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European Commission releases detailed proposal for definitive VAT system

On 25 May 2018, the European Commission released a proposal containing detailed technical amendments to the EU VAT directive. The amendments would supplement the overhaul of the system proposed in October 2017 to reduce cross-border VAT fraud and to improve and modernize the VAT systems for governments and businesses alike, in line with the 2016 EU VAT action plan (for prior coverage, see *World Tax Advisor*, 27 October 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171027_3.html

The commission estimates that around 200 of the 408 articles in the VAT directive would need to be adapted.

Under the new system, cross-border sales of goods within the EU would be taxed in the same way as sales within a single EU member state, *i.e.* VAT would be imposed on cross-border sales between businesses (which currently are

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exempt from VAT) under a destination-based system. Applying VAT on cross-border trade should significantly reduce VAT fraud in the EU, particularly missing trader intra-Community (MTIC) fraud. At the same time, the changes would reduce the number of administrative steps needed when businesses sell to companies in other EU member states, and would eliminate specific reporting obligations under the current transitional VAT regime for trade in goods.

The commission aims for the rules to become effective on 1 July 2022.

Background

The new proposals follow through on the October 2017 proposals, which included a series of fundamental principles or "cornerstones" for a definitive VAT regime for cross-border trade of goods, as well as a series of "quick fixes" to the current regime.

The intention is to overhaul the VAT directive and replace or delete the current transitional articles. The 46 pages of legislative provisions contain the actual changes constituting the definitive VAT regime for goods, as well as textual modifications to reflect the "Union" concept throughout the VAT directive and some other minor changes.

The commission also reiterates its intention to work on the adoption of initially proposed changes for the quick fixes that should become effective well ahead of the technical proposals, *i.e.* in principle, on 1 January 2019.

Key proposed changes

Intra-Union supply: The European Commission's proposal would put an end to the current split of all intra-EU cross-border movements of goods into two different transactions: an exempt intra-Community supply in the member state of departure and an intra-Community acquisition taxed in the member state of destination. Instead, it proposes the concept of an "intra-Union" supply of goods, which would mean a supply of goods with cross-border transport carried out by one taxable person for another taxable person or for a nontaxable legal person (*e.g.* a public authority or holding).

Under the destination principle of taxation, the intra-Union supply would be taxable in the country where the dispatch or transport of goods to the customer ends. A supply would qualify as an intra-Union supply only if it is linked to the cross-border transportation of goods by the supplier or the purchaser. Hence, under the definitive VAT regime, it would be important to allocate transport to a specific supply in chain transactions. All supplies preceding or following the intra-Union supply would be taxed as domestic supplies, either in the country of dispatch or the country of arrival. The simplification rule for triangular supplies would cease to exist.

The current thresholds under which cross-border supplies of goods to nontaxable legal persons or to fully exempt taxable persons are taxed in the country of dispatch would be abolished, and taxation at destination of these supplies as intra-Union supplies would apply in all cases.

Certain types of supplies (*e.g.* supply of goods with installation) would not fall within the scope of the new rules for intra-Union supplies, but would remain subject to their own specific place-of-supply rules.

Transfers of own goods by a business from one member state to another would be assimilated to an intra-Union supply in the same way as they currently are assimilated to an intra-Community transaction. The taxable person completing such a transfer would have to self-assess VAT in the country of arrival.

Concept of Certified Taxable Person (CTP): The October 2017 proposal introduced the concept of a CTP. A business established in the EU that carries out or intends to carry out cross-border goods trade (sell or buy side) would be able to apply to its national tax authorities to become a CTP, by demonstrating compliance with certain pre-defined criteria. Member states would mutually recognize CTP status. Non-EU-established traders, fully exempt taxable persons and nontaxable legal persons would not be able to obtain CTP status.

The CTP concept, which has not been well received by businesses and member states, would become very important under the definitive VAT regime, as it would allow buyers to apply a reverse charge on their cross-border business-to-business (B2B) purchases of goods in many cases, following significant changes to the chargeability rules.

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Persons liable to pay VAT on supplies of goods: The principle under EU VAT legislation that sellers should charge VAT due on the sale of goods to their customers and pay this VAT over to the member state of taxation would remain unchanged.

For an intra-Union supply, sellers would have to charge VAT at the rate applicable in the destination member state. This would result in an additional administrative burden for suppliers operating cross-border (determination of VAT rates) and would have a significant cash flow impact, since no VAT currently is charged on cross-border supplies due to the exempt status of intra-Community supplies.

Where the customer is a CTP, the latter would be liable to VAT under a reverse charge mechanism in all situations where the supplier is not established in the destination member state. This mandatory reverse charge would apply on both intra-Union supplies and on domestic supplies where the supplier is not established in the member state of taxation.

To achieve consistent VAT treatment based on the principle of effectively charging VAT (unless a CTP is involved), member states no longer would have the option to apply domestic reverse charge rules for supplies of goods. As such, domestic reverse charge rules would be aligned with the rules on cross-border supplies, *i.e.* non-established suppliers would apply a reverse charge only if their customer qualifies as a CTP. For services, domestic reverse charge rules still could be applied at the national level.

This change regarding the VAT liability on domestic sales by non-established suppliers could have a positive effect in chain transactions where all parties after the initial supplier are CTPs, since entire chains could be without VAT.

Time of supply rules for intra-Union supplies: The chargeability of VAT on intra-Union supplies would follow the same rules as are currently applicable for intra-Community supplies and acquisitions. The chargeability of VAT on cross-border supplies occurs when the invoice for the supply is issued, which should take place before the 15th day of the month following that in which the supply occurs. If no invoice is issued by that date, VAT would become due on the 15th day of the month following the supply. No VAT would be due for payments on account (advances) received in connection with intra-Union supplies.

This approach would allow the same time of supply for all intra-Union supplies, but could mean that VAT included in payments on account for taxable intra-Union supplies could be retained by the supplier until the actual time of supply.

Single union one-stop shop: Following the statement on the definitive VAT regime included in the October 2017 proposal, an online reporting mechanism or "one-stop shop" (OSS) would be introduced to allow the declaration, payment and deduction of VAT for all B2B goods transactions of traders operating in the EU. The current proposal describes this OSS in detail, which has the potential to redefine the VAT obligations of businesses when conducting cross-border business.

Technically, the OSS would be an extension of the intra-EU OSS that will apply as from 1 January 2021 for the declaration and payment of EU distance sales (cross-border business-to-consumer (B2C) sales) by EU or non-EU taxable persons. It would allow the reporting of supplies of goods for which VAT is payable by the supplier or buyer, and the claiming of deductible VAT, in a single portal in the member state of establishment of an EU-based business, or, for non-EU based businesses, in a member state where they appoint an intermediary to benefit from the regime.

At first glance, taxpayers opting for this scheme no longer would have local VAT registration and reporting obligations for their trade in goods, but would limit their VAT reporting to the domestic VAT return in their country of establishment and the OSS for their foreign-taxed transactions.

The intra-Union OSS would allow the deduction of input VAT incurred outside of the home country; however, this would be limited to VAT of member states where the business has (within a certain timeframe) taxable outgoing transactions reportable in the OSS. If there are no such transactions, a taxable person would have to rely on the traditional refund procedures provided by VAT legislation.

In principle, the OSS return would have to be filed quarterly, but a monthly filing would be required for companies with an overall EU turnover exceeding EUR 2.5 million.

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Intra-Union supplies included in the OSS no longer would have to be reported in the intra-Community Sales Listing for intra-Community supplies, but limited information on trade flows still would need to be reported in the OSS, per the member state of destination. It is important to note that the intra-Community sales listing would be maintained for services.

Comments

The European Commission proposal gives "food for thought" on the future direction of the European VAT system. To achieve the goal of a robust system of taxation at destination, the commission makes clear choices on the effective application of VAT on cross-border supplies and the centralization of reporting obligations in the home country of a business.

Whether the EU VAT system is ready for such a drastic change in the short-to-medium term remains to be seen. For businesses, the technical proposals allow a detailed study of the impact that these changes, if adopted, could have on trade flows, financial cash flows, processes and systems.

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Denmark:
Proposed changes would bring thin capitalization rules in line with CJEU decision

A bill presented to the Danish parliament on 2 May 2018 contains proposed changes to the thin capitalization rules to bring them in line with a 2016 decision of the Court of Justice of the European Union (CJEU), in which the court held that Denmark's rules on the tax treatment of interest income are incompatible with the freedom of establishment provision in the Treaty on the Functioning of the European Union (for prior coverage, see *World Tax Advisor*, 27 January 2017). The draft bill would extend the exclusion from taxable income for interest income that has been disallowed as a deduction for the debtor (payer) under Denmark's thin capitalization rules to apply to interest income that has been disallowed as a deduction under the thin capitalization rules of another EU member state. If approved, the changes would be effective as from 1 July 2018 and would first apply for the 2018 income year.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170127_3.html

Background

Under Denmark's thin capitalization rules, the deduction of interest expense incurred by a Danish tax resident company or Danish permanent establishment (Danish debtor) on debt owed to a related party is limited where the Danish debtor has a debt-to-equity ratio that exceeds 4:1 and the related party debt exceeds DKK 10 million. In this case, the interest on the portion of the related party debt that exceeds the 4:1 ratio is not deductible.

In general, companies are related if one company holds more than 50% of the share capital or voting rights in the other company. Third-party debt is considered to be related party debt for purposes of the rules if it is guaranteed by a related party.

The thin capitalization rules apply to related party interest paid by Danish-based groups, as well as groups based outside of Denmark. Where the deduction for interest paid by a Danish debtor to another Danish company is restricted, the current rules allow the Danish recipient to exclude a corresponding amount of interest income from its Danish taxable income. However, this exemption does not extend to interest income received from nonresident companies.

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The CJEU held in 2016 that the Danish rules that grant an exemption only for interest income received from a Danish debtor make it less attractive for a Danish parent to have subsidiaries in other EU member states, as opposed to having Danish subsidiaries. As a result of the decision, Denmark was required to amend its thin capitalization rules to bring them in line with EU law.

Draft bill

The bill would extend Denmark's thin capitalization rules that grant a Danish company a tax exemption on interest income received from related Danish debtors to apply to interest received from related companies resident in another EU member state, where the deduction for the interest expense has been restricted under the other member state's thin capitalization rules. The amount of exempt income would equal the amount of the interest expense deduction disallowed in the other member state, but would be limited to the amount the deduction would have been reduced under the Danish thin capitalization rules had the debtor company been a resident of Denmark.

Comments

The draft bill would bring the Danish thin capitalization rules more in line with the freedom of establishment principle since cross-border groups would, to a larger extent, be treated the same as wholly Danish groups under the proposed rules.

Although the bill provides that the changes would be effective beginning with the 2018 tax year, if enacted, the Danish tax authorities are expected to issue binding instructions that would set out how to apply the rules to earlier years.

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France: Courts clarify criteria for determining whether permanent establishment exists

In two recent cases, French courts ruled on whether a permanent establishment (PE) existed in France, for purposes of determining nonresident companies' exposure to French VAT. The decisions clarify the criteria for determining whether a service provider will be considered to have sufficient human and technical resources in France to enable the services to be performed in an independent manner, which would constitute a PE.

The Supreme Court issued a decision on 4 April 2018, concluding that, based on the relevant facts and circumstances, a VAT PE existed in France in a case involving a transport commissionaire arrangement. In contrast, the Administrative Court of Appeal of Paris issued a taxpayer-favorable decision on 1 March 2018, concluding that no French VAT PE existed under the circumstances considered in a case involving an intragroup supply of services. This latter decision has been appealed to the Supreme Court.

Even though the two courts reached different conclusions, the decisions show that for a taxpayer to avoid having a VAT PE in France, it is important for the taxpayer to be able to produce sufficient cumulative evidence that the requisite human and technical resources to give rise to a PE are absent.

Supreme Court decision

The Supreme Court case involved a situation where a UK sea carriage commissionaire signed a client assignment contract with a French company carrying out the same activity, as well as a contract for the French company to organize and provide transport services.

The French tax authorities took the position that the UK company had a VAT PE in France through the French company and, therefore, that the supply of transport services should be attributed to this PE. The case eventually was appealed to the Supreme Court.

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The Supreme Court noted that the UK company was required to approve any new clients or suppliers. In addition, it managed the reservation systems for clients to book the transport and communicated with the clients regarding the transport and the insurance linked to the business. The French company was responsible for the overall development of the business through identifying new clients, and it physically organized the transport services.

The French company had the authority to negotiate independently with clients and suppliers in the name of the UK company, including the negotiation of prices. For this purpose, the company had three offices in France with customer service personnel to receive orders and organize the transport services, as well as a sales department.

Based on these facts, the Supreme Court concluded that the French company had sufficient human and technical resources to provide the transport commissionaire services. Accordingly, the court held the that the UK company had a PE in France, even though the company had no means of providing the transport services on its own, since the transport services were organized and carried out independently by the French company.

Administrative Court of Appeal decision

The issue in the case before the Administrative Court of Appeal of Paris was whether an Irish company had a PE in France in a situation where employees of a French company in the same group carried out marketing, representation, management, back office and administrative assistance services on behalf of the group.

In reaching its decision that no PE existed, the administrative court reiterated that a PE will exist in the case of a supply of services only if there is sufficient permanence and structure in terms of human and technical resources in France that enables the services to be performed in an independent manner.

The following factors were decisive for the court in concluding that there were insufficient human and technical resources to give rise to a PE:

- The employees of the French company did not have authority to decide on the online publication of advertising spots. In fact, campaigns could not start without the advance approval and signature of the relevant contracts by the management of the Irish company, even though the signature was automated and consisted of a simple validation and cross-check of the contracts negotiated and drawn up by the employees of the French company. Thus, it was not possible for the French company to be considered a dependent agent.
- Even if French equipment enabled the French company to access the digital resources of the group, the necessary infrastructure for rendering the services was located abroad.

As noted above, the decision of the Administrative Court of Appeal has been further appealed to the Supreme Court.

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Malaysia:
GST expected to be replaced with sales and services tax

As from 1 June 2018, the rate of Malaysia's goods and services tax (GST) reduced from 6% to 0% (for prior coverage, see *World Tax Advisor*, 25 May 2018). It is expected that the effective removal of GST is a prelude to the introduction of a new sales and services tax (SST) regime in the coming months. The proposed effective date for the SST currently is 1 September 2018.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180525_ib.html#Malaysia

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Malaysia's May 2018 general elections resulted in a change in the federal government. Pakatan Harapan, the coalition forming the new government, campaigned on a comprehensive reform agenda that included replacement of GST with an SST.

On 17 May 2018, the government issued a number of orders, the impact of which are that with effect from 1 June 2018, all goods and services that were subject to GST at 6% are now subject to GST at a rate of 0%. The change will remain in effect until further notice from the Ministry of Finance.

For transitional purposes, businesses must take into account sections 66 and 67 of the GST Act (described below) and the effective date of the change, *i.e.* 1 June 2018.

In summary, section 66 provides that GST will be charged at 6% on the higher of the following amounts:

- Full or partial payment received before the effective date; or
- The value of the supply of the goods or services supplied before the effective date. The value of the supply will be determined based on the extent to which the goods are removed from the supplier's warehouse or made available, or the services performed.

The new 0% rate will be charged on the difference, if any, between the amounts determined above and the total value of the supply.

In addition, for contracts that have been entered into but were not executed by 31 May 2018, section 67 of the GST Act allows the supplier to deduct from the agreed GST inclusive price the amount of GST due to the reduction in rate on 1 June 2018.

Businesses should focus on the following areas:

- Review the status of ongoing supplies and the applicable billing and payment arrangements to ensure that GST is accounted for at the correct rate.
- Ensure that GST returns capture standard-rated supplies (at 0%), exempt supplies, disregarded and other supplies correctly.
- As exempt supplies are still in place, mixed suppliers need to undertake partial exemption calculations for any input tax captured after 1 June 2018.
- Assess pricing strategies and considerations, including price displays, to reflect the government's stated intentions for the removal of GST.

On 30 May 2018, the Royal Malaysian Customs Department issued an updated list of frequently asked questions (FAQs) on the transition of the rate on standard-rated supplies from 6% to 0%, superseding several previous lists of FAQs. The FAQs cover several topics, including tax invoices, GST returns, the interpretation of section 66 and the impact of special GST schemes.

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Singapore:
Removal of intellectual property income from existing tax incentives

Concessionary tax treatment for income derived from intellectual property rights (IPRs) will be removed from the scope of existing incentives offered by Singapore, namely the Pioneer Services Companies Incentive (PC-S) and the Development and Expansion Incentive (DEI), for awards approved on or after 1 July 2018. As a replacement, a new IP development incentive (IDI) (announced by the 2017 budget; for prior coverage, see *World Tax Advisor*, 24 February 2017) will be introduced from 1 July 2018 to provide concessionary tax treatment for IP income, in the form of a patent box regime that will incorporate the BEPS-compliant modified nexus approach. However, it is expected that the relevant legislation will be enacted only toward the end of 2018 and will apply retroactively.

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URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170224_2.html

The PC-S and DEI incentives cover IP income that arises from qualifying activities, as prescribed under the relevant incentive award. The PC-S provides a corporate tax exemption on income from qualifying activities, and the DEI provides for a reduced corporate tax rate of 5% or 10% on incremental income from qualifying activities. The duration of the PC-S and DEI awards for a taxpayer are subject to negotiation with the Singapore authorities.

The following legislation and implementing guidance were issued on 4 May 2018, and broadly entered into effect on the same date, to remove income from IPRs from the existing incentives (among other things):

- Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2018;
- Economic Expansion Incentives (Relief from Income Tax) (Intellectual Property Income) Regulations 2018; and
- Economic Expansion Incentives (Relief from Income Tax) Act 2018 (Commencement) Notification 2018.

The regulations define income from IP as royalties or other income receivable as consideration by the company for granting the right to another party to commercially exploit the IPRs. IPRs are defined as rights conferred by a patent, copyright, trademark, registered design, geographical indication, layout-design of integrated circuits or grant of protection of a plant variety.

For PC-S and DEI awards approved before 1 July 2018, a grandfathering provision will allow income from existing IPRs owned to continue to be covered under the respective incentives until 30 June 2021. However, any IPRs acquired from a related party during the period from 17 October 2017 to 30 June 2018 (where one of the main purposes for the acquisition is to avoid tax) or any IPRs acquired on or after 1 July 2018 will not be covered under the grandfathering provision.

All relevant IP income will be excluded from new or extended PC-S and DEI awards approved on or after 1 July 2018.

The details on the concessionary tax treatment that will be available under the IDI have not yet been made publicly available. Companies will be able apply for the IDI from 1 July 2018, and the authorities are expected to issue guidance on the application procedure once the details of the IDI have been finalized.

Comments

An income stream falls under the definition of "IP income" that will be excluded from the PC-S and DEI incentives only if the taxpayer enjoying the incentive has granted the right to another party to commercially exploit the IPRs. There also are exceptions to the exclusion from the incentives for taxpayers that grant IPRs to another party for purposes of toll manufacturing, contract manufacturing and limited risk distribution arrangements.

The definition of IPRs under the new regulations differs from the definition under section 19B of the Income Tax Act. It appears that the definition of IPRs under the new regulations has a narrower scope than section 19B, as the term "trade secret or information that has commercial value" has been omitted from the definition, meaning that relevant IP income derived from trade secrets or information that has commercial value will not be excluded from the existing incentives.

A potential third definition of IPRs is likely to be included in the IDI legislation; under a BEPS-compliant approach, IPRs that may qualify for tax benefits include patents and other IPRs that are functionally equivalent to patents (which includes copyrighted software). As such, an IP income stream eligible for concessional treatment under the PC-S or DEI scheme (*e.g.* income from trademarks) may not necessarily be covered under the IDI.

Businesses, in particular those that are PC-S and DEI award holders, should begin to evaluate the potential impact of the changes on their IP income streams that currently are eligible for incentives. If certain IP income streams will have to be excluded from the incentives, businesses should identify the correct timing for excluding the relevant income (*i.e.* whether the grandfathering rules will apply), as well as consider whether such IP income streams may be eligible for the new IDI.

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Thailand:
Guidance issued on tax treatment of cryptocurrency

The Thai government issued two emergency decrees on 13 May 2018 that provide guidance for businesses engaged in the trading of "digital assets" and on the tax treatment of cryptocurrency and digital tokens. The decrees apply as from 14 May.

The emergency decree on businesses engaged in the trading of digital assets contains a definition of such assets, and requires "operators" to obtain an approval from the Securities and Exchange Commission of Thailand, with a view to preventing money laundering and/or fraud. Operators for this purpose include intermediaries, brokerages, providers of platforms and dealers.

The second emergency decree imposes a 15% personal income withholding tax on payments of profit distributions or gains derived from the holding of digital tokens, as well as gains arising from the transfer of cryptocurrency or digital tokens, provided their value in monetary terms exceeds the cost of the investment.

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In brief

China: The government has announced tariff reductions on many consumable products that are imported for daily use. The changes, which cover 1,449 HS codes, will take effect on 1 July 2018. Since 1 June 2015, there have been a number of specific reductions of import tariffs on daily consumable products. The new tariff cuts represent around a 50% duty reduction.

European Union: The tax intermediaries directive was published in the official gazette on 5 June 2018 and will enter into force on 25 June (*i.e.* 20 days after publication). The directive, adopted by the Council of the European Union on 25 May, will require mandatory reporting by intermediaries and the automatic exchange of information by the tax authorities of member states for certain cross-border arrangements (for prior coverage, see EU tax alert, 14 March 2018). Intermediaries such as tax advisors, accountants and lawyers that design and/or promote tax planning schemes will have to report schemes that are potentially aggressive, with penalties imposed for failure to comply. EU member states have until 31 December 2019 to transpose the directive into national law in advance of the directive's 1 July 2020 effective date. However, under a transition period, reportable arrangements will have to be disclosed where the first step of implementation takes place between the date the directive enters into force and the effective date; such reports will be due by 31 August 2020 and will be exchanged by the tax authorities by 31 October 2020.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-14-march-2018.pdf

On 25 May 2018, the European Council removed the Bahamas and Saint Kitts and Nevis from the EU's list of noncooperative tax jurisdictions because the two jurisdictions have made commitments at a high political level to remedy EU concerns. As a result, the Bahamas and Saint Kitts and Nevis, which were added to the list on 13 March 2018 (for prior coverage, see *World Tax Advisor*, 23 March 2018), have been moved from annex I to annex II of the conclusions, which cites jurisdictions that have undertaken sufficient commitments to reform their tax policies. Jurisdictions are included on the EU noncooperative jurisdiction list because they either lack transparency or fair taxation or they have not agreed to implement the BEPS minimum standards.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_3.html

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The Court of Justice of the European Union (CJEU) issued a decision on 19 April 2018 in a VAT case relating to the triangular transaction rule (triangular transactions involve two supplies of goods between VAT-registered taxpayers in three EU member states). The CJEU held that taxpayers that act as an intermediary in a cross-border supply chain can apply the simplified rules for triangular sales, if they use a VAT ID number other than a number from the member states of the dispatch or arrival of goods, even if they also are VAT-registered in the member state of dispatch. The decision will have implications for companies engaged in cross-EU border transactions and that have multiple VAT registrations, and likely will provide an opportunity for businesses to simplify their billing and invoicing processes. The CJEU's interpretation of the rules for triangular sales means that EU member states that do not allow the application of the simplified rules in the relevant situation will need to revise their rules.

The European Commission has approved under EU state aid rules the extension of the UK Enterprise Management Initiative (EMI) scheme, which reduces the taxation of employee share options for small and medium-sized enterprises (SMEs). Employees of SMEs benefit from reductions in income tax and/or national insurance contributions (NICs) when exercising share options. Employers that are listed SMEs and that also would be subject to NICs on the exercise of the options benefit from reductions in those contributions. The commission initially authorized the scheme in 2009 and the original approval expired in April 2018. The EMI will continue to be considered compliant at least until the UK ceases to be an EU member state.

Korea: On 12 April 2018, Korea's Supreme Court issued a decision concluding that the sale of credits for greenhouse gas emission reduction constitutes a supply of goods subject to VAT. The plaintiff participated in the Korea Voluntary Emission Reduction (KVER) business operated by the Korean government and sold its greenhouse gas reduction credits to the energy management corporation commissioned by the government to operate the KVER business. The plaintiff did not issue tax invoices for the payments it received, nor did it include the payments in the VAT tax base. The Korean tax authorities took the view that the sale of the credits constituted a supply of goods for VAT purposes, and assessed VAT on the payments. The taxpayer appealed, but the Supreme Court upheld the assessment.

Mexico: A law published in the official gazette on 1 June 2018 and that applies as from 2 June includes rules to prevent taxpayers from engaging in practices that reduce their corporate income tax liability through the transfer of net operating losses (NOLs) (for prior coverage, see *World Tax Advisor*, 25 May 2018). The rules allow the Mexican tax authorities (SAT) to presume the existence of a "harmful" transfer of NOLs when a taxpayer generates tax losses in six situations and subsequently is involved in a group restructuring, spinoff or merger, or where there is a change in ownership that results in the taxpayer ceasing to be part of the group to which it belonged when the tax losses were incurred. If the SAT determines that there has been a harmful transfer of NOLs, the taxpayer will not be allowed to use the NOLs, the SAT can impose a penalty and the transfer may trigger criminal charges.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180525_8.html

Netherlands: Beginning on 1 January 2019, the applicable period for qualified expatriates to benefit from the Dutch "30% facility" will be shortened from five years to eight years, with the five-year period applying to both new and existing cases. On 25 May 2018, the State Secretary confirmed the reduction of the term also would affect employees currently benefitting from the regime. The 30% facility is a tax benefit granted to certain foreign employees that have expertise or skills that are not readily available in the Netherlands and that either are transferred from abroad to work for a Dutch employer or are recruited from abroad by a Dutch employer. The facility consists of a tax-free allowance of 30% of the employee's gross remuneration subject to Dutch wage tax: only 70% of the employee's salary is taxed. The proposed reduction in the duration of the benefit will be included in the 2019 tax bill.

OECD: On 30 May 2018, Lithuania and Colombia signed accession agreements to become the 36th and 37th OECD members, respectively. Both countries must take the appropriate steps at a domestic level to accede to the OECD Convention and deposit their instruments of accession with the depository of the convention before their memberships will take effect.

The OECD released the first peer reviews relating to the BEPS action 13 country-by-country (CbC) reporting initiative on 24 May 2018. According to the OECD, almost all of the countries where large multinational enterprises are headquartered have introduced new reporting regimes that comply with transparency requirements. The peer reviews cover 95 jurisdictions that are members of the BEPS inclusive framework. As of January 2018, 60 of these jurisdictions had introduced domestic legislation to implement a CbC reporting obligation, with the remaining jurisdictions working toward doing so. The legislation reviewed is largely consistent with the BEPS action 13 minimum standard, although some jurisdictions are working to implement recommendations for improvement in specific areas.

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United Arab Emirates: The cabinet announced on 20 May 2018 that foreign ownership restrictions will be relaxed by the end of 2018. Currently, foreign investors can hold only up to 49% of companies established in the UAE (free zone companies can be 100% foreign-owned but must restrict their business activities to the UAE mainland). Specific details have yet to be released and are not expected until at least the third quarter of 2018. Previous announcements have suggested that a selective and gradual opening of the market focusing on certain sectors, coupled with a set of conditions as adopted in other Gulf Cooperation Council member states, could be a possible approach.

United States: On 21 May 2018, the Internal Revenue Service (IRS) Large Business and International (LB&I) division announced its selection of six additional compliance campaigns (*i.e.* areas identified as having substantial noncompliance risk) as part of its continued focus on issue-based examinations. One of the additional campaigns relates to enterprise activities (interest capitalization for self-constructed assets), while four relate to withholding and international individual compliance. These campaigns are in addition to the 29 campaigns previously announced by LB&I between January 2017 and March 2018 (for prior coverage, see *World Tax Advisor*, 23 March 2018).
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_ib.html#US

Zimbabwe: The tax amnesty program announced in the Finance Act 2018, which was gazetted on 14 March 2018, is now in effect and will run through 30 June 2018. The amnesty waives prosecution and penalties and interest for past noncompliance with respect to all taxes administered by Zimbabwe's tax authorities (ZIMRA). These include corporate income tax, employment tax and withholding tax; capital gains tax; VAT; and customs and excise duties. Taxpayers with tax obligations that were due and payable by 1 December 2017 and outstanding on that date are eligible to apply for the amnesty with respect to those obligations that are paid between 1 January 2018 and 30 June 2018.

Global tax alerts

Netherlands
Legislative proposal contains broad changes to fiscal unity regime
On 6 June 2018, the Netherlands Ministry of Finance published a legislative proposal that contains measures to bring the Dutch fiscal unity regime in line with the "per element" approach taken in a February 2018 decision by the Court of Justice of the European Union. According to the proposed measures, most of which are intended to apply retroactively as from 25 October 2017, certain tax rules would be applied ignoring the existence of a Dutch fiscal unity.
Issue date: 6 June 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-netherlands-6-june-2018.pdf

South Africa
Penalties for failure to submit CbC report, master file and local file clarified
The South African Revenue Service issued a notice on 11 May 2018 regarding the consequences for failing to submit a country-by-country (CbC) report and related transfer pricing documentation when required to do so.
Issue date: 25 May 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-016-25-may-2018.pdf

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