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New Luxembourg-France tax treaty aligned with 2017 OECD model

On 20 March 2018, the governments of Luxembourg and France signed a new tax treaty and protocol to modernize the existing agreement, which is 60 years old. The new treaty completely revamps the 1958 treaty and includes provisions that reflect the latest international standards in the 2017 version of the OECD model treaty and recommendations under the BEPS project, as well as the multilateral instrument (MLI).

The new treaty includes the OECD-recommended title and preamble to clarify that the purpose of the treaty is not to create opportunities for nontaxation or reduced taxation through tax avoidance or evasion. Other new features relate to residence and persons covered; the definition of a permanent establishment (PE); withholding tax on dividends (including dividends paid by real estate investment funds), interest and royalties; taxation of employment income; and the method to be used by French residents to eliminate double taxation. Certain provisions will be subject to practical requirements that may be determined jointly by the two countries, or on a unilateral basis.

The following highlights some of the main features of the new treaty.

Persons covered

The definition of a resident mainly is in line with the definition in the OECD model, although it expressly precludes trustees and fiduciaries from treaty benefits because they are not the beneficial owners of income.

The treaty includes a rule that deals with income derived by or through entities that are treated as wholly or partially fiscally transparent under the tax law of either country, under which the treaty will apply to the extent the domestic law of the relevant country treats the income as the income of a resident of that country. The treaty also will apply where such fiscally transparent entities are established in a third country if certain requirements are met.

A collective investment fund of one of the contracting states assimilated to funds of the other contracting state will be able to benefit from the dividends and interest articles of the new treaty with respect to income corresponding to rights held by residents of one of the contracting states, or by residents of a third country that has concluded an administrative assistance agreement with the country in which the income is derived.

Permanent establishment

The new treaty adopts various modifications to the definition of a PE in line with the BEPS project, and seems to follow the French position taken under the MLI (*e.g.* regarding the introduction of an "anti-fragmentation rule," which Luxembourg generally opted not to adopt when it submitted its MLI position), as well as the proposed wording of the OECD model treaty.

The new treaty will lower the threshold at which a PE will arise in the other country by:

- Broadening the scope of the definition of a dependent agent;
- Narrowing the exemptions for a fixed place of business by requiring activities to be of a "preparatory or auxiliary" nature and introducing an anti-fragmentation rule that will result in the denial of the PE exemption for preparatory or auxiliary activities in certain cases; and
- Aggregating the time periods for the presence of a building site or construction or installation project PE.

Dividends, interest and royalties

The new treaty makes changes to the rates of withholding tax on dividends, interest and royalties, and includes a beneficial ownership requirement for purposes of benefiting from the lower treaty rates:

- **Dividends:** The current tax treaty provides for a 5% withholding tax rate on dividends paid to a company in the other contracting state that holds at least 25% of the share capital of the payer company; otherwise, the rate is 15%.

  The new treaty retains the maximum default withholding tax of 15%, but also will exempt from withholding tax dividends that are paid to a company that is resident in the other contracting state and that holds at least 5% of the capital of the payer company for at least 365 days. Therefore, provided the recipient company is the beneficial owner and meets the holding requirements, the dividends will be taxable only in the country of residence of the recipient. The new treaty also modifies the withholding tax rate on dividends paid by real estate investment funds, which are eligible for a 5% rate under the existing treaty. The rate will be 15% where the beneficial owner holds, directly or indirectly, less than 10% of the capital of the fund. Where the participation equals or exceeds 10%, the dividends will not be granted a reduced withholding tax rate under the treaty; instead; they will be taxable at the rate that applies under the domestic law of the source country.

- **Interest:** Interest will be exempt from source-country taxation (*i.e.* interest will be taxable only in the state of residence of the recipient) if the recipient is the beneficial owner of the income. The existing treaty provides for a maximum rate of 10% (even though Luxembourg and France generally do not impose withholding tax on interest paid to a nonresident).

- **Royalties:** Whereas the existing treaty provides for a full exemption from withholding tax, the new treaty provides for source-state taxation of royalties at a rate of up to 5% of the gross amount.

Anti-abuse rules

The new treaty contains various anti-abuse rules, some of which (*e.g.* the principal purpose test) are in line with the OECD requirements in connection with the MLI. In addition, the following provisions are included:

- France will be permitted to apply certain domestic anti-abuse rules to transactions that fall within the scope of the treaty, meaning that the treaty provisions will not prevent the application of domestic rules.
- In addition to the fact that the right to tax real estate investments (including real estate companies) will remain in the state where real estate is located, a new rule will allow for the taxation of gains from the sale by an individual that holds a substantial participation (*i.e.* at least 25%) in a company established in the other contracting state, where the individual was resident in the other contracting state at any time during the five years preceding the disposal of the shares. Similar provisions already are included in some of Luxembourg's tax treaties.

Employment income

The employment income article has been completely revised to be fully aligned with the OECD model treaty. Under the general rule, employment income will be taxable in the country where the employment activities are exercised. The treaty also includes a provision that addresses short-term employment activities, where the country in which the individual is resident will be allocated taxing rights if the following requirements are met:

- The individual is present in the other country for fewer than 183 days within the 12-month period in the relevant fiscal year;
- The individual's compensation is paid by an employer that is not located in the other country; and
- The compensation is not borne by a PE of the employer located in the other country.

The treaty also contains a "cross-border workers" clause, according to which income earned by a French tax resident working in Luxembourg for a Luxembourg employer will be taxable in Luxembourg, provided the employee does not spend more than 29 work days per year outside Luxembourg. The same rule will apply to a Luxembourg resident working in France for a French employer.

By including the 29-day rule, the French and Luxembourg governments have acknowledged the realities of cross-border workers by providing some flexibility for such workers who may conduct business trips abroad and/or occasionally work from home. This provision generally is aligned with similar clauses in Luxembourg's agreements with Belgium (24 days) and Germany (19 days), although these two agreements have lower thresholds.

The new treaty does not contain any guidance on how the 29-day period will be calculated (*e.g.* how half-days and sick days should be treated, etc.), so the Luxembourg and French tax authorities will need to issue guidance in this area.

Elimination of double taxation

The new treaty makes a significant change to the way double taxation is avoided for French tax residents working in Luxembourg, by moving from an "exemption with progression" method to a "tax credit" method. The tax credit method will apply to all types of income of a French tax resident.

Under the exemption with progression method, Luxembourg-source income is exempt from French tax, but may be considered when determining the French tax rate that applies on any remaining income. Under the tax credit method, however, Luxembourg-source income will be taxable in France, with a credit granted for the tax paid on such income to Luxembourg. The tax credit will be limited to the amount of French tax payable on the Luxembourg-source income.

In principle, the tax credit method will be less beneficial than the exemption method, since the taxpayer always will have to pay the higher of both countries' tax rates.

Further clarifications are expected on the practical aspects of the new rules.

Entry into force

The new treaty and protocol will enter into force once the two countries exchange their respective ratification instruments (following the completion of their ratification procedures), and will enter into effect as from 1 January of the calendar year following the year the treaty enters into force. As a result, if the treaty is ratified in 2018, it will become effective on 1 January 2019; however, an effective date of 1 January 2020 is more likely.

It also should be noted that some of the MLI provisions adopted by Luxembourg and France, such as mandatory arbitration, are not included in the new treaty, but will be treated as included in the treaty once the MLI becomes effective.

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China:
SAT updates guidance on interpretation of tax treaties

The State Administration of Taxation (SAT) issued guidance (Bulletin 11) on 12 February 2018 that updates and modernizes 2010 guidance (Circular 75) on the interpretation of the provisions in China's tax treaties. It should be noted that, while Circular 75 was issued in the context of the China-Singapore treaty, it generally had been applicable to all of China's treaties/arrangements that contain similar provisions.

Bulletin 11 is effective from 1 April 2018 and contains changes to the interpretation of the following articles in China's treaties: permanent establishment (PE); shipping and air transport; entertainers (artistes) and sportspersons; and eligibility of partnerships for treaty benefits.

Permanent establishment

Bulletin 11 clarifies that the aggregate six months within any 12-month period in relation to the furnishing of services, a threshold applied when defining a permanent establishment under some of China's tax treaties, should be interpreted to mean 183 days in the aggregate within any 12-month period.

A PE can arise in China where an enterprise sends personnel to China to provide services for a specified period of time, which typically is "183 days" within any 12-month period in China's recent tax treaties, but "six months" in some older treaties (*e.g.* the China-US treaty). The SAT issued guidance in 2007 (in the context of its tax arrangement with Hong Kong) that adopted a strict view on how to calculate the six-month period, under which a presence for one day could be counted as "one month." Although the relevant provisions in the 2007 guidance have been abolished, the ambiguity on how to calculate the six-month period remains, and some tax officials have continued to follow the 2007 guidance to determine whether a service PE exists. Bulletin 11's confirmation that six months means 183 days should be welcomed by taxpayers.

Shipping and air transport

The guidance on the shipping and air transport article is updated. One of the main points of Bulletin 11 is that profits derived from the transport of passengers or cargo by leasing an aircraft (in the form of a "wet lease") or ship (in the form of a voyage or time charter) will be considered profits derived by an enterprise of a contracting state from the operation of ships or aircraft in international traffic.

Bulletin 11 marks a welcome change in the SAT's interpretation of leasing a ship or aircraft on charter that is fully equipped, crewed and supplied (*i.e.* wet lease, voyage or time charter) to align with the 2014 OECD and 2011 UN commentaries on the model treaties relating to the scope of the international transport articles. Previously, such profits could not enjoy the treaty exemption under article 8 unless such leasing activities were incidental to the operation of international transportation.

Entertainers (artistes) and sportspersons

Bulletin 11 updates Circular 75's guidance on the entertainers or artistes and sportspersons article (article 17) as follows:

- Three new examples are added for the activities from which income covered by article 17 is derived: film promotion by entertainers, annual meetings and ribbon- cutting ceremonies for companies in which entertainers and sportspersons participate.
- Visiting conference speakers are not covered, unless the speech is in the nature of a "performance" and made as a commercial activity, in which case article 17 will apply.
- Electronic sports (*i.e.* competitive video gaming) activities fall within the scope of article 17.
- By invoking article 17, the source state has the right to tax the income derived by an entertainer (artiste) or sportsperson from personal activities and the income from personal activities carried out by an entertainer (artiste) or sportsperson in his/her capacity that accrues to other persons, regardless of whether the article dealing with business profits, dependent or independent personal services applies.

Eligibility of partnerships and other comparable entities for treaty benefits

Bulletin 11 provides guidance on partnerships and other comparable entities:

Chinese partnerships: China will treat income of a Chinese partnership as flowing through to the foreign partners, so the partners (if residents of relevant contracting states) should be entitled to benefits under the relevant treaties with respect to their share of the income of the partnership, provided such share of the income also is treated as the income of the foreign partners in the relevant contracting states.

Although it has been almost eight years since a foreign party has been allowed to become a partner of a Chinese partnership, tax guidance in this area is limited. It seems the SAT will consider the other contracting states' tax treatment in determining whether to grant treaty benefits to foreign partners for their share of income of Chinese partnerships. Bulletin 11 does leave a few key issues unanswered, such as how to determine the classification of the income for treaty purposes, whether and how holding the interest of a Chinese partnership would give rise to a PE and, if so, how to determine that the share of income is attributable to the PE, etc.

Foreign partnerships:

- A foreign partnership (that is not effectively managed in China) is considered a nonresident enterprise (*i.e.* "non-flow through entity") for Chinese enterprise income tax purposes.
- A foreign partnership will be entitled to treaty benefits only if it is considered a resident of the other contracting state under the relevant treaty, unless the treaty provides otherwise.
- If a foreign partnership cannot prove that it is liable to tax in the other contracting state by reason of its domicile, residence, place of establishment, place of management or any other criterion of a similar nature, it will not be considered a resident of the contracting state to access the treaty benefits, even if it has submitted a residence certificate issued by the competent tax authorities of the contracting state.

Bulletin 11's confirmation of a foreign partnership's "non-flow through" treatment means that the Chinese tax authorities would accrue the relevant income to the foreign partnership and tax the partnership, rather than its partners or members. This being the case, a foreign partnership established in a country that treats the partnership as tax transparent could be denied access to the benefits under a relevant treaty, since the partnership would be unable to meet the “liable to tax” test to be considered a tax resident of its home country. One possible way to resolve this issue would be to include special provisions in a treaty that extend treaty benefits to partners or members that are residents of the home country, regardless of the non-flow through treatment by the source country. Currently, the 2013 China-France treaty seems to be the only tax treaty signed by China to contain such provisions.

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Cyprus:
New tax treaty with the UK contains BEPS-related measures

Cyprus and the UK signed a new tax treaty and protocol on 22 March 2018 to replace the existing treaty dating from 1974 (as amended by a 1980 protocol). The new treaty is based on the 2017 version of the OECD model treaty and includes some BEPS-related measures. The treaty is expected to enhance economic cooperation between the two countries.

The key provisions in the new treaty are the following:

Dividends, interest and royalties

No withholding tax will apply on dividends, interest and royalty payments provided the recipient of the income is the beneficial owner. However, dividends paid out of income derived directly or indirectly from tax-exempt immovable property by certain investment vehicles will be subject to a maximum 15% withholding tax.

Capital gains

Capital gains derived from the alienation of shares will be taxable only in the country where the seller is resident, except in the following cases:

- More than 50% of the value of the shares is derived directly or indirectly from immovable property situated in the other country. In that case, the source country will have the right to tax the gain, unless the shares being alienated are substantially and regularly traded on a stock exchange; and
- Where the shares derive their value or the greater part of their value (directly or indirectly) from certain offshore rights or the exploration or exploitation of the seabed or subsoil or their natural resources located in the other contracting state.

Treaty abuse

The new Cyprus-UK treaty is largely consistent with the BEPS action 6 measures relating to treaty abuse:

- A new title and preamble makes it clear that the purpose of the treaty is to eliminate double taxation, and that it is not intended to create opportunities for nontaxation or reduced taxation through tax evasion or avoidance (including through treaty shopping arrangements aimed at obtaining relief provided in the agreement for the indirect benefit of residents in third states).
- Dual resident entities generally will not be able to benefit under the treaty if the competent authorities of the two countries are unable to determine by mutual agreement the entity’s state of residence, taking into account the place of effective management, the place where the entity was incorporated/otherwise constituted and any other relevant factors.
- The treaty includes a principal purpose test, under which treaty benefits will be denied if one of the principal purposes of a transaction or arrangement is to obtain treaty benefits, unless it is established that granting these benefits would be in accordance with the object and purpose of the provisions of the treaty.

Dispute resolution

The treaty contains measures that will implement the final report on BEPS action 14 in relation to making dispute resolution mechanisms more effective. The treaty includes a mutual agreement procedure and a binding arbitration provision, under which taxpayers will be able to refer tax disputes that remain unresolved after two years for binding arbitration.

Other matters

Other key features of the treaty include the following:

- The treaty expressly deals with income derived through fiscally transparent entities or arrangements; and
- The Cyprus and UK tax authorities are required to assist each other in the collection of their respective revenue claims.

Entry into force and effective dates

The treaty will enter into force once both Cyprus and the UK exchange notifications that their formal ratification procedures have been completed.

The treaty provisions enter into effect in Cyprus on or after 1 January following the date the treaty enters into force. The treaty will enter into effect in the UK as follows:

- **Withholding tax:** For amounts paid or credited from 1 January following the date the treaty enters into force;
- **Income tax and capital gains tax:** From 6 April following the date the treaty enters into force; and
- **Corporation tax:** For any financial year beginning on or after 1 April following the date the treaty enters into force.

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Malaysia:
Guidance issued on tax treatment of digital advertising provided by a nonresident

The Inland Revenue Board (IRB) of Malaysia issued Practice Note No. 1/2018 on 16 March 2018, to provide guidance on the withholding tax on income derived from Malaysia by a nonresident from the provision of digital advertising.

Based on the practice note, the tax treatment of such payments can be summarized as follows:

Status of nonresident	Type of payment	Withholding tax
Nonresident without a permanent establishment (PE) / business presence in Malaysia	If the payer purchases or uses an application (app) that allows the payer to create its own advertising campaign, the payment is treated as royalty income.	10%
	If the payer relies solely on the service provider to deal with all aspects of digital advertising and there is no purchase or use of an app, the payment is treated as technical service fee income.	10%

Status of nonresident	Type of payment	Withholding tax
Nonresident with a PE/business presence in Malaysia	The payment constitutes business income derived from Malaysia by the nonresident.	For payments to a nonresident contractor in respect of services, withholding tax at 10% (on account of the tax payable by the nonresident contractor) + 3% (on account of the tax payable by the nonresident contractor's employees) may apply, which is creditable against the income tax payable.

Comments

Practice notes set out the IRB's interpretation of the tax law, but they do not have the force of law. Nevertheless, taxpayers should be aware of the positions taken by the tax authorities.

In cases where the recipient of income is tax resident in a country that has concluded a tax treaty with Malaysia, the treaty provisions (*e.g.* reduced rates, definition of royalty, etc.) must be considered, since a treaty generally prevails over Malaysia's domestic tax law.

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Nigeria:
Voluntary disclosure regime extended

On 11 April 2018, Nigeria's president approved the extension of the Voluntary Assets and Income Declaration Scheme (VAIDS) for three months (for prior coverage, see *World Tax Advisor*, 14 April 2017). VAIDS, which originally lasted for nine months and expired on 31 March 2018, now will run until 30 June 2018.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170414_ib.html

In considering whether to extend the regime, the president referred to appeals from professional bodies and individual taxpayers, specifically to consider a three-month extension that will coincide with the annual filing deadline for many corporate bodies with a December year-end.

The extension will provide an opportunity for taxpayers caught by the original deadline to regularize their tax positions. The federal government feels that the extension will enhance tax compliance levels and generate additional tax revenue for the government.

For taxpayers that are in default of their tax liabilities, the benefits of participating in VAIDS include a waiver of interest and penalties, immunity from tax audit and prosecution, confidentiality and the ability to make installment payments for tax liability for the period 2011 to 2016.

Since the original deadline was based on an executive order, a new executive order will be issued to give legal backing to the revised timeline.

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Puerto Rico:
Draft tax reform bill includes reduction in corporate income tax rate

On 16 April 2018, the governor of Puerto Rico presented a draft bill that would introduce significant tax changes for corporations, individuals and partnerships as set forth under the administration's proposed new tax model, which is based on best practices identified from other jurisdictions and aims to simplify tax compliance and incentivize economic growth.

Among the proposals that would affect corporations, the draft bill would:

- Reduce the corporate income tax rate from 20% to 19%;
- Reduce the maximum rate of the corporate surtax from 19% to 12% (but lower the threshold at which the maximum rate would apply);
- Reduce the alternative minimum tax rate from 30% to 19% (or 23% for corporations with turnover of USD 3 million or more) and set new limitations for allowable expenses for calculating alternative minimum taxable income; and
- Increase the net operating loss deduction limitation from 80% to 90% of taxable income.

Corporate and individual taxpayers whose only source of income arises from a service trade or business and is subject to withholding at source would be able to elect to pay income tax on their gross income at progressive rates ranging from 5% up to 20%, subject to certain conditions.

The draft proposals also would broaden the definition of related entities and would provide relief from the general 51% disallowance of deductions of amounts paid to related parties where the taxpayer files a transfer pricing report in line with the provisions of US law (section 482).

In addition, taxpayers that are required to file audited financial statements would be required to file a schedule detailing their "uncertain tax positions" with their tax returns.

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Sweden:
Proposal to restrict deductions of interest expense revised

On 21 March 2018, the Swedish government presented a revised proposal to restrict the deduction of interest expense and reduce the corporate tax rate. The revisions follow a consultation launched in 2017 that recommended changes to the original proposal (for prior coverage, see *World Tax Advisor*, 21 July 2017). The proposed measures would implement the EU anti-tax avoidance directive (ATAD I and II) and the relevant recommendations under the OECD BEPS project into Swedish law.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_8.html

The revised proposal would introduce a general interest deduction limitation rule that would restrict a company's deduction for net interest expense (the amount of otherwise deductible interest expense that exceeds taxable interest income) to 30% of tax EBITDA. As in the original proposal, the current rules restricting the deduction of interest expense on intragroup debt would be maintained with minor changes, and specific limitations on intragroup hybrid arrangements would be introduced.

The revised proposal also provides for a two-step reduction in the corporate income tax rate: the rate would be reduced from the current 22% to 21.4% in 2019, and then to 20.6% by 2021. The original proposal, which would have reduced the rate to 20% as from 1 July 2018, was rejected.

If approved, the changes would be effective as from 1 January 2019.

Intragroup loans and hybrid arrangements

Under both the original and revised proposals, the current rules that limit the deduction of interest expense on intragroup loans would be modified to disallow deductions of interest expense in situations where a beneficial owner receiving the interest is not located within a country within the European Economic Area (EEA) or a country that has concluded a tax treaty with Sweden, or the interest income is not taxed at a rate of at least 10%. However, even if the deductibility requirements are met, an interest expense deduction would be nondeductible if the purpose of the intragroup loan is exclusively or almost exclusively (defined under the proposal as 90%-95% up to 100%) for the group to achieve a "substantial" tax benefit. Where the loan was obtained to finance an intragroup acquisition of shares, the acquisition would need to be "substantially" motivated by sound business reasons for the interest expense to be deductible.

The revised proposal also maintains the rules in the original proposal that would restrict the deduction of interest expense in certain cross-border hybrid arrangements. A deduction would be disallowed where interest costs that otherwise are deductible in Sweden also may be deducted in another country, or where there is no taxable interest income in another country corresponding to the interest expense in Sweden, and this treatment results from differences in the classification of the payment or in the underlying financial instrument.

General interest deduction limitation rule

According to the revised proposal, a company's deduction for net interest expense on intragroup and external debt would be limited to 30% of a company's "tax EBITDA" (instead of 25% of tax EBIT or 35% of tax EBITDA as originally proposed). Tax EBITDA is defined as the company's taxable income before deductions for net interest expense and tax depreciation on certain assets, interest income, income from Swedish partnerships and foreign legal entities taxed at the level of the owners and changes in the company's tax allocation reserve. Group contributions made and received would be included when calculating tax EBITDA.

If a company's taxable result before the deduction of net interest expense is a loss, tax EBITDA would be increased by an amount equal to the tax losses carried forward included in the current year's taxable result, up to an amount equal to the current year's tax loss.

The general interest limitation rule would apply to foreign exchange effects (which would be considered interest income or expense) on loans and loan receivables if the currency exposure has been hedged through a derivative. Foreign exchange effects on derivatives where the underlying asset is other than borrowed capital would not be subject to the limitation rule, nor would the rule apply to foreign exchange effects on accounts receivables and payables.

A safe harbor rule would be introduced (for both intra-EU and non-EU loans), under which net interest expense below SEK 5 million (increased from SEK 100,000 under the original proposal) would be deductible without having to satisfy the general interest deduction limitation rule. For companies that are part of a group, the deduction would be limited to SEK 5 million for the group.

Other rules

- As under the previous proposal, a company that is not able to fully deduct its net interest costs would be allowed to carry forward the excess for up to six years. However, the right to use the net interest expense carried forward would be restricted if there is a change in control of the company.
- Companies with net interest income that are members of a group would be allowed to deduct the interest expense of other group companies. The deduction would be limited to the net interest income of the company, and would be allowed only where both companies are able to exchange tax-deductible group contributions under Swedish tax law.

- The revised proposal does not include rules in the original proposal that would give the leaseholder in a finance lease a depreciation right.
- The revised proposal does not include any limitation on utilizing tax losses carried forward from previous years.

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(**Note to our readers:** Beginning with this issue, *World Tax Advisor* "BEPS corner" has been discontinued. *World Tax Advisor* will continue to cover relevant news and developments relating to the OECD BEPS project in news articles, the "In brief" column and/or "Tax treaty round-up.")

Australia: Legislation that would reduce the corporate tax rate for all businesses to 25% by FY 2027 has been deferred. Currently there are different corporate tax rates for small (27.5%) and large (30%) businesses. The proposals would progressively raise the threshold for what is a small business before removing the distinction and then progressively reducing the tax rate to 25% for all businesses over four years.

Indonesia: The Directorate General of Taxes (DGT) has launched a web portal that seeks to consolidate country-by-country (CbC) reporting-related information in one place (for prior coverage of the CbC reporting rules, see *World Tax Advisor*, 13 January 2017). The portal also provides additional information and clarifications relating to CbC reporting (including a list of the countries that have activated exchange relationships with Indonesia for CbC reports), and the DGT has activated the online filing mechanism for CbC reporting notifications and reports. The launch of the portal is timely, given the impending deadline of 30 April 2018 for the first cycle of CbC report/notification filings for the fiscal year ended 31 December 2016.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170113_bc.html

OECD: The OECD and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) jointly issued a draft practice note on 18 April 2018 on limiting excessive interest deductions against mining revenues. The practice note responds to a concern of many developing countries that multinationals use debt "excessively" in mineral-producing countries to shift profits abroad—one of the areas addressed under action 4 of the OECD BEPS project. The note looks at how debt finance typically is used by mining companies and behaviors in the sector that have been identified as being of concern, and outlines best practices for limiting tax base erosion for developing countries. Comments are requested on the draft by 18 May 2018.

On 17 April 2018, the OECD published public comments received in response to a consultation document issued on 19 February 2018 on the misuse of residence by investment schemes to circumvent the Common Reporting Standard (CRS). The comments include a wide range of proposals for tackling CRS circumvention by such schemes, including comprehensive due diligence checks as part of the application process; spontaneous exchange of information about individuals that have obtained residence/citizenship through a scheme with their original tax residence jurisdiction; and strengthened CRS due diligence procedures for financial institutions for high risk accounts. The comments can be found on the OECD's website.

Peru: A decree that will enter into force on 1 January 2019 and will apply as from that date provides that countries that are OECD members will no longer be considered tax havens for Peruvian tax purposes. Transactions with entities resident in tax havens must comply with Peru's transfer pricing rules, and expenses arising from tax havens are not deductible for Peruvian tax purposes (with certain exceptions). The countries to be removed from Peru's tax haven list will depend on the countries that are OECD members when the decree enters into force; the only country that currently is expected to be removed from the list is Luxembourg.

Saudi Arabia: The tax authorities have issued guidance on the application of the VAT legislation that was introduced on 1 January 2018 (for prior coverage, see *World Tax Advisor*, 12 January 2018). The newest guidance addresses the financial services sector, specifically the VAT treatment of financial services and insurance, including single supply and multiple supplies, VAT recovery, application of VAT exemption and place of supply among other issues.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180112_ib.html

United Kingdom: The tax authorities (HMRC) have opened a consultation that runs until 8 June 2018 on proposals to tackle tax avoidance schemes designed to move UK profits outside the charge of UK tax, often using offshore trusts and companies. The government announced at Autumn Budget 2017 that it would consult on proposals to prevent UK traders and professionals from avoiding tax by arranging for their UK business profits to accrue to entities resident in territories where no tax, or only a low rate of tax, is paid. The proposals under consultation would bring these profits within the scope of UK tax and require notification of the arrangements to HMRC and earlier payment of tax. The government plans to publish its response, along with draft legislation, in summer 2018 and introduce legislation in the 2018/19 finance bill that, if enacted, would take effect from April 2019.

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.

China: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180427_2.html

Cyprus-United Kingdom: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180427_3.html

Czech Republic-Turkmenistan: The 2016 treaty entered into force on 27 March 2018 and will apply as from 1 January 2019. When in effect, the treaty provides for a 10% withholding tax rate on dividends, interest and royalties.

Finland-Sri Lanka: The 2016 treaty, to replace the 1982 treaty, entered into force on 24 March 2018 and will apply as from 1 January 2019 in Finland and as from 1 April 2019 in Sri Lanka. When in effect, the new treaty provides for a 7.5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%.

France-Luxembourg: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180427_1.html

Germany-Tunisia: When in effect, the treaty signed on 8 February 2018 to replace the 1975 treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. A 2.5% rate will apply to interest received by a banking establishment; otherwise, the rate will be 10%. A 10% rate will apply to royalties.

Hong Kong-Belarus: The 2017 tax agreement entered into force on 30 November 2017 and applies as from 1 April 2018 in Hong Kong and as from 1 January 2018 in Belarus. The agreement provides for a 5% withholding tax rate on dividends and interest. A 3% rate applies to royalties for the use of, or the right to use, aircraft; otherwise, the rate is 5%.

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

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

Mexico-Philippines: The 2015 treaty entered into force on 18 April 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 (other than a partnership) that holds directly at least 70% of the capital of the payer company; a 10% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. A 12.5% rate will apply to interest and a 15% rate to royalties.

Netherlands-Ukraine: When in effect, the protocol to the 1995 treaty signed on 12 March 2018 provides for a 0% withholding tax rate on dividends paid to a pension fund; a 5% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 15%. A 0% rate will apply to interest paid to a pension fund; otherwise, the rate will be 10%. A 5% rate will apply to royalties paid for the use of, or the right to use a copyright of scientific work, patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; a 10% rate will apply to royalties paid for the use of, or the right to use a copyright of literary or artistic work (including cinematograph film and films or tapes for radio or television broadcasting).

Slovakia-Oman: When in effect, the treaty signed on 25 March 2018 provides for a 0% withholding tax rate on dividends and a 10% rate on interest and royalties.

Ukraine-Qatar: When in effect, the treaty signed on 20 March 2018 provides for a 0% withholding tax rate on dividends paid to a pension fund; a 5% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. A 5% rate will apply to interest paid on a bank loan or in connection with the sale on credit of any industrial, commercial or scientific equipment; otherwise, the rate will be 10%. A 5% rate will apply to royalties paid for the use of, or the right to use a copyright of scientific work, a patent, trademark, secret formula or process, or for information concerning industrial, commercial or scientific experience; otherwise, the rate will be 10%.

United Kingdom: On 16 April 2018, the tax authorities published an updated document setting out the government's provisional choices under the OECD BEPS multilateral convention (MLI) and that tracks proposed revisions from the original provisional choices published in June 2017 at the time the UK signed the MLI. The document points out that these revisions are in draft form and for information purposes only; the UK's final list of reservations and notifications will be those submitted to the OECD when it deposits the instrument of ratification. Notable changes include the following: (i) removal of the treaty with Germany from the list of covered tax agreements; (ii) addition of treaties with the Faroe Islands, Kyrgyzstan and the United Arab Emirates to the list of covered tax agreements; and (iii) updates due to the amendment of the treaty with Ukraine (for prior coverage, see *World Tax Advisor*, 24 November 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171124_tr.html

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Global tax alerts

No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.