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OECD issues interim report on tax challenges arising from digitalization

On 16 March 2018, the G20/OECD inclusive framework on base erosion and profit shifting (BEPS) released *Tax Challenges Arising from Digitalisation – Interim Report 2018*, which has been agreed by more than 110 jurisdictions. The interim report follows the work previously undertaken in relation to the final report on BEPS action 1 *Addressing the Tax Challenges of the Digital Economy* and the subsequent request for input in September 2017. The report focuses on new digital business models and considers how to respond to the challenge of determining how taxing rights on income generated from cross-border digital activities should be allocated among jurisdictions.

Digitalization, business models and value creation

The Task Force for the Digital Economy, supported by the OECD Secretariat, has undertaken work to understand the main features of digital markets and how these characteristics shape value creation. The following characteristics have been observed in highly digitalized business models:

- Scale without mass. Highly digitalized businesses often are highly involved in the economy of a jurisdiction without any significant physical presence;
- Reliance on intangible assets; and
- Data and user participation, including network effects. This concept of value creation currently is not captured by the existing tax framework.

There is no consensus agreement among countries over the tax implications of scale without mass and a greater reliance on intangibles. There is general agreement that data and user participation are common characteristics of highly digitalized businesses, but there are differences of opinion on whether and the extent to which they represent a contribution to value creation by the business. For example, some jurisdictions consider that the role of user participation allows highly digitalized businesses to collect and monetize information, while others consider that the data is similar to any other input sourced from an independent third party.

Adapting the international tax system to the digitalization of the economy

Countries have different views as to whether, and to what extent, changes are needed to the international tax rules, which fall into three broad categories:

1. Targeted changes are needed. Reliance on data and user participation may lead to misalignment between the location in which profits are taxed and the location in which value is created, but this issue is confined to certain digital business models;
2. Changes should apply more broadly. The ongoing digital transformation and globalization of the economy present challenges to the existing international tax framework for business profits, so a broader review is needed; and
3. No significant reform of the international tax rules is needed. The BEPS package has largely addressed the concerns of double nontaxation, although it is still too early to fully assess the impact. The existing tax system generally is satisfactory.

Acknowledging the divergence, there is welcome agreement that it is in the common interest to maintain a single set of relevant and coherent international tax rules to promote economic efficiency and global welfare. Therefore, a review will be undertaken of how taxing rights are allocated between jurisdictions (nexus) and how profits (and, presumably, losses) are allocated to the different activities carried out by multinational enterprises (profit allocation).

This work will include an analysis of the value contribution of certain characteristics of highly digitalized business models, as well as digitalization more broadly, and technical solutions to test the feasibility of different options for nexus and profit attribution rules. Input will be gathered from stakeholders.

Interim measures

There is no consensus on the need for, or merit of, interim measures and the interim report does not recommend their introduction.

Jurisdictions that oppose interim measures are concerned about the adverse consequences of a gross-basis tax on grounds including: the impact on investment, innovation and welfare; increases in consumer price; the possibility of over-taxation; and compliance and administrative costs, particularly given the limited time that the measure is intended to be in force. There also is concern that an interim measure may remain in place long term.

Other jurisdictions acknowledge these challenges, but consider that the policy challenge of not acting outweighs the disadvantages. These jurisdictions consider that the current position undermines the sustainability and public acceptability of the system and believe that, pending a global solution, jurisdictions should be compensated for what they consider to be untaxed value created in their jurisdiction. A number of jurisdictions, including the UK, are considering an interim measure in the form of an "excise" or revenue tax on the supply of certain e-services within

their jurisdiction. In addition, on 21 March 2018, the European Commission released a proposal that would introduce an interim 3% tax on gross revenue derived from the provision of certain digital services based on where the revenue is generated, rather than where the company is located. This would be followed by longer-term structural changes to the definition of a permanent establishment (PE) that would permit digital services to create a deemed or virtual PE in a country where a service provider does not have a physical presence. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_ib.html#EU

Countries have agreed that, where interim measures are introduced, design guidelines are to be followed to mitigate possible adverse consequences and limit divergence. In particular, the measures must:

- Comply with a country's international obligations, including tax treaties and World Trade Organization, EU and EEA membership. Consideration will be needed as to whether the new tax would be covered by (and creditable under) existing bilateral tax treaties;
- Be temporary in duration. Countries must remain committed to working towards consensus on adapting the international tax system;
- Target the highest risk areas where value is created by user participation and network effects. The online sale of goods and digital content should be excluded. A number of countries maintain that the focus could be on internet advertising and online intermediation services on the basis that these businesses typically operate remotely and rely heavily on intangible property, data, user participation and network effects;
- Minimize over-taxation through a low tax rate and possible exemptions;
- Minimize impact on start-ups, business creation and small business more generally, e.g. thresholds for both global group revenue (potentially in line with the country-by-country reporting threshold of EUR 750 million) and local sales; and
- Minimize cost and complexity by relying on the existing tax collection mechanisms and place of supply rules. For online intermediation services, it is suggested that supply would be based at the location of the customer purchasing the intermediation services.

Next steps

An update on the work in respect of the profit allocation and nexus rules will be provided in 2019, with members working towards a consensus-based solution by 2020. The Task Force for the Digital Economy also will continue to monitor the impact of BEPS measures, US tax reform, unilateral measures and evolving business models in connection with the digitalization of the economy.

Comments

The taxation of sales and other activities in a country by nonresidents depends on rules that are strongly rooted in physical presence requirements and may not always reflect modern business models and technologies. Widespread international agreement is needed for any changes, since the law defining taxable presence is set out in the world's 3,000 double tax treaties.

Currently, there is no consensus agreement on change among the inclusive framework member countries. Some favor a new allocation of profit model, where part of a group's profit (or, presumably, loss) is allocated to jurisdictions where users are based. This is intended to reflect the depth of user contribution to the financial results of the digital service provider. The US Treasury indicated in February 2018 that it would be prepared to discuss this issue, but only as part of a wider review of taxable presence rules. Other countries do not consider that any significant reform is required. These are complex technical issues and agreement has been reached that a review is needed of the nexus (taxable presence) and profit allocation rules, along with further work on value contribution. The OECD has set an ambitious timetable to develop a consensus-based solution by 2020.

New approaches should be aligned as closely as possible with the existing global consensus on international corporate taxation. The locations where new technologies are developed, enhanced and marketed must continue to receive the appropriate share of profit allocation, based on people functions and reward for the control and management of risks and the provision of assets.

While no interim measures are recommended, the pressures on some governments to take more immediate action are recognized. A framework of design considerations has been developed to help mitigate the risks of the unilateral introduction of any interim measures and to limit divergence.

As mentioned above, the European Commission has announced a proposal for interim and long-term approaches. The need to continue to monitor the latest developments in respect of evolving business models and the impact of unilateral action is recognized. It is essential that there is flexibility in taxation models to accommodate new developments, which bring benefits through boosting global economic growth. It also is essential that ultimately governments are able to agree a consensus solution over the framework for countries to tax digital businesses at the profit level to minimize double taxation and potential distortions that could affect businesses' commercial decisions.

— Bill Dodwell (London)
Partner
Deloitte United Kingdom
bdodwell@deloitte.co.uk

Alison Lobb (London)
Partner
Deloitte United Kingdom
alobb@deloitte.co.uk

Australia:
Draft anti-hybrid rules go beyond BEPS framework

On 7 March 2018, the Australian government issued revised exposure draft legislation that incorporates the exposure draft legislation released in 2017 and new rules to address branch mismatch arrangements (for prior coverage, see *World Tax Advisor*, 15 December 2017). The draft legislation dealing with hybrid arrangements and branch mismatch arrangements is largely consistent with the OECD BEPS framework, but it also would introduce an integrity rule. If enacted, the integrity rule could operate to disallow interest (and similar) payments on loans from related party entities that are resident in low tax jurisdictions. Although included as part of the draft anti-hybrid legislation, it is not strictly an anti-hybrid measure and goes beyond any measures proposed by the OECD or the measures in the UK anti-hybrid rules.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171215_3.html

The Australian government previously announced that it would implement the OECD anti-hybrid rules and, on 24 November 2017, it released the first version of exposure draft legislation and an explanatory memorandum for public consultation. The government also stated that a targeted integrity rule would be developed to address arrangements designed to circumvent the hybrid mismatch rules.

Under the integrity rule, if the following conditions are fulfilled, the relevant interest payment could be disallowed in its entirety:

- There is a payment of interest (or an amount in the nature of interest) or an amount under a derivative financial arrangement;
- A deduction otherwise would be allowable in Australia for the payment;
- The payment is between entities within the same commonly controlled group;
- The recipient is a non-Australian entity;
- The parent of the commonly controlled group is not a resident of the same country as the recipient; and
- The payment to the recipient is subject to foreign income tax at a rate of 10% or less (this appears to apply to the headline rate and, thus, should be unaffected by losses).

Three exceptions to the rule would apply:

- The interest recipient is subject to tax under Australian or foreign equivalent CFC-type rules (the interaction with the new "GILTI" (i.e. global intangible low-taxed income) rules introduced as part of the recent US tax reform will be important in this regard);
- The common control parent is subject to income tax at a rate equal to or lower than that of the recipient entity and the arrangement does not involve a hybrid mismatch; or
- It can be established that the arrangement was not designed to achieve a tax- advantaged outcome (i.e. tax rate arbitrage between the deduction and the income).

Implications and timing

The proposed integrity rule ostensibly targets the deductibility of interest incurred on ordinary related party loans from low tax or tax haven jurisdictions. Given that the deduction would be permanent (*i.e.* not available for carryforward) and the potential for the disallowed interest to remain subject to withholding tax, exposure to this rule could result in a significant cost for affected companies.

The rule is proposed to apply as from six months after enactment of the legislation (in line with the broader anti-hybrid proposals), and there are no proposed transitional or grandfathering rules.

The Australian government will undertake consultation until 4 April 2018, and it is expected that the measures will be finalized and introduced into parliament later this year.

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

European Union:
List of noncooperative jurisdictions revised

On 13 March 2018, EU finance ministers issued a second update to the EU list of noncooperative jurisdictions to take into account recent commitments made by listed jurisdictions and an assessment of jurisdictions for which a listing decision had not yet been made (several jurisdictions that suffered damage during the hurricanes in 2017 were given additional time to address the EU concerns).

Seventeen jurisdictions were on the original list issued on 5 December 2017, eight of which were removed on 23 January 2018 following commitments to address deficiencies identified by the EU (for prior coverage, see *World Tax Advisor*, 26 January 2018).
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180126_bc.html

The following changes were made to the noncooperative jurisdiction list on 13 March:

- Bahrain, the Marshall Islands and Saint Lucia were removed;
- The Bahamas, Saint Kitts & Nevis and the US Virgin Islands were added because they failed to make commitments at a high political level in response to the EU's concerns; and
- Anguilla, Antigua and Barbuda, the British Virgin Islands and Dominica were added to a separate category of jurisdictions subject to close monitoring (i.e. the grey list).

The assessment process is continuing with the Turks and Caicos Islands, with a commitment sought by 31 March 2018.

The noncooperative list now is comprised of nine jurisdictions: American Samoa, the Bahamas, Guam, Namibia, Palau, Samoa, Saint Kitts & Nevis, Trinidad and Tobago and the US Virgin Islands. This includes six of the original 17 jurisdictions, plus the three newly added Caribbean jurisdictions.

Jurisdictions are included on the EU noncooperative jurisdiction list because they either lack transparency or fair taxation or have not agreed to implement the BEPS minimum standards.

— Susan Lyons (Washington, DC)
Managing Director
Deloitte Tax LLP
slyons@deloitte.com

Israel:
Tax ruling offers alternative tax treatment for foreign investment corporations

The Israeli tax authorities (ITA) issued a tax ruling on 7 February 2018 that introduces a new tax treatment for foreign corporations investing in Israeli or Israeli-related start-up or high-technology companies, under which tax will be imposed based on the corporation's "costs ratio." Depending on the particular circumstances, corporations may be able to agree with the ITA to apply the new treatment retroactively.

Background

Prior to the issuance of the ruling, the ITA has applied a special tax arrangement to venture capital funds that fulfill various conditions concerning the minimum number of investors, the percentage shareholdings of investors, minimum funding requirements, etc. Under the arrangement, foreign investors in the fund are exempt from Israeli tax on income derived from their investments and foreign investors are not required to submit tax returns in Israel in respect of their investment in the fund.

For funds that do not fulfill the conditions for tax exemption (typically, small funds with few investors), the ITA has applied an alternative arrangement known as the "small funds tax arrangement." Under the alternative arrangement, foreign investors in the funds may be eligible for a reduced tax rate of 10%-15% (depending on their country of residence) on income derived from their investments. The ITA's intention was to reduce the tax liability of the foreign investors in Israel, but in some cases the foreign investors have not been able to offset the tax paid in Israel in their home country.

Application of the ruling

The new ruling provides another alternative in addition to the small funds tax arrangement for foreign corporations that invest in Israeli or Israeli-related start-up or high-technology companies, and do not fulfill the conditions required for tax exemption.

The ruling was issued in the case of an investment corporation established as a foreign partnership. There is a single limited partner, which is a foreign company resident in a country that does not have a tax treaty with Israel and owned by a public foreign company. The general partner is an Israeli partnership with limited partners who are both Israeli and foreign residents. The investment corporation intends to invest in Israeli and/or Israeli-related start-up or high-technology companies. All investment decisions will be made by a committee whose members will be appointed by the general and limited partners. The committee meetings will be held in Israel and abroad. In addition, an Israeli services company will provide services, such as gathering information about potential investments, due diligence, valuation, etc. to the investment corporation. The general partner will be eligible to receive management fees and carried interest. The Israeli services company will be entitled to arm's length remuneration for its services.

The ITA ruling states that the investment corporation's activities in Israel performed by its various representatives, including the general partner, the committee and the services company, will be considered business activities, generating income in Israel. This income (such as profits from the disposal of shares, management fees, carried interest, etc.) will be subject to tax in Israel based on a costs ratio, meaning that tax will be imposed on a proportion of the investment corporation's income calculated according to the ratio between the costs incurred in Israel and the total costs incurred, whether in Israel or abroad, in relation to the investment activity in Israel.

The new treatment is likely to benefit an investment fund that incurs abroad the majority of its costs connected with the investment activity in Israel, which may result in an effective tax rate lower than the rate under the small funds tax arrangement. To apply the special tax arrangement, the small funds tax arrangement or the treatment under the new ruling, a fund must request a ruling from the ITA, which, if granted, will apply for the life of the fund provided the facts remain as described at the time of the application. If there are any changes in the fund's circumstances, it must apply for a new ruling.

The ITA ruling also specifies detailed additional conditions and limitations applicable to investment corporations requesting the alternative basis of taxation, which are not addressed further here.

Comments

As a result of the ITA ruling, a foreign corporation that does not fulfill the conditions to qualify for the tax exemption arrangement may either approach the ITA for approval to apply the small funds tax arrangement and obtain a reduced tax rate of 10%-15% or, assuming the corporation expects to incur significant costs outside of Israel (in relation to the investment activity in Israel), seek approval to apply the new arrangement.

— Yitzchak Chikorel (Tel Aviv)
Partner
Deloitte Israel
ychikorel@deloitte.co.il

Guy Blau (Tel Aviv)
Senior Manager
Deloitte Israel
gblau@deloitte.co.il

Portugal:
Nonresidents may be subject to tax on indirect disposals of immovable property

Portugal's state budget for 2018 introduced a rule that results in the taxation of gains derived by nonresidents from the indirect disposal of certain immovable property located in the country. As from 1 January 2018, such gains are subject to Portuguese income tax at a rate of 25% (for corporations) or 28% (for individuals) if, during any of the 365 days preceding a disposal of shares (or rights) in a nonresident company, more than 50% of the value of the shares (or rights) is directly or indirectly related to immovable property in Portugal. Previously, nonresident companies/individuals were taxable only on direct disposals of shares in Portuguese-domiciled or tax resident companies or on immovable property situated in Portugal.

This taxation does not apply, however, where the immovable property is used for agricultural, industrial or commercial activities, except where the business activity of the company that holds the property is the acquisition and resale of property.

Significantly, the new rule applies to a disposal by a nonresident of the shares (or similar rights) held in a nonresident company that (i) holds Portuguese immovable property, or (ii) holds shares/rights in a company that holds immovable property in Portugal, when, in either case, the Portuguese immovable property is not related to the company's core business or the company that holds the immovable property carries on a property trading business. If the property is related to the core business and there is no property trading business involved, the gain will not be subject to tax.

Nonresident companies and individuals that fall within the scope of the rule must submit an income tax return to the Portuguese tax authorities.

Potentially affected companies and individuals should assess whether the disposal of shares may trigger taxation in Portugal under the new rule.

— Ricardo Reis (Lisbon)
Partner
Deloitte Portugal
rreis@deloitte.pt

Inês Lobo Vicente (Lisbon)
Manager
Deloitte Portugal
ivicente@deloitte.pt

United States:
Government accepting product exclusion requests from new tariffs

The US Department of Commerce (DOC) announced on 19 March 2018 that it is accepting product exclusion requests from the new tariffs on imported steel (25%) and aluminum (10%) products that apply as from 23 March. The DOC published in the Federal Register an interim final rule to the DOC Bureau of Industry and Security (BIS) regulations. As of now, impacted goods made in Canada or Mexico will benefit from a blanket exemption. Public comments related to the interim final rule are due by 18 May 2018.

The interim rule sets out the requirements and procedure for US industry to request a tariff exclusion for steel and aluminum products not made in the US. Only individuals or organizations that use covered articles in business activities (construction, manufacturing, reselling, etc.) can apply for a product exclusion. Each request must identify the specific business activities the requestor undertakes within the US that qualify it to make a request, and provide support showing that either the article in question is not produced in the US in sufficient quality and quantities, or that there is a national security reason to justify the exclusion. Product-specific exclusions will be limited to the organization or individual that requested the exclusion. Exclusions generally will be granted for one year.

— Helen Cousineau (Chicago)
Managing Director
Deloitte Tax LLP
hcousineau@deloitte.com

In brief

Czech Republic: The Supreme Administrative Court issued a decision on 4 January 2018 on the withholding tax exemption for income from interest and royalty payments that is available under the Czech Republic's implementation of the EU interest and royalties directive (IRD). Based on the decision, EU companies that qualify for the application of the IRD and that obtain a "resolution" from the Czech tax authorities to this effect should be able to request a refund of tax withheld for the two tax years prior to the date on which they file the application for a tax exemption with the tax authorities. Previously, the tax authorities had taken the position that tax exemptions could be utilized no earlier than the date of issuance of the relevant tax exemption resolution.

European Union: On 21 March 2018, the European Commission released a proposal that would require businesses providing digital services to pay tax on profits generated in EU member states where they have a "significant digital presence," even if they do not have an actual physical presence in the country. The proposal is based on the premise that companies offering digital services in the EU may pay little or no tax on their profits in the country where the value of the services is created. Specifically, the commission has proposed the introduction of an interim 3% tax on gross revenue derived from the provision of certain digital services based on where the revenue is generated, rather than where the company is located, to fill urgent gaps in taxation. This is to be followed by longer-term structural changes to the definition of a permanent establishment (PE) that would permit digital services to create a deemed or virtual PE in a country where a service provider does not have a physical presence. The effective date of the rules currently is unclear.

On the same day, the European Commission issued a communication on new anti-tax avoidance requirements in the EU legislation governing financing and investment operations. The communication is directed at the EU's partners (international financial institutions, development financial institutions and other eligible counterparties) that are entrusted with the implementation of EU budget funds, which have an obligation to ensure that such funds are not used in projects that contribute to tax avoidance. The communication describes recent steps taken by the EU to combat tax avoidance, including the adoption of the list of noncooperative jurisdictions for tax purposes and regulatory amendments to reinforce the link between EU funds and tax good governance that will enter into force in summer 2018, and provides guidance on implementing the applicable compliance requirements.

On 1 March 2018, Advocate General (AG) Kokott of the Court of Justice of the European Union (CJEU) issued her opinions in six cases involving the concept of beneficial owner under the EU parent-subsidiary and interest and royalties directives, where dividends and interest were paid by a Danish company to a company resident in another EU member state with a more favorable withholding tax regime and the EU company subsequently redistributed or repaid the amounts to persons resident outside the EU (and in jurisdictions with favorable tax regimes). The CJEU has been asked to rule on issues such as whether Denmark was entitled to deny the benefits of the directives and impose domestic withholding tax and whether the EU directives should be interpreted in light of the commentaries to the OECD model tax treaty. AG Kokott concluded that legal concepts used in the EU directives must be interpreted only in the context of EU law – not based on the commentary to the model treaty. Simply because an EU company repays amounts it receives to its non-EU shareholders is not, in itself, an indication of tax avoidance, nor is the fact that an EU member state does not impose withholding tax. Further, tax avoidance should not be presumed if there are business reasons for a company to be established in a particular EU member state, unless the reason for a chosen location is to allow the payment of income to investors via a third country, with the effect that the investors' countries of residence do not receive information on the income (*i.e.* because there is no exchange of information between the relevant jurisdictions). The CJEU still must issue its decision.

Indonesia: The Directorate General of Taxation and Ministry of Finance have issued regulations that simplify certain registration procedures, make changes to the rules for submitting individual and corporate income tax returns and generally regulate the procedure for submitting an application for activation of an electronic filing activation number.

Panama: The government issued a resolution on 8 March 2018 that contains an initial list of 20 countries that are deemed to "discriminate" or that apply restrictive measures against Panama that affect economic and commercial interests. Panama intends to introduce retaliatory measures in the form of tariffs, immigration, labor or other measures. The following countries (all of which include Panama on their own lists) are on Panama's list: Brazil, Cameroon, Chile, Colombia, Croatia, Ecuador, El Salvador, Estonia, France, Georgia, Greece, Lithuania, Peru, Poland, Portugal, Russia, Serbia, Slovenia, Uruguay and Venezuela.

Poland: A regulation dated 14 March 2018 and that applies as from 15 March extends the deadlines for certain transfer pricing documentation and reporting obligations. Specifically, the regulation extends the deadlines until the end of the ninth month after the end of the tax year with respect to: (i) preparing transfer pricing documentation; (ii) submitting a statement on preparing tax documentation to the tax office; and (iii) attaching a simplified transfer pricing form to the annual tax return.

Ukraine: On 1 March 2018, the National Bank of Ukraine (NBU) approved the following measures to ease restrictions on foreign currency (for prior coverage, see *World Tax Advisor*, 14 April 2017): (i) the ability for foreign investors to repatriate dividends in foreign currency is extended to include dividends accrued for 2017; (ii) the early repayment of foreign currency third-party loans is permitted up to a maximum of the equivalent of USD 2 million per month (per borrower and per authorized bank); and (iii) until 13 June 2018, a resident company refinancing existing debt with foreign currency borrowings is no longer required to sell 50% of the foreign currency before repaying its current debt to nonresidents or authorized banks. The measures apply as from 3 March 2018.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170414_ib.html

United Arab Emirates: The federal tax authority has published a guide, *Taxable Person Guide for Value Added Tax* (VAT), that provides more insight on VAT in the UAE and includes an overview of the main VAT rules and procedures and answers to many of businesses' questions. Guidelines on real estate VAT also have been issued.

United Kingdom: Finance (No 2) Bill 2017-19 received royal assent on 15 March 2018 and is now the Finance Act 2018 (Chapter 3). The act contains, among others, some clauses withdrawn from the March 2017 finance bill after the calling of the 2017 general election. Key provisions include amendments to the corporate interest restriction rules, the introduction of stamp duty land tax relief for first time buyers, anti-avoidance legislation targeting offshore settlements and landfill tax and clarification of the taxation of partnerships.

On 13 March 2018, the UK Chancellor of the Exchequer presented his first spring statement, which contains no tax or spending changes but invites comments on various proposals and consultations. An updated position paper on taxation of the digital economy acknowledges that the government favors a new allocation of profit model that is based on where users are located and that the UK continues to support the EU's position that an interim tax on sales is needed. Consultations mentioned in the statement include (i) the introduction of alternative methods of VAT collection, including a split-payment mechanism to extract VAT in real time and deposit it with the tax authorities; (ii) the role of online platforms in helping users meet tax obligations, notably in the expanding "gig" economy; (iii) the impact of the VAT registration threshold on business growth; (iv) modifications to the entrepreneurs' relief rules; (v) extensions to venture capital schemes; and (vi) the future role of cash and digital payments. The deadline for comments varies, depending on the consultation.

United States: The Internal Revenue Service (IRS) announced on 13 March 2018 that the Offshore Voluntary Disclosure Program (OVDP) that began in 2014 will close on 28 September 2018, and encouraged US taxpayers with undisclosed foreign financial assets to take advantage of the program before it closes. The OVDP allows taxpayers to resolve past noncompliance relating to undisclosed assets and failure to file foreign information returns, while protecting them from criminal liability. The terms of the OVDP allow the IRS to end the program at any time. The IRS's reasons for doing so at this point include that the number of taxpayers participating in the OVDP has dropped significantly over the years, and taxpayers' awareness of their compliance obligations has improved. The IRS emphasized that it will continue to pursue offshore tax avoidance through other means, including criminal prosecution.

Other options are available for taxpayers with undisclosed foreign assets to resolve past noncompliance, which are listed on the IRS website.

On 13 March 2018, the IRS Large Business and International (LB&I) division announced its selection of five additional compliance campaigns (*i.e.* areas identified as having substantial noncompliance risk) as part of its continued focus on issue-based examinations. The five additional campaigns are (i) costs that facilitate a transaction under section 355 of the US Internal Revenue Code; (ii) self-employment tax; (iii) partnership stop filers; (iv) sales of partnership interests; and (v) elections to recognize partial dispositions of buildings. These campaigns are in addition to the 13 campaigns announced by LB&I on 31 January 2017 (for prior coverage, see *World Tax Advisor*, 10 February 2017) and the 11 campaigns announced on 3 November 2017.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_ib.html

On 5 March 2018, the IRS released an advance version of Notice 2018-20, updating the list of jurisdictions that do not issue taxpayer identification numbers (TINs) to their residents ("No TIN List") to include Australia and any jurisdictions that subsequently make a request to the US competent authority to be included on the list. In response to requests from jurisdictions with laws that restrict the collection or disclosure of the local jurisdiction TINs of their residents ("foreign TINs"), the IRS expanded the No TIN List to include any jurisdiction that requests to be included, even if the jurisdiction issues TINs to individuals or entities that are tax residents. The US Treasury Department and the IRS intend to amend the relevant regulations to clarify that withholding agents are not required to collect or report foreign TINs of residents of the jurisdictions on the updated No TIN List.

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 issued revised exposure draft legislation dealing with hybrid arrangements and branch mismatch arrangements that largely follows the OECD BEPS framework, but also would introduce a rule that could operate to disallow interest on loans from related parties that are resident in low tax jurisdictions. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_2.html

European Union: On 13 March 2018, EU finance ministers reached political agreement on the proposed tax intermediaries directive that would require mandatory reporting by tax intermediaries and the automatic exchange of information by the tax authorities of member states for certain cross-border arrangements. See European Union alert, 14 March 2018.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-14-march-2018.pdf

On the same date, the finance ministers issued a second update to the EU list of noncooperative jurisdictions. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_3.html

OECD: The OECD has announced that the multilateral instrument (MLI) will first enter into force on 1 July 2018, following Slovenia's deposit of the fifth instrument of ratification of the MLI on 22 March 2018. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_tr.html#OECD

OECD: On 16 March 2018, the OECD released an interim report on the tax challenges arising from digitalization, which updates the final report on action 1 of the BEPS project that was issued in 2015. The report focuses on new digital business models and how income generated from cross-border digital activities should be allocated among jurisdictions, but makes no specific recommendations with respect to either a long-term, comprehensive solution to issues surrounding the digital economy or short-term interim measures. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_1.html

On 12 March 2018, the OECD announced the release of the third round of peer reviews on the implementation of the BEPS minimum standard on improving tax dispute resolution (BEPS action 14). The eight new "stage 1" peer reports issued cover Czech Republic, Denmark, Finland, Korea, Norway, Poland, Singapore and Spain, and provide specific recommendations for each jurisdiction. The country's implementation of the recommendations will be assessed in "stage 2" of the peer review process. The OECD also has requested taxpayer input on the fifth round of peer reviews – which will cover Estonia, Greece, Hungary, Iceland, Romania, Slovakia, Slovenia and Turkey – by 9 April 2018.

The OECD announced on 12 March 2018 that Serbia has joined the Global Forum on Transparency and Exchange of Information for Tax Purposes.

On 9 March 2018, the OECD announced the issuance of model mandatory disclosure rules to require service providers (including lawyers, accountants, financial advisors, banks and other service providers) to inform the relevant tax authorities of schemes put in place for clients to circumvent the Common Reporting Standard (CRS) requirements or to prevent the beneficial owners of entities or trusts from being identified (for prior coverage, see *World Tax Advisor*, 15 December 2017). The model rules, which were issued in response to a request from the G7 finance ministers, draw extensively from the recommendations in the report on BEPS action 12 (mandatory disclosure rules). The rules aim to target persons and their advisors that try to hide offshore assets and avoid CRS reporting, by requiring a wide range of financial intermediaries to notify the tax authorities about such schemes.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171215_bc.html#OECD

The OECD and Egypt's Ministry of Finance are launching an EU-funded program that aims to assist Egypt in implementing the new international standards to combat tax avoidance and evasion. Egypt already is a member of the Inclusive Framework on BEPS and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

United Kingdom: The tax authorities have published an updated statement of practice covering the mutual agreement procedure (MAP), which describes the UK's practice in relation to methods for reducing or preventing double taxation. The update, which supersedes the version published in 2011, incorporates a number of changes made as a result of the OECD BEPS project, specifically, action 14 on dispute resolution. The changes will take effect in the UK's treaties once the UK and the relevant treaty counterparties have ratified the OECD multilateral instrument.

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.

Chile-United Kingdom: On 28 February 2018, the UK tax authorities announced that the most-favored nation (MFN) clause in the UK-Chile tax treaty applies as from 1 January 2017. The clause was triggered by Chile's treaty with Japan, which provides for more favorable withholding tax rates on certain interest and royalty payments, and came into effect as from 1 January 2017. The net result of the triggering of the MFN clause is that the withholding tax rate on interest payments is reduced from 15% or 5% to 4% in certain circumstances, and the 15% rate reduces to 10% as from 1 January 2019 in line with the Chile-Japan treaty. The withholding tax rate is reduced from 5% to 2% on royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate is 10%. Taxpayers may be entitled to a refund of excess tax withheld as from 1 January 2017.

Colombia-Italy: When in effect, the treaty signed on 26 January 2018 provides for a 5% withholding tax rate on dividends paid to a recipient that holds more than 20% of the equity of the payer company or to a qualifying pension fund; otherwise, the rate will be 15%. A 0% rate will apply to interest paid to certain financial institutions or for the purchase on credit of industrial, commercial or scientific equipment; a 5% rate will apply to interest payments made to a qualifying pension fund; otherwise, the rate will be 10%. A 10% rate will apply to royalties.

Estonia-Kyrgyzstan: The 2017 treaty entered into force on 7 February 2018 and will apply as from 1 January 2019 for withholding tax purposes. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest will be 10% and the rate on royalties will be 5%.

Hong Kong-India: When in effect, the tax agreement signed on 19 March 2018 provides for a 5% withholding tax rate on dividends, and a 10% rate on interest and royalties.

Mauritius-United Kingdom: When in effect, the protocol to the 1981 treaty signed on 28 February 2018 provides for a 15% withholding tax rate on dividends paid out of income (including gains) derived directly or indirectly from certain immovable property by an investment vehicle resident in a contracting state whose income from such property is exempt from tax and that distributes most of that income annually (other than dividends paid to pension schemes, which will be exempt); otherwise, the rate will be 0%. The withholding tax rates on interest and royalties will not be affected by the protocol.

Mexico-Saudi Arabia: The 2016 treaty entered into force on 1 March 2018 and will apply as from 1 January 2019. When in effect, the treaty provides for a 5% withholding tax rate on dividends. A 5% rate will apply to interest paid to a financial institution or pension fund; otherwise, the rate will be 10%. A 10% rate will apply to royalties.

Netherlands-Zambia: The 2015 treaty to replace the 1977 treaty enters into force on 31 March 2018 and will apply as from 1 January 2019. When in effect, the new treaty 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 fund; otherwise, the rate will be 15%. The rate on interest will be 10% and the rate on royalties will be 7.5%.

OECD: The OECD announced on 22 March 2018 that the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) will first enter into force on 1 July 2018, following Slovenia's deposit of the fifth instrument of ratification of the MLI on 22 March. Ratification instruments already have been deposited with the OECD by Austria (22 September 2017), the Isle of Man (19 October 2017), Jersey (15 December 2017) and Poland (23 January 2018). According to the terms of the convention, the MLI must be ratified by at least five jurisdictions before it first enters into force. Following a period of three months after the date of ratification by the fifth state, the MLI will enter into force for those first five jurisdictions at the start of the subsequent calendar month. The MLI, therefore, will enter into force for Austria, the Isle of Man, Jersey, Poland and Slovenia on 1 July 2018. A similar three-month period for entry into force will apply for all other jurisdictions that subsequently ratify the MLI. The MLI can enter into effect for a specific tax treaty that is a "covered tax agreement" only after the three-month period has expired for all parties to the covered tax agreement. The default timings are that the modified withholding tax provisions will have effect for payments made after the first day of the following calendar year, while changes relating to taxes levied with respect to taxable periods will have effect for taxable periods beginning on or after a period of six calendar months has elapsed (or less if both parties agree). For prior coverage, see OECD alert, 9 June 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-9-june-2017.pdf

Portugal-Barbados: The 2010 treaty entered into force on 6 October 2017 and applies as from 1 January 2018. 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 15%. A 10% rate applies to interest and a 5% rate to royalties.

Singapore-Tunisia: When in effect, the treaty signed on 27 February 2018 provides for a 5% withholding tax rate on dividends. A 5% rate will apply to interest paid to a bank or financial institution; otherwise, the rate will be 10%. A 10% rate will apply to royalties and a 5% rate to fees for technical services.

Turkey-Vietnam: The 2014 treaty entered into force on 9 June 2017 and 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 50% of the capital of the payer company or has invested more than USD 10 million (or its equivalent in Turkish or Vietnamese currency) in the capital of the payer company; a 10% rate applies to dividends paid to a company that holds, directly or indirectly, at least 25% but less than 50% of the capital of the payer company; otherwise, the rate is 15%. A 10% rate applies to interest and royalties.

United Kingdom: An updated statement of practice covering the mutual agreement procedure includes changes that will take effect in the UK's treaties once the UK and the relevant treaty counterparties have ratified the OECD multilateral instrument. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_bc.html#UK

Global tax alerts

European Union
ECOFIN reaches agreement on tax intermediaries directive / revises noncooperative jurisdiction list
On 13 March 2018, EU finance ministers reached political agreement on the proposed tax intermediaries directive that would require mandatory reporting by tax intermediaries and the automatic exchange of information by the tax authorities of member states for certain cross-border arrangements. The council also revised the EU's list of noncooperative jurisdictions.
Issue date: 14 March 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-14-march-2018.pdf