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Mexico launches special economic zones

Decrees published in Mexico's federal official gazette on 29 September 2017 officially launched three special economic zones (SEZs) in the country: Lázaro Cárdenas-La Unión, Puerto Chiapas and Coatzacoalcos. The SEZs, which apply as from 30 September 2017, provide for preferential income tax, VAT, and customs duty treatment for companies operating in the zones (for prior coverage, see *World Tax Advisor*, 19 August 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160819_ib.html

A law enacted in 2016 created the SEZ regime, but individual decrees were required to officially launch them. The SEZs aim to stimulate growth, reduce poverty, facilitate the supply of basic services and attract investment to economically underdeveloped or depressed areas. Mexican companies or state-owned entities that obtain permission to become "integral administrators" and Mexican or nonresident entities and individuals that receive authorization from the Ministry of Finance to be qualified SEZ "investors" and that carry out qualifying "economic productive activities" in an SEZ qualify for the incentives.

Income tax benefits

Integral administrators and investors will be granted a 100% reduction of corporate income tax otherwise due on income earned within the SEZ for the first 10 fiscal years from the date authorization for integral administrator/investor status is granted. A 50% income tax reduction will be granted on income earned within the SEZ during the subsequent five years. (However, foreign tax credits applied to reduce tax on SEZ income also will be subject to the same 100% or 50% reduction, as applicable.)

To be eligible for the income tax benefit, qualifying integral administrators and investors must maintain at least the same number of insured employees registered under the mandatory regime with the Mexican social security authorities in all fiscal years in which the tax reduction is applied, and the employees must provide their services exclusively within the SEZ.

Taxpayers opting to apply Mexico's integration tax regime are not eligible for the income tax reduction on SEZ income. However, companies with an IMMEX (maquiladora) authorization can apply the SEZ benefits provided other benefits available to maquiladoras under the Income Tax Law are not applied.

The following tax incentives also will be available to integral administrators and investors operating within an SEZ:

- An additional 25% deduction from income generated in the SEZ for training expenses incurred to provide SEZ employees with technical and scientific knowledge related to the activity for which the authorization was granted; and
- A tax credit against the income tax equal to 50% of the employer's contribution for illness and maternity insurance for the first 10 fiscal years, dropping to 25% for the following five years. If the tax credit exceeds the income tax liability in a particular fiscal year, the taxpayer may request a refund or offset the balance against other taxes.

Value added tax benefits

VAT benefits will be granted for goods imported into an SEZ and for services performed in the zones.

A 0% VAT rate (instead of the standard 16% rate) will apply to the sale of goods, the provision of services and the granting of the temporary use of tangible assets by taxpayers located outside an SEZ to integral administrators or investors for use or consumption within an SEZ. However, the supply must be directly related to the construction, management or maintenance of the SEZ or for carrying out productive economic activities within the zone.

The following will not be considered imports for purposes of VAT and, therefore, will not be subject to VAT:

- The introduction of foreign goods into an SEZ;
- The acquisition of intangible assets from nonresidents by residents of an SEZ;
- The temporary use within an SEZ of intangible assets provided by nonresidents;
- The use within an SEZ of tangible assets for which physical delivery occurred outside of Mexico; and
- The use of services rendered by nonresidents within an SEZ.

Integral administrators or investors that bring goods into the SEZ that were acquired and subject to VAT outside of the SEZ will be able to recover the VAT paid. The administrator/investor will be able to request a refund from the Mexican tax authorities (provided the taxpayer only carried out acts or activities within an SEZ), or may credit the VAT paid against VAT due with respect to acts or activities performed outside the SEZ.

The following rules also apply:

- The removal of goods from an SEZ to a non-SEZ location in Mexico is subject to VAT.
- The removal of goods from the SEZ to be exported out of the country or to be returned abroad is not subject to VAT.
- Transactions carried out within the SEZ will not be taxable for VAT purposes, and taxpayers that carry out the transactions will not be considered VAT taxpayers.
- Acts or activities carried out between qualifying integral administrators and/or investors will not be subject to VAT if certain control requirements that ensure that such acts or activities will be carried out within an SEZ are met.
- The removal of goods from an SEZ to be transported to an establishment of the taxpayer located in another SEZ will not be subject to VAT, provided certain control requirements are fulfilled.

Special customs regime

A special customs regime will apply, whereby integral administrators and investors that introduce goods into an SEZ will be granted reduced federal customs processing fees and will be allowed to pay the lowest import duty rate between the rate applicable to the raw materials and the rate applicable to the goods after they were processed, transformed, or repaired within the zone.

Various other benefits will be granted for integral administrators and investors in SEZs, including the following:

- The possibility of introducing goods into the zone through consolidated customs declarations;
- The exemption from VAT for transfers of goods between qualified investors located in the same or different SEZ;
- The temporary removal of machinery and equipment from an SEZ for repair or maintenance without any VAT consequences; and
- The introduction of goods into an SEZ without complying with the non-tariff regulations and restrictions or the Mexican official standards determined by the Ministry of Economy.

Since the federal SEZ law does not address the excise duty treatment of production activities or services rendered in SEZs, excise duty must be applied in accordance with the applicable excise duty laws. However, the following rules aim to neutralize the customs regime for SEZs with respect to excise duty:

- The introduction into Mexico of goods under the customs regime will be deemed to be permanent imports (and excise duty will be triggered);
- Customs operations resulting from the transfer of goods between qualifying SEZ investors will not be considered exports or imports, as appropriate;
- The removal of goods from the SEZ for introduction into other locations in Mexico will not trigger excise duty on permanent importation for customs purposes; and
- Operations covered by documents proving the introduction of the goods into the SEZ will not be considered exports.

Government fees

Integral administrators (but not investors) are exempt from the payment of government fees for the use or enjoyment of assets within the public domain.

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Argentina:
Proposed tax reform would introduce most significant changes in decades

The executive branch of Argentina's federal government submitted a bill to Congress on 15 November 2017 that would significantly reform the country's tax system. The bill includes changes that would affect the taxation of both residents and nonresidents, and would lower the corporate tax rate on undistributed profits from 35% to 25% by 2020. The reform has a number of goals, including encouraging investment, promoting the development of the economy, making Argentina globally competitive, facilitating quality employment, increasing fairness in the tax system and reducing tax evasion. While the bill is still a work in progress and the effective date is uncertain until the law is approved, the main changes relevant to corporations are expected to affect the following areas:

Corporate income tax

- The current 35% corporate income tax rate would be reduced to 30%, and then to 25% by 2020.
- A withholding tax on dividends paid by an Argentine entity to a nonresident or a resident individual would be imposed at a rate of 7% for 2018 and 2019, increasing to 13% as from 2020, so that the overall income tax burden on distributed profits would reach about 35%.
- The equalization tax would be eliminated for income generated as from 2018. This tax currently applies to dividends paid to a resident or nonresident that exceed the Argentine payer company's accumulated taxable income, after certain adjustments.
- The imposition of tax on capital gains on the sale of shares of Argentine companies derived by nonresidents as from 23 September 2013 would be retroactively affirmed. Although such transactions have been subject to tax as from that date, the tax authorities did not issue rules on how the tax should be paid where both the purchaser and the seller are nonresidents until 18 July 2017, so it is likely that some transactions escaped taxation. A resolution issued on 20 July 2017 suspended the effective date of the rules for 180 days, reportedly due to concerns relating to transactions carried out on a stock exchange (for prior coverage, see *World Tax Advisor*, 18 August 2017). The bill would provide a tax exemption for shares traded on a stock exchange as from 23 September 2013 if the broker did not apply the applicable withholding tax.
  URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170818_3.html
- An exemption would be introduced for capital gains derived by nonresidents on the sale of publicly traded shares or certificates of deposit for such securities (*i.e.* ADRs). The exemption for interest and capital gains from public and corporate bonds, financial trusts with a public offering and certain mutual funds with a public offering would be retained.
- The taxation of certain digital content at a 17.5% rate (the effective withholding tax rate that applies to certain royalties paid to a nonresident) would be clarified.
- Indirect sales of certain Argentine assets (shares of Argentine entities, Argentine permanent establishments (PEs) and other assets such as real estate located in Argentina) that are carried out through the sale of shares or other participations in a nonresident entity would become subject to tax.
- The thin capitalization rules would be replaced by rules limiting the deductibility of interest on loans with related companies to 30% of taxable EBITDA (earnings before interest, taxes, depreciation and amortization). (Currently, only certain related-party interest is subject to the thin capitalization rules, based on a 2:1 debt-to-equity ratio.) Certain exceptions would apply in the case of highly leveraged economic groups. The deductibility of foreign exchange losses also would be limited by the new rules.
- The current tax transparency rules would be replaced by broader rules that would be triggered in more situations, and certain transactions would result in "deemed dividends."
- A definition of a PE would be introduced (currently, the concept of a PE exists, but without a specific definition). In addition, a limited "force of attraction" rule would be introduced that could subject certain revenue of the head office of a PE to tax in Argentina, but a deduction for expenses incurred by the head office would be allowed.
- Changes would be made to the transfer pricing rules to introduce a new definition of related parties, expand the scope of the rules to apply to transactions with low-tax jurisdictions in addition to transactions with noncooperative jurisdictions, and modify the "sixth" transfer pricing method (a variation of the comparable uncontrolled price method that currently must be used in certain cases).

Miscellaneous

- The tax on financial transactions that is levied on debits and credits to current accounts, at a rate of 0.6% per transaction, gradually would become 100% creditable against the income tax.
- Digital content (*i.e.* music, videos, etc.) provided by nonresidents would become subject to VAT.
- A portion of an employee's monthly salary would be exempt from the employer's social security contribution. A unified employer contribution rate of 19% would apply (instead of the current rates that range between 23% and 27%), but the portion of the contribution currently creditable against the VAT would be eliminated. These modifications would be implemented gradually and would be fully in force as from 2022.

- An advance pricing agreement mechanism would be introduced to provide certainty in transactions with related companies.
- A mutual agreement procedure would be introduced to handle the resolution of disputes relating to the application of tax treaties.

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Australia: Exposure draft legislation addresses hybrid mismatch arrangements

On 24 November 2017, the Australian government released exposure draft legislation (ED) and an explanatory memorandum addressing hybrid mismatch arrangements. The ED follows announcements in the 2016-17 and 2017-18 budgets that the government would implement the rules developed under action 2 of the OECD BEPS project, taking into account the recommendations of Australia's Board of Taxation (BOT). The ED proposals, which are subject to consultation, are aimed at eliminating double nontaxation benefits arising from differences in the tax treatment of an entity or instrument under the tax laws of two or more jurisdictions.

In broad terms, a hybrid mismatch would arise under the proposed rules where a payment gives rise to:

- A "deduction/non-inclusion" mismatch (*i.e.* a tax deduction for a payment is allowed in the payer's jurisdiction but the payment is not subject to tax in the recipient's jurisdiction); or
- A "double deduction" mismatch (*i.e.* a tax deduction is available for the same payment in two jurisdictions).

A mismatch covered by the proposed rules would be "neutralized," either by the disallowance of a deduction or the inclusion of an amount in assessable income.

While the ED proposals are largely in line with the OECD BEPS action 2 recommendations, they also include certain Australia-specific rules that would, for example:

- Adopt the BOT's recommendation to exclude timing mismatches in respect of financial instruments or arrangements with a term of three years or less (the OECD recommendation would exclude financial instruments only where the tax administration is satisfied that the payment is expected to be included in income within "a reasonable period of time");
- Disregard the "single entity" rule in Australia's tax consolidation provisions when identifying whether an entity makes a payment to another entity or determining the amount of an entity's income or profits;
- Deny Australian "imputation benefits" on "franked" distributions made by an Australian corporate tax entity, where the entity is entitled to a foreign income tax deduction on any part of the distribution; and
- Apply transitional rules to "Additional Tier 1" capital instruments issued by authorized deposit-taking institutions before 9 May 2017 that will continue to allow imputation benefits to distributions made before the first available call date of the instrument that occurs on or after such date.

The ED also would modify Australia's current nonportfolio dividend exemption to prevent it from applying to foreign equity distributions where the foreign payer is entitled to a foreign income tax deduction in respect of the distribution.

The government also announced that it will consult with stakeholders to develop additional new rules to address the following situations:

- Double nontaxation outcomes arising due to "branch mismatches," which are differences in the tax treatment of dealings within the same legal entity (*i.e.* dealings between a head office and a foreign branch), as recommended under the 2017 BEPS action 2 report. The government has indicated that it will implement the report's recommendations to bring the treatment of these arrangements in line with the rules for hybrid mismatches; and

- Investments into Australia by multinational groups that seek to circumvent the hybrid mismatch rules by using investment structures and arrangements that may not fall within the scope of the proposed rules. (An example could be a foreign-headquartered group investing into Australia using financing arrangements through interposed entities in zero tax countries that reduce Australian profits without those profits being subject to foreign tax.) This "targeted integrity rule" goes beyond the scope of the OECD's recommendations, and the Australian government has not provided any further guidance on its scope.

Comments

Submissions on the proposals, including the branch mismatch rules and the targeted integrity rule, are due by 22 December 2017. Following consultation, the measures will be introduced into parliament and, if enacted, are proposed to become effective six months after the bill receives royal assent. There will be no "grandfathering" relief for existing arrangements.

Taxpayers should consider the potential application of the rules to their funding and operational structures and the associated tax, financial reporting, legal and treasury issues that may arise – including the potential need to refinance or restructure existing arrangements. In addition, the precise interaction between the proposed rules and other areas of tax law (*e.g.* the thin capitalization rules and controlled foreign company rules) will need to be clarified by the government.

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Germany:
Church tax may affect foreign assignees

The German church tax, which applies to resident individuals who are members of certain officially recognized German churches, has become a common issue for assignees coming to Germany because the tax authorities increasingly are challenging the statements of individuals that they are not members of a church (and accordingly are not subject to the church tax). The tax authorities often consider such statements – which are provided as part of the individual's registration as a resident with the relevant municipal office – to be legally invalid and insufficient to prevent the individual from being subject to church tax if there is evidence of membership in the church (in Germany or in the home country).

Background

In Germany, unlike many other countries, members of most Christian churches and the Jewish community contribute to their religious organizations through a tax levied by the German tax authorities on behalf of these organizations. The tax is levied as a supplement to the income tax, wage tax and withholding tax, with the rate ranging between 8% and 9% of the income tax due, depending on the German state collecting the tax. The final church tax burden is determined and assessed with the annual income tax notice.

All German resident individuals who are church members are subject to the tax. The determination of whether an individual is a member of a German church is governed by the rules of the church. The church tax itself and the relevant procedures are regulated by the church tax laws of the German states.

Relevance for inbound assignees

Many inbound assignees are unaware that they may be considered to have become members of a German church, even if they have not formally declared their membership, if they are affiliated with the church in their home country and establish tax residence in Germany. Those most obviously affected are Roman Catholics, who are considered to become church members (worldwide) by baptism. The same is true for many protestant churches, *e.g.* most Lutheran churches have bilateral or multilateral agreements in place providing automatic membership in the case of migration from the territory of one church to that of another.

Many individuals simply accept the tax because of their religious beliefs. The only ways for other individuals to avoid liability for the church tax are to break (or never acquire) German residence or to officially declare their exit from the church before the German authorities. The rules for this procedure differ from state to state, but the effect of deregistration from a church is not retroactive, *i.e.* it applies only prospectively.

Comments

German church tax can be a surprise for foreign assignees, and should be taken seriously, since the German tax authorities may challenge the position that an individual is not a member of a church (for example, they may ask the home country church for an excerpt from the baptismal register).

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Italy:
Proposed tax on digital activities approved by upper house of parliament

On 30 November 2017, Italy’s upper house of parliament approved the budget law for fiscal year 2018. The bill, now under discussion in the lower house, includes two measures that would significantly affect companies engaging in digital/web-based activities in Italy. Specifically, an equalization tax would be introduced on certain digital transactions and the domestic definition of a permanent establishment (PE) would be revised.

These measures follow the issuance of a political statement signed on 11 September 2017 by the finance ministers of France, Germany, Italy and Spain (“Joint Initiative on the taxation of companies operating in the digital economy”) in which the four EU member states indicate that they will introduce unilateral measures to tax the digital economy if the EU does not expeditiously move forward in a coordinated manner, and the European Commission’s communication on the digital economy released on 21 September 2017 (“A Fair and Efficient Tax System in the European Union for the Digital Single Market”).

Equalization tax

The introduction of a domestic-level equalization tax by individual countries is one of the short-term mechanisms suggested in the OECD’s final report on action 1 of the BEPS project and in the European Commission’s 21 September communication. An equalization tax is a tax on untaxed or insufficiently taxed income generated from all internet-based business activities (both business-to-business (B2B) and business-to-consumer (B2C) activities) that is aimed at protecting a country’s tax base while a long-term strategy is developed at an international level.

Under the bill approved by Italy’s upper house, a 6% equalization tax would be levied on payments made to nonresidents by Italian-resident purchasers of digital services (such as online advertising) carried out through electronic means (*e.g.* the internet or other electronic networks), regardless of where the transaction agreement is concluded. The equalization tax would apply only to B2B transactions, *i.e.* transactions with companies, partnerships, professionals and individuals that carry out an economic business in Italy, and on Italian PEs of foreign entities. B2C transactions would fall outside the scope of the proposed equalization tax.

In accordance with the recommendations in the final report on BEPS action 1 and the above European Commission communication, to avoid double taxation, the new rule would allow for a tax credit to digital service providers subject to the equalization tax. It is unclear how the tax credit mechanism would operate, but the intent is to make the equalization tax neutral for Italian residents.

The rule included in the approved bill contains compliance requirements. Italian resident purchasers of digital services would have to submit quarterly tax reports to the Italian tax authorities that include details of the digital service providers. If a foreign digital service provider that does not have a PE in Italy carries out more than 1,500 transactions within a six-month period that amount in the aggregate to at least EUR 1.5 million, it would be subject to an assessment procedure aimed at confirming that no PE exists in Italy. The foreign digital service provider would be allowed to use Italy's "cooperative compliance regime" (a regime introduced in 2013 to help to resolve tax controversies) to determine the existence of a previously undisclosed PE and to settle (with reduced penalties) any overdue tax liabilities.

Definition of PE

The approved bill contains a measure that would expand the definition of a PE under Italy's Income Tax Code to bring it in line with the revised definition in the 2017 version of the OECD model tax treaty (approved by the OECD on 21 November 2017, see the article in this issue) and in the recommendations made in the final report to BEPS action 7. These changes to the model treaty and the report on action 7 are designed to deal with the situation where a company can have a significant digital presence in a country without having a taxable presence in a country under an applicable tax treaty and to ensure that revenue from the provision of digital services is subject to taxation in the country in which the services are provided.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171215_tr.html#OECD

The changes to Italy's domestic PE rules would adopt the BEPS action 7 recommendations that would tighten the specific activity exemptions to PE status; prevent the use of commissionaire arrangements or similar structures to circumvent the definition of a PE; limit the exemption for "independent agents"; and introduce "anti-fragmentation" rules. A "positive list" would be added to the tax code under which the presence of a PE could be identified where a company has a "significant economic presence without necessarily having a substantial physical presence."

Comments

The bill still requires the approval of the lower house of parliament, which is expected before the end of 2017. If approved, the new equalization tax would apply as from 1 January of the year following the year in which the measures are published in Italy's official gazette (likely 1 January 2019), and the revised PE definition would apply as from 1 January 2018.

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Latvia:
Tax haven list updated

The Cabinet of Ministers approved regulations on 7 November 2017 that update the list of low-tax or no-tax jurisdictions and territories that are considered tax havens for Latvian tax purposes. The regulations will become effective on 1 January 2018, and the new list will apply as from that date.

Latvian domestic tax law contains special anti-tax avoidance rules relating to tax havens, which provide for tax withholding or tax base increases for transactions carried out with persons located in tax haven jurisdictions.

The new list includes the following 25 jurisdictions/territories:

Antigua and Barbuda	Grenada	Macao	Tahiti
Bahamas	Guam	Maldives	Tonga
Bahrain	Jamaica	New Caledonia	US Virgin Islands
Brunei	Jordan	St. Helena	Vanuatu
Djibouti	Kenya	St. Pierre et Miquelon	Venezuela
Dominica	Liberia	São Tomé and Príncipe	Zanzibar
Ecuador			

Over 40 jurisdictions have been removed from the list because an exchange of tax-related information is possible, either on the basis that the jurisdiction has concluded a tax treaty or a tax information exchange agreement (TIEA) with Latvia or due to Latvia's participation in the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (mutual assistance convention), which provides for the exchange of information among its participating jurisdictions.

The regulations also provide that a jurisdiction/territory will not be regarded as a tax haven starting from the year in which a tax treaty with Latvia enters into effect or from the date on which a TIEA enters into force. For practical purposes, this means that if a jurisdiction included on the list demonstrates its intention to cooperate on an international level by concluding a tax treaty or a TIEA with Latvia or by joining the mutual assistance convention, that jurisdiction no longer will be treated as a tax haven for tax purposes in Latvia.

It should be noted that Latvia joined the mutual assistance convention on 1 November 2014 and, in practice, jurisdictions for which the convention was in force after that date have not been treated as tax havens from a Latvian perspective, even where the jurisdiction was included on the tax haven list. The new regulations formalize this approach in the tax law by ensuring that such jurisdictions are removed from the list.

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Peru:
MFN clause in tax treaty with Mexico applies

On 21 November 2017, the Peruvian tax administration (SUNAT) announced that the most-favored nation (MFN) clause in the Peru-Mexico tax treaty applies as from 1 January 2015. The MFN clause was triggered by Peru's treaties with Korea (ROK) and Switzerland, which provide for more favorable withholding tax rates on dividends and interest, respectively, that came into effect as from 1 January 2015.

The SUNAT has confirmed that the maximum withholding tax rates on dividends and interest of the Peru-Mexico treaty are amended as follows for payments by a Peruvian taxpayer to a beneficiary resident in Mexico:

- Dividends: The maximum general withholding tax rate is reduced to 10% in accordance with the rate provided in the Peru-Korea (ROK) treaty. Previously, the 10% rate applied only to dividends paid to a company that held directly or indirectly at least 25% of the voting rights of the payer company; otherwise, the rate was 15%.
- Interest: A 10% withholding tax rate applies to interest incurred on financing obtained to acquire industrial, commercial or scientific equipment or on a bank loan, in accordance with the rate provided in the Peru-Switzerland treaty; otherwise, the rate remains at 15%.

Tax withheld since 1 January 2015 in accordance with the previous higher tax rates under the treaty now is subject to refund by the SUNAT. To obtain the repayment, the taxpayer must submit a refund request to the SUNAT, which will have 45 business days to process the claim.

The Mexican tax authorities also have confirmed the application of the reduced rates for payments by a Mexican taxpayer to a beneficiary resident in Peru.

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In brief

Bulgaria: Changes to the VAT rules published in the official gazette on 5 December 2017 introduce the following: (i) mandatory VAT registration for taxable persons whose turnover within a two-month period (including the current month) exceeds BGN 50,000; (ii) a general requirement to file VAT returns electronically as from 2018; and (iii) a requirement that each negotiated/executed stage of a continuous supply of goods be treated as a taxable event.

European Union: On 5 December 2017, the European Council approved and published an EU list of 17 noncooperative tax jurisdictions (American Samoa, Bahrain, Barbados, Grenada, Guam, Korea (ROK), Macao (SAR), Marshall Islands, Mongolia, Namibia, Palau, Panama, Saint Lucia, Samoa, Trinidad and Tobago, Tunisia and United Arab Emirates). The listing process is part of the EU's initiative to tackle tax avoidance and evasion and promote fairer taxation within the EU and globally (for prior coverage, see *World Tax Advisor*, 23 September 2016), and it delivers on the Council's November 2016 statement that a list be established by the end of 2017. The Council states that jurisdictions with low or zero tax rates should not "facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction." Some jurisdictions, including Bermuda and the Cayman Islands, have agreed to address these concerns by the end of 2018, and other jurisdictions, such as Hong Kong and Switzerland, have agreed to amend certain regimes by the end of 2018. The Council has postponed reaching a conclusion on eight Caribbean islands affected by the recent hurricanes, with a view to assessment by the end of 2018. Sanctions include additional monitoring followed by a choice of sanctions at the option of individual member states. The European Council also agreed on the further process, including on applying "defensive" measures with regard to the listed jurisdictions.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160923_ib.html

The European Commission issued a press release on 30 November 2017, announcing that it is proposing new tools to combat VAT fraud that would enable EU member states to exchange more relevant information and to cooperate more closely in the fight against fraud. The proposed rules include the following:

- Establishing an online system for information sharing within the "Eurofisc" network of anti-fraud experts;
- Allowing joint audits to be conducted by officials from different tax authorities;
- Opening new lines of communication between tax authorities and law enforcement;
- Sharing information about imported goods in transit across the EU; and
- Accessing car registration data to distinguish between new and second-hand cars.

The proposed measures follow up on the cornerstones for a new definitive single EU VAT area proposed in October 2017 (for prior coverage, see *World Tax Advisor*, 27 October 2017), and the VAT Action Plan for a single EU VAT area presented in April 2016. The new legislative proposals will be submitted to the European parliament for consultation and to the council for adoption.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171027_3.html

The Court of Justice of the European Union (CJEU) issued a decision on 23 November 2017, concluding that the freedom of establishment principle in the Treaty on the Functioning of the European Union precludes Finland from immediately taxing transfers of business assets to permanent establishments (PEs) in other EU member states, while only taxing similar transfers to domestic companies upon realization. The case involved a Finnish company that transferred the trade and assets of its Austrian PE to an Austrian company in exchange for shares in that company. The gains arising were taxed immediately in Finland with no possibility of deferral. In a comparable domestic situation, tax would have been deferred until realization of the assets. The CJEU held that the Finnish rules are impermissible to the extent they do not permit deferred collection of the tax.

France: The amended finance bill for 2017 that introduces an exceptional one-time surtax on corporate income tax due by very large companies has been validated by the constitutional court and was published in the official gazette on 2 December 2017 (for prior coverage, see France alert, 3 November 2017). As a result, affected companies closing

their financial year on 31 December will be required to pay an advance payment equal to 95% of the surtax by 20 December 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-3-november-2017.pdf

Greece: The tax authorities have published a list of countries and territories with a preferential tax regime for FY 2016 and FY 2017, defined as a regime that either imposes no income tax or imposes income tax at a rate of less than 14.5% (*i.e.* less than 50% of the Greek corporate tax rate, currently 29%), even if the country is an EU member state. 42 countries and territories are included on the list for FY 2016, and Hungary is added for FY 2017. Under Greek tax legislation, expenses paid by a Greek entity to an individual or a legal person/entity resident in a country with a preferential tax regime are not tax deductible, unless the expenses correspond to actual and habitual transactions that do not result in profit shifting aimed at tax avoidance or evasion. The participation of a Greek tax resident in the share capital of a company tax resident in a country with a preferential tax regime is taken into account, *inter alia*, as a condition for the application of the Greek controlled foreign corporation rules.

Latvia: The VAT registration threshold for companies is reduced from EUR 50,000 to EUR 40,000 as from 1 January 2018.

Malaysia: The 2018 budget proposals were released on 27 October 2017, followed by the release of the Finance (No. 2) Bill 2017 on 31 October 2017. Many tax proposals from the budget were not included in the finance bill, but separate legislation may be proposed to implement additional budget proposals. The salient proposals that would affect corporations include the introduction of earnings stripping rules as from 1 January 2019 that would be in line with the OECD recommendations under BEPS action 4, to limit the deductibility of interest on intragroup loans (a measure not included in the finance bill). The thin capitalization rules whose application previously had been deferred until 1 January 2018 would be abolished without ever entering into force (a measure that is included in the finance bill). The finance bill must be passed by Malaysia's House of Representatives and Senate, receive royal assent from the king and be published in the official gazette as the finance act before it is enacted.

Poland: The president signed a law on 24 November 2017 that makes changes to the application of Poland's research and development (R&D) incentives. As from 1 January 2018, the rate of the super deduction will increase from 150% to 200% of qualifying costs, irrespective of the type of costs and the size of the taxpayer (currently the deduction differs depending on the type of costs and whether the company is a small and medium-sized enterprise or a large enterprise). Additionally, the super deduction will be increased for R&D centers, and companies operating in special economic zones (SEZ) will be able to benefit from the super deduction for costs not reported in the SEZ.

Switzerland: The following VAT measures will take effect as from 1 January 2018: (i) the standard VAT rate will decrease to 7.7% (3.7% for hotel accommodation); (ii) the reduced VAT rate of 2.5% will apply to e-magazines, e-newspapers and e-books (for prior coverage, see *World Tax Advisor*, 13 October 2017); and (iii) VAT registration will be mandatory with the first taxable supply in Switzerland, unless global turnover is below CHF 100,000. The effective date of the following VAT measures has been postponed to 1 January 2019: (i) the imposition of a tax liability on the import of low value goods where the annual value of such imports exceeds CHF 100,000; and (ii) the imposition of a broadcasting charge based on annual global turnover according to VAT returns. The broadcasting charge may be abolished before entering into force (the vote will take place on 4 March 2018).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171013_ib.html

United Kingdom: As part of the autumn budget, and included in the Finance (No. 2) Bill, the government has announced plans to hold online marketplaces jointly and severally liable for: (i) any future VAT that a UK business selling goods via the online marketplace fails to account for after the tax authorities have issued a notice to the online marketplace; and (ii) any VAT that a non-UK business selling goods via the online marketplace fails to account for where the business was not registered for VAT in the UK and the online marketplace knew or should have known that that business should be registered for VAT in the UK. The legislation also would require online marketplaces to display a VAT number when they are provided with one by a third-party seller operating on their platform and to ensure that such VAT numbers are valid. Penalties would apply for noncompliance. The changes will take effect from the date the finance bill receives royal assent. (For additional coverage of the autumn budget, see United Kingdom alert, 22 November 2017.)
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-22-november-2017.pdf

United States: At the time this issue of the *World Tax Advisor* went to press, a number of news agencies, citing comments from congressional aides, were reporting that House and Senate conferees had reached an agreement on a

tax reform package aimed at lowering tax rates on corporations, pass-through entities, individuals and estates and moving the US toward a territorial-style system for taxing foreign-source income of domestic multinational corporations. See *Tax News & Views*, 13 December 2017.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171213_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.

Australia: The tax authorities (ATO) have extended the deadline for filing the first CbC reports (including the master file, local file and CbC report) in Australia from 31 December 2017 until 15 February 2018. The ATO currently is working to ensure this deferred due date is reflected in its systems, and has confirmed that if a taxpayer receives an auto-generated letter regarding its failure to file its CbC reports by 31 December, the letter should be disregarded. The ATO also has confirmed that failure to file penalties will not apply to statements that are submitted by 15 February 2018.

The government released exposure draft legislation on 24 November 2017 that would implement hybrid mismatch rules, which generally would follow the OECD recommendations in the action 2 report. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171215_3.html

Belgium: The tax authorities have granted an extension for the submission of the CbC report and the master file form for assessment year 2017, and the CbC notification related to assessment year 2018, to 31 March 2018. See Global Transfer Pricing Alert 2017-050, 7 December 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-050-7-december-2017.pdf

Cyprus: On 11 December 2017, the tax authorities announced the extension of certain deadlines relating to CbC reporting. The deadline for filing the first CbC report (*i.e.* for the 31 December 2016 reporting fiscal year) is extended from 31 December 2017 to 28 February 2018. In addition, the deadline for those entities with a 31 December 2017 deadline for filing CbC notifications for the 2017 reporting fiscal year is extended to 15 January 2018. Entities that are required to make CbC filings must be registered with the Ariadni governmental gateway portal, and noncompliance with the filing requirements will result in the imposition of administrative fines.

Greece: The tax authorities have released guidance that clarifies the filing and exchange procedures for CbC reports. See Global Transfer Pricing Alert 2017-053, 12 December 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-053-12-december-2017.pdf

Ireland: The tax authorities issued an eBrief on 24 November 2017 that extends the filing deadline for CbC reports for calendar year 2016 to 28 February 2018. See Global Transfer Pricing Alert 2017-048, 28 November 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-048-28-november-2017.pdf

Italy: The draft budget law approved by the upper house of parliament on 30 November 2017 would introduce a domestic-level equalization tax in accordance with the recommendations in the action 1 final report, and would expand Italy's definition of a PE to bring it in line with the revised definition in the 2017 version of the OECD model tax treaty and the final report on action 7. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171215_5.html

Malaysia: The 2018 budget proposals include the introduction of earnings stripping rules as from 1 January 2019 that would be in line with the OECD recommendations under action 4. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171215_ib.html#Malaysia

New Zealand: A bill introduced into parliament on 6 December 2017 includes measures to prevent multinationals from using: (i) artificially high interest rates on loans from related parties to shift profits out of New Zealand (interest limitation rules); (ii) artificial arrangements to avoid having a taxable presence (a permanent establishment) in New Zealand; (iii) transfer pricing payments to shift profits into their offshore group members in a manner that does not reflect the actual economic activities undertaken in New Zealand and offshore; and (iv) hybrid and branch mismatches that exploit differences between countries' tax rules to achieve an advantageous tax position. A majority of the proposals are to be enacted with effect from income years beginning on or after 1 July 2018.

OECD: On 11 December 2017, the OECD released a public consultation document on addressing the use of arrangements or nontransparent offshore structures to circumvent the OECD's common reporting standard (CRS), including through implementation of the model mandatory disclosure rules outlined under the report on action 12. The action 12 model recommendations are intended to target promoters and service providers with a material involvement in the design, marketing or implementation of CRS avoidance arrangements or offshore structures, and would require such intermediaries to disclose information on the scheme to their national tax authorities. The rules contemplate that information on the schemes and the identities of users and beneficial owners would be made available to other tax authorities under an applicable information exchange agreement. Comments on the draft document must be submitted by 15 January 2018.

On 4 December 2017, the OECD released the first analysis of individual countries' progress in spontaneously exchanging information on tax rulings in accordance with the final report on action 5. Exchanges started in April 2016. The first annual report assesses how 44 countries (all OECD members and all G20 countries) are implementing one of the four minimum BEPS standards (*i.e.* the minimum standard to ensure that information on certain tax rulings is exchanged between relevant tax administrations in a timely manner). The standard encompasses rulings such as advance pricing agreements, permanent establishment rulings, related party conduit rulings and rulings on preferential regimes. The OECD report notes that 10,500 rulings had been reviewed by December 2016 and 6,500 rulings exchanged. Recommendations were issued to a number of countries on various issues, including improving the timeliness of exchanges and ensuring that all relevant information is exchanged.

On 30 November 2017, the OECD announced that the inclusive framework on BEPS has issued additional guidance on CbC reporting under action 13, which aims to provide increased certainty to tax authorities and multinationals regarding the implementation of CbC reporting. The new issues covered in the guidance include (i) the reporting of amounts from financial statements that were prepared using fair value accounting; (ii) the treatment of a negative amount of accumulated earnings; (iii) the treatment of mergers, acquisitions and demergers; (iv) the treatment of short accounting periods; and (v) the definition of total consolidated group revenue. The additional guidance also consolidates all previous OECD guidance issued on the implementation of CbC reporting (for prior coverage, 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

On 21 November 2017, the OECD council approved the 2017 update to the OECD model tax convention, which contains changes developed through the OECD/G20 BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171215_tr.html#OECD

Trinidad and Tobago has joined the inclusive framework for the global implementation of the BEPS project. Under the inclusive framework, all OECD state and non-state jurisdictions that commit to the project will participate as BEPS associates of the OECD's Committee on Fiscal Affairs. Joining the inclusive framework means that Trinidad and Tobago must implement four minimum standards: countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution. There now are 108 countries participating in the inclusive framework.

Bulgaria has signed the Multilateral Competent Authority Agreement for Country-by-Country Reporting (CbC MCAA), bringing the total number of signatories to 67.

Portugal: The Ministry of Finance has released the CbC notification form that is to be used to inform the tax authorities of the identity of the reporting entity of an MNE group. See Global Transfer Pricing Alert 2017-052, 12 December 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-052-12-december-2017.pdf

United Kingdom: The UK has a number of CbC reporting requirements with a deadline of 31 December 2017. See Global Transfer Pricing Alert 2017-051, 11 December 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-051-11-december-2017.pdf

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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-Seychelles: Belgium recently announced that the 2006 treaty entered into force on 10 September 2015 and applies as from 1 January 2016. Under the treaty, a 0% withholding tax rate applies to dividends paid to a company that has held directly at least 25% of the capital of the payer company for an uninterrupted period of at least 12 months at the time the dividends are paid; a 5% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate is 15%. A 0% rate applies to interest on debt claims or loans (not represented by bearer instruments) paid to a banking enterprise and interest on deposits made by an enterprise with a banking enterprise; a 5% rate applies to interest on commercial debt claims (including those represented by commercial paper) resulting from deferred payments for goods, merchandise or services supplied by an enterprise; otherwise, the rate is 10%. A 5% rate applies to royalties.

Chile-Czech Republic: The competent authorities of Chile and the Czech Republic recently have agreed that the conditions for the application of a most-favored nation clause in the tax treaty have been activated with effect from 1 January 2017. As a result, a 4% rate applies to interest paid to a bank, an insurance company or certain other companies primarily engaged in a lending or finance business; on trade receivables for machinery and equipment; or to other enterprises, provided that in the three taxable years preceding the taxable year in which the interest is paid, the enterprise derives more than 50% of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and more than 50% of the assets of the enterprise consist of debt-claims against unrelated persons; otherwise, the rate is 15% for the first two years the treaty is in effect, reducing to 10% thereafter. A 5% rate applies to interest paid to a bank or an insurance company as part of an arrangement involving back-to-back loans or a similar arrangement. A 10% rate also applies to interest (other than interest paid to a bank or an insurance company) that would otherwise be subject to the 4% rate but is paid as part of an arrangement involving back-to-back loans or a similar arrangement. Previously, the rate was 5% on interest paid to banks or insurance companies and 15% on all other interest.

Chile-Ireland: As a result of the triggering of a most-favored nation clause in the tax treaty, reduced withholding tax rates apply to certain interest and royalties as from 1 January 2017. The withholding tax rate is reduced to 4% (from 5%) on interest paid to a bank or insurance company, and on interest on trade receivables for machinery and equipment; however, a 5% rate applies if such interest is paid as part of an arrangement involving back-to-back loans or a similar arrangement. The withholding tax rate is reduced to 4% (from 15%) on interest paid to certain other companies primarily engaged in a lending or finance business, and on interest paid to other enterprises if in the three taxable years preceding the taxable year in which the interest is paid: (i) the enterprise derives more than 50% of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and (ii) more than 50% of the assets of the enterprise consist of debt-claims against unrelated persons; however, a 10% rate applies if such interest is paid as part of an arrangement involving back-to-back loans or a similar arrangement. A 5% rate applies to interest paid on bonds or securities that are regularly and substantially traded on a recognized securities market. Otherwise, the rate is 15%, reducing to 10% as from 1 January 2019. The withholding tax rate is reduced to 2% (from 5%) on royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate is 10%.

Hong Kong-Belarus: The 2017 tax agreement entered into force on 30 November 2017 and will apply as from 1 April 2018 in Hong Kong and as from 1 January 2018 in Belarus. When in effect, the agreement provides for a 5%

withholding tax rate on dividends and interest. A 3% rate will apply to royalties for the use of, or the right to use, aircraft; otherwise, the rate will be 5%.

Hong Kong-Latvia: The 2016 agreement entered into force on 24 November 2017 and will apply as from 1 April 2018 in Hong Kong and as from 1 January 2018 for withholding tax purposes in Latvia. When in effect, the agreement provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership) or to a pension fund or scheme; otherwise, the rate will be 10%. A 0% rate will apply to interest paid by a company to a company (other than a partnership) or paid to a pension fund or scheme; otherwise, the rate will be 10%. A 0% rate will apply to royalties paid by a company to a company (other than a partnership) for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience; otherwise, the rate will be 3%.

Hong Kong-Pakistan: The 2017 agreement entered into force on 24 November 2017 and will apply as from 1 April 2018 in Hong Kong and as from 1 July 2018 for withholding tax purposes in Pakistan. When in effect, the agreement provides for a 10% withholding tax rate on dividends, interest and royalties.

Hungary-Oman: The 2016 treaty entered into force on 18 March 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 0% withholding tax rate on dividends (other than dividends paid to an individual, which will be taxable at a 10% rate). Interest will be taxable only in the state of residence of the recipient. An 8% rate will apply to royalties.

Israel-Azerbaijan: When in effect, the treaty signed on 13 December 2016 provides for a 15% withholding tax rate on dividends, other than distributions made by real estate investment trusts which are not considered as dividends under the treaty and are taxable according to the domestic law of the contracting state. The rate on interest will be 10%. The rate will be 5% on royalties paid for any patent, design or model, plan, secret formula or process; or for the use of, or the right to use, industrial, commercial or scientific equipment; or for information (know-how) concerning industrial, commercial or scientific experience; otherwise, the rate will be 10%.

Kenya-Iran: The 2012 treaty entered into force on 13 July 2017 and will apply as from 1 January 2018 in Kenya and as from 21 March 2018 in Iran. When in effect, the treaty provides for a 5% rate on dividends and a 10% rate on interest and royalties.

Kenya-United Arab Emirates: The 2011 treaty entered into force on 22 February 2017 and will apply for withholding tax purposes as from 1 January 2018. When in effect, the treaty provides for a 5% rate on dividends and a 10% rate on interest and royalties.

Korea (ROK)-Ethiopia: The 2016 treaty entered into force on 6 November 2017 and will apply as from 1 January 2018 for withholding tax purposes in Korea and as from 8 July 2018 in Ethiopia. When in effect, the treaty provides for a 5% 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 8%. The rate on interest will be 7.5%, and the rate on royalties will be 5%.

Mexico-Peru: As a result of the triggering of a most-favored nation clause in the treaty, reduced withholding tax rates on certain dividends and interest apply from 1 January 2015. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171215_7.html

OECD: On 21 November 2017, the OECD Council approved the 2017 update to the OECD model tax convention. The 2017 update, which will be incorporated into a soon-to-be-published revised version of the model convention, comprises changes that were developed through the OECD/G20 BEPS project and other changes that were provided in a draft released on 11 July 2017 for which the OECD requested public comments on certain provisions (for prior coverage, see *World Tax Advisor*, 21 July 2017). The 2017 update was approved by the OECD Committee on Fiscal Affairs on 28 September 2017. The 2017 update also includes the changes and additions made to the observations and reservations of OECD member countries and to the positions of non-OECD economies.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_5.html

Singapore-Ethiopia: The 2016 treaty and protocol entered into force on 8 December 2017 and will apply as from 1 January 2018 for withholding tax purposes in Singapore and as from 8 July 2018 in Ethiopia. When in effect, the treaty provides for a 5% withholding tax rate on dividends, interest and royalties.

Global tax alerts

Austria
Dividend withholding tax refund may be possible for EU/EEA entities
The general five-year statute of limitations will expire at the end of 2017 for EU/EEA-resident corporate taxpayers to file refund claims for tax withheld on dividends based on a special reimbursement procedure. These claims can go back as far as 2012.
Issue date: 27 November 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-austria-27-november-2017.pdf

Belgium
Belgium extends deadline to file CbC report, master file
The tax authorities have granted an extension for the submission of the CbC report and the master file form for assessment year 2017, and the CbC notification related to assessment year 2018, to 31 March 2018.
Issue date: 7 December 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-050-7-december-2017.pdf

Greece
Greek tax authorities clarify procedures for filing, exchange of CbC reports and submission of CbC report notifications
Greece's tax authorities released guidance on 24 November 2017 that clarifies the filing and exchange procedures for CbC reports.
Issue date: 12 December 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-053-12-december-2017.pdf

Ireland
Ireland extends deadline for filing first CbC reports
The tax authorities issued an eBrief on 24 November 2017 that extends the filing deadline for CbC reports for calendar year 2016 to 28 February 2018.
Issue date: 28 November 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-048-28-november-2017.pdf

Portugal
Portugal publishes CbC notification form
On 11 December 2017, the Ministry of Finance released the CbC notification form that is to be used to inform the tax authorities of the identity of the reporting entity of an MNE group.
Issue date: 12 December 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-052-12-december-2017.pdf

United Kingdom
UK CbC reporting filing and notification deadline approaches
The UK has a number of CbC reporting requirements with a deadline of 31 December 2017.
Issue date: 11 December 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-051-11-december-2017.pdf

Autumn budget 2017 announced
The first autumn budget delivered on 22 November 2017 includes announcements that largely are targeted at supporting the robustness of the UK tax system, while continuing to promote the UK as a favorable business location, and includes measures that will affect foreign-owned groups.
Issue date: 22 November 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-22-november-2017.pdf