Deloitte.

In this issue:

Swiss Federal Council releases new package of corporate tax reforms ... 1
Chile: Measures proposed to implement BEPS actions, CRS ... 3
Denmark: Tax authorities rule PE created by home office of sales representative ... 4
Finland: Changes proposed to withholding tax treatment of dividends paid on nominee-registered shares ... 5
Greece: Guidance issued on application of MAP under EU arbitration convention ... 6
Japan: Tax treaty with Estonia contains BEPS-related provisions ... 7
Netherlands: Legislative proposal released to revise scope of domestic dividend withholding tax ... 7
Spain: New form approved for reporting related party and tax haven transactions ... 10
In brief ... 10
BEPS corner ... 12
Tax treaty round up ... 13
Global tax alerts ... 14

Swiss Federal Council releases new package of corporate tax reforms

On 6 September 2017, the Swiss Federal Council released draft legislation for a tax reform proposal 17 (STR 17, previously known as the Corporate Tax Reform III or CTR III), following the rejection of the CTR III by the Swiss electorate in a referendum held on 12 February 2017 (for prior coverage, see *World Tax Advisor*, 28 April 2017). The new proposals, which aim to address the concerns with the predecessor legislation, essentially are in line with the

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

recommendations made by the steering committee in June, and are accompanied by an explanatory report that provides details on the application of the measures.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170428_6.html

The revised version of the corporate tax reform was drawn up with input from various stakeholders (*e.g.* political parties, business associations, labor unions and the Swiss cantons), particularly with respect to the anticipated loss of tax revenue under the CTR III. As a result, the proposals should be more likely to succeed.

Main proposed changes compared to CTR III

The main adjustments in the newly released draft legislation as compared to the CTR III are as follows:

- The notional interest deduction at the federal and cantonal levels is no longer part of the package.
- The partial taxation of dividends paid to individual shareholders that hold at least 10% of the share capital of a company would be increased from 60% to 70% at the federal level and to at least 70% for all cantons, although the cantons could opt for a higher percentage of taxation.
- The combined tax relief for the cantonal patent box, the research and development (R&D) super deduction and the amortization from the step-up of hidden reserves due to a status change prior to STR 17 would be limited to a maximum of 70% (previously 80%) at the cantonal and communal levels.

Main features of STR 17

The STR 17 contains the following main elements:

- The sunset of all special corporate tax regimes, such as the mixed, domiciliary, holding and principal company regimes, as well as the Swiss finance branch regime;
- The tax-privileged release of hidden reserves for cantonal/communal tax purposes for companies transitioning out of tax-privileged cantonal tax regimes (such as mixed or holding companies) into ordinary taxation for a five-year transition period;
- A reduction of the general cantonal/communal tax rates at the discretion of the individual cantons (to an expected 12%-14% effective combined federal/cantonal/communal tax rate);
- The introduction of a mandatory cantonal-level patent box regime applicable to all patented intellectual property for which the R&D spend occurred in Switzerland, based on the OECD modified nexus approach (as articulated in the final report on action 5 of the OECD BEPS project), with a reduction of qualifying patent income at a cantonal level of 90%;
- The introduction of cantonal R&D incentives in the form of deductions of up to 150% of qualifying R&D expenditure at the discretion of the individual cantons; and
- A step-up in the basis of assets (including self-generated goodwill) for direct federal and cantonal/communal tax purposes when a foreign company migrates into Switzerland (*i.e.* transfers its legal seat or place of effective management to Switzerland) or moves additional activities and/or functions into Switzerland, with the same mechanism applied upon exit from Switzerland.

Comments

The proposed legislation will be subject to a public consultation that will run until 6 December 2017. During this time, stakeholders can submit comments on the proposals, with a final version of the legislation expected to be presented to parliament during the spring 2018 session. The STR 17 could become effective as soon as 1 January 2020, but no later than 1 January 2021, which would give cantons adequate time to introduce the federal framework law into their laws.

The proposals represent a well-balanced and internationally competitive solution that would ensure that Switzerland remains an attractive location for both domestic companies and multinationals, while at the same time providing an internationally aligned tax system that is in conformity with international standards, such as the OECD BEPS project. Because the STR 17 likely will have buy-in by all relevant stakeholders, it seems unlikely that a referendum on the legislation will be required.

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

— Jacqueline Hess-Ingrassia (Zurich)
Partner
Deloitte Switzerland
jahess@deloitte.ch

Jacques Kistler (Geneva)
Partner
Deloitte Switzerland
jkistler@deloitte.ch

Chile:
Measures proposed to implement BEPS actions, CRS

Chile's president submitted a bill to the congress on 22 August 2017 that would amend the income tax code to implement measures under the OECD BEPS project (including the country-by-country (CbC) reporting rules that were introduced in December 2016) and provide a framework for Chile to comply with the OECD common reporting standard (CRS). The bill also contains measures that would extend the transition rules under the dual tax regime that applies as from 1 January 2017 and abolish the investment platform regime. The bill now must pass both the House of Representatives and the Senate to receive full congressional approval.

The following are the main proposals in the bill.

Legal framework for MCAA

While Chile signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCAA) on 27 January 2016, changes to domestic law are needed for Chile to comply with its provisions. The bill would introduce the requirement for financial institutions (as defined under a treaty that provides for the exchange of financial information) to provide the Chilean tax authorities with information on account "holders" that are tax resident in other jurisdictions. Reportable accounts for these purposes would include accounts of nonresident individuals and other holders, as well as entities that are effectively managed in another jurisdiction. Penalties would apply for noncompliance.

The information provided would be used to fulfill Chile's obligations regarding the exchange of information between tax authorities based on relevant competent authority agreements. In this regard, the bill would provide for an exception to the Chilean bank secrecy law, under which bank information may be disclosed only with the previous authorization of a court.

Extension of transition rules under dual tax regime

The bill proposes to extend a beneficial transition rule under the dual tax regime that became effective on 1 January 2017.

The dual tax regime allows certain corporate taxpayers to opt to be taxed under a fully integrated or a partially integrated tax regime. Under the fully integrated regime, shareholders are taxed on their share of the profits that are accrued annually by the Chilean entity, at a combined income tax rate of 35%. Under the partially integrated tax regime, shareholders are subject to a 25.5% (27% in 2018) first category income tax (FCIT) on their accrued income. When profits are distributed to a nonresident shareholder, a 35% additional withholding income tax (AWIT) applies, but only 65% of the FCIT is creditable, with the remaining 35% paid to the Chilean government as AWIT. However, if the recipient of the distribution is a shareholder/partner resident in a country that has a tax treaty with Chile in force, the full 27% FCIT will be creditable.

A transition rule under the dual tax regime applies until 31 December 2019. This rule allows shareholders/partners resident in countries that have signed a treaty with Chile that was not in force on 1 January 2017 to credit the full FCIT paid by the Chilean entity against the 35% AWIT, to equalize the treatment of these shareholders/partners with those in countries whose treaties with Chile are in force. The bill proposes to extend the transition period for residents in countries that have a signed tax treaty with Chile by 1 January 2019 to allow them to use the full FCIT paid by the Chilean entity as a credit up to 31 December 2021.

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

Abolition of investment platform regime

The investment platform regime in the income tax law would be abolished. The regime, introduced in 2002 to attract multinationals to relocate their headquarters to Chile, has not met expectations, and the OECD has qualified the regime as a potentially harmful regime under action 5 of the BEPS project.

— Joseph Courand (Santiago)
Partner
Deloitte Chile
jcourand@deloitte.com

Denmark:
Tax authorities rule PE created by home office of sales representative

The Danish tax board has issued three rulings dealing with the level of activity necessary for a sales representative in Denmark to constitute a permanent establishment (PE) of a foreign company. Two rulings (one issued on 22 March 2017 and the other on 30 August) clarify the tax authorities' position on the extent to which a home office can create a PE, and illustrate how a seemingly minor presence in Denmark could result in significant tax exposure for a foreign company. In a third ruling issued on 28 August 2017, however, the board determined that no PE was created because the individual's activities in Denmark were considered preparatory and auxiliary.

A PE generally is deemed to exist where an entity operates in a country through a fixed place of business through which the entity's business is wholly or partly carried on. Based on Danish case law, a "disposal criterion" also must be met, which requires that an area, office, facility, etc. be at the disposal of the entity. In recent years, the Danish tax authorities have challenged the applicability of the disposal criterion by maintaining that the fixed place of business does not have to be at the disposal of the entity for a PE to be created, which has given rise to several cases involving whether a home office will constitute a fixed place of business.

Facts

The 22 March and 30 August rulings involved a sales representative who primarily met with clients at the client's place of business, and carried out the work ensuing from the meetings at that place. The sales representative performed limited administrative tasks from a home office. The contract between the sales representative and the foreign entity did not require the sales representative to work from home, nor did it contain any provisions for the foreign entity to reimburse the representative for expenses incurred from using his home office. Any work the representative performed from home was by choice.

Decisions of the tax board

The tax board determined in both cases that, due to the relatively permanent nature of the home office (in terms of its availability for use and location), the home office met the fixed place of business criterion. The board also concluded that the sales representative's activities carried out at the office were connected to the core business of the foreign enterprise and, therefore, gave rise to a PE of the foreign entity.

In one case, the board reached this conclusion even though the representative's activities conducted from his home office were minimal; the board considered it relevant that the activities were carried out on a regular basis and were not random and/or sporadic. In the other case, the tax board stated that if a sales representative has the option to use a home office for business purposes, the work performed in the office is not sporadic and occasional. Therefore, the home office constitutes a fixed place of business through which the business of the foreign enterprise is partly carried on. A PE of the foreign entity is created and the foreign entity will have to determine the portion of its revenue that is attributable to the sales representative's activities, and pay Danish income tax on that portion.

In the above rulings, the tax board did not include an extensive discussion of what constitutes preparatory or auxiliary activities in the context of a home office, although it did conclude that the work carried out in the home office was not preparatory or auxiliary because the work was part of the core business of the foreign entity. Had the activities carried

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

out by the representative in the home office been of a preparatory or auxiliary nature, a PE generally would not have been created on this basis.

In the 28 August ruling, the tax board did consider the definition of preparatory or auxiliary activities in connection with an office at the disposal of a Danish representative. This ruling involved a German entity operating in the construction industry that employed a Danish representative who performed certain marketing activities and had access to an office in Denmark. The tax board considered the activities of the Danish individual to be preparatory and auxiliary in nature (as defined in article 5(4)(d)(e) of the OECD model treaty) because the activities did not fall within the scope of the main business of the foreign entity. As a result, the tax board held that the individual's activities through the office in Denmark did not create a PE for the foreign entity.

Implications of the rulings

Two of the rulings indicate a broadened scope of the PE rules, and they confirm that there may be an increased risk of tax liability for foreign companies that decide to enter the Danish market by using a sales representative. A sales representative in Denmark may create a PE for a foreign company in the following cases:

- The individual performs work from a home office that is at his/her disposal, even if it is not necessarily at the disposal of the enterprise;
- The individual carries out activities connected to the core business of the foreign enterprise, and/or that are not considered preparatory or auxiliary activities with respect to the business of the enterprise; or
- The sales representative performs work exercised on a regular basis, and not randomly and sporadically.

A sales representative that has the option to use a home office for business purposes may create a perception that he/she is working on a regular basis and not sporadically and occasionally. Foreign companies with such representatives in Denmark should examine their situations to assess the possibility of PE exposure.

— Nikolaj Vinther (Aalborg)
Partner
Deloitte Denmark
nvinther@deloitte.dk

Finland:
Changes proposed to withholding tax treatment of dividends paid on nominee-registered shares

The Finnish government released a proposal on 28 June 2017 that would modify the tax treatment and procedure relating to dividends paid for nominee-registered shares. The main proposed changes include the following:

- Abolition of the simplified procedure for relief from withholding tax at source;
- Increase in the withholding tax rate applicable to unidentified foreign beneficial owners; and
- Imposition of tax liability on registered custodians where tax was incorrectly withheld because the registered entity failed to provide information identifying the beneficial owner.

Current legislation

A Finnish payer or account operator currently must withhold tax at a rate of 20%/30% at the time dividends are paid, unless the distribution qualifies for relief at source under an applicable tax treaty or the income is exempt from tax. To benefit from a reduced withholding tax rate, the dividend payer must have information to identify the beneficial owner of the dividend.

An exception from the identification requirement applies to nominee-registered shares. In these cases, the payer of dividends can apply a 15% or higher withholding tax rate in accordance with an applicable treaty if the payer knows the beneficial owner's country of residence. It is not necessary to provide any other information identifying the beneficial owner.

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

Proposed changes

The proposed rules would abolish the simplified withholding tax relief at source procedure. The payer would be required to withhold tax at a new increased rate of 35% on dividends paid to unidentified foreign beneficial owners. To benefit from a lower treaty rate, full disclosure of the beneficial owner would be mandatory.

A new custodian register would be created to replace the existing foreign custodian register. All current registrations would expire, and custodians would be required to re-register. New registrations could be made during the six-month period before the new legislation becomes effective.

The rights and obligations of the registered custodian would change under the new system. The registered custodian closest to the beneficial owner would be required to provide the dividend-paying entity with reliable information on the identity of the beneficial owner. This would include the beneficial owner's name, address and date of birth or tax identification number or other official identification number. The registered custodian would have to ensure that the beneficial owner qualifies for treaty benefits and provide a certificate of tax residence upon request. Further, the registered custodian would become liable for the withholding tax if tax was incorrectly withheld because inaccurate or incomplete identification information was provided.

Comments

Although a bill on the measures has not been issued, if approved, the measures are expected to enter into force from 1 January 2018, and to apply as from 1 January 2019 or 1 January 2020.

— Outi Ukkola (Helsinki)
Partner
Deloitte Finland
outi.ukkola@deloitte.fi

Greece:
Guidance issued on application of MAP under EU arbitration convention

Greece's Director of the Independent Public Revenue Authority (IPRA) issued a decision on 23 August 2017 that contains new guidance on the application of the mutual agreement procedure (MAP) in the EU arbitration convention. The decision, published in the official gazette on 30 August, is applicable for MAP requests filed as from that date.

The tax treaties of EU member states contain an article that is comparable to article 25 of the OECD model treaty, which provides for a MAP, under which the competent authorities of the treaty partner countries attempt to resolve disputes arising under the treaty. The arbitration convention, which has been in effect in the EU since 1995, contains a procedure to resolve transfer pricing disputes and disputes involving the attribution of profits of permanent establishments between member states. However, unlike the MAP in most treaties, the convention requires the competent authorities to eliminate the double taxation by mandating that if the authorities are unable to reach agreement, an advisory commission must be set up to issue an opinion.

The MAP provides an opportunity to resolve disputes arising under a tax treaty and the convention, following the submission of a written request by a taxpayer. The IPRA issued guidance on the application of the MAP under Greece's tax treaties on 7 April 2017 (for prior coverage, see *World Tax Advisor*, 26 May 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170526_4.html

The new guidance complements the April guidance, specifically with respect to the scope of application of the MAP, the evaluation and consultation procedure, the content of a MAP request and the results of the MAP. However, the new guidance also provides as follows:

- The competent authority of a contracting state will not be required to initiate a MAP or to set up an advisory body in cases where legal or administrative proceedings have resulted in a final ruling under which one of the enterprises concerned has committed a "serious infringement" (as defined).

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

- Where the competent authorities fail to reach an agreement that eliminates the double taxation within two years of the date the case was first submitted, the competent authorities must set up an advisory body charged with issuing an opinion that eliminates the double taxation in question.

The issuance of this supplementary guidance by the IPRA should create a more complete framework for resolving instances of double taxation.

— Maria Trakadi (Athens)
Partner
Deloitte Greece
mtrakadi@deloitte.gr

Eftichia Piligou (Athens)
Partner
Deloitte Greece
epiligou@deloitte.gr

Japan:
Tax treaty with Estonia contains BEPS-related provisions

The governments of Japan and Estonia signed the first tax treaty between the two countries on 30 August 2017. The treaty generally follows the OECD model treaty and reflects certain recommendations included in the BEPS project.

The treaty includes provisions that will clarify the scope of taxable income for purposes of eliminating double taxation; provide for arbitration where taxation not in accordance with the treaty is not able to be resolved under the mutual agreement procedure after two years; and introduce the exchange of information on tax matters and mutual assistance in the collection of tax claims.

The treaty provides for reduced withholding tax rates on dividends, interest and royalties:

- **Dividends:** A 0% rate will apply on dividends paid to a company that holds, directly or indirectly, at least 10% of the voting power of the payer company for the six-month period ending on the date on which entitlement to the dividends is determined (provided the payer company is not entitled to a deduction for dividends paid in computing its taxable income); otherwise, the rate will be 10%.
- **Interest:** The general rate will be 10%, with an exemption for interest and debt claims beneficially owned by certain government institutions.
- **Royalties:** The rate will be 5%.

The treaty includes a limitation on benefits article that sets out the criteria that will have to be fulfilled for persons to qualify for beneficial treatment. Benefits will not be granted if it is reasonable to conclude that obtaining a treaty benefit was one of the principal purposes of a transaction.

The treaty will enter into force 30 days after the two jurisdictions exchange diplomatic notes indicating that their domestic approval procedures for the treaty are complete, and generally will apply as from 1 January of the following calendar year.

— Sunie Oue (Tokyo)
Partner
Deloitte Japan
sunie.oue@tohmatsu.co.jp

Netherlands:
Legislative proposal released to revise scope of domestic dividend withholding tax

The Netherlands Ministry of Finance published a legislative proposal on 19 September 2017 that details proposed changes to the dividend withholding tax act, following a public consultation launched in May 2017 (for prior coverage, see *World Tax Advisor*, 26 May 2017). The document proposes to align the domestic dividend withholding tax

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

treatment of Dutch holding cooperatives with that of private limited liability companies (BVs)/public limited companies (NVs) and to expand the scope of the exemption from dividend withholding tax to apply to parent companies resident in countries that have concluded a tax treaty with the Netherlands. The legislative proposal also includes specific rules regarding interests held in a Dutch BV/NV or a holding cooperative through hybrid entities.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170526_1.html

The legislative proposal also includes changes to the tax regime applicable to nonresident taxpayers in the Dutch corporate income tax act. Nonresident taxpayers that hold a substantial interest in a Dutch BV/NV or cooperative generally would be subject to Dutch corporate income tax on their Dutch-source dividend income and on their capital gains only if the interest is held with the main purpose (or one of the main purposes) of avoiding Dutch personal income tax at the level of the (indirect) shareholder. To some extent, this narrowing of the tax base would be counter-balanced by the introduction of an anti-abuse provision in the dividend withholding tax act.

If adopted, the measures would apply as from 1 January 2018.

Holding cooperatives

Dividends distributed by a Dutch cooperative currently are not subject to Dutch dividend withholding tax, except in certain situations where abuse is present. By contrast, Dutch BVs/NVs, in principle, are required to withhold a 15% tax on dividends paid to shareholders.

Under the legislative proposal, a Dutch holding cooperative would be required to withhold dividend withholding tax where a member of the cooperative holds a "qualifying interest," *i.e.* an interest that entitles the holder to at least 5% of the cooperative's profits and/or liquidation proceeds. In determining whether this quantitative test is met, the interests of related parties, including those of related individuals, would be taken into account.

A holding cooperative for these purposes would be defined as a cooperative at least 70% of whose activities comprise the holding of participations or the direct or indirect financing of affiliated entities. The determination of whether a cooperative falls within the definition of a holding cooperative, in principle, would be based on the cooperative's balance sheet for the year before the year of the distribution. However, other factors also would be considered, such as the nature of the cooperative's assets and liabilities, its turnover and profit-generating activities and how the cooperative's personnel spend their time. A Dutch cooperative that actively manages its investments and has sufficient related substance (*e.g.* personnel, offices) in the Netherlands potentially would not qualify as a holding cooperative and, therefore, would not fall within the scope of the dividend withholding tax act. In certain circumstances, some cooperatives in private equity-owned structures could qualify as non-holding cooperatives.

The above activity and quantitative ownership criteria for cooperatives would not apply to BVs/NVs, which would continue to be subject to the dividend withholding tax act. It should be noted that a Dutch BV/NV, similar to a Dutch holding cooperative, may benefit from a full domestic dividend withholding tax exemption (see below).

Broadening of dividend withholding tax exemption

Under current law, if a foreign parent company holds an interest in a BV/NV or a holding cooperative (a "Dutch entity") through a Dutch permanent establishment to which the interest can be allocated, a domestic dividend withholding tax exemption applies, provided the interest qualifies for the Dutch participation exemption or participation credit. In conjunction with the new withholding tax obligation that would be applicable to Dutch holding cooperatives, the legislative proposal includes a provision that would broaden the scope of the domestic dividend withholding tax exemption applicable to EU/European Economic Area (EEA) parent companies. The exemption would apply to distributions made by BVs/NVs and holding cooperatives to parent companies that are tax resident in the EU/EEA or in a third country that has concluded a tax treaty with the Netherlands that contains "qualifying provisions" relating to dividend withholding tax. In both instances, the interest in the Dutch entity would have to be an interest that would qualify for the Dutch participation exemption or participation credit if the recipient were resident in the Netherlands.

It should be noted that the full Dutch withholding tax exemption would be applicable even where dividends are distributed to persons resident in treaty countries where the relevant treaty provides for a reduced rate of withholding tax rather than a full exemption (*e.g.* where a treaty with a non-EU/EEA member state provides for a 5% dividend withholding tax rate).

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

The legislative proposal includes a concession in relation to an interest held in a Dutch entity through a hybrid entity that is considered non-transparent for Dutch tax purposes, but transparent in its country of residence. Even though, from a Dutch tax perspective, the dividend recipient otherwise would not qualify for the exemption because it is not a tax resident of the EU/EEA or a tax treaty jurisdiction, the exemption would be available if all participants in the hybrid entity treat the hybrid entity as transparent and would qualify for the exemption if they had held the Dutch entity directly. (For example, the exemption could be available where a US corporation holds an interest in a Dutch entity through a disregarded limited liability company.) On the other hand, if the hybrid entity is considered transparent for Dutch tax purposes, but as nontransparent from the perspective of the participants, the participants would not qualify as the dividend recipients from a Dutch tax perspective. Therefore, for the exemption to apply, the hybrid entity itself would have to qualify as a tax resident in the EU/EEA or a tax treaty jurisdiction.

Anti-abuse rule

The legislative proposal also would introduce a new anti-abuse rule in the context of the dividend withholding tax exemption. For the exemption to apply to recipients resident in the EU/EEA and/or in a treaty jurisdiction, it would be necessary to determine whether the (direct) interest in the Dutch entity is held with the main purpose (or one of the main purposes) of avoiding Dutch dividend withholding tax (the "subjective test"); and if so, whether the structure or transaction is considered artificial (the "objective test"). A structure or transaction would not be deemed artificial if it is based on valid business reasons that reflect economic reality. This could be the case, for example, if the direct member or shareholder of the Dutch entity itself carries on an active trade or business to which the interest can be allocated. When the interest in the Dutch entity is considered a passive investment, the exemption would be applicable only if the subjective test is failed (*i.e.* if the interest is not held with a main purpose of tax avoidance).

Since the determination of the valid business reasons that reflect economic reality would be made by reference to the existing rules, a private equity investment fund could qualify as an active business and thus satisfy the valid business reason criterion. In addition, if the member or shareholder of a Dutch entity is a top-tier holding company that carries out governance, management and/or financial activities for the group, this could satisfy the valid business reason criterion. The criteria also could be satisfied by a foreign intermediary holding company with the requisite substance that performs a "linking function" between the business or head office activities of the (ultimate) shareholder and the lower-tier companies (whether Dutch or non-Dutch).

The factors that would be taken into account in determining whether the foreign intermediary holding company has the requisite substance would be adjusted under the proposed rules. In addition to the substance needed to obtain an advance tax ruling (*i.e.* at least 50% of the board of directors must be Dutch resident, bookkeeping must be maintained in the Netherlands, etc.), the foreign intermediary holding company would have to have wages of approximately EUR 100,000 relating to either its own or hired group personnel and an office and premises of its own available, both of which (*i.e.* the personnel and the premises) are being used for its intermediary holding function. The legislative proposal would provide a transition period of three months from the date the new rules become effective (*i.e.* until 1 April 2018) where the two additional substance requirements would not have to be met.

It should be noted that if the dividend withholding tax exemption does not apply, tax treaty relief would still be available (in whole or in part).

Comments

Eliminating the different Dutch dividend withholding tax treatment of Dutch holding cooperatives and BVs/NVs means that all such entities, in principle, would be required to withhold tax on distributions. However, an exemption would apply to business structures with the requisite substance in the Netherlands, either in a Dutch cooperative or in a Dutch permanent establishment to which the interest in the Dutch entity can be allocated. An exemption also would apply to active business structures where the recipient is tax resident in the EU/EEA or a tax treaty country. Under certain circumstances, substance requirements could be fulfilled at the level of the intermediate holding company holding an interest in the Dutch entity.

— Corina van Lindonk (Amsterdam)
Director
Deloitte Netherlands
cvanlindonk@deloitte.nl

Godfried Schutz (New York)
Client Service Executive
Deloitte Tax LLP
godschutz@deloitte.com

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

Spain: New form approved for reporting related party and tax haven transactions

The Spanish tax authorities published on 30 August 2017 the final regulation that formally approves a new form (Form 232) to be used by corporate taxpayers to report certain related party transactions and all transactions with persons resident in tax haven countries for tax years beginning on or after 1 January 2016 (for prior coverage, see Global Transfer Pricing Alert 2017-021, 25 May 2017). The information required to be reported for these types of transactions, which previously was reported on the corporate income tax return (Form 200), now must be reported (with certain modifications) on Form 232.

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-021-25-may-2017.pdf

Under both the previous reporting rules and the new regulation, all transactions carried out with the same related party must be reported where the total consideration involved exceeds EUR 250,000. Moreover, all related party transactions made where the taxpayer has elected to apply the Spanish "patent box" and all transactions conducted with residents of countries on Spain's list of tax havens are reportable, regardless of the amount of consideration.

The final regulation introduces two new disclosure rules that apply beginning with the 2016 reporting year:

- As an anti-fragmentation measure, all transactions with the same related party that are of the same nature and that are quantified using the same valuation method must be disclosed where the combined amount of the transactions is greater than 50% of the entity's turnover.
- "Special" transactions must be disclosed where the total amount of each transaction type exceeds EUR 100,000. Such transactions include transfers of a business unit, real estate, intangibles and shares in entities that are not traded on regulated exchange markets or that are traded on exchange markets located in tax havens.

The final regulation provides that Form 232 generally must be filed with the Spanish tax authorities during the first calendar month after the 10-month period that immediately follows the taxpayer's fiscal year-end (*e.g.* for calendar year taxpayers, the period for filing Form 232 is from 1 November through 30 November of the following year).

— Brian Leonard (Madrid)
Partner
Deloitte Spain
bleonard@deloitte.es

Jon Diaz de Durana (Madrid)
Associate Principal
Deloitte Spain
jdiazdedurana@deloitte.es

In brief

Australia: A bill that would change the goods and services tax (GST) treatment of digital currencies was introduced into parliament on 14 September 2017. The bill would amend the GST law to ensure that supplies of digital currency receive equivalent GST treatment to supplies of money, in particular, foreign currency. The bill is in response to concerns that the current GST rules effectively create a "double taxation" effect for some digital currency users. In broad terms, the amendments would have the effect of taking digital currency outside the GST system when it is used in exchange for other goods and services, but treat the provision of it as an "input taxed" supply for GST purposes when it is exchanged for Australian or foreign currency or another digital currency.

On 11 September 2017, the government released for public consultation exposure draft legislation and a draft explanatory memorandum on the tax consolidation rules. The measures included in the draft legislation address changes with respect to the treatment of deductible liabilities and deferred tax liabilities; certain transfers by foreign residents of membership interests in a joining entity; the interaction of the tax consolidation rules with the rules for taxing intragroup financial arrangements; the treatment of intragroup liabilities in the context of the exit tax cost setting rules; and the treatment of entities holding securitized assets upon joining or leaving a consolidated group. Comments may be submitted until 6 October 2017.

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

Brazil: The tax authorities issued guidance on 29 August 2017 that clarifies the tax rates applicable to capital gains derived by nonresident legal entities on the disposal of Brazilian assets. The progressive rates ranging from 15% to 22.5% that were introduced as from 1 January 2017 also are applicable to gains of nonresident entities disposing of assets located in Brazil (for prior coverage of the rates, see *World Tax Advisor*, 8 April 2016). Taxpayers already have relied on the application of the rates to legal entities based on a law that equalizes the treatment of the capital gains derived by nonresidents with the treatment applicable to gains derived by individuals. By incorporating the changes that were introduced as from 1 January 2017, the guidance confirms that the rates are applicable to nonresident entities.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160408_4.html

India: The Central Board of Excise and Customs issued an announcement on 11 September 2017 indicating that the deadline for taxpayers to file their GST returns for July 2017 is extended due to difficulties in filing online returns. The deadline for filing Form GSTR-1 is extended to 3 October 2017 (10 October 2017 for taxpayers with turnover up to INR 1 billion). The deadlines for filing Form GSTR-2 and Form GSTR-3 are extended to 31 October 2017 and 10 November 2017, respectively.

Korea: The National Tax Service (NTS) held a nationwide chief tax officers meeting on 17 August 2017 to confirm its plans for measures to reform tax administration, and affirmed its commitment to the proactive implementation of the measures. The NTS intends to establish a task force for tax administration reform to implement measures to improve tax audits. The task force will comprise two departments that will be in charge of improving tax audits and achieving justice and fairness, respectively. The task force will overhaul the framework for tax audit cases, which has caused political controversy in the past, and draw up measures to improve the system.

Mexico: The 2018 economic package presented to congress on 8 September 2017 does not include any relevant changes to the tax laws for nonresidents. The economic package must be reviewed and approved by congress by the end of October 2017.

Thailand: The tax authorities have approved the extension of the 7% VAT rate for another year, so that the reduction from the standard 10% rate will apply until 30 September 2018.

United Kingdom: The Finance Bill 2017-19 published on 8 September 2017 includes the clauses introduced in March 2017 that were withdrawn after the general election was called. These measures include the corporation tax loss carryforward rules; the corporate interest restriction; the substantial shareholding exemption; and enabling legislation for Making Tax Digital (for prior coverage, see *World Tax Advisor*, 21 July 2017). The committee stage is expected to start by mid-October, with royal assent likely in the first or second week of November.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_1.html

On 13 September 2017, the UK tax authorities (HMRC) published a consultation and further draft legislation on making tax digital. Specific VAT regulations will be published by April 2018, allowing time to ensure that "functional compatible software" will operate as expected. There is relatively little detail on how the software will need to operate, but the HMRC's guidance indicates that software will need to keep records and create returns as required by existing regulations, and be able to receive information from HMRC systems. There also will be a facility to provide HMRC with additional information on a voluntary basis. Comments on the consultation document must be submitted by 10 November 2017.

United States: On 14 September 2017, the Internal Revenue Service (IRS) reminded foreign financial institutions (FFIs) that participate under the Foreign Account Tax Compliance Act (FATCA) to renew their FFI agreements with the IRS, if required. FFI agreements should be renewed online using the IRS' FATCA FFI Registration system. FFIs that fail to renew their FFI agreements by 24 October 2017 could be removed from the November FFI list and be subject to a 30% tax on certain US-source payments, and will be treated as having terminated their FFI agreements as from 1 January 2017.

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

BEPS corner

In each issue that provides updates on developments in the OECD BEPS initiative, *World Tax Advisor* includes a "BEPS corner" covering these developments.

Chile: A bill submitted to the congress on 22 August 2017 would amend the income tax code to implement measures under the OECD BEPS project, provide a framework for complying with the OECD common reporting standard and abolish the investment platform regime, which the OECD has qualified as a potentially harmful regime under BEPS action 5. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170922_2.html

Estonia-Japan: The governments of Japan and Estonia signed the first tax treaty between the two countries on 30 August 2017, which generally follows the OECD model treaty and reflects certain recommendations included in the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170922_6.html

European Union: On 16 September 2017, the EU Economic and Financial Affairs Council (ECOFIN) issued a press release announcing that, during an informal meeting on 15 and 16 September, the financial and economic affairs ministers of the EU member states agreed on updating the international tax rules for companies so that the rules can be applied to tax enterprises using digital technology. The ministers aim to reach a common understanding on the topic at the December 2017 ECOFIN meeting.

Germany: The Federal Ministry of Finance has published administrative guidance for country-by-country (CbC) reporting that applies beginning with the CbC report that is filed for the 2016 fiscal year (for prior coverage, see *World Tax Advisor*, 13 January 2017). The guidance summarizes the information that must be included in the report tables, and specifies that the report must be created and submitted to the tax authorities using the XML schema as published by the OECD on 22 March 2013.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170113_5.html

Ireland: On 12 September 2017, the government published the report prepared by an independent academic expert who was appointed in October 2016 to undertake a review of the corporation tax code to further implement Ireland's commitments with respect to transfer pricing under the OECD BEPS project. The review resulted in proposed changes to Ireland's transfer pricing laws that would align the rules with the 2017 versions of the OECD transfer pricing guidelines and actions 8-10 and 13 of the BEPS project; remove the grandfathering exemption for arrangements in place before 1 July 2010; apply the rules to non-trading and capital transactions; introduce documentation requirements that follow the master file and local file approach; and potentially apply the rules to small and medium-size enterprise groups.

OECD: On 14 September 2017, the OECD announced that the automatic exchange of financial account information (AEOI) between 49 jurisdictions committed to the common reporting standard (CRS) is set to commence in September 2017, and that an additional 53 jurisdictions have committed to exchanging information as from September 2018. The OECD also announced that an additional series of bilateral exchange relationships for CRS information has been activated, and over 2,000 such relationships now exist. All jurisdictions that will exchange information starting in September 2017 have activated the relevant relationships under the CRS MCAA, and 20 of the jurisdictions that will exchange information starting in 2018 are positioned to commence exchanges under the CRS MCAA. An additional activation round that will allow the remaining jurisdictions to nominate the partner jurisdictions with which they will carry out the AEOI beginning in 2018 is planned for November 2017.

Brunei Darussalam became the 113th jurisdiction to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended) on 12 September 2017. The convention provides for the exchange of information on request, spontaneous exchanges, automatic exchanges, tax examinations abroad, simultaneous tax examinations and assistance in tax collection.

On 6 September 2017, the OECD's inclusive framework on BEPS released two sets of guidance on the implementation and operation of CbC reporting under action 13 of the BEPS project. See Global Transfer Pricing Alert 2017-038, 14 September 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-038-14-september-2017.pdf

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

Switzerland: On 6 September 2017, the Federal Council released draft legislation that would introduce a mandatory cantonal-level patent box regime based on the modified nexus approach under BEPS action 5. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170922_1.html

---

Tax treaty round up

At the end of each month, *World Tax Advisor* provides an update on recent tax treaty developments, with a focus on items that directly affect the withholding tax rates of the key jurisdictions covered by the Deloitte International Tax Source (DITS). Additional coverage may include stated negotiating priorities and other important tax treaty trends.
URL: http://www.dits.deloitte.com?id=us:em:na:wta:eng:tax

Unless otherwise noted, the developments discussed below are not yet in force.

Belgium-Mexico: The 2013 protocol to the 1992 treaty entered into force on 19 August 2017 and will apply as from 1 January 2018 for withholding tax purposes. When in effect, the protocol provides for a 0% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company for an uninterrupted period of at least 12 months, or to a qualifying pension fund; otherwise, the rate will be 10%. A 0% withholding tax rate will apply to interest paid to a qualifying pension fund; a 5% rate will apply to interest paid to a bank or financial institution (including insurance companies) or paid on bonds or securities that are regularly and substantially traded on a recognized securities market; otherwise, the rate will be 10%. The withholding tax rate on royalties will not be affected by the protocol.

Denmark-Azerbaijan: When in effect, the treaty signed on 17 February 2017 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company and that has invested at least EUR 1 million (or its equivalent in any other currency) in the capital of the payer company; otherwise, the rate will be 15%. An 8% rate will apply to interest. A 5% rate will apply to royalties paid in respect of a patent, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; otherwise, the rate will be 10%.

Ecuador-United Arab Emirates: When in effect, the treaty signed on 9 November 2016 provides for a 10% withholding tax rate on dividends and interest. A 10% withholding tax rate will apply to royalties for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate will be 15%.

Estonia-Japan: When in effect, the treaty signed on 30 August 2017 provides for a 0% withholding tax rate on dividends paid to a company that holds, directly or indirectly, at least 10% of the voting power of the payer company for the period of six months ending on the date on which entitlement to the dividends is determined, provided that the payer company is not entitled to a deduction for dividends paid in computing its taxable income; otherwise, the rate will be 10%. The rate on interest will be 10%. The rate on royalties will be 5%. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170922_6.html

Hong Kong-Saudi Arabia: When in effect, the agreement signed on 24 August 2017 provides for a 5% withholding tax rate on dividends. A 0% rate will apply to interest. A 5% rate will apply to royalties paid for the use of, or the right to use, industrial, commercial, or scientific equipment; otherwise, the rate will be 8%.

Japan-Russia: When in effect, the treaty signed on 7 September 2017 to replace the 1986 treaty between Japan and the former USSR in relations between Japan and Russia provides for a 0% withholding tax rate on dividends paid to a pension fund, provided the dividends are derived from specified activities; a 5% rate will apply to dividends paid to a company that has held directly at least 15% of the voting power of the payer company for a period of 365 days, ending on the date on which entitlement to the dividends is determined; a 15% rate will apply to dividends derived from shares of a company or comparable interests, such as interests in a partnership, trust, or investment fund, if, at any time during the 365 days preceding the payment of the dividends, the shares or comparable interests derived at least 50% of their value directly or indirectly from certain immovable property situated in the other contracting state; otherwise, the rate will be 10%. A 10% rate will apply to certain contingent interest; otherwise, the rate will be 0%. Royalties will be exempt from withholding tax.

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

Malaysia-Ukraine: When in effect, the treaty signed on 4 August 2016 to replace the 1987 treaty between Malaysia and the former USSR in relations between Malaysia and Ukraine provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest will be 10%. The rate on royalties will be 8%. An 8% rate will also apply to technical service fees.

Nigeria: Nigeria signed the Multilateral Instrument on 17 August 2017. Seventy-one jurisdictions now have signed the MLI (a list of the jurisdictions is available through DITS).
URL: https://www.dits.deloitte.com/App/Views/PopUpWindow.html?pageName=taxTreaties

Portugal-Ivory Coast: The 2015 treaty entered into force on 18 August 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 10% withholding tax rate on dividends. The rate on interest will be 10% and on royalties 5%.

Portugal-Sao Tome and Principe: The 2015 treaty entered into force on 12 July 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 10% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%. The rate on technical fees will be 15%.

Saudi Arabia-Jordan: The 2016 treaty entered into force on 1 September 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 5% withholding tax rate on dividends and interest, and a 7% rate on royalties.

South Africa-Cameroon: The 2015 treaty entered into force on 13 July 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 10% withholding tax rate on dividends paid to a company that holds at least 25% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Switzerland-Zambia: When in effect, the treaty signed on 29 August 2017 to replace the 1954 treaty between Switzerland and the UK in relations between Switzerland and Zambia provides for a 0% withholding tax rate on dividends paid to a pension fund or similar institution; a 5% rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company throughout a 365-day period that includes the day the dividends are paid; otherwise, the rate will be 15%. A 0% rate will apply to interest paid to a pension fund or similar institution; otherwise, the rate will be 10%. A 5% rate will apply to royalties.

United States: An intergovernmental agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA), dated 11 September 2017, has been signed with Kazakhstan.

Global tax alerts

European Union
CJEU rules on French denial of WHT exemption on dividends paid to EU parent controlled by non-EU company
The European Court of Justice issued a decision on 7 September 2017 in which it concluded that a pre-2016 French law violated the EU parent-subsidiary directive (PSD) and the EU freedom of establishment principle. The rules operated to automatically deny the withholding tax exemption on dividends under the PSD where the dividends were paid to an EU parent company that was controlled by a non-EU company, and the latter company was unable to demonstrate that the principal purpose of the structure was not to take advantage of the exemption.
Issue date: 11 September 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-11-september-2017.pdf

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

OECD

OECD releases additional implementation guidance on CbC reporting and appropriate use of information in CbC reports

The OECD on 6 September 2017 released additional guidance on the implementation of the country-by-country (CbC) reporting requirement introduced in the BEPS action 13 final report, as well as guidance on the appropriate use of information contained in CbC reports.

Issue date: 14 September 2017

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-038-14-september-2017.pdf

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 www.deloitte.com/about to learn more about our global network of member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.