**In this issue:**



## China's SAT publishes new rules on beneficial owners

On 3 February 2018, China's State Administration of Taxation (SAT) published new rules (Bulletin 9) on the concept of the beneficial owner (BO) of income for purposes of obtaining benefits under China's tax treaties. The bulletin is accompanied by official interpretation notes that include practical examples with detailed and clarifying guidance for both taxpayers and the Chinese local tax authorities on how to understand and implement the rules in Bulletin 9. The bulletin expands the ways in which a nonresident can achieve BO status, but it also revises the negative factors in ways that will make it more difficult for nonresidents to obtain tax treaty benefits.

Bulletin 9 will apply to tax payment or withholding obligations that arise on or after 1 April 2018, and provides welcome clarifications on various aspects of the rules regulating BO status.

## Background

For a nonresident to qualify for reduced withholding tax rates on dividends, interest and royalties under China's tax treaties, the nonresident must be considered the BO of the income. Since 2009, the SAT has issued several sets of guidance that address the concept of a BO and the requirements to qualify for BO status. Circular 601, issued in 2009, defined the term BO and set out factors that should be taken into account in assessing whether a nonresident qualifies as a BO. Bulletin 30, issued in 2012, clarified the determination of BO status and introduced a "listed company" safe harbor, which allowed automatic qualification as a BO for recipients that are listed companies in the treaty partner jurisdiction or that are held by listed companies in the treaty partner jurisdiction.

Bulletin 9 repeals certain aspects of Circular 601 and Bulletin 30 and amends the rules on the determination of BO status, the safe harbor and the requirement to produce a tax residence certificate.

## BO status

Circular 601 contains seven factors that are considered by the tax authorities in determining whether a "recipient" of China-source income is a BO under a tax treaty. The presence of these factors can result in the denial of tax treaty benefits. As stipulated in both Bulletin 9 and Bulletin 30, all of the negative factors – not merely one factor – must be analyzed in their totality in determining BO status.

Bulletin 9 modifies and consolidates these factors, so there will be only five negative factors after 1 April 2018. The modifications to the first and second factors will make it more difficult for a nonresident to obtain BO status.

The following table compares the negative factors in Circular 601 and Bulletin 9:

| Circular 601 | Bulletin 9 | Comments |
|---|---|---|
| 1. The recipient is obligated to distribute or pay all or most of the income (*i.e.* more than 60%) to a resident of a third jurisdiction within a prescribed period of time (*i.e.* within 12 months after it receives the income). | 1. The recipient is obligated to pay more than 50% of the income to a resident(s) of a third jurisdiction within 12 months after it receives the income. "Obligated to pay" for this purpose means that the recipient of the income has a contractual obligation to pay, or if there is no contractual obligation to pay, the recipient actually has made a payment(s). | To illustrate a situation where there is an actual payment but no contractual obligation to pay, the interpretation notes accompanying Bulletin 9 contain an example of a financing arrangement.<br><br>Under the arrangement, each time the nonresident received dividends from its Chinese subsidiaries, it used at least 80% of the income to make loans to its parent entity within a month of the date the dividends were received. In this example, the loan arrangement was not found to comply with the arm's length principle because it did not specify the loan repayment period and the interest rate was lower than the benchmark bank loan interest rate in the country where the recipient was located. Therefore, the first negative factor would be considered to be present in this situation.<br><br>Despite the example in the interpretation notes, we do not believe that using income received from China to make a related party loan *automatically* would be deemed to result in the presence of the first negative factor. It would be necessary |

| Circular 601 | Bulletin 9 | Comments |
| --- | --- | --- |
| | | to examine the business purpose for the loan and whether the transaction complies with the arm's length principle. |
| 2. Other than holding the rights or property from which the income is derived, the recipient conducts no or very few other business activities. | 2. The business activities carried out by the recipient of the income do not qualify as substantive business activities; substantive business activities include substantive manufacturing, trading and management activities, etc.<br><br>The determination of whether the recipient has carried out substantive business activities will be made based on the functions performed and risks assumed by the recipient.<br><br>Substantive investment management activities can qualify as substantive business activities. Where a recipient carries out both non-substantive investment management activities and other business activities, it will not be considered as being engaged in substantive business activities if the other business activities are insignificant. | Bulletin 9 bolsters the requirement relating to business activities and clarifies that "substantive business activities" include "substantive investment management activities." The tax authorities and taxpayers have not always been able to agree on how to demonstrate that an investment holding company engages in substantive business activities.<br><br>The interpretation notes to Bulletin 9 contain some guidance by stating that "generally, the recipient should carry out activities such as pre-investment research, evaluation and analysis, making investment decisions, execution of investment, post-investment management, etc." The interpretation notes also contain examples relating to the meaning of substantive business activities. |
| 3. Where the recipient is an entity, such as a corporation, its assets, the size of its business and the number of its personnel are comparatively small (or insufficient), and not commensurate with its income. | Deleted | Incorporated into the factor 2 assessment |
| 4. With respect to the income or the property or rights from which the income is derived, the recipient has little or no right to control or dispose of the relevant income/property, and bears few or no related risks. | Deleted | Incorporated into the factor 2 assessment |
| 5. The recipient is exempt from tax on the relevant income or the income is not taxable in the residence jurisdiction, and if the income is taxable, the effective tax rate is extremely low. | Unchanged | Now factor 3 |
| 6. In addition to a loan agreement under which interest arises and is paid, the creditor has concluded another loan agreement or deposit agreement with a third party and that agreement contains similar terms, such as the amount, interest rate and signing date, etc., to the first-mentioned loan agreement. | Unchanged | Now factor 4 |

| Circular 601 | Bulletin 9 | Comments |
|---|---|---|
| 7. A license or transfer agreement exists between the nonresident and a third party relating to the transfer of the ownership of, or right to use, the copyright, patent or technology covered by the license agreement, based on which a royalty is derived and paid. | Unchanged | Now factor 5 |

As provided in Bulletin 30 and confirmed in Bulletin 9, where income of an applicant for treaty benefits is collected by an agent of the applicant, the applicant's BO status will not be affected.

**Safe harbor rule**

As noted above, Bulletin 30 introduced a safe harbor for listed companies that derive China-source dividend income. Bulletin 9 expands the scope of the safe harbor to include dividends received by the following:

- The government of the other contracting state;
- Individuals resident in the other contracting state; and
- Companies that are wholly owned, directly or indirectly, by such a listed company, government or individual.

In these cases, the recipient of the dividends will be deemed to be the BO of the dividends, and it will not be necessary to make an assessment of the five negative factors. The bulletin provides specific examples of circumstances in which the expanded scope of the safe harbor will and will not apply. One important condition is that, where the recipient is indirectly held, the intermediary shareholder(s) cannot be resident in a third jurisdiction.

**Expanded path to qualify as a BO**

Bulletin 9 allows a path for a recipient of dividends to qualify for tax treaty benefits, even when the recipient does not qualify for the safe harbor or as a BO on its own, if certain requirements are met. This will increase the chances for a nonresident to enjoy treaty benefits. The bulletin provides that the recipient will be recognized as a BO if it is 100% owned, directly or indirectly, by a shareholder that can meet the BO requirements based on an assessment of the five negative factors. A distinction is made between a shareholder resident in the same jurisdiction as the recipient and one resident in another jurisdiction:

- If the shareholder that can meet the BO requirements is a tax resident of the same jurisdiction as the recipient of the dividends, it is irrelevant whether there are any intermediary shareholders (and what their status is) between this shareholder and the recipient.
- If the shareholder that can meet the BO requirements is not a tax resident of the same jurisdiction as the recipient, but it and any intermediary shareholders all are "qualified persons," the recipient will be deemed to be the BO. Bulletin 9 defines a "qualified person" as a person that is resident in a tax treaty jurisdiction and that, pursuant to the relevant treaty (or arrangement) between China and the person's country of residence, is entitled to treaty benefits on China-source dividends that are the same as or better than those to which the recipient would be entitled under the tax treaty in effect between the country where the recipient is resident and China. Where a dividend recipient can obtain BO status only by virtue of its 100% indirect shareholder that meets the BO requirements and is resident in a different jurisdiction, the criteria for the intermediary shareholder are more stringent than when the recipient and the shareholder are resident in the same jurisdiction.

Bulletin 9 requires that the shareholding percentage in the safe harbor rules and the above rules be met at all times during the 12 consecutive months before the dividends are received, which reflects the requirement for shareholding continuity (also found in other SAT guidance).

**Tax residence certificate**

Bulletin 9 introduces new requirements relating to the period covered by the tax residence certificate and the persons whose certificates must be submitted.

The bulletin requires that the tax residence certificate must certify the residence status for the year in which the income was received, or for the previous year. For example, if a taxpayer applies for treaty benefits in 2018 with respect to income derived in 2016 and claims a tax refund for the tax withheld, the tax residence certificate must show the residence status for 2016 or 2015.

Depending on the situation, a tax residence certificate may need to be submitted by the recipient, the person that wholly owns (directly or indirectly) the recipient, a government, an individual and/or intermediary shareholders in a multi-tier structure.

**Other reasons for denial of treaty benefits**

According to Bulletin 9, even if a recipient of China-source income is considered the BO, the tax authorities still can invoke the main purpose test under a tax treaty or the general anti-avoidance rule (GAAR) in domestic tax law to deny treaty benefits. Some of China's recent tax treaties include a main purpose test that either applies to the entire treaty or only to specific provisions (*e.g.* dividends, interest and royalties).

China is one of the countries that signed the OECD multilateral instrument (MLI) on 7 June 2017, adopting the "principal purpose test" (PPT) into China's tax treaty network. The PPT is similar to the broadly applicable main purpose test, so that once the relevant MLI provisions enter into force with respect to China's covered tax agreements, the impact of the PPT will be much broader.

There has been some controversy about the power of the Chinese tax authorities to invoke the domestic GAAR to deny treaty benefits. Bulletin 9 makes clear that, even if a recipient is a BO, the tax authorities still can initiate a GAAR investigation.

**Comments**

BO status has been an area of focus for both the Chinese tax authorities and taxpayers. The publication of Bulletin 9 makes the BO rules in China more comprehensive. On one hand, Bulletin 9 increases the opportunities for recipients to enjoy treaty benefits and provides clearer guidance to the tax authorities and taxpayers on many issues. On the other hand, Bulletin 9 signals that the PRC tax authorities aim to prevent treaty abuse. Potentially affected parties should study the implications of Bulletin 9 and take appropriate steps for their existing or future cross-border structures.

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## Belarus: Legal framework introduced for blockchain activities, technology incentives expanded

The president of Belarus signed a decree on the development of the digital economy on 21 December 2017 that establishes an innovative legal framework for information technology (IT) and high technology businesses in Belarus. In addition to extending and expanding the availability of the tax incentives offered in the High Technologies Park

(HTP), the decree legally authorizes blockchain-based business activities and the use of cryptocurrencies and other tokens. The decree becomes effective on 28 March 2018.

**Framework for blockchain-based activities**

The decree legalizes blockchain-based business activities and provides legal definitions for cryptocurrencies and other tokens. A token is defined as a record in the list of blocks (blockchain) that proves its owner's rights to assets and/or a cryptocurrency.

Any legal entity (domestic or foreign) is permitted to hold tokens and carry out the following operations:

- Create and distribute its own tokens in Belarus and abroad through an HTP resident (*i.e.* run an initial coin offering (ICO) in Belarus);
- Store tokens in virtual wallets; and
- Purchase, sell and otherwise transact in and dispose of tokens, provided such transactions are carried out via a cryptocurrency stock exchange, cryptocurrency exchange office or an HTP resident.

The decree also permits the use of "smart contracts" by HTP residents.

**High Technologies Park**

The HTP was established in 2005 to attract IT companies by providing them with tax incentives and a special legal regime. The new decree extends the duration of the HTP's tax incentives and the special legal regime until 1 January 2049. The modifications to the HTP regime are described below, along with the requirements to become an HTP resident and the benefits available under the regime.

**Eligible activities:** Historically, companies engaged in the following activities could become HTP residents:

- Analysis, design and development of information systems;
- Custom production of software;
- Design, development and implementation of automated management systems; and
- Various separate stages of software design, including development, testing and modification.

The decree substantially expands the scope of qualifying activities that are covered by the HTP's special legal regime, to include the following (among others):

- Development of artificial intelligence and neural networks;
- Development of medical technologies and biotechnologies;
- Design, development, maintenance, sale and operation of software/hardware on the basis of or using blockchain technologies, and other distributed decentralized information systems;
- Operation of cryptocurrency platforms and exchanges; and
- Mining of cryptocurrencies.

**HTP residence:** HTP residents pay a quarterly fee of 1% of their revenue for the previous quarter to the HTP administration. The steps to obtain HTP residence are as follows:

- Set up a company in Belarus (HTP residence is not geographically binding, *i.e.* a company can have its office and facilities anywhere in Belarus);
- Prepare a business plan, based on HTP-qualifying activities; and
- Apply for HTP residence and sign an agreement with the HTP administration.

The approval process is relatively straightforward, but the business plan must be carefully prepared, as it will be reviewed and approved by the HTP administration and board.

**Tax and other benefits:**

- HTP residents are exempt from corporate tax (18%) and VAT (20%) and, in some cases, from the offshore duty (15%) and real estate tax.
- Dividends paid by HTP residents to foreign companies and to residents outside the HTP enjoy a lower withholding tax rate (5% instead of 12%), unless a more favorable regime is provided under an applicable tax treaty.
- Foreign companies providing certain services to HTP residents (*e.g.* advertising, data processing, hosting) are exempt from withholding tax and VAT; the sale of shares of HTP residents also is exempt from withholding tax and VAT.
- The transfer of intellectual property rights by foreign companies to HTP residents is non-VATable.
- Employees of HTP residents enjoy a reduced personal income tax rate (9% instead of 13%).
- Compulsory social security payments are not charged on the portion of salaries of HTP residents' employees exceeding the Belarussian average wage.
- HTP residents may import equipment, components and spare parts free of customs duties and VAT, provided the imports are intended for the implementation of HTP projects.
- HTP residents may employ foreigners without work permits.
- Instruments such as convertible loan agreements, option agreements, indemnity agreements, non-solicitation agreements and non-compete agreements with employees may be used.

**Comments**

Software development companies, biotech and medical companies, companies looking to run ICOs, cryptocurrency platforms and exchanges and companies engaged in other qualifying activities may benefit from the special HTP regime in Belarus.

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## Hungary:
## New registration/disclosure requirements apply to domestic companies

New registration and disclosure requirements apply to Hungarian-established companies as from 1 January 2018.

Specifically, such companies must register to communicate directly with government authorities by using the "Company/Business Gateway," a mandatory state-run electronic platform. The purpose of the registration is to establish guaranteed electronic communications between companies and various authorities, governmental organizations, public administration bodies, local governments, judicial executors and even public utility providers. Transition rules that apply until 31 December 2018 allow taxpayers to continue to communicate with the tax authorities via the company's representatives' client portal.

Additionally, all Hungarian-established companies must disclose to the tax authorities information regarding bank accounts held in foreign (*i.e.* non-Hungarian) banks (*e.g.* the name of the foreign bank, the date the account is opened/closed). If a new bank account is opened with a foreign bank or an existing account is closed, the taxpayer must inform the tax authorities within 15 days of the date of opening/closing the bank account, with penalties applying for noncompliance.

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## Ukraine:
## List of low-tax jurisdictions updated

Ukraine's Cabinet of Ministers has extended the list of "low-tax" jurisdictions from 65 to 80 countries, adding 17 (Morocco, the United Arab Emirates and 15 others) and removing two countries (French Guiana and Lesotho). (The list included in the decree passed by the Cabinet of Ministers on 27 December 2017 included 22 new low-tax jurisdictions, but five of those countries (Estonia, Georgia, Hungary, Latvia and Malta) are expected to be removed from the list, although the revised list has not yet been officially published.)

The full list of low-tax countries now is as follows:

| | | |
|---|---|---|
| Andorra (the principality of) | Guadeloupe | Nauru |
| Anguilla | Guatemala | Niue |
| Antigua and Barbuda | Guernsey | Northern Mariana Islands |
| Aruba | Hong Kong | Oman |
| Bahamas | Iran | Palau |
| Bahrain | Ireland | Panama |
| Barbados | Isle of Man | Paraguay |
| Belize | Jersey | Puerto Rico |
| Bermuda | Kosovo and Metohija of the Republic of Serbia | Qatar |
| Bosnia and Herzegovina | Kyrgyz Republic | Saint Kitts and Nevis |
| British Virgin Islands | Labuan | Saint Lucia |
| Brunei Darussalam | Laos | Saint Maarten |
| Bulgaria | Lebanon | Saint Vincent and the Grenadines |
| Burundi | Liberia | Samoa |
| Canary Islands, Spain | Liechtenstein | San Marino |
| Cape Verde | Macao | Sao Tome and Principe |
| Cayman Islands | Macedonia | Seychelles |
| Cook Islands | Madeira | Singapore |
| Cuba | Maldives | Sudan |
| Curaçao | Marshall Islands | Timor-Leste |
| Cyprus | Martinique | Turkmenistan |
| Djibouti | Mauritius | Turks and Caicos Islands |
| Dominica | Moldova | United Arab Emirates |
| Dominican Republic | Monaco | US Virgin Islands |
| Federated States of Micronesia | Montenegro | Uzbekistan |
| Gibraltar | Montserrat | Vanuatu |

| | | |
|---|---|---|
| Grenada | Morocco | |

The effective date of the updated list has not been officially confirmed, but it is likely that it will apply as from 1 January 2018. However, due to some ambiguities in the relevant Ukrainian legislation, there is a slight chance that the effective date of the updated list may be 1 January 2019.

The government reviews the low-tax jurisdiction list annually, adding countries that meet the following criteria:

- The country's corporate tax rate is five or more percentage points lower than the rate in Ukraine (Ukraine's standard rate is 18%) or there is preferential tax treatment and it is possible not to pay corporate income tax in such country;
- The country does not have an agreement on the exchange of information with Ukraine; and
- The country does not provide a complete and timely exchange of tax and financial information at the request of the Ukraine tax authorities.

Special rules apply to transactions with residents of the countries included in the list, including the following:

- Business transactions are treated as controlled transactions for transfer pricing purposes (irrespective of whether the taxpayer and the person resident in the listed country are related parties); and
- Taxpayers may deduct only 70% of the cost of goods, work and services purchased in noncontrolled transactions from residents of listed countries, unless the taxpayer can demonstrate that the terms of the transaction are at arm's length.

**Comments**

Given the significant expansion of countries included in the updated list of low-tax jurisdictions, the number of taxpayer transactions treated as controlled likely could increase.

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## In brief

**China:** On 31 January 2018, the General Administration of Customs published Bulletin 14, which contains guidance for the implementation of the new customs advance ruling regime that became effective on 1 February 2018 (for prior coverage, see *World Tax Advisor*, 26 January 2018). Bulletin 14 further clarifies various aspects of the new regime and provides template forms (*e.g.* ruling application, ruling decision letter, etc.) that are to be used by taxpayers and the tax authorities. Specific forms are to be used to apply for an advance ruling for a tariff classification, a dutiable price and the origin of goods. Bulletin 14 confirms that the customs authorities generally will publish ruling decisions on their website, except for confidential information relating to the business. To protect trade secrets, an applicant must specify on the application form whether it agrees to publication of the relevant decision.
**URL:** http://newsletters.usdbriefs.com/2018/Tax/WTA/180126_ib.html#China

**Ecuador:** As from fiscal year 2018, the standard corporate tax rate is 25% (increased from 22%), increasing to 28% on taxable income corresponding to the shareholding of partners or shareholders resident in tax havens or low-tax jurisdictions. If the shareholding exceeds 50%, the applicable rate for the entire entity is 28%. The rate is reduced to 15% or 18% for export companies, inbound tourism companies and companies engaged in the production of goods incorporating 50% or more of a "national component" and that reinvest their profits in the country. Companies deemed to be micro and small companies, as well as those with the status of habitual exporters, may apply a reduced rate of 22%. In addition, the standard withholding tax rates on interest, royalties and technical service fees increased from 22% to 25% as from 1 January 2018.

**Malta:** The official text of the European Commission's decision conditionally approving the Maltese tonnage tax regime for a period of 10 years under the EU state aid rules was published on 7 February 2018, ending an in-depth investigation. In light of the commission's findings, the Maltese authorities have committed to explicitly limit the application of the regime. Malta has three months from the date of the decision (19 December 2017) in which to introduce new rules aimed at making the tonnage tax regime compatible with the internal market and in line with the EU Maritime Guidelines. In addition, the commission required the recovery of undue aid granted to Maltese residents in relation to the exemption from tax on capital gains on shares in shipping companies, to the extent a *de minimis* threshold of allowable aid is exceeded.

On 2 February 2018, Malta's Minister for Finance published new notional interest deduction (NID) rules for 2018 to replace the rules introduced in 2017. The new rules revise the definition of risk capital for purposes of the NID (for prior coverage, see Malta tax alert, 16 October 2017).
**URL:** https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-malta-16-october-2017.pdf

**Russia:** A law signed by the president on 29 December 2017 amends the tax rules governing controlled foreign corporations (CFCs), tax residence and permanent establishments (PEs); the main provisions generally apply retroactively as from 1 January 2016. The changes to the CFC rules include clarifications to the calculation of CFC income. In addition, CFC profits are excluded from the scope of transfer pricing audits, and the tax exemption for income derived by a controlling owner from distributions of a CFC's previously taxed profits is extended to apply to distributions other than dividends. The changes to the residence and PE rules expand the functions that do not lead to tax residence or a PE in Russia. Preparations for shareholders' or board meetings will not be deemed to constitute the effective management of a foreign corporation from Russia (and thus will not automatically trigger Russian tax residence for the foreign corporation), nor will an expanded set of activities considered to comprise functions of planning and controlling the activities of a foreign corporation. The PE changes include modifications relating to foreign investment funds.

**Singapore:** The finance minister presented the 2018 budget statement on 19 February 2018. Budget 2018 would raise the goods and services tax (GST) rate from 7% to 9% sometime between 2021 and 2025, and would introduce GST on imported services as from 1 January 2020. The corporate income tax rate would remain at 17%, but some modifications would be made to the corporate tax rebate and partial tax exemption scheme.

**United States:** The budget blueprint for fiscal year 2019 that the Trump administration submitted to Congress on 12 February 2018 includes assorted discrete tax proposals; however, aside from a Republican call to repeal the Patient Protection and Affordable Care Act that is unlikely to gain traction, it proposes no sweeping changes to federal tax laws. The proposals in the blueprint include several provisions addressing tax preparer oversight, taxpayer compliance and health care. The dearth of new tax proposals was not unexpected; the Treasury Department announced on 9 February 2018 that, for the second year in a row, it would not publish the traditional "Green Book" with detailed explanations of the tax proposals typically included in a presidential budget.

On 9 February 2018, Congress approved and the president signed a two-year budget agreement that sets top-line defense and nondefense spending levels for two years, extends dozens of expired temporary tax provisions, provides tax relief for victims of the fall 2017 natural disasters and tweaks certain provisions in the tax reform legislation that was enacted at the end of 2017 (for prior coverage, see *World Tax Advisor*, 12 January 2018). A number of temporary tax deductions, credits and incentives that expired at the end of 2016 are extended – most notably, the "orphaned" commercial and residential investment tax credits for certain energy property, which were not renewed under the Protecting Americans from Tax Hikes (PATH) Act in 2015.
**URL:** http://newsletters.usdbriefs.com/2018/Tax/WTA/180112_ib.html#US

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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 government has released exposure draft legislation containing amendments to give the force of law in Australia to the OECD BEPS multilateral instrument (MLI). See the article in this issue.
**URL:** http://newsletters.usdbriefs.com/2018/Tax/WTA/180223_tr.html#Australia

**Malaysia:** The Inland Revenue Board has issued a new version of its mutual agreement procedure (MAP) guidelines, dated 19 December 2017, which aligns the guidelines with the BEPS action 14 minimum standard. The new MAP guidelines also provide further explanation of the relationship between the MAP and the domestic appeal process and clarify that a MAP application is not available for appeal cases where a Special Commissioners of Income Tax/court decision has been issued.

**OECD:** The OECD announced on 19 February 2018 that Serbia 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. Countries joining the inclusive framework must implement four minimum standards: countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution. There now are 112 jurisdictions participating in the inclusive framework.

On 8 February 2018, the OECD announced that the Inclusive Framework on BEPS has released guidance on the implementation of CbC reporting that covers two additional issues: (1) how total consolidated group revenue is defined; and (2) whether a failure to comply with the confidentiality, appropriate use and consistency conditions constitutes a systemic failure. The inclusive framework also released a compilation of approaches adopted by its members in cases where the guidance permits alternative approaches. In addition, the OECD announced that the inclusive framework has issued an updated table of the results of the preferential regime reviews carried out by the Forum on Harmful Tax Practices. The status of three regimes has been updated based on actions taken by the respective countries toward amending or abolishing the regimes.

Armenia signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended) on 24 January 2018. 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. A total of 117 jurisdictions now are participating in the convention.

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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.

**Australia:** On 8 February 2018, the government released exposure draft legislation containing amendments to the International Tax Agreements Act 1953 to give the force of law in Australia to the OECD BEPS multilateral instrument (MLI). The proposed changes to the act itself are minimal, with the associated explanatory materials being more expansive. The next step for Australia will be that, after the finalization and passage of the resulting bill, Australia will ratify the MLI; thereafter, the MLI will begin to affect the designated covered tax agreements between Australia and other countries that have ratified the MLI.

**Austria-Israel:** The 2016 treaty to replace the 1970 treaty enters into force on 1 March 2018 and will apply as from 1 January 2019. When in effect, the new treaty provides for a 0% withholding tax rate on dividends, including distributions by Austrian private foundations, paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. A 15% rate will apply to distributions made by a real estate investment fund to a recipient that holds directly less than 10% of the capital of the fund; otherwise, the domestic rate will apply. A 0% rate will apply to interest paid to a pension fund or similar arrangement, or on corporate bonds traded on a stock exchange in the state in which the issuing company is resident; otherwise, the rate will be 5%. Royalties will be taxable only in the state of residence of the recipient.

**Cyprus-Barbados:** The 2017 treaty entered into force on 11 September 2017 and applies as from 1 January 2018. The treaty provides that dividends, interest and royalties are taxable only in the state of residence of the recipient.

**Ireland-Ghana:** When in effect, the treaty signed on treaty on 7 February 2018 provides for a 7% withholding tax rate on dividends. A 0% rate will apply to interest paid in connection with the sale of industrial, commercial or scientific equipment on credit, or to a pension fund that is exempt from tax on the interest income; otherwise, the rate will be 7%. An 8% rate will apply to royalties.

**Israel-Armenia:** When in effect, the treaty signed on 25 July 2017 provides for a 0% withholding tax rate on dividends paid to a pension plan that does not hold directly or indirectly more than 25% of the capital or voting power of the payer company; a 5% rate will apply to dividends paid to a company (other than a partnership or a real estate investment company) that holds directly at least 25% of the capital of the payer company; otherwise, the rate generally will be 15%. However, where the payer company is a real estate investment company, the rate will be 15% on distributions paid to a recipient that holds directly less than 10% of the capital of the payer company; otherwise, the domestic rate will apply. The rate on interest will be 10%. A 5% rate will apply to royalties paid for the use of, or the right to use, a patent, trademark, design or model, plan, secret formula or process, or for industrial, commercial or scientific information or equipment; a 10% rate will apply to royalties paid for the use of, or the right to use, a copyright of literary, artistic or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.

**Italy-Panama:** The 2010 treaty entered into force on 1 June 2017 and generally applies as from 1 January 2018 for withholding tax purposes. 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 is 10%. A 0% withholding tax rate applies to interest paid in relation to a sale of merchandise or equipment to an enterprise on credit; a 5% withholding tax applies to interest paid to a bank; otherwise, the rate is 10%. A 10% rate applies to royalties.

**Poland-Ethiopia:** The 2015 treaty entered into force on 14 February 2018 and will apply as from 1 January 2019 in Poland and as from 8 July 2018 in Ethiopia for withholding tax purposes. When in effect, the treaty provides for a 10% withholding tax rate on dividends, interest and royalties.

**Saudi Arabia-Switzerland:** When in effect, the treaty signed on 18 February 2018 provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company, or to a pension scheme; otherwise, the rate will be 15%. A 0% rate will apply to interest paid: to a pension scheme; in connection with the sale of equipment, merchandise or services on credit; on loans granted by a financial institution; and on loans between companies. Otherwise, the rate will be 5%. A 5% rate will apply to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate will be 7%.

**Spain-Qatar:** The 2015 treaty entered into force on 6 February 2018 and applies as from that date for withholding tax purposes. The treaty provides for a 0% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company, and on dividends paid by a company whose shares are substantially and regularly traded on a stock exchange of one of the contracting states to a recipient that holds directly at least 1% of the capital of the payer company; otherwise, the rate is 5%. Interest and royalties are taxable only in the state of residence of the recipient.

**United Kingdom-Uzbekistan:** When in effect, the protocol to the 1993 treaty signed on 24 January 2018 provides for a 5% withholding tax rate on dividends paid to a company that controls, directly or indirectly, at least 10% of the voting power of the payer company; a 15% rate will apply to dividends paid out of income (including gains) derived from immovable property by an investment vehicle that distributes most of the income annually and whose income from the immovable property is tax exempt; otherwise, the rate will be 10%. The withholding tax rates on interest and royalties will not be affected by the protocol.

**United States:** An intergovernmental agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA), dated 12 February 2018, has been signed with Armenia.

## Global tax alerts

**United States**

**IRS substantially increases advance pricing agreement user fees**

On 6 February 2018, the US Internal Revenue Service released a new schedule of substantially increased user fees to request a unilateral, bilateral or multilateral advance pricing agreement.

Issue date: 8 February 2018

**URL:** https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-004-8-february-2018.pdf