign legal entities that own one or more of the following in Brazil: real estate, vehicles, vessels, aircraft, bank accounts, investments in the capital and financial markets or equity investments outside of the capital markets;
3. Foreign financial institutions carrying out foreign exchange transactions with Brazilian banks;
4. Certain qualified foreign legal entities that invest exclusively in the Brazilian financial or capital markets and that are registered with the Brazilian Securities Exchange Commission (such entities will have to disclose information concerning their ultimate beneficiaries through their legal representatives and provide relevant documentation). The disclosure requirement will apply for these entities even if the condition regarding significant influence in a Brazilian legal entity is not fulfilled; and
5. “Silent” partnerships.

Legal entities that already hold a “legal entity identifier number” also will be required to disclose it in the CNPJ.

Foreign legal entities and financial institutions described in items b) or c) above that do not comply with the new requirements will have their CNPJ registration suspended and will be precluded from carrying out transactions with financial institutions in Brazil. This restriction, however, will not apply to transactions carried out before the suspension or to a return of an investment to a foreign shareholder.

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

Entities requesting a new registration in the CNJP will have to comply with the new reporting requirements as from 1 January 2017. Entities that already are registered in the CNJP have until 31 December 2018 to comply with the new requirements, unless a change in the registry information occurs on or after 1 January 2017. All information reported must be submitted electronically.

— Marcelo Natale (Sao Paulo)
Partner
Deloitte Brazil
mnatale@deloitte.com

Daniel Yamamoto (Sao Paulo)
Partner
Deloitte Brazil
danielyamamoto@deloitte.com

France:
Temporary additional depreciation mechanism to be extended

The French tax authorities announced on 12 April 2016 that the parliament is reviewing a bill for the "digital Republic" that would extend the temporary additional depreciation mechanism applicable to certain assets for another year and would allow more assets to benefit from the enhanced deduction (for prior coverage, see *World Tax Advisor*, 8 January 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_1.html

Originally enacted as part of the Growth and Economic Activity Law in July 2015, the mechanism allows corporate income taxpayers to deduct an additional amount equal to 40% of the original cost (excluding financing expenses) of eligible assets used for the company's business and that were acquired or manufactured by the company during the period between 15 April 2015 and 14 April 2016. The extra deduction is spread (on a straight-line basis) over the normal useful life of the assets. For assets to be eligible for the deduction, they must be depreciable under the declining-balance method (according to the French tax code) and must fall within one of the following categories (the last three of which were added by the amended finance law for 2015 and the finance law for 2016):

- Equipment and tools used for industrial manufacturing or processing operations;
- Facilities used for water purification and air quality improvement;
- Handling equipment;
- Equipment used for the production of steam, heat or energy (except for facilities for the production of electrical energy subject to regulated tariffs);
- Materials and tools used for scientific or technical research activity;
- Optic fiber installations and equipment;
- Natural gas or bio-methane functioning heavy trucks; and
- Ski lift installations.

The bill would provide for a one-year extension of the 40% additional depreciation mechanism, so that it would apply to assets acquired or manufactured until 14 April 2017 (and until 31 December 2017 for natural gas or bio-methane functioning heavy trucks).

In addition, certain computer equipment to be used for a computer "rack" would qualify for the enhanced deduction, and the bill would extend the benefit to co-investments in optic fiber

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

installations and allow the owner and the holder of the right to use such equipment to split the deduction.

This article has been prepared by professionals in Taj, French tax and legal firm, member of Deloitte Touche Tohmatsu Limited.

— Marie-Pierre Hoo (Paris)
Director
Taj
mhoo@taj.fr

Patrick Fumenier (Paris)
Partner
Taj
pfumenier@taj.fr

Hungary:
Updated tax audit guidelines released

Hungary's Tax and Customs Authority published guidelines on 19 February 2016 that set out the items it will focus on during tax audits in fiscal year 2016. These items are intended to reflect current economic trends and business practices of taxpayers that may result in tax risks in Hungary, and include the following:

- Taxpayers registered at "seat providers" (i.e. entities that help companies establish and maintain a registered seat in Hungary);
- Sellers and/or buyers of loss-making companies or companies with significant debt;
- Taxpayers relocating their registered seat (typically, to Budapest or to Pest county) to receive more beneficial tax treatment, while effectively operating from their original seat;
- Related individuals and corporate entities, particularly owners of multiple or high-risk companies and/or the representatives of such companies;
- Transfer pricing policies of related parties;
- Accurate accounting treatment of tax grants, in particular, incentives relating to R&D (where the volume is significant);
- Determinations of nonbusiness-related costs, expenses and "unjustified" tax base-adjusting items for income tax purposes;
- Taxpayers carrying out e-commerce, online services (such as online storage) and shared economy services (such as community accommodation, transportation and catering);
- International trading of high-risk, licensed products;
- Taxpayers required to use online cash registers;
- Taxpayers engaged in the handling of products subject to excise duty (cigarettes, alcohol, fuel);
- Taxpayers employing unregistered employees;
- Activities including the following:
    - Real estate planning and development;
    - Public road freight and passenger transport;
    - Loan staffing;
    - Trade in information technology products and communication technology products; and
    - Management consulting.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

Regardless of a taxpayer's status ("reliable" or "unreliable"), the tax authorities intend to frequently audit those taxpayers with the greatest volume of tax liabilities, due to their significant impact on the national economy. The most common type of audit will remain the inspections carried out prior to granting a tax refund.

— Gabor Koka (Budapest)
Partner
Deloitte Hungary
gkoka@deloitteCE.com

India:
Supreme Court clarifies definition of fees for technical services

In a decision published on 31 March 2016 (*Commissioner of Income-tax v. Kotak Securities Ltd*), India's Supreme Court held that where a service is not customized to the needs of the customer and is indistinguishable from a common "facility" provided to all customers of the service provider, payments for that service cannot be considered fees for technical services (FTS) that are subject to withholding tax in India under India's domestic law.

The taxability of FTS has been a long-standing issue in India. FTS is defined under domestic law to include income received for rendering technical, consultancy or managerial services; however, the terms "technical," "consultancy" and "managerial" do not have any specific meaning or scope attached to them. The absence of a specific delineation of the boundaries between these terms has given rise to disputes between taxpayers and the tax authorities, and although courts and tribunals have tried to define these terms in their decisions, there is still some lack of clarity.

The Supreme Court's decision in the *Kotak* case helps clarify the scope of technical services. The court considered the treatment of transaction fees paid to the Bombay stock exchange by its members, which the lower court had treated as FTS. The court held that for a service to qualify as a technical service, the following elements are necessary:

- The service must be customized to cater to the specific needs of the service recipient; and
- The service must not be a common facility that is available for the use of every customer of the service provider.

The court determined that the transaction fees paid to the stock exchange did not satisfy these criteria because there was no customization of the service based on the needs of the customer and all members had to use the same service to trade on the stock exchange; accordingly, the payments did not qualify as FTS taxable under India's domestic law.

Comments

The Supreme Court's decision, which takes into account evolving technological realities, is welcome and provides much-needed clarity regarding the scope of services that should be considered technical in nature. Although the decision deals with the taxability of income from

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

such services under India's domestic law, the rationale of the decision also could be applied in determining the nature of services under India's tax treaties that do not define a "technical service."

This decision is likely to benefit service providers that provide common facilities to their users without any exclusive element, such as cellular and internet service providers, etc.

— Rajesh H. Gandhi (Mumbai)
Partner
Deloitte Haskins & Sells LLP
rajegandhi@deloitte.com

Shivani Kotadia (Mumbai)
Assistant Manager
Deloitte Haskins & Sells LLP
shkotadia@deloitte.com

Italy:
Changes made to patent box ruling procedure

Italy's tax authorities issued guidance on 6 May 2016 that amends the procedural rules relating to the application for a tax ruling under the patent box regime introduced in the 2015 stability law (for prior coverage, see Italy tax alert, 10 December 2015). (The authorities also issued guidance on the patent box regime on 7 April 2016 to address certain implementation matters that required clarification.)
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-italy-10-december-2015.pdf

The patent box regime grants a partial exemption from corporate income tax and the regional tax on productive activities for income deriving from qualifying intangible assets; for 2016, the exemption is equal to 40% of qualifying income, increasing to 50% in 2017. Where the taxpayer uses the relevant intellectual property directly, the taxpayer must obtain a tax ruling from the Italian tax authorities (a ruling is optional where the intellectual property is based on an intercompany license).

According to the new guidance, which applies immediately, qualifying taxpayers with tax revenue exceeding EUR 300 million must submit their ruling applications and supporting documentation to the competent regional directorate of the tax authorities where the taxpayer is resident. Taxpayers with turnover below this threshold must submit their ruling applications to the office for advance rulings and international disputes.

— Stefano Schiavello (New York)
Client Service Executive
Deloitte Tax LLP
stschiavello@deloitte.com

Luca Bosco (Turin)
Partner
Deloitte Italy
lubosco@sts.deloitte.it

Puerto Rico:
US district court holds AMT provisions unconstitutional

The US District Court for the District of Puerto Rico issued its opinion and order in the case Wal-*Mart Puerto Rico, Inc. v. Juan C. Zaragoza-Gómez* on 28 March 2016. The opinion struck

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

down certain provisions of the alternate minimum tax (AMT) regime under the Puerto Rico Internal Revenue Code of 2011, as amended (for prior coverage, see Puerto Rico tax alert, 12 June 2015).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-puertorico-12-june-2015.pdf

In addition to the regular income tax, corporations in Puerto Rico are subject to the AMT. Under the AMT regime, the AMT is equal to the excess of the "tentative minimum tax" over the regular income tax. The tentative minimum tax is the higher of 30% of the alternative minimum net income, or the sum of the following items:

- 20% of amounts paid or incurred to a related party, or costs allocated from a head office to a Puerto Rico branch, if those expenses are not subject to Puerto Rico income tax or withholding tax in the year in which paid or incurred; and
- The amount resulting from applying the applicable rate (ranging between 2.5% and 6%) to the value of purchases of personal property from related persons, or to the personal property transferred from a home office to a Puerto Rico branch.

The taxpayer in the case challenged the constitutionality of the AMT, in particular, the component involving purchases of personal property from related parties.

The court held that the AMT on the value of purchases of personal property from affiliates, on its face, clearly discriminated against interstate commerce. The court also determined that the AMT applied only to "cross-border transactions with [an] out-of-state home office or related company" and, therefore, violated both the Federal Relations Act and the equal protection clause of the US Constitution. Consequently, the court held that certain provisions of the AMT (section 1022.03(b)(2) and (d)) were unconstitutional.

As a result of the court's ruling, an injunction was issued, with immediate effect, prohibiting the Puerto Rico Treasury Department from levying, collecting or enforcing the unconstitutional components of the AMT regime. The government has appealed the court's decision to the US Court of Appeals for the First Circuit.

— Francisco A. Castillo (San Juan)
Partner
Deloitte Puerto Rico
fcastillo@deloitte.com

Ricardo Villate (San Juan)
Director
Deloitte Puerto Rico
rvillate@deloitte.com

Taiwan: Focus on e-commerce tax issues to intensify

Recent announcements made by Taiwan's Ministry of Finance (MOF) and the National Taxation Bureau of Taipei (NTBT) make it clear that changes to the tax treatment of cross-border e-commerce transactions are on the horizon. In addition to revising legislation (including changes to take into account the OECD's base erosion and profit shifting (BEPS) action plan), there will be an increased focus in tax audits on cross-border e-commerce transactions.

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

The MOF has announced that it will refer to the OECD's BEPS actions when proposing changes to the tax laws relating to e-commerce, and that it will require foreign electronic suppliers that engage in online business in Taiwan to register for tax purposes and pay VAT on their sales in Taiwan. In addition, the MOF intends to revise the rules for the determination of Taiwan-source income, clarify the term "fixed place of business" and define the tax treatment of e-commerce, to prevent tax evasion. Further, the NTBT has announced that cross-border electronic trading will be a priority for VAT audit case selection for 2016, with a particular focus on online travel and leisure businesses that fail to issue VAT invoices and that avoid taxes. Businesses that import a large volume of goods and resell them, but that do not register and pay VAT, also will be targets of investigation by the NTBT.

E-commerce businesses should assess the potential tax risks and plan to cope with future changes in the tax system.

— Cheli Liaw (Taipei)
Partner
Deloitte Taiwan
cheliliaw@deloitte.com.tw

Connie Chiou (Taipei)
Senior Manager
Deloitte Taiwan
conniechiou@deloitte.com.tw

In brief

Belgium: On 22 March 2016, the government filed an application with the General Court of the European Union to annul the European Commission's decision that the Belgian excess profit rulings regime constitutes illegal state aid (for prior coverage, see *World Tax Advisor*, 22 January 2016). The application for annulment does not suspend the Commission's order for Belgium to recover the aid granted to beneficiaries of the regime. It is expected that some of these beneficiaries may submit similar applications for annulment of the decision.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160122_3.html

Czech Republic: The amendment to the income tax law that implements the anti-hybrid rule in the amended EU parent-subsidiary directive into domestic law was published in the Czech official gazette on 25 April 2016 and applies as from 1 May 2016. Under the new rule, dividends received by a parent company in the Czech Republic will not be exempt from corporate income tax if the dividends are treated as deductible by a subsidiary located in another EU member state. The Czech Republic will not be implementing the general anti-abuse rule under the directive because the country already has a general anti-abuse principle based on case law.

Czech Republic: Legislation implementing the OECD's Common Reporting Standard (CRS) for the automatic exchange of information on financial accounts into the Czech legal environment entered into effect on 6 April 2016. The first round of CRS reporting will occur by 30 June 2017 for the year 2016.

European Union: The European Commission issued a reasoned opinion on 28 April 2016, stating that France's regime for taxing dividends from nonresident subsidiaries is incompatible with EU law, and has requested France to fully comply with the 2011 decision of the Court of Justice of the European Union (CEU) in the *Accor* case. *Accor* involved the tax credit relief

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

system available to French companies against the advance payment of tax payable on dividends received from subsidiaries in other EU member states. French legislation allowed a parent company to set off against the advance payment a tax credit for dividends received from a French subsidiary, but did not allow a credit for dividends from subsidiaries in another member state. The CJEU held that that the different tax treatment of domestic and foreign dividends restricted the EU freedom of establishment and free movement of capital principles and could not be justified by overriding reasons in the public interest. According to the Commission, a 2012 interpretation of the CJEU decision by the French Supreme Court is not in line with EU law as it fails to take into account tax paid by sub-subsidiaries in other EU member states, because tax credits were limited to one-third of the dividends redistributed in France by nonresident subsidiaries, and disproportionate evidence-based requirements were imposed. France has two months to respond to the Commission's request; otherwise, the Commission may refer France to the CJEU.

European Union: The European Commission has published a new edition of its "Customs Blueprints," first published in 1998 as part of the "pre-accession strategy." The blueprints are a tool designed to assist customs administrations in new EU member states in improving their operational capacity and performance by setting standards of achievement in particular areas. The update is an effort of customs experts across Europe working under the Customs 2020 Programme.

European Union: The European Commission has adopted a new work program for the implementation of the Uniform Customs Code (UCC), relating to the development and deployment of the required electronic systems (for prior coverage, see *World Tax Advisor*, 22 April 2016). The work program repeals the previous program dating from April 2014 to take into account the most recent legal, transitional and operational developments for the UCC. The work program is designed to govern, plan and manage the electronic environment underpinning the UCC as from 1 May 2016, the date the UCC became effective, until its full implementation on 31 December 2020. National planning information will be shared between EU member states and the Commission, and will be made available to economic operators via the Europa website.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160422_1.html

France: In a decision dated 20 April 2016, the French Supreme Court held that payments made to shareholders pursuant to a buyback of shares carried out before 1 January 2015 are not liable to the 3% surtax that was applied to the issuing company on the distribution for the repurchase. The French legislature previously modified the taxation of the buyback of shares as from 1 January 2015 (through the amended finance act for 2014) so that only capital gains tax applies and the 3% surtax is eliminated (for prior coverage, see *World Tax Advisor*, 23 January 2015). French companies involved in a buyback of shares in 2014 that paid the 3% surtax must file a refund claim with the tax authorities before 31 December 2016 to obtain a reimbursement of the surtax.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150123_1.html

Luxembourg: On 26 April 2016, the prime minister presented the government's policy plans for 2017, including certain tax measures. Some of the measures are unchanged from the government's previous announcement (for prior coverage, see *World Tax Advisor*, 11 March 2016), including a reduction in the corporate income tax rate from 21% to 19% in 2017 and 18% in 2018. Other measures have been modified, including a change in the proposed

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

restrictions on tax loss carryforwards that would permit losses realized as from tax year 2017 to be carried forward for 17 years (currently unlimited) and to set off only 75% of the profits realized in a tax year. Additionally, the tax fraud regime applicable for corporate tax, individual income tax and VAT purposes would be modified to introduce a new criminal offense for "aggravated tax fraud," and the existing regime would be modified to allow the imposition of administrative fines for certain taxpayer offenses. Other tax measures for corporations could be announced in the near future, since there are plans to form working groups to examine various subjects.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_5.html

New Zealand: On 13 April 2016, the government announced a variety of tax proposals that would affect both large and small businesses. Changes to the "use of money interest" regime would remove many businesses from the scope of the regime, and small and medium-sized businesses (with turnover of NZD 5 million or less) would be able to pay provisional tax based on their accounting income on a real-time basis (i.e. aligning tax payments with when income is earned). Other changes would include amendments to the withholding tax applicable to contractors and modifications to the current secrecy rules that would allow the tax authorities to share certain information with credit reporting agencies and the Companies Office under certain circumstances. The proposals (which are to be further refined) are expected to be included in a tax bill in August 2016 and generally to apply from 1 April 2017. Comments on the proposals will be accepted until 30 May 2016.

United States: Three months after releasing the draft version, the Internal Revenue Service has released a new Form W-8BEN-E, "Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)," and accompanying instructions (for prior coverage, see *World Tax Advisor*, 12 February 2016). There are a number of substantial updates to the form and instructions, including a requirement for taxpayers claiming treaty benefits to certify that they satisfy a limitation of benefits provision in the applicable tax treaty. As provided in the treasury regulations, a withholding agent may continue to accept the prior version of the Form W-8BEN-E for six months after the revision date shown on the form and may rely on it until the period of validity expires. For a Form W-8BEN-E, that validity period generally is the period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, absent a change in circumstances.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_ib.html

Vietnam: On 6 April 2016, the National Assembly approved the Law on Export and Import Duties 2016, which will apply as from 1 September 2016 and will replace the 2005 law on export and import duties. Among other changes, the law will add and remove duty exemptions for certain goods; modify the duty provisions that apply to goods imported for the manufacturing of export products; supplement the regulations on anti-dumping duty, allowance duty and safeguard duty; and permit the application of special preferential tariffs on goods manufactured in nontariff zones if certain conditions are satisfied.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

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 federal budget 2016-17 includes certain proposals relating to BEPS, including the introduction of a diverted profits tax and anti-hybrid measures. See Australia tax alert, 5 May 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-5-may-2016.pdf

Denmark: An executive order implements the transfer pricing documentation requirements from action 13 of the BEPS action plan. See alert, 11 May 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-017-11-may-2016.pdf

European Union: A European Commission proposal calls for the imposition of a public country-by-country (CbC) reporting requirement on multinational enterprises operating in the EU. See Global Transfer Pricing alert, 25 April 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-016-25-april-2016.pdf

OECD: On 20 April 2016, the OECD released an updated list of the signatories of the Multilateral Competent Authority Agreement on the exchange of CbC reports. In addition to the 31 countries that originally signed the agreement (for prior coverage, see *World Tax Advisor*, 12 February 2016), Bermuda and Senegal have been added to the list.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_bc.html

South Africa: Draft regulations have been issued that would specify the CbC reporting requirements for certain multinational enterprises for fiscal years beginning on or after 1 January 2016 (for prior coverage, see *World Tax Advisor*, 11 March 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_7.html

Switzerland: The Federal Council initiated a consultation on 13 April 2016 on the multilateral agreement on the exchange of CbC reports, and the federal act required to implement the agreement in Switzerland. CbC reporting would be required beginning with the 2018 tax period, and would be optional for tax periods before 2018. The consultation period will run until 13 July 2016.

Taiwan: The Ministry of Finance has announced that it will refer to the OECD's BEPS actions when proposing changes to the tax laws relating to e-commerce. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160513_8.html

---

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

Are You Getting Your Global Tax Alerts?

Regularly, Deloitte provides commentary and analysis on developments affecting cross-border transactions on a free subscription basis delivered straight to your email. Read the recent alerts below or visit the archive.
Subscribe: http://www2.deloitte.com/global/en/pages/tax/articles/global-tax-newsletter-sign-up.html?id=us:2em:3na:wta:awa:tax
Archives: http://www2.deloitte.com/content/www/global/en/pages/tax/articles/global-tax-alerts.html?id=us:2em:3na:wta:awa:tax

Australia

Budget includes new DPT and BEPS rules

Australia's federal budget 2016-17, announced on 3 May 2016, contains significant changes that would affect multinationals with Australian subsidiaries, including the introduction of a diverted profits tax and anti-hybrid measures and the implementation of the OECD transfer pricing recommendations under the BEPS initiative. The combination of the BEPS program, the Australian government's inquiry into corporate tax avoidance, a public tax reform debate and intense media interest has resulted in a changed expectation of multinationals in relation to transparency and tax planning, and an increased expectation for regulators to take a harder line in dealing with tax avoidance.
Issue date: 5 May 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-5-may-2016.pdf

Denmark

Implementation of OECD three-tiered approach to transfer pricing documentation finalized

On 4 May 2016, the tax authorities issued an executive order that implements the transfer pricing documentation recommendations from action 13 of the OECD's BEPS action plan, including the master file/local file requirements. The information required under the new order is significantly more comprehensive and detailed than was required under the former Danish transfer pricing documentation requirements.
Issue date: 11 May 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-017-11-may-2016.pdf

European Union

European Commission proposes public disclosure of MNEs' tax information

A recent European Commission proposal calls for the imposition of a public country-by-country reporting requirement on multinational enterprises (MNEs) operating in the EU. The 12 April 2016 proposal, which calls for amendments to the EU's Accounting Directive, would require some MNEs to disclose financial information.
Issue date: 25 April 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-016-25-april-2016.pdf

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

Have a question?
If you have needs specifically related to this newsletter's content, send us an email at clientsandmarketsdeloittetax@deloitte.com to have a Deloitte Tax professional contact you.

About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see http://www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Disclaimer
This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.