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In this issue:

US government unveils details of proposed tax reform bill

On 9 November 2017, the US House Ways and Means Committee approved draft legislation unveiled by committee Republicans on 2 November 2017 for a fundamental and broad reform of the US tax system.

The draft legislation, formally known as the Tax Cuts and Jobs Act (TCJA), contains significant measures that would affect both companies and individuals, including ambitious cuts to tax rates for corporations, pass-through entities and individuals; a more generous expensing regime; significant increases to the individual standard deduction and the child tax credit; and the repeal of the estate tax and the alternative minimum tax. To offset the cost of these measures, the bill also would repeal or limit a number of tax deductions and credits.

From an international tax perspective, the bill includes measures that would provide for a landmark shift to a territorial system of taxation, a cap on interest deductions and changes to the controlled foreign corporation rules, as well as introduce an excise tax on certain amounts paid or incurred by a domestic corporation to foreign corporate members of its international financial reporting group.

For a detailed discussion of the TCJA as initially released, see *Tax News & Views*, 3 November 2017. For additional coverage of the TCJA's international provisions, see United States tax alert, 6 November 2017 and United States tax alert, 8 November 2017.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171103_1.html
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-6-november-2017.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-8-november-2017.pdf

Building on the tax reform "framework"

The TCJA advances the objectives of the tax reform framework put forward in September by congressional Republican leaders and White House officials, but which addressed tax policy goals largely in broad strokes and provided few details on how various tax relief provisions would operate and how they would be paid for. Unofficial estimates from the nonpartisan Tax Policy Center suggested the framework could cost several trillion dollars over 10 years, but the recently approved unified budget resolution for fiscal year 2018 only affords budget reconciliation protections to a tax bill that increases the federal deficit on a net basis by up to USD 1.5 trillion over 10 years. (Budget reconciliation sets up a fast-track process shielding qualifying legislation from a filibuster in the Senate by allowing legislation to be passed in that chamber with only 51 votes, rather than the 60 votes normally needed to clear procedural hurdles—a useful tool for Republicans, who currently control only 52 Senate seats.)

The TCJA fills in the framework's blanks: for example, it includes income thresholds for the proposed new individual rate brackets, "guardrails" for the proposed new pass-through regime and deemed repatriation rules and base erosion protections to accompany the transition to a territorial tax regime. Moreover, it lays out an array of proposed base-broadening provisions that would have a significant impact on corporations, pass-through entities, individual taxpayers and tax-exempt organizations. An initial estimate from the Joint Committee on Taxation projects the bill as released would result in a 10-year deficit spike of USD 1.49 trillion—just under the limit established in the budget resolution.

Concerns lead to modifications

Some of the bill's details attracted pockets of opposition from within the Republican party as they came to light. The drafting process for the TCJA was highly secretive, so much so that many of the finer points of the proposal were unknown even to a number of Ways and Means Republicans and their staff until just recently. Indeed, as Republican committee members learned just what was being proposed and voiced their concerns with specific provisions, last-minute modifications resulted in the delay of the proposal's official release beyond the original 1 November target date. Additional revisions were made shortly after the bill was unveiled and again during the Ways and Means Committee mark-up process. Some of the revisions to the original bill include further refinements to international tax reform measures.

Next steps

At press time, House Republican leaders appeared confident that they would be able to bring the bill to the floor and secure passage sometime during the week of 13 November.

At press time on 9 November, the, Senate Finance Committee Republicans released their own version of tax reform legislation, which varies from the House bill.

Policy differences between House and Senate Republicans could further complicate the tax reform effort. Once a tax reform bill clears the Senate, any differences between that measure and the House-passed legislation must be resolved in a joint conference committee and the resulting conference agreement will need to be approved in both chambers before it can be sent to the White House for President Trump's signature.

Congressional Republican leaders have stated that they expect to see tax reform enacted by the end of this year. But as lawmakers face a tight legislative calendar and a pile-up of other end-of-year priorities, some have speculated that action on tax reform could be delayed into 2018.

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Ireland's Finance Bill 2017 includes new measures

On 19 October 2017, the Irish Minister for Finance, Public Expenditure and Reform presented Finance Bill 2017 to parliament, which starts the process for implementing the measures announced on 10 October 2017 in Budget 2018. The Finance Bill largely reflects the measures announced in the budget, but also includes other provisions, some of which would affect companies.

Measures from Budget 2018

Measures in the Finance Bill that were announced in the budget include the following:

- The reintroduction of the 80% cap on the relevant income against which capital allowances for intangible assets may be deducted in a tax year (as a result, 20% of the profits would remain within the charge to Irish corporation tax, and any unused capital allowances could be carried forward);
- The introduction of a "Key Employee Engagement Programme" (KEEP), a new share option scheme to help small and medium-sized enterprises (SMEs) attract and retain top talent though tax efficient share-based remuneration. Under the KEEP, tax on the exercise of employer share options would be deferred until the shares are sold, at which point the lower capital gains tax rates would apply to the income;
- An increase in the standard rate band for income tax to EUR 34,550 for single earners, along with a decrease in the 2.5% universal social charge rate from 2.5% to 2%;
- An increase in the stamp duty rate on transfers of commercial property from 2% to 6% with effect from midnight, 10 October 2017, subject to transitional measures provided in the Finance Bill; and
- A reduction in the qualifying holding period of land or buildings from seven years to four years for qualifying disposals to be exempt from capital gains tax.

New measures

The Finance Bill has added several measures that would affect corporations:

Deductibility of interest: The deductibility of interest on financing has been the subject of considerable discussion over the last 12 months. The updates included in the Finance Bill formally recognize the complex structures of corporate groups, which can involve multi-tiered holding company structures due to legal requirements or practices in a particular country or security requirements of lenders, etc. The updates in the Finance Bill would be effective for loans made on or after 19 October 2017.

The Finance Bill would extend the existing anti-avoidance measures relating to the recovery and "deemed" recovery of capital (which disallow the deduction of interest expense where a company is deemed to have recovered capital in relation to the underlying borrowings) to such multi-tiered holding company structures. The bill also would require taxpayers to maintain appropriate records to support positions where a recovery of capital could occur, but the taxpayer is claiming non-applicability of these rules. Broadly, the deduction of such interest expense should not be disallowed where the debt is incurred for bona fide commercial reasons and not for purposes of avoiding Irish tax.

Ireland has made a formal request that the EU accept its current rules on interest expense deductibility as being equally effective to the rules proposed in the EU anti-tax avoidance directive for a period that extends until the earlier of (i) the transition period that lasts until 31 December 2023; or (ii) when BEPS action 4 becomes a minimum standard, thereby allowing these rules to remain in effect for the foreseeable future.

Multilateral instrument: The Finance Bill commences the legislative procedure required to ratify the OECD multilateral instrument (MLI), which Ireland signed on 7 June 2017. The MLI will have the effect of updating Ireland's tax treaties; each of Ireland's treaties will be modified where Ireland and the relevant treaty partner country have signed and ratified the MLI. No specific timeline has been provided for ratification.

Other measures:

- The Finance Bill includes measures that would clarify the provisions for adopting a new accounting standard within an existing accounting framework, such that affected income and expenses would be adjusted, taxed or allowed, respectively, over a five-year period. The measures would apply to accounting periods beginning on or after the date the Finance Act is passed (mid to late December 2017, with earlier election possible).
- The Finance Bill would implement changes to deal with provisions in the Companies Act 2014 with respect to transfers of assets and liabilities of a "transferor company" to a "successor company" pursuant to a merger or division. The amendment would ensure that the tax payment, filing and reporting obligations and liabilities of a transferor company would transfer to a successor company or companies following the transaction.
- An anti-avoidance measure would be introduced that would apply to the capital gains tax exemption on the disposal of certain shareholdings made on or after 19 October 2017, to ensure that money or other assets transferred to a company prior to a disposal of shares in that company would not be taken into account in determining the assets from which the value of the shares is derived.

Transfer pricing / Coffey report: The Finance Bill does not contain any specific transfer pricing measures, although in an update on Ireland's international tax strategy published as part of the budget, the minister announced a consultation that runs until 31 January 2018 to review how the recommendations in the "Coffey report" will be implemented into Irish tax law. The Coffey report, published on 12 September 2017, is the output of a review of the Corporation Tax Code undertaken by an independent academic expert that was appointed to perform the review in 2016.

The report, for instance, recommends that Ireland provide for the application of the OECD 2017 Transfer Pricing Guidelines incorporating BEPS actions 8-10 into Irish legislation. This recommendation is now subject to public consultation. Other transfer pricing recommendations outlined in the report and under consultation include whether to:

- Extend the transfer pricing rules to non-trading and capital transactions;
- Remove the current exemption for certain SMEs; and
- Repeal pre-1 July 2010 grandfathered arrangements and bring them within the scope of the transfer pricing rules.

Comments

Finance Bill 2017 held few surprises, providing for the enactment of measures announced in Budget 2018 together with a number of amendments to corporation tax provisions, which are outlined above.

From a corporation tax perspective, Budget 2018 was framed against the backdrop of the Coffey report, which focused on tax transparency, avoiding preferential tax treatment, further implementation of Ireland's international commitments under the OECD BEPS project, delivering tax certainty, maintaining competitiveness and maintaining the 12.5% corporation tax rate.

If implemented, the transfer pricing recommendations under public consultation would represent a significant refinement of Ireland's existing transfer pricing laws. The implementation of BEPS actions 8-10 would have a substantial impact on groups that hold intellectual property assets in Ireland or that are considering on-shoring such assets. Ensuring the appropriate level of substance in Ireland in terms of decision-makers and personnel who have the capability to manage and control the risks of exploiting such activities also is key. Other business activities in Ireland, such as centralized procurement and treasury operations, would need to be aware of the impact of actions 8-10 on current transfer prices and policies.

The recommendation relating to updating the transfer pricing documentation rules to reflect the new two-tier master and local files approach in the OECD 2017 Transfer Pricing Guidelines would present a new compliance requirement for groups operating in Ireland. The level of detail that needs to be included in the new OECD two-tier documentation goes far beyond what groups currently include, and is likely to mean significant resources would have to be dedicated to align to the new documentation approach. Consideration should be given to introducing an exemption for groups under a certain monetary threshold from having to prepare full OECD documentation. A number of other jurisdictions already have adopted this approach.

With respect to the recommended expansion of the transfer pricing laws to non-trading and capital transactions, it is noteworthy that other parts of Ireland's tax laws already include measures with concepts comparable to the arm's length principle that deal with such transactions (in particular, capital transactions) and, therefore, any consideration of whether additional measures are needed should form part of the review process.

The Finance Bill is expected to be passed by both houses of parliament and signed into law by late December 2017.

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Austria:
Supreme Administrative Court clarifies scope of anti-tax loss trafficking rule

Austria's Supreme Administrative Court issued a decision on 13 September 2017, concluding that an indirect transfer of the shares in an Austrian company is not "harmful" within the meaning of the anti-tax loss trafficking rule in the Corporate Income Tax Act.

Under the anti-tax loss trafficking (or change-in-ownership) rule, existing tax loss carryforwards of a company subject to Austrian corporate income tax are forfeited if harmful events are present. Such events will exist if the taxpayer's identity is substantially changed due to a material change in its organizational and business structures, in combination with a material change in its shareholder structure, following a disposal of shares for consideration. However, the loss carryforwards will not be forfeited if the changes are a consequence of a reorganization structured in such a way to preserve a substantial proportion of jobs. Similar provisions exist in other tax areas, such as the Reorganization Tax Act.

Since the language of the statute appears to provide that only a direct transfer of the shares in an Austrian company is covered by the anti-tax loss trafficking rule, the prevailing opinion has been that an indirect share transfer higher up the shareholding chain is irrelevant for purposes of triggering the rule. However, the Austrian tax authorities recently have, on occasion, taken the position that an indirect share transfer (*e.g.* a transfer of shares in the parent company of the Austrian loss-making company) is deemed to be harmful within the meaning of the anti-tax loss trafficking rule.

In its September 2017 decision, the Supreme Administrative Court concluded that the anti-tax loss trafficking rule cannot be triggered merely by an indirect share transfer. For a change to fall within the scope of the rule, a change at the shareholder level definitely refers to a transfer of shares in the Austrian loss-making company itself.

The decision is important for multinational groups of companies with Austrian affiliates since it offers some legal reassurance in terms of preserving Austrian tax loss carryforwards where, for example, the top holding company is acquired or a restructuring involves intragroup share transfers at a level above the Austrian company in the shareholding chain.

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Barbados:
Status of various regimes in context of OECD BEPS project

Barbados' Ministry of International Business recently announced that the government will review the operation of its existing preferential tax regimes in the context of meeting its commitments under the OECD inclusive framework (Barbados joined the framework on 4 July 2017). Members of the inclusive framework are committed to implementing the key BEPS actions, and they will participate as BEPS associates of the OECD's Committee on Fiscal Affairs in developing further standards to address remaining BEPS issues.

The Barbados government announcement followed the release of a report ("Harmful Tax Practices – 2017 Progress Report on Preferential Regimes") by the OECD on 16 October 2017 that sets out the results of peer reviews undertaken by the Forum on Harmful Tax Practices (FHTP) over the last 12 months. The progress report is an update to the 2015 report on action 5 of the BEPS project, and contains the results of the FHTP review of 164 preferential tax regimes that have been identified worldwide (including Barbados' regimes).

One of the goals of the FHTP is to identify the features of preferential tax regimes that can facilitate BEPS and can negatively impact the tax base of another jurisdiction. Countries with preferential tax regimes will need to place a renewed focus on substance, transparency and eliminating ring-fencing characteristics in their domestic legislation.

Status of Barbados' regimes

The FHTP report captures the review of preferential regimes globally, including in Barbados, and identifies the steps that already have been taken by affected countries and what still needs to be done. The scorecard for Barbados shows that there are two potentially harmful regimes, and that the Barbados government is committed to amending regimes that are under review. The categories of regimes reviewed include intellectual property regimes, headquarters regimes, financing and leasing regimes, banking and insurance regimes, distribution center and service center regimes, shipping regimes, holding company regimes and miscellaneous regimes.

The following table outlines the status of Barbados regimes:

Types of regimes	Regimes	Status
Intellectual property regimes	International societies with restricted liabilities (ISRL) and international business companies (IBC)	In the process of being amended
Headquarters regimes	IBC (reviewed as a financing and leasing regime)	In the process of being amended
Financing and leasing regimes	IBC	In the process of being amended
Financing and leasing regimes	International financial services (also reviewed as a headquarters regime)	Potentially harmful
Banking and insurance regimes	Exempt insurance and qualifying insurance companies	In the process of being amended
Distribution center and service center regimes	Fiscal Incentives Act	Out of scope / not being reviewed at this time
Shipping regimes	Shipping regime	Under review
Holding company regimes	ISRL and international trusts (also reviewed as a financing and leasing regime)	In the process of being amended
Miscellaneous regimes	Credit for foreign currency earnings/credit for overseas project or services	Potentially harmful (the Ministry of International Business has signaled that changes may be made to this aspect of the Barbados income tax legislation)

The report provides meanings of the terms used, except for the terms "out of scope" and "under review."

Status	Meaning
In the process of being amended	Barbados has communicated to the FHTP that the government is committed to abolishing or amending the regime in light of the discussions by the FHTP about features of the regime that are of concern. The FHTP can reconsider the description of these regimes if insufficient progress is made.
Potentially harmful	The regime includes potentially harmful features due to ring fencing and the lack of substantial activities or activities that lack economic substance.

Timeframes and grandfathering

The OECD report contains timeframes and grandfathering measures for the regimes as follows:

- No new entrants will be allowed into IP regimes after 30 June 2018 (with existing entities grandfathered until 2021); and
- Non-IP regimes are to be shut down as soon as possible, but no later than 31 October 2018 or, where necessary, by 31 December 2018 because of the legislative process.

Comments

While the Barbados government has demonstrated its commitment to changing these regimes, it is equally committed to ensuring that the sector remains relevant and competitive.

As is clear from the first table above, the Barbados IFC and the credit for foreign currency earnings on qualifying overseas projects or services are cited as having “potentially harmful” features due to ring-fencing and the lack of substantial activities. However, the report does not conclude that any regimes in Barbados are “harmful” and must be abolished. The grandfathering rules will provide a cushion for entities that currently are within the scope of regimes that are being amended, until June 2021 at the latest. Therefore, no immediate action is required.

Pronouncements by the Ministry of International Business suggest that Barbados has agreed to amend all legislation with ring fencing features within the relevant timeframe (*i.e.* by the end of September 2018) to conform to the suggestions made by the FHTP. The ministry also has indicated that the government is committed to ensuring that substance requirements are met so that the international business sector remains sustainable and competitive.

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China:
SAT issues guidance on EIT withholding on income derived by NREs

China’s State Administration of Taxation (SAT) published guidance (Bulletin 37) on 27 October 2017 that contains updated guidance on the collection of enterprise income tax (EIT) on China-source income derived by nonresident enterprises (NREs), and includes measures to reduce the administrative burden on withholding agents and coordinate responsibilities among different competent tax authorities involved in the withholding process.

Bulletin 37 fully repeals two sets of guidance dating from 2009 relating to the collection of withholding tax on income of NREs (*i.e.* Circular 3 and Circular 698), as well as specific individual articles in other circulars. Unless otherwise noted below, the provisions in Bulletin 37 will apply as from 1 December 2017.

Bulletin 37 abolishes the requirement for withholding agents to submit relevant contracts to the Chinese tax authorities and clarifies the following:

- Date for tax to be withheld from dividend payments;
- Situations where a withholding agent will be deemed to have withheld tax but not to have paid the tax to the tax authorities (as opposed to not having withheld the tax at all), and the timeframe for an NRE to report and pay tax on its own in cases where the withholding agent fails to withhold;
- Foreign currency exchange rules relating to the calculation of taxable income; and
- Duties and cooperative practices that apply among the Chinese tax authorities involved in EIT withholding.

Abolition of requirement to submit contracts

Under Circular 3, where a contract involving the withholding of EIT has been concluded or amended, the withholding agent must complete a specific form and submit the form, the contract and other documents to the Chinese tax authorities within 30 days from the date the contract was signed or amended.

Bulletin 37 effectively eliminates this contract registration requirement by repealing Circular 3 in its entirety (although withholding agents and NREs still may be required to submit contracts to the tax authorities under other tax rules). Nevertheless, under Bulletin 37, withholding agents still will be required to maintain proper files relating to the relevant contracts, and the tax authorities will have the right to request a contract from a withholding agent.

Date for withholding from dividend payments

Where a Chinese resident enterprise pays dividends to an NRE that does not have an office or other premises in China, existing rules (article 5 of Bulletin 24) require the resident enterprise to withhold the tax on the earlier of: (i) the date on which the board of directors decides to distribute the profits; or (ii) the date on which the dividend payment is made. Bulletin 37 abolishes article 5, and clarifies that the withholding obligation on dividends paid to an NRE will be triggered on the date the dividends are paid. This provision will have retroactive effect for income that has arisen, but "has not been dealt with" (the terminology used by the SAT) before 1 December 2017.

Failure of withholding agent to remit tax

Where the withholding agent does not remit the EIT to the Chinese tax authorities, different legal consequences will arise for the agent depending on whether (i) the agent is considered to have withheld the tax but not to have paid the tax to the tax authorities; or (ii) the agent is considered not to have withheld the tax at all. Bulletin 37 provides the following guidance on how to distinguish between these two situations:

- Where the income has been paid to the NRE, but the withholding agent did not remit the tax to the Chinese tax authorities, and any of the following circumstances is present, the withholding agent will be considered to have withheld the tax, but not to have paid the tax to the tax authorities:
    - The withholding agent expressly informs the payee that the tax was withheld;
    - The amount of the tax payable is booked as a separate item in the withholding agent's accounting ledger;
    - The amount of the tax payable is deducted or starts to be amortized as a separate item in the withholding agent's tax filing; or
    - There is other evidence that the tax actually was withheld.
- In all other cases, the withholding agent will be deemed not to have withheld the tax.

Where a withholding agent fails to withhold EIT, the current rules contain strict time requirements for an NRE to report and remit the tax to the Chinese tax authorities on its own to avoid the imposition of late payment interest for noncompliance.

Bulletin 37 provides a new rule that is more beneficial to taxpayers. Where an NRE voluntarily reports and pays the tax to the Chinese tax authorities before being requested to do so, the date on which the tax payment is made will be deemed to be the due date of the tax payment, and late payment interest will not be levied. It also appears that late payment interest will not be levied even where the competent tax authorities set a date for the tax payment for the first time and the NRE complies. This new rule will have retroactive effect, similar to that applicable for withholding on dividend payments.

Foreign currency issues

Where a payment that was made or becomes payable by a withholding agent is in a foreign currency, Bulletin 37 prescribes that the foreign currency is to be converted into RMB as follows:

- Where the withholding agent withholds the tax, based on the median exchange rate published on the date the withholding obligation is triggered;

- Where an NRE reports and pays the tax voluntarily before the tax authorities request the payment, based on the median exchange rate published "on the day before the day on which the tax payment form is completed"; and
- Where the tax authorities request the NRE to pay the tax within a prescribed period, based on the median exchange rate published "on the day before the day on which the tax authority makes the decision to request the tax payment" (the tax authorities will issue a notification of the decision with a specific date).

Duties of tax authorities

Since there may be multiple tax authorities involved in the collection of withholding tax, guidance is needed to specify and coordinate the duties and responsibilities of the authorities. Bulletin 37 provides the following rules:

- If a withholding agent does not withhold tax at all, the competent tax authorities in the place where the withholding agent is located will have to pursue the liability of the agent in accordance with the relevant laws and regulations. If it is necessary to recover the tax from the NRE, the tax authorities in the place where the income is derived should do so.
- If the location of a withholding agent is different from the place where the income is derived, and the competent tax authorities in the place where the income is derived are responsible for collecting the tax, those authorities will be responsible for verifying the relevant information with the competent tax authorities in the place where the withholding agent is located.
- If the competent tax authorities in the place where the withholding agent is located have confirmed that the agent did not withhold or pay the tax, these tax authorities will have to notify the relevant authorities in the place where the income is derived about the tax issues related to the NRE by sending a letter within five business days from the date the tax authorities make such confirmation.

Comments

Bulletin 37 provides clear and updated guidance on the collection of EIT on China-source income derived by NREs, which should make tax collection more efficient. Since the bulletin makes a number of significant changes to existing rules, parties involved in transactions that have not yet been taxed and parties that are considering relevant transactions should carefully review Bulletin 37, analyze the relevant tax implications and take steps needed to mitigate any potential tax risks.

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India:
Place of effective management rules clarified

India's Central Board of Direct Taxes (CBDT) issued a circular on 23 October 2017 to clarify the guidelines for determining whether a foreign company has a place of effective management (POEM) in India (and thus is considered an Indian tax resident) in cases involving a multinational group with a regional headquarters structure in India.

Background

The POEM concept was introduced into the Income-tax Act, 1961, effective from assessment year 2017-2018, for purposes of determining whether a foreign company is a tax resident of India (for prior coverage, see *World Tax Advisor*, 11 March 2016). The POEM is the place where key management and commercial decisions necessary for the

conduct of the business of an entity as a whole are made, in substance. (Previously, a foreign company was considered an Indian tax resident only if the control and management of its affairs was carried out entirely in India.)
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_1.html

The CBDT issued final guidelines for the determination of the POEM for an entity in a circular dated 24 January 2017, and the rules were further clarified in another circular dated 23 February 2017. The latter guidance provided that the POEM provisions will not apply to companies with turnover or gross receipts of no more than INR 500 million in a financial year.

The January 2017 circular states that if, on the basis of the relevant facts and circumstances, the board of directors of a foreign company is not actually exercising its powers of management, and such powers instead are being exercised by a holding company or any other person(s) resident in India, the foreign company will be considered to have a POEM in India.

The CBDT received several requests for clarification on whether a POEM in India would be triggered merely because a multinational group operates a "regional headquarters" in India that conducts certain routine activities that are not specific to any foreign entities or subsidiaries/group companies.

Clarification from the CBDT

Referring to the specific conditions set forth in the January 2017 circular, the CBDT now has clarified that, in and of themselves, the activities of a regional headquarters will not establish a POEM in India, provided:

- The regional headquarters carries out activities for subsidiaries/group companies in line with general and objective global policies set forth by the group parent entity (in areas such as payroll and human resource functions, accounting, information technology infrastructure and network platforms, supply chain functions and routine banking operational procedures); and
- These activities are not specific to any subsidiaries/group companies.

The general anti-avoidance rules may be triggered if the clarifications provided by the circular are used for purposes of abusive/aggressive tax planning.

Comments

The new circular issued by the CBDT clarifies the application of the POEM rules for multinational companies with a regional headquarters in India that merely is conducting routine activities for the entire group that are in line with the global policies of the parent entity.

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In brief

Estonia: The annual threshold for taxable supplies above which VAT registration is mandatory will increase to EUR 40,000 beginning on 1 January 2018 (the threshold currently is EUR 16,000). The main reason for the change is to support the business activities of small businesses in Estonia by reducing the administrative burden of preparing and submitting VAT returns. Taxpayers with total annual taxable supplies below the threshold may voluntarily register for VAT.

European Union: On 26 October 2017, the European Commission announced that it has opened an in-depth state aid investigation into the UK's controlled foreign company (CFC) rules. Specifically, the commission is questioning whether the CFC regime's group financing exemption, which since 2013 has exempted certain financing income received by a UK company's offshore subsidiary from another foreign group company from UK taxation, violates EU law by selectively favoring some companies over others. According to the commission, the group financing exemption allows multinationals active in the UK to provide financing to a foreign group company via an offshore subsidiary and pay little or no tax on the profits from these transactions while, on the other hand, the rules subject certain other income shifted to offshore subsidiaries of UK companies to UK tax.

Malaysia: The Ministry of Finance has issued an order that was published in the official gazette on 24 October 2017 and "deemed to have come into operation" on 6 September 2017 that restores the withholding tax exemption for offshore technical and installation services carried out by nonresidents that applied before 17 January 2017 (for prior coverage see *World Tax Advisor*, 11 November 2016). The restoration of the exemption is not fully retroactive, *i.e.* certain transactions before the order came into operation still may be subject to withholding tax. The Malaysian tax authorities are expected to provide clarification as to whether the relevant date for purposes of determining the applicability of the exemption is the date services are rendered or the date payment for the services is made.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161111_5.html

Switzerland: On 1 November 2017, the Council of State of the canton of Vaud announced that the cantonal tax reform project will become effective on 1 January 2019, instead of the projected 2020-2021. The entry in force of the new law will result in the reduction of the effective corporate income tax rate for ordinarily taxed companies from the current rates, which range between 20%-22%, to 13.79%. The capital tax rate will be increased slightly, although the capital tax will continue to be creditable against income tax. Companies benefitting from a favorable tax regime will continue to receive benefits until the time such regimes sunset (the preferential tax regimes should be abolished by the time the federal corporate tax reform (STR 17) becomes effective, likely in 2020-2021) (for prior coverage of STR 17, see *World Tax Advisor*, 22 September 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170922_1.html

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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.

Barbados: The Ministry of International Business has announced that the government will review the operation of existing preferential tax regimes in the context of meeting its commitments under the OECD inclusive framework. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171110_4.html

Ireland: The "Coffey report," published on 12 September 2017, recommends that Ireland provide for the application of the OECD 2017 Transfer Pricing Guidelines incorporating BEPS actions 8-10 into Irish legislation. This recommendation is now subject to public consultation. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171110_2.html

OECD: The OECD announced on 6 November 2017 that it has published updated versions of 31 transfer pricing country profiles that reflect current legislations and practices of each of the countries. The information aims to reflect the current state of countries' legislation and to indicate which of their rules follow the OECD transfer pricing guidelines. The updated profiles – based on data provided by the countries themselves – focus on countries' domestic legislation regarding key transfer pricing principles, including the arm's length principle, transfer pricing methods, comparability analysis, intangible property, intragroup services, cost contribution agreements, documentation, administrative approaches to avoiding and resolving disputes, safe harbors, etc.

The OECD announced on 4 November 2017 that Maldives has become the 104th country to join the inclusive framework on BEPS. Under the inclusive framework, all jurisdictions that commit to the BEPS project will participate as BEPS associates of the OECD's Committee on Fiscal Affairs. Joining the BEPS inclusive framework means that the countries must implement the four minimum standards: countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution.

Peru signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended) on 25 October 2017, becoming the 114th jurisdiction to join the convention. 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.

The Isle of Man deposited its instrument of ratification, acceptance or approval for the Multilateral Instrument (MLI) on 25 October 2017. The Isle of Man is the second country to ratify the MLI, following Austria (for prior coverage, see *World Tax Advisor*, 27 October 2017). A least three more jurisdictions must ratify the MLI before it enters into force.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171027_tr.html#Austria

Portugal: The deadline for filing the CbC reporting notification has been extended to 31 December 2017. See Global Transfer Pricing Alert 2017-046, 27 October 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-046-27-october-2017.pdf

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Global tax alerts

European Union
AG opines on Dutch tax treatment of interest expense deductions/currency losses in context of fiscal unity
On 25 October 2017, CJEU Advocate General Sánchez-Bordona issued his opinion in two cases relating to the Dutch fiscal unity regime, involving the interest deduction limitation rule and the rule on the deduction of currency losses on a participation.
Issue date: 30 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-30-october-2017.pdf

France
Large companies to be subject to one-time exceptional surtax on corporate income tax
On 2 November 2017, the government presented an amended finance bill for 2017 that would introduce a one-time corporate income tax surtax, which would be due by companies whose annual turnover exceeds EUR 1 billion. The surtax would have to be paid by 20 December 2017.
Issue date: 3 November 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-3-november-2017.pdf

Portugal
Portugal delays deadline for filing CbCR notification
The Secretary of State for Finance has postponed the deadline for taxpayers to comply with the CbC reporting notification obligation to 31 December 2017, because the official electronic form to make the notification has not yet been made available.
Issue date: 27 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-046-27-october-2017.pdf

United States
Amendments to international tax provisions of the Tax Cuts and Jobs Act
On 6 November 2017, the chairman of the House Ways and Means Committee introduced an amendment to the Tax Cuts and Jobs Act, which would make certain changes and technical corrections to its international tax provisions.
Issue date: 8 November 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-8-november-2017.pdf

The international tax provisions of the Tax Cuts and Jobs Act
The Tax Cuts and Jobs Act released by the House Ways and Means Committee on 2 November 2017 contains a number of provisions that will affect multinationals, including changes to the CFC rules, a cap on interest deductions, an excise tax on certain payments made by a domestic corporation and a shift to a territorial tax system.
Issue date: 6 November 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-6-november-2017.pdf