World Tax Advisor
Connecting you globally.
13 April 2018

In this issue:

European Commission proposes tax on digital services, structural changes to PE rules

On 21 March 2018, the European Commission issued two draft directives on the taxation of the digital economy. Under the proposed new long-term comprehensive solution, companies would have to pay corporate income tax in each EU member state where they have a significant digital presence. In the interim, the Commission proposes a 3% revenue-based digital services tax on specific digital services where the main value is created through user participation. The Commission aims for an effective date of the interim measure of 1 January 2020.

Background

The European Commission's proposal is based on the fact that companies offering digital services in the EU may pay no or little tax on their profits in the country where the value of the services is created. One reason for this is that the service provider often has no physical presence in the country where the services are performed, which may mean that there is no possibility for that country to tax the related profits under current tax rules. The Commission considers this outcome to be undesirable, and it intends to structurally change the concept of a permanent establishment (PE) to prevent this result. Specifically, the supply of such services would create a deemed PE (*i.e.* a "digital" or "virtual" PE) linked to specific transfer pricing rules for digital services. These structural changes would be complex and would take time to implement, so the Commission is proposing an interim solution that would tax the gross revenue derived from digital services.

The proposal for an EU-wide digital services tax would generate revenue estimated to be worth up to EUR 5 million a year across the EU and help avoid a patchwork of unilateral actions that could fragment the single market and create uncertainty for businesses.

Interim tax on digital services

Scope of tax: Pending multilateral, international solutions to taxing the digital economy, the European Commission is proposing a 3% digital services tax on the gross revenue resulting from the supply of certain digital services characterized by user value creation:

- Online placement of advertising;
- Sale of collected user data; and
- Digital platforms that facilitate interaction between users that then can exchange goods and services directly via the platform.

The provision of digital content, payment services, online sales of goods or services, and certain regulated financial and crowdfunding services are excluded from the new digital services tax.

The measure is targeted at businesses with:

- Sufficient scale that established strong market positions allow them to benefit more from network effects and exploitation of big data, *i.e.* those with total consolidated annual global revenue exceeding EUR 750 million; and
- A significant digital footprint in the EU, *i.e.* those with annual revenue from taxable digital activities in the EU exceeding EUR 50 million.

Notably, the digital services tax would apply irrespective of whether a business is established within the EU.

Place of supply of services: The following rules would be used to determine the place where the services would be deemed to be supplied and where the tax would be due:

- For services involving the provision of user data collected by means of making advertising space available, or the sale of data: Where the advertisement is displayed or where the users that supplied the data that is being sold are located; and
- For services involving making digital platforms/marketplaces available to users: Where the user paying for access to the platform (or to conclude a transaction within the platform) is located.

In situations where two platform users are involved in an underlying transaction, they are paying for the use of the platform and are resident in different EU member states, the digital services tax would be levied in both member states on the amount of revenue generated in each.

In line with the concept of user value creation, the digital services tax would be payable to the member state where the users are located. Where users are in different member states, one member state would be responsible for collecting the tax and allocating it to the other member state(s), based on allocation keys.

Tax administration: The annual gross revenue derived from digital services would be taxed at a rate of 3%. Thus, individual transactions would not be taxed, and there would be no deductions for costs incurred. It would not be possible to settle any tax levied at an earlier stage of the supply, but the tax would be deductible as an expense for corporate income tax purposes.

Additional reporting requirements would need to be imposed due to the specific information EU member states would need to levy the digital services tax. A single EU-wide payment and reporting portal would be established, based on the one-stop-shop model currently used for VAT purposes, meaning that all information would have to be provided to only a single member state that subsequently would exchange the information with other affected member states. Businesses would be required to self-assess the tax liability and pay it on an annual basis. Consolidated groups would be able to nominate one company to deal with compliance and payment.

Longer-term structural changes to taxation of digital services

In a separate draft directive, the European Commission is proposing common EU rules to allow member states to tax profits generated from a significant digital or "virtual" presence in their jurisdiction, regardless of physical presence. The proposed significant digital presence concept builds on existing international tax principles to create a new category of PE in respect of a broad range of digital services.

The proposal would extend the current PE rules by establishing a taxable nexus for digital businesses operating across borders, where at least one of the following conditions is fulfilled with respect to a tax year:

- Revenue from digital services provided to users located in a member state exceeds EUR 7 million;
- The number of active users of digital services located in a member state exceeds 100,000; or
- The number of business contracts for digital services concluded by users located in a member state exceeds 3,000.

The definition of digital services would follow the definition used for VAT purposes under the EU VAT directive.

These thresholds would apply by reference to the activities of the services supplied by the entity itself aggregated with those supplied by any associated enterprises. The associated enterprises test would be broad and include cases of significant influence through participation in management, a direct or an indirect holding that exceeds 20% of voting rights, or participation in the capital through a direct or an indirect right of ownership that exceeds 20% of the capital.

According to the European Commission, the structural tax changes to the PE concept eventually should be included in the proposal for a common consolidated corporate tax base (so that taxable profits are allocated in proportion to the share of activity of an EU member state). EU member states also would have to implement the rules on digital PEs and profit allocation for corporate income tax purposes.

"Anti-fragmentation" rules would be introduced to prevent tax avoidance.

Profit allocation: The profit allocation rules relating to digital services would be aligned with the OECD transfer pricing guidelines. The basic assumption would be that profits should be taxed where value is created. In terms of digital services, the Commission intends to relate value creation to the location where the buyers of the digital services are established and data is collected and processed. To this end, additional criteria for profit allocation would be developed, focusing specifically on digital services, which could relate to:

- Users' engagement and contributions to a platform;
- Data collected from users in an EU member state through a digital platform;
- Number of users; and
- Amount of user-generated content.

Comments

The European Commission intends that the directive would require the amendment of tax treaties between EU member states, and that it also would apply to transactions between member states and third countries that have not concluded tax treaties with member states. Where there is a tax treaty between an EU member state and a third country, the Commission intends to recommend that the member state apply the measures by amending the treaty.

The Commission would seek to have the changes incorporated into the OECD model tax treaty through amendments to articles 5 (permanent establishment) and 7 (business profits).

Unanimous approval by all EU member states is required for the adoption of the proposed directives. It is unclear when the measures would effectively be introduced, but as noted above, the Commission aims for an effective date of the interim measure of 1 January 2020.

The EU would prefer rules agreed at the global level but considers that an unacceptable amount of profits currently is untaxed and, therefore, has proposed solutions at an EU level. Notable, the EU proposals were released within days of the OECD's *Tax Challenges Arising from Digitalization: Interim Report 2018* (for prior coverage, see *World Tax Advisor*, 23 March 2018), and the European Commission intends that its latest proposals will contribute to the ongoing work at the OECD level to influence international discussions on a global solution.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_1.html

— Peter Kavelaars (Rotterdam)
Partner
Deloitte Netherlands
pkavelaars@deloitte.nl

Jasper Korving (Rotterdam)
Senior Manager
Deloitte Netherlands
jkorving@deloitte.nl

China:
VAT rate cuts and changes to small VAT payers announced

On 4 April 2018, China's Ministry of Finance and the State Administration of Taxation (SAT) issued two sets of guidance on the VAT rate reductions and changes to the annual sales threshold for small-scale VAT payers that are part of a package of VAT measures announced by the State Council on 28 March 2018. The State Council decision was made following the announcement by Premier Li Keqiang on 5 March 2018 at the First Session of the 13th National People's Congress that VAT would be the focus of the 2018 tax cuts in the country (estimated to result in tax cuts exceeding RMB 400 billion).

The two circulars take effect on 1 May 2018.

VAT rate reductions

The VAT rates for taxable supplies that currently are subject to the 17% and 11% VAT rates will be reduced to 16% and 10%, respectively (supplies subject to the 6% rate remain unchanged). The affected taxable activities and rates are as follows:

Taxable activities	**Applicable VAT rate**	
	Before	**After**
Sale and import of general goods; provision of processing, repair and replacement services; and provision of leasing services of tangible and moveable assets	17%	16%
Sale and import of "specified goods"; provision of transportation services, postal services, basic telecom services, construction services and leasing services of immovable property; and sale of land use rights or immovable property	11%	10%
Provision of value-added telecom services, financial services, modern services and lifestyle services; and sale of intangible assets other than land use rights	6%	6%

The export VAT refund rate for goods that currently are subject to both the 17%/11% VAT rates and export VAT refund rates also will be reduced to 16%/10%, respectively. Transitional rules will apply to exports of affected supplies until 31 July 2018, with the export date being the date shown on the export customs declaration form for exports of goods and the export invoice date for exports of services:

- **Trading enterprises:** The 17%/11% export VAT refund rate will apply if the goods were subject to 17%/11% VAT when they were purchased by a trading enterprise. The 16%/10% export VAT refund rate will apply if the goods were subject to the 16%/10% VAT when they were purchased by a trading enterprise.
- **Manufacturing enterprises:** The 17%/11% export VAT refund rate will apply.

Consolidation of annual sales threshold for small-scale VAT payers

The annual sales threshold to qualify as a small-scale taxpayer will be revised. Currently, VAT taxpayers are classified as general VAT payers or small-scale VAT payers based on their annual taxable sales, with different sales thresholds applying depending on the type of entity (*e.g.* manufacturing, trading, etc.). Small-scale VAT payers are subject to a simplified taxing method at a 3% VAT rate as compared to the 6%-17% rate applying to general VAT payers. Once a small-scale VAT payer's annual taxable sales reach the threshold, it must change its VAT payer status and register as a general VAT payer. Under the new package of measures, the annual taxable sales thresholds for manufacturing enterprises and trading enterprises will be consolidated and increased from RMB 500,000 and RMB 800,000, respectively, to RMB 5 million.

A manufacturing or trading enterprise whose sales reached the threshold (*i.e.* RMB 500,000/800,000) and, therefore, had to register as a general VAT payer may convert to small-scale VAT payer status by 31 December 2018 if the annual sales of the enterprise have not reached the new threshold of RMB 5 million when it applies to convert its status. When an eligible taxpayer converts to small-scale VAT payer status, any uncredited input VAT at the time of conversion will not be creditable and will have to be borne by the taxpayer as a cost.

Comments

Rate reduction: The VAT rate reductions aim to relieve the tax burden on businesses and promote the development of the economy, and it is hoped that the reductions will enhance the competitiveness of the VAT system overall.

It should be noted that *all* taxable activities that currently are subject to the 17%/11% VAT rates will be eligible for a lower rate (*i.e.* 16%/10%) as from 1 May 2018. When the rate reductions initially were announced on 28 March, only certain sectors (*i.e.* manufacturing, transportation, construction, basic telecom services and agricultural products) were mentioned as being able to enjoy the new lower rates. The circulars confirm that other sectors (notably, trading companies, leasing services and sales of immovable property) also will benefit.

As mentioned above, the 6% VAT rate that is applied to the service sectors will remain unchanged, and many believe the likelihood of further changes to this rate in the near future is low.

Technically, the new rates will apply to taxable transactions whose VAT liability arises on or after 1 May 2018. The rules to determine the date on which the VAT liability arises could be complex and the date may differ from the date of payment or sales recognition for financial accounting purposes. For example, VAT liability could arise on the date goods are delivered if the supplier already received an advance payment for the goods, but VAT liability will arise on the date a service provider received an advance payment in the case of leasing services. Affected taxpayers should be aware of these rules to apply the VAT rates correctly, but they also may be able to time transactions to achieve desired tax positions.

Manufacturing enterprises that export self-manufactured goods may benefit from a lower irrecoverable VAT cost as a result of the rate reduction if the applicable VAT refund rate is lower than the VAT rate (*e.g.* goods on which a 13% or 15% export VAT refund rate is applied), even though the circulars do not change the VAT refund rate.

Small-scale taxpayers: The consolidated and increased threshold of annual taxable sales for small-scale VAT payers will allow more taxpayers to adopt the simplified taxing method, thus reducing their VAT management and compliance costs and also helping the tax authorities to improve tax administration.

From a supply chain perspective, general VAT payers should be aware of the potential impact of a status change of their suppliers. If a supplier converts from general VAT payer to small-scale VAT payer status, the purchaser will not be able to obtain a special VAT invoice with a 16%/10% VAT rate from that supplier in the future, and thus could have less creditable input VAT and higher purchase costs, since the VAT-inclusive purchase price remains unchanged.

Refund of excess input VAT: The press release on the State Council's executive meeting stated that a one-time refund for input VAT in excess of output VAT would be introduced for eligible companies (including equipment manufacturing and other advanced manufacturing enterprises, R&D and other modern service enterprises and electric power grid enterprises) within a certain period of time. The circulars do not cover this incentive so further guidance is expected.

Conclusion

With the effective date of the circulars less than a month away, affected businesses have little time to prepare for the changes. Businesses should begin to assess the impact of the new rules on their operations as soon as possible and, if commercially viable, take appropriate actions, such as expediting or deferring transactions.

It should be noted that, based on the 2018 government work report released during the National People's Congress, the number of VAT rates will be reduced from three to two. However, since three VAT rates currently still apply (*i.e.* 6%, 10% and 16%), further adjustments are expected.

— Li Qun Gao (Shanghai)
Partner
Deloitte China
ligao@deloitte.com.cn

June Qu (Shanghai)
Senior Manager
Deloitte China
junqu@deloitte.com.cn

Germany:
New guidance issued on anti-treaty shopping rule

Germany's tax authorities issued a decree on 4 April 2018 that sets out its views on how to apply the domestic anti-treaty shopping rule in line with EU law. The decree responds to two decisions of the Court of Justice of the European Union (CJEU) that were published on 20 December 2017, in which the CJEU concluded that Germany's anti-treaty shopping rule in section 50d(3) of the pre-2012 version of the Income Tax Code (ITC) violates EU law. The CJEU held that the rule violates both the EU parent-subsidiary directive (PSD) and the freedom of establishment principle in article 49 of the Treaty on the Functioning of the European Union (TFEU).

Although the CJEU decision only addresses dividend payments made by a German entity to its EU parent company for periods before 2012, commentators have suggested that the court's reasoning also could be applied to the post-2012 version of the rule, and a case already is pending before the CJEU regarding the latter version. The new decree indicates that the tax authorities agree with this interpretation of the CJEU decision.

The decree states that the anti-treaty shopping rule in the pre-2012 version of the ITC no longer is applicable to situations where relief from withholding tax is sought based on the PSD (as implemented into German law in section 43b ITC). Applications for dividend withholding tax relief that are based on a tax treaty between Germany and an EU/EEA member state are not covered by the decree, nor are applications for relief from royalty withholding tax based on a tax treaty or the EU interest and royalties directive (IRD). These distinctions are somewhat surprising since there is no obvious reason why the principles of the CJEU decision should not apply in these situations and why the anti-treaty shopping rule should be treated differently under EU law principles in this area.

The decree also limits the application of the post-2012 version of the anti-treaty shopping rule to cases that are based on the PSD, but no limit is imposed on claims based on an applicable tax treaty or the IRD.

For claims that are based on the PSD, the decree provides that only section 50d(3) sentence 2 no longer should be applied. This section states that when analyzing the conditions under the anti-treaty shopping rule, the analysis must focus exclusively on the substance and activities of the company that receives the payment, and that the substance and activities of other group companies in the same country as the recipient company are not to be taken into account. It is not entirely clear whether this means that it now is possible to rely on the substance and activities at the level of group companies that are resident in the same country as the shareholder of the German entity (where no substance is available/activities are performed). The wording of the decree seems to imply that the tax authorities intend to apply this approach in a very restrictive manner, but it seems questionable whether the approach will be sufficient to bring the post-2012 version of the German anti-treaty shopping rule in line with EU law.

The decree, which applies to all open cases, may provide limited relief for claims for a 0% dividend withholding tax based on the PSD, but it remains to be seen how the federal tax office will apply the principles outlined in the decree. Applications that were put on hold by the federal tax office after the CJEU decision was published in December 2017 now will be processed. The outcome and position of the federal tax office should be carefully analyzed for each application and, if required, an appeal with reference to the current case pending before the CJEU with respect to the post-2012 rules may need to be filed. Refund applications and applications for a withholding tax exemption certificate that were rejected and still can be appealed should be revisited in light of the new decree. Finally, affected taxpayers should analyze whether interest on the refund amount in the particular case can be claimed based on general EU law principles.

— Andreas Maywald (New York)
Client Service Executive
Deloitte Tax LLP
anmaywald@deloitte.com

India:
Finance Act 2018 enacted

India's Finance Bill 2018 received presidential assent on 29 March 2018 and now is enacted law, following changes made by the lower house of parliament on 15 March (for prior coverage, see *World Tax Advisor*, 9 February 2018). The parliament clarified certain measures in the original bill, including the rules relating to country-by-country (CbC) reporting and the requirement to obtain a permanent account number (PAN). Most of the provisions in what is now the Finance Act 2018, including the reduction in the corporate tax rate from 30% to 25% (plus the applicable surcharge and cess) for domestic companies whose total turnover or gross receipts during FY 2016-17 did not exceed INR 2.5 billion, are effective on 1 April 2018, unless otherwise stated.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180209_4.html

The key changes made by parliament are as follows:

Indexation benefits for unlisted shares subsequently sold on listing

The Finance Bill included the introduction of a 10% tax on long-term gains derived from the sale of listed shares, with grandfathering rules applying to gains accrued up to 31 January 2018 based on the market price of the shares on that date. However, the grandfathering benefit was not extended to shares that were unlisted on 31 January. The parliament revised the language so that an indexation benefit now applies in such cases. This means that the original cost of such shares will be increased based on the cost inflation index between the date of purchase of the shares and 31 January 2018, resulting in a lower taxable capital gain.

Representations made to the government requesting a grandfathering benefit for shares received due to a reorganization (merger, demerger, etc.) of listed companies were not accepted.

Significant economic presence

The Finance Bill 2018 included measures relating to when a foreign enterprise will be considered to have a significant economic presence and, therefore, a business connection in India (for prior coverage, see *World Tax Advisor*, 9 February 2018). To expand the scope of taxation of digital transactions under domestic law, transactions or activities may give rise to a significant economic presence (and, hence, be taxable in India), regardless of whether the nonresident has a place of residence or place of business in India or renders services in India. The parliament has added language to deem a significant economic presence to exist regardless of whether the relevant agreement is concluded in India.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180209_2.html

CbC reporting

The Finance Bill 2018 included clarifications to the CbC reporting requirements that were introduced in 2017. The parliament further revised the rules applying to Indian constituent entities (*i.e.* Indian companies that have

nonresident parent companies). Under the modified rules, if a reporting obligation arises for an Indian constituent entity (such as where there is no agreement for the exchange of information between India and the country where the parent company is resident), the CbC report will have to be filed within the prescribed period, which has not yet been defined (for prior coverage, see Global Transfer Pricing Alert 2018-008, 3 April 2018). This should provide the Indian constituent entity an extension for filing the CbC report in India. Before this change made by the parliament, the report had to be filed for the year ended 31 March 2017 by 31 March 2018; the parliament clarified that the 31 March 2018 deadline applies only to CbC reporting of parent or surrogate reporting entities.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-008-3-april-2018.pdf

Another change made by the parliament affects the definition of the term "agreement" for purposes of the exchange of information relating to CbC reports. The term has been amended so that it refers both to agreements between India and another country for the avoidance of double taxation and for the exchange of information and agreements for the exchange of CbC reports of Indian resident parent entities of multinational groups. As a result, CbC reports filed by Indian constituent entities cannot be exchanged by the Indian tax authorities with authorities of other jurisdictions.

PAN requirement in financial transactions

The Finance Bill 2018 included a measure that would have required all entities, including foreign entities and their principal officers (*e.g.* managing director, director, partner, etc.) entering into specified financial transactions that exceed in the aggregate INR 250,000 to obtain a PAN. (The PAN is a 10-digit alphanumeric identity given to a taxpayer by the Indian tax authorities, and is necessary for certain financial transactions.) This proposal created concerns for foreign entities because the foreign entity *and* its directors and partners would have had to obtain a PAN if the entity engaged in any business transaction with India. The parliament clarified the language to specify that only resident Indian entities will have to obtain a PAN.

— Rajesh Gandhi (Mumbai)
Partner
Deloitte Haskins & Sells
rajegandhi@deloitte.com

Ukraine:
Tax authorities issue guidance on recent changes to transfer pricing rules

In a letter dated 1 March 2018, the Ukrainian tax authorities issued guidance relating to the enacted changes to the country's transfer pricing law that generally apply as from 1 January 2018 (for prior coverage, see *World Tax Advisor*, 9 March 2018). The letter clarifies certain rules for treating transactions of permanent establishments (PEs) as controlled transactions, confirms the effective date of the updated list of "low-tax" jurisdictions and provides other information and examples, but does not provide specific guidance on the choice of transfer pricing methods or their application.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180309_8.html

The key points in the letter are summarized below.

Transactions with PEs

As from 1 January 2018, transactions between a nonresident company and its PE in Ukraine are considered to be controlled transactions for transfer pricing purposes if the value of the transactions within the reporting period exceeds UAH 10 million. Given that the nonresident and its PE generally are treated as a single legal entity, questions have arisen regarding how this provision would apply in practice, but the letter does not provide further guidance on this issue.

The letter clarifies that the total annual revenue threshold of UAH 150 million for the transfer pricing rules to apply does not apply to transactions of the PE that otherwise would be considered controlled transactions. (The normal rule is that both the UAH 150 million in total annual revenue and UAH 10 million in transaction value requirements have to be met for a transaction to be deemed to be a controlled transaction. The annual revenue requirement does not apply to PEs.)

The letter also confirms that business transactions of Ukrainian residents with PEs of nonresidents are not considered controlled transactions for transfer pricing purposes, even though the tax authorities previously have expressed the opposite position.

Transactions with residents of low-tax jurisdictions

In December 2017, the Cabinet of Ministers updated the list of low-tax jurisdictions (for prior coverage, see *World Tax Advisor*, 23 February 2018). The effect of a country being included on the list is that business transactions of Ukrainian taxpayers with nonresidents registered in such jurisdictions may be treated as controlled transactions for transfer pricing purposes, irrespective of whether the taxpayer and the person resident in the listed country are related parties.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180223_4.html

There has been some uncertainty regarding the effective date of the December 2017 list. The letter confirms that the updated list applies for transactions that take place on or after 1 January 2018.

Other guidance

The letter provides some clarifying examples relating to the rules that came into effect 1 January 2018, and it confirms that taxpayers need to retain required transfer pricing documentation and information for a period of 2,555 days (*i.e.* seven years) from the deadline for filing the relevant tax return with the tax authorities.

— Alexander Cherinko (Kyiv)
Partner
Deloitte Ukraine
acherinko@deloitte.ua

Oleksandr Yampolskyi (Kyiv)
Manager
Deloitte Ukraine
oyampolskyi@deloitte.ua

United States:
IRS to revise CbC reporting rules to protect national security

The US Internal Revenue Service (IRS) on 30 March 2018 issued Notice 2018-31, which states that the IRS and the Department of the Treasury intend to amend the country-by-country (CbC) regulations introduced in 2016 to incorporate guidance to US multinational enterprise (MNE) groups that are “specified national security contractors,” so that those contractors may file their CbC reports in the modified manner described in the guidance (for prior coverage of the CbC regulations, see Global Transfer Pricing Alert 2016-024, 1 July 2016).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-024-1-july-2016.pdf

The term “specified national security contractor” is defined as a US MNE group where more than 50% of the group’s annual revenue, as determined in accordance with US generally accepted accounting principles, in the preceding reporting period is attributable to contracts with the US Department of Defense or other US government intelligence or security agencies.

Based on consultations with the Department of Defense following the issuance of the final CbC regulations, the Treasury Department and the IRS have determined that CbC reports do require modifications for information related to national security.

According to the notice, the amended regulations will provide that US MNE groups that have an obligation to file a CbC report (Form 8975) and that are specified national security contractors may provide Form 8975 and accompanying schedules in the following manner:

- Complete Form 8975 with a statement that the US MNE group is a specified national security contractor as defined in the notice;
- Complete one Schedule A for the tax jurisdiction of the United States with the aggregated financial and employee information for the entire US MNE group in Part I, Tax Jurisdiction Information, and only the ultimate parent entity's information in Part II, Constituent Entity Information; and
- Complete one Schedule A for the tax jurisdiction "Stateless" with zeroes in Part I, Tax Jurisdiction Information, and only the ultimate parent entity's information in Part II, Constituent Entity Information.

No other Schedule A or additional information will be required.

To ensure that originally filed CbC reports are not automatically exchanged, specified national security contractors that are filing an amended Form 8975 and Schedules A (Form 8975) to supersede an already filed Form 8975 and Schedules A (Form 8975) should do so by 20 April 2018, if filing an amended federal income tax return on paper, or by 25 May 2018, if filing electronically.

The notice will apply to CbC reports and amended CbC reports filed after 30 March 2018. Filing in accordance with the IRS rules should provide protection from other countries that have entered into a qualified competent authority agreement for the exchange of CbC information with the IRS.

— Joseph Tobin (Washington, DC)
Principal
Deloitte Tax LLP
jtobin@deloitte.com

David Varley (Washington, DC)
Principal
Deloitte Tax LLP
dvarley@deloitte.com

In brief

Australia: On 27 March 2018, the government released a detailed paper on the changes it intends to introduce to tighten the rules governing "stapled structures" (*i.e.* structures created when two or more securities are contractually bound together, such that they are not able to be bought or sold separately). These structures often are used in the property sector in Australia and often involve a managed investment trust (MIT). Following concerns by the Australian Taxation Office in 2017 about abuses of stapled structure arrangements, the government is proposing a package with the following measures: (i) preventing active business income from accessing the 15% MIT withholding tax rate (instead it would be subject to withholding at the corporate income tax rate); (ii) preventing "double gearing" structures through the thin capitalization rules; and (iii) limiting the exemptions that are available to foreign pension funds and foreign sovereign immunity funds. The thin capitalization measures would apply to income years commencing after 1 July 2018, and the other proposed changes would apply to income years commencing after 1 July 2019. Transitional relief would apply to arrangements in existence on the date of the government announcement, *i.e.* such arrangements would continue to be subject to the existing laws for seven years (15 years for certain infrastructure staples).

Canada: The federal budget presented on 27 February 2018 proposes additional information reporting requirements for nonresident trusts that are required to file an annual tax return in Canada. These trusts would be required to report the identity of all trustees, beneficiaries and settlors of the trust, as well as the identity of each person who has the ability (through the trust terms or a related agreement) to exert control over trustee decisions regarding the appointment of income or capital of the trust. The new reporting requirements would apply to returns required to be filed for the 2021 and subsequent tax years. It also was announced that additional funds would be allocated to improve the audit and administration of trusts and trust returns.

Colombia: The tax authorities released a legal opinion dated 23 March 2018 stating that royalties paid for the exploitation of intangible assets (*e.g.* trademarks) relating to finished products acquired by the taxpayer for resale are not deductible where such royalties are deemed already to be incorporated in the acquisition price of the goods. This rule is designed to prevent taxpayers from receiving a double deduction for the amount of the deemed royalty payment. The tax authorities will consider the payment for the finished product to include the value relating to the exploitation of any associated intangible(s), unless the taxpayer is able to demonstrate that the value was not incorporated in the cost structure at the time the product was acquired (the opinion does not provide any further clarification of what evidence the taxpayer would have to provide in this regard).

Hong Kong: Legislation introducing a two-tiered profits tax regime was passed by the Legislative Council on 21 March 2018 (for prior coverage, see *World Tax Advisor*, 27 October 2017). As from year of assessment 2018/19, profits tax will be levied at a rate of 8.25% (7.5% for unincorporated businesses) on the first HKD 2 million of assessable profits and at a rate of 16.5% (15% for unincorporated businesses) on the remainder of assessable profits.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171027_4.html

Japan: The National Diet enacted the 2018 tax reform proposals on 28 March 2018 (for prior coverage, see *World Tax Advisor*, 26 January 2018), which include the following corporate tax changes: the expansion of tax credits and incentives for companies that increase wages and capital investment for fiscal years beginning between 1 April 2018 and 31 March 2021; the introduction of information collaboration tax incentives applicable from the effective date of the Productivity Improvement Act to 31 March 2021; revisions to the domestic definition of a permanent establishment (PE) to prevent the artificial avoidance of PE status in line with the 2017 OECD model tax treaty as from fiscal years beginning on or after 1 January 2019 (and as from calendar year 2019 for individuals); and changes to the CFC regime as from fiscal years beginning on or after 1 April 2018.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180126_3.html

South Africa: The South African Revenue Service (SARS) has issued a guide and a set of frequently asked questions (FAQs) that cover some important issues to consider as a result of the increase in the standard VAT rate from 14% to 15% that became effective on 1 April 2018. The rate increase was announced in the Minister of Finance's budget speech on 21 February 2018 (for prior coverage, see *World Tax Advisor*, 9 March 2018). The FAQs indicate that the rate increase will apply for at least 12 months from 1 April 2018, and that parliament must pass legislation to give permanent effect to the announcement within 12 months.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180309_ib.html

United States: An appropriations bill enacted on 23 March 2018 that funds the government for the remainder of fiscal year 2018 includes certain tax measures, including long-stalled technical corrections to the Protecting Americans from Tax Hikes (PATH) Act of 2015 (for prior coverage, see United States Tax Alert, 29 January 2016), the partnership audit rules originally enacted as part of the Bipartisan Budget Act of 2015 and other pre-2017 tax laws. The technical corrections to the PATH Act affect a variety of topics, including real estate investment trusts (REITs) and the rules under the Foreign Investment in Real Property Tax Act (FIRPTA). The Joint Committee on Taxation's technical explanation of the appropriations bill's revenue provisions states that, except as otherwise provided, the amendments take effect as if they were included in the original legislation to which they relate.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-29-january-2016.pdf

The Internal Revenue Service (IRS) has released Publication 5292 *How to Calculate Section 965 Amounts and Elections Available to Taxpayers*, which provides information on calculating and elections relating to the "transition tax" that was enacted as part of the tax reform legislation signed on 22 December 2017. The publication is available on the IRS website.

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.

India: The government has deferred the due date for CbC reports of Indian constituent entities from 31 March 2018 to a future yet-to-be determined date. See Global Transfer Pricing Alert 2018-008, 3 April 2018.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-008-3-april-2018.pdf

The Finance Act 2018 includes clarifications to the CbC reporting requirements that were introduced in 2017. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180413_4.html

Japan: The tax reform enacted on 28 March 2018 includes revisions to the domestic definition of a permanent establishment to prevent the artificial avoidance of PE status in line with BEPS action 7 and additional changes to the CFC regime. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180413_ib.html#Japan

Revised transfer pricing administrative guidelines include changes to the calculation approach for low-value-adding services consistent with the 2015 final report on BEPS actions 8-10. See Global Transfer Pricing Alert 2018-006, 2 April 2018.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-006-2-april-2018.pdf

Luxembourg: On 22 March 2018, parliament passed a law to replace the intellectual property (IP) box regime that was abolished in 2016. The law is in line with the provisions of the draft law issued on 7 August 2017 (for prior coverage, see *World Tax Advisor*, 18 August 2017), and with the "modified nexus approach" under action 5 of the BEPS project. An 80% income tax exemption will be introduced for income derived from the commercialization of certain IP rights, as well as a 100% exemption from net wealth tax. The new rules are expected to be applicable as from fiscal year 2018, although it still is unclear when the Council of State will initiate the next steps to finalize the law so it can become effective.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170818_1.html

Malaysia: In line with the revised transfer pricing guidelines issued in July 2017 (for prior coverage, see Global Transfer Pricing Alert 2017-034, 11 August 2017), the Inland Revenue Board of Malaysia (IRB) has begun issuing a revised version of Form MNE [PIN 1/2017] to taxpayers. The form is used to collect information for the IRB to carry out a risk review to select cases for transfer pricing audits, and is issued to taxpayers that are selected based on certain risk criteria. Generally, the IRB grants a period of 30 days (from the date of issuance of Form MNE) for taxpayers to file a response. The revised Form MNE is more comprehensive and intends to capture key data points in line with the changes introduced post-BEPS. Notably, most of the information sought through Form MNE also is required either as a part of the country-by-country reporting template or in a master file. It is expected that with the information required to be provided in the revised form, the IRB will conduct more informed and intensive audits.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-034-11-august-2017.pdf

OECD: On 5 April 2018, the OECD published an update on the bilateral relationships that have been activated for the automatic exchange of information under the Common Reporting Standard (CRS), which includes over 2,700 relationships worldwide (for prior coverage, see *World Tax Advisor*, 12 January 2018). The update reflects new relationships activated under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA), including activations by Panama for the first time. The OECD also released the second edition of the CRS implementation handbook on the same date. The handbook provides an overview of the CRS for the financial sector and the public, and guidance to assist financial institutions and government officials in implementing the CRS.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180112_bc.html

On 4 April 2018, the Global Forum on Transparency and Exchange of Information for Tax Purposes published peer review reports assessing nine countries' compliance with the international standards on tax transparency and exchange of information upon request. Estonia, France, Morocco and New Zealand are rated "compliant"; Bahamas, Belgium and Hungary are rated "largely compliant"; and Ghana is rated "partially compliant." The report for Jamaica is a supplementary report that assesses its progress since the report published on 21 August 2017 that rated the country as partially compliant, and concludes that it is now largely compliant (for prior coverage, see *World Tax Advisor*, 8 September 2017). In addition, Montenegro has become the 150th member of the global forum.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170908_bc.html

On 22 March 2018, the OECD released *Additional Guidance on the Attribution of Profits to Permanent Establishments* resulting from the recommended changes in the 2015 final BEPS action 7 report to the definition of a permanent establishment (PE) in article 5 of the OECD model tax treaty. The 2015 report mandated the development of additional guidance on how the existing attribution rules would apply to PEs resulting from the changes (which are aimed at preventing the use of certain tax avoidance strategies to avoid PE status) taking into account the final report under BEPS actions 8-10 on aligning transfer pricing outcomes with value creation. The additional guidance, which follows two earlier discussion drafts issued in 2016 (for prior coverage see OECD Tax Alert, 8 July 2016), sets out high-level

general principles and includes examples of a commissionnaire structure for the sale of goods, an online advertising sales structure and a procurement structure and an example on the attribution of profits to PEs arising under the anti-fragmentation rule.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-8-july-2016-permanent-establishments.pdf

United States: The tax authorities have issued a notice that states that they intend to amend the CbC reporting regulations to provide that US MNE groups that are "specified national security contractors" may file their CbC reports in a modified manner. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180413_6.html

---

Global tax alerts

India
Due date for filing CbC reports by Indian constituent entities of foreign MNEs postponed
The Indian government has deferred the due date for Indian constituent entities of foreign-headquartered multinational groups to file CbC reports in India, from 31 March 2018 to a future yet-to-be determined date.
Issue date: 3 April 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-008-3-april-2018.pdf

Ireland
Revenue releases guidelines on low-value intragroup services
The guidelines indicate that the tax authorities are prepared to accept a 5% mark-up of the relevant costs without a formal benchmarking study.
Issue date: 4 April 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-009-4-april-2018.pdf

Italy
Draft measures issued on implementation of domestic transfer pricing provisions for public consultation
The draft documents issued for consultation include guidelines to address arm's length issues in accordance with the OECD transfer pricing guidelines, rules implementing the newly introduced unilateral corresponding adjustment procedure and an Italian translation of the OECD transfer pricing guidelines.
Issue date: 5 April 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-010-5-april-2018.pdf

Japan
Transfer pricing administrative guidelines released
The guidelines include revisions relating to advance pricing arrangements and the provision of intragroup services and are intended to encourage a consistent application of the transfer pricing rules at the various levels of the tax authorities.
Issue date: 2 April 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-006-2-april-2018.pdf

United States
2017 APA report shows continued strong interest in APAs
On 30 March 2018, the Internal Revenue Service released the 2017 advance pricing agreement (APA) annual report that summarizes recent APA developments in the Advance Pricing and Mutual Agreement Program and provides a statistical snapshot of the program's APA activities during the calendar year.
Issue date: 5 April 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-011-5-april-2018.pdf