In this issue:

Curaçao's preferential tax regimes revised to bring them in line with BEPS standards 1
Bangladesh: Finance Act 2018 contains new definition of PE/"business connection" concept eliminated 4
Kosovo: Proposed changes to corporate income tax law include new definition of PE 5
Luxembourg: Tax authorities clarify treatment of virtual currency 6
Peru: Master file and CbC reporting requirements clarified 7
Ukraine: Tax on distributed profits proposed to replace corporate income tax 8
In brief 9
Tax treaty round up 12
Global tax alerts 13

Curaçao's preferential tax regimes revised to bring them in line with BEPS standards

Legislative changes to Curaçao's preferential tax regimes that were published on 4 July 2018 and generally apply as from 1 July 2018 include measures to align the regimes with the internationally accepted standards recommended by the OECD and to exclude income qualifying as foreign-source income from the taxable base in Curaçao for profit tax purposes. Other amendments relate to substance requirements, an "innovation box" regime, offshore companies and the fiscal unity regime.

Background

The OECD's BEPS action plan identified 15 actions to address BEPS in a comprehensive manner, including action 5: *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*, one of the four BEPS minimum standards. All members of the Inclusive Framework on BEPS, including Curaçao, must commit to implement the action 5 minimum standard into their domestic tax legislation and to participate in peer reviews to ensure timely and accurate implementation.

The peer review comprises a review of preferential tax regimes to identify features of such regimes that can facilitate BEPS and, therefore, have the potential to unfairly affect the tax base of other jurisdictions. The peer review considered three preferential tax regimes in Curaçao to be harmful: the regimes for economic zone (E-zone) companies, export facility companies and tax-exempt companies. The OECD recommended adjustments to align these tax regimes with the internationally accepted standards to avoid BEPS.

The legislation published on 4 July 2018 amends Curaçao's tax regimes in line with the recommendations; a formal endorsement of the changes by the OECD is expected to take place in October 2018.

E-zone companies

The E-zone is a specifically designated geographical area in Curaçao. Prior to the amendments, qualifying legal entities established in an E-zone were taxed at a reduced profit tax rate of 2%, and no sales tax or import duties were due on goods delivered/services provided to customers outside of Curaçao.

As from 1 July 2018, the E-zone is limited to trade in goods (although repair and maintenance services can be provided within the E-zone under certain circumstances). Goods can enter the E-zone without being subject to import duties and turnover tax. Companies that no longer meet the requirements to remain in the E-zone (for services) may be able to apply for the new tax regime offering a profit tax exemption for income derived from foreign sources (the tax regime designed to replace the export facility, described below).

The former distinction between domestic or foreign supplies of goods (and services) is eliminated. Under the new legislation, the tax rate applicable to all profits of an E-zone company is 2%, regardless of where its customers reside. E-zone companies also must meet the new substance requirements (described below).

The changes to the E-zone rules have several sales tax consequences. Once goods leave the E-zone to be imported into Curaçao, they will be subject to a 9% sales tax. The exemption from Curaçao sales tax no longer applies to the supply of goods from the E-zone to a warehouse or to the export of goods.

Transition rules apply to existing E-zone companies from 30 June 2018 through 31 December 2018, i.e. such companies can continue to operate under the previous regime through 31 December 2018.

Export facility companies

Until 30 June 2018, companies primarily engaged in transactions with foreign customers could apply for the export facility regime, under which the profits of a qualifying company were taxed at an effective profit tax rate of 3.19%. As from 1 July 2018, the export facility is replaced by a new tax regime in which a distinction is made between income derived from domestic sources and foreign sources. Resident taxpayers must declare their worldwide income for profit tax purposes, but only income derived from domestic sources is taxed, while foreign-source income is excluded from the taxable base in Curaçao.

The following will be regarded as foreign-source income exempt from profit tax:

- Profits derived by a Curaçao tax resident entity through a permanent establishment or a permanent representative located abroad;
- Profits derived from immovable property or rights to immovable property located abroad; and
- Profits derived in connection with the delivery of goods or provision of services to customers located abroad, even if domestic assets were used for these activities.

Some services are excluded from the exemption, including insurance and reinsurance activities; trust activities; the services of notaries, lawyers, public accountants and tax consultants; related services; income derived from the exploitation of intellectual property (IP); and shipping activities.

No application is needed to apply the exemption for foreign-source income. Companies claim the exemption by reporting the amount of their exempt foreign-source income in their profit tax return.

In the legislative changes, the exemption for Curaçao sales tax with respect to the export of goods or services is abolished. However, the application date of this change is yet to be decided. If the change enters into force, such supplies would become subject to sales tax.

Transition rules apply to existing export facility companies from 30 June 2018 through 31 December 2018, i.e. such companies can continue to operate under the previous regime through 31 December 2018, so an existing export facility company will need to restructure its licensing activities before 1 January 2019.

Tax-exempt company

Until 30 June 2018, a qualifying limited company or private company could request tax-exempt company status. Qualifying companies were not subject to profit tax in Curaçao and, in principle, were not required to make a profit tax declaration. As from 1 July 2018, the regime for tax-exempt companies is eliminated and such companies may be considered to be Curaçao investment institutions. Curaçao investment institutions are subject to a 0% profit tax rate, except for income from IP that fails to meet the requirements of the nexus approach under the innovation box regime (described below), and have the obligation to file profit tax returns.

As from 1 July 2018, the statutory purpose or actual activities of an investment institution are no longer permitted to include the licensing of intellectual and industrial property rights and similar property rights or rights of use. Companies receiving such income will not qualify as a Curaçao investment institution.

Transition rules apply for existing tax-exempt companies from 30 June 2018 through 31 December 2018, i.e. such companies can continue to operate under the previous regime through 31 December 2018, so licensing companies must restructure before 1 January 2019. Additional transition guidance is expected to be introduced for existing tax-exempt companies.

Substance requirements

As from 1 July 2018, substance requirements are introduced, and companies that fail to meet these requirements will be unable to apply a preferential tax regime. For Curaçao profit tax purposes, a real presence (i.e. substance) in the country will be deemed to exist if a corporate entity meets the following requirements:

- Has a number of full-time qualified employees (within or outside Curaçao) that is appropriate for the nature and extent of the activities of the company or its group; and
- Has an amount of annually recurring domestic operational costs that is appropriate for the nature and extent of the activities of the company or its group.

The tax authorities will determine whether an entity meets the “appropriate” standards for employees and operational costs, and it is possible to request a statement from the authorities confirming that an entity meets the substance requirements.

Innovation box

A new innovation box regime, which applies as from 1 July 2018, is introduced in line with the OECD’s “nexus approach.” Qualifying income from IP in Curaçao may be taxed at a 0% profit tax rate if it is derived from an intangible asset for which actual research and development (R&D) work is performed in Curaçao, or for which a Curaçao tax resident outsources the R&D activities to an unrelated foreign company for the account, risk and benefit of the Curaçao tax resident. Detailed rules address the type and extent of the IP falling within the scope of the innovation box. Taxpayers may opt to have the income from qualifying intangible assets taxed at the 0% rate when filing their profit tax returns.

Offshore companies may opt for transparent company status

Companies that have "offshore company" status based on the offshore profit tax regime, which will expire at the end of the last financial year commencing before 1 July 2019 and provides for a reduced profit tax rate of 2.4% to 3%, may apply for transparent company status at the beginning of a new financial year, provided all relevant requirements are met. A transparent company will be treated similarly to a partnership for profit tax purposes, i.e. its assets and income will be allocated pro rata to the shareholders, which may be subject to profit tax or personal income tax in Curaçao.

Offshore companies also may wish to consider other alternatives and incentives, including the E-zone company regime, the exemption for foreign-source income, the Curaçao investment institution regime and the innovation box.

Fiscal unity regime

A fiscal unity may be established during a year, as from the date indicated in the request to apply for a fiscal unity, as long as this date is no earlier than three months prior to the date of submitting the request.

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Bangladesh:
Finance Act 2018 contains new definition of PE/"business connection" concept eliminated

Bangladesh's Finance Act 2018 enacted on 30 June 2018 implements tax law changes that apply as from 1 July 2018, several of which will affect both domestic and cross-border activities.

Key corporate tax changes include the following:

- The tax rate for banks, insurance companies and financial institutions is reduced from 42.5% to 40% (40% to 37.5% if the company is publicly traded). Other corporate tax rates remain unchanged.
- The allowable limit for the deduction of royalties; fees for technical services, assistance or know-how; or any fees of a similar nature is increased to 10% of the net profit disclosed in the statement of accounts for the first three years from the commencement of a business, and remains at 8% for subsequent years.
- A nonresident entity without a permanent establishment (PE) in Bangladesh is no longer required to file an income tax return.
- The disallowance of a deduction for head office expenses exceeding 10% of net profit applicable to companies not incorporated in Bangladesh is extended to include intragroup expenses.

Key international tax changes include the following:

- The definition of income deemed to accrue or arise in Bangladesh has been amended to include income from the sale of goods or services online or by any other electronic means to purchasers in Bangladesh. This reflects concerns raised by the finance minister in his 2018-19 budget speech that with the growth in the digital economy, many foreign companies were earning income in Bangladesh but not paying an appropriate amount of tax.
- A new provision is introduced to tax indirect share transfers. The transfer of shares in a company that is not resident in Bangladesh is deemed to be the transfer of an asset situated in Bangladesh to the extent the value

of the shares transferred is directly or indirectly attributable to the value of any assets situated in Bangladesh and, hence, taxable in Bangladesh. The legislation does not provide for any exceptions to the charge and does not clarify the valuation mechanism.

- The concept of a "business connection" is abolished and replaced with the concept of a PE. Previously, business income was taxed in Bangladesh if it was earned via a business connection in the country – a business connection was more broadly defined than a PE. As from 1 July 2018, any income accruing or arising, whether directly or indirectly, through or from a PE in Bangladesh will be deemed to accrue or arise in Bangladesh.
- A detailed definition of PE has been introduced to include a place of business such as branch, office, warehouse, etc. The definition also covers construction and supervision PEs, and service PEs, with no requirement for the activities to be carried out for a minimum period of time.
- A nonresident claiming a reduced rate of withholding tax or nil withholding in accordance with the provisions of a relevant tax treaty must obtain a dispensation certificate from the National Board of Revenue before the beneficial rate can be applied.

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Kosovo:
Proposed changes to corporate income tax law include new definition of PE

A draft law that would make numerous changes to Kosovo's corporate income tax rules is awaiting a first public hearing in parliament. The proposed changes include the following:

- The base and rate of taxation of insurance companies would be changed from a 5% tax on gross premiums to a 10% tax on income;
- Dividend income, which currently is exempt from tax, would be taxed at a rate of 10%, and distributions of dividends would be subject to a 10% withholding tax;
- The carryforward period for tax losses would be reduced from six years to four years;
- Tax holidays (to be implemented by the government via separate measures) would be available for businesses, irrespective of whether they are start-ups; and
- The special 10% deduction on new equipment or equipment first placed in service in Kosovo would be eliminated for equipment brought into Kosovo that was acquired or transferred from a related party.

Currently, companies with annual turnover of up to EUR 50,000 may elect to be taxed on a gross income basis (at rates ranging from 3% to 10%) instead of on their net income (at a 10% rate). The draft law would reduce the annual turnover threshold to EUR 30,000. The annual turnover above which entities would be required to keep books and records also would be reduced from EUR 50,000 to EUR 30,000; and entities with annual turnover below EUR 30,000 would be subject to the simplified requirements for small businesses.

The domestic definition of a permanent establishment (PE) would be revised to be more closely aligned with the PE definition in the 2017 OECD model tax treaty. In particular, construction sites used for the "research of natural resources" within Kosovo no longer would be considered a PE. In addition, Kosovo's transfer pricing rules would be harmonized with the provisions of a 2017 administrative instruction issued by the Minister of Finance.

Following the public hearing, the draft law could be sent for further consultation with stakeholders, the working group and the inter-ministerial council. If enacted by the parliament, the proposed measures would apply as from 1 January 2019.

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Luxembourg:
Tax authorities clarify treatment of virtual currency

The Luxembourg tax authorities released a circular on 26 July 2018 that addresses the direct tax treatment of virtual currency, particularly income generated through the creation or disposal of cryptocurrency. The guidance aims to clarify the tax rules that apply to transactions using virtual currency. The authorities also have issued guidance on the VAT treatment of cryptocurrency transactions, but that circular is not discussed in this article.

The salient features of the direct tax circular are as follows:

- Virtual currency is not an actual currency because it cannot be considered legal tender and its exchange value is not guaranteed by the central bank. For these reasons, a taxpayer is not allowed to set up or maintain accounts for tax purposes or declare taxable revenue in virtual currency. All income, expenses and costs formulated in virtual currency must be determined in euros or in another actual currency, the exchange rate of which is fixed and published by the European Central Bank, based on the daily rate from an exchange platform approved by Luxembourg's Financial Sector Supervisory Commission. The proceeds are to be determined based on the exchange rate on the day the proceeds are made available to the taxpayer, and expenses on the day they are incurred.
- Using a virtual currency to pay for goods or services will not affect the tax nature of the income; in other words, virtual currency received in a transaction generally should be treated the same as income derived in a "real world" transaction.
- The taxability of income does not depend on whether the income has been accrued in the real or virtual world, but rather whether it falls under one of the income categories in Luxembourg's income tax law. Therefore, for corporate income tax and municipal business tax purposes, income derived in a virtual currency can fall under the category of commercial income or other income (see below).
- Virtual currency is considered an intangible asset for purposes of Luxembourg corporate income tax, municipal business tax and net worth tax.

Disposal, exchange or mining of virtual currency: Commercial income

Income derived from a cryptocurrency will be considered commercial income where it falls within the definition of such income under the Income Tax Law. This typically would be the case for the mining of virtual currency, or the operation of an online stock exchange or vending machines with virtual currencies.

The circular lists several criteria that can be indications that a commercial activity exists that could give rise to commercial income, such as:

- Premises or an organization that is assigned to conduct transactions involving virtual currencies;
- Debt financing;
- Frequent rotation of inventory of virtual currencies; and
- Trading on behalf of third parties.

Operating expenses, such as costs of electricity related to virtual currency mining or conversion fees of virtual currency exchange platforms, are deductible only if the expenses were incurred exclusively by the enterprise and they are not related to any tax-exempt income. The same applies to the depreciation of computer infrastructure.

The circular states that income derived from all activities of collective funds and mutual insurance associations automatically will be considered commercial income. Such income is always subject to municipal business tax where the undertaking is located in Luxembourg.

Disposal, exchange or mining of virtual currency: Other income

In the absence of a commercial enterprise, it must be determined whether income derived through virtual currency falls within the category of other income in the Income Tax Law (for example, where a mining activity does not fulfill all the criteria to qualify as a commercial undertaking in Luxembourg).

Where a cryptocurrency is exchanged for another virtual or for a real currency or where a transaction is settled (such as the purchase of goods or services), the taxpayer is considered to have ceded its virtual currency against remuneration, followed by a purchase against remuneration of the currency, goods or services received in exchange. Any resulting gain or loss constitutes a speculation gain or loss if the period from the date of acquisition of the virtual currency to the date of the relevant transaction does not exceed six months. Income derived from such a transaction is not subject to tax if it does not exceed a maximum of EUR 500 in a calendar year.

The taxpayer is required to maintain consistent and ongoing records that include the acquisition or creation dates of the virtual currency and all related expenses. The burden of proving the circumstances surrounding the settlement of a virtual currency transaction is on the taxpayer. Because individual identification of a specific amount of virtual currency is nearly impossible, the price must be determined according to an adjusted average price method (exclusive of the "first in, first out" and "last in, first out" methods). The speculation gain, therefore, is to be determined only where it is possible that the virtual currency has been held for a period of less than or equal to six months.

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Peru:
Master file and CbC reporting requirements clarified

Guidance issued by Peru's tax authorities that was published on 29 June 2018 and applies as from 30 June 2018 provides additional clarifications to the rules regulating the submission of the master file and the country-by-country (CbC) report for transfer pricing purposes. The Peruvian rules are consistent with the recommendations under action 13 of the OECD/G20 BEPS project, and the first master files and CbC reports will be due in 2018 for transactions carried out in fiscal year 2017. The new guidance clarifies the taxpayers that are subject to a reporting obligation and the relevant filing deadlines.

Master file reporting

Taxpayers that are part of an economic group (i.e. a group of entities that are connected via control, etc. and that are required to file consolidated financial statements) must submit a master file when, in the fiscal year subject to reporting: (i) the taxpayer's annual income accrued exceeds 20,000 "tax units"; and (ii) the taxpayer carries out transactions within the scope of the transfer pricing rules, the total amount of which equals or exceeds 400 tax units within the year. (A tax unit (UIT) is a reference value used in Peru to determine the applicable tax rates, the thresholds for the application of certain tax rules and applicable penalties, among other things. For operations relating to fiscal year 2017 to be reported in 2018, the value of the tax unit is PEN 4,050.)

CbC reporting

The following taxpayers are required to submit a CbC report in Peru, if, according to the consolidated financial statements prepared by the parent company of the multinational (MNE) group, the income accrued in the fiscal year prior to the year covered in the report equaled or exceeded PEN 2.7 billion:

- A parent company of an MNE group that is resident in Peru; or
- A resident taxpayer that is part of an MNE group whose parent company is not resident in Peru, when any of the following are present:
    - The taxpayer has been designated as the representative of the nonresident parent company for purposes of filing the CbC report; or
    - One or more of the following conditions are fulfilled:
        - The nonresident parent company of the MNE group is not required to file a CbC report in its jurisdiction of residence;
        - On the deadline for filing the CbC report, the jurisdiction where the parent company is resident has signed a treaty that is in force with Peru or is party to an Andean Community agreement that is in force with Peru and that authorizes the exchange of tax information, but no

treaty/agreement is in force for the exchange of CbC reports between Peru and the tax authorities of the other jurisdiction; or

- The jurisdiction where the parent company is resident has a treaty in force with Peru or is party to an Andean Community agreement that is in force with Peru and that authorizes the exchange of tax information, but there is a systematic breach of the exchange of tax information with the Peruvian tax authorities that has been notified by the tax authorities to the resident taxpayer.

If more than one Peruvian resident taxpayer is part of the MNE group and one of the conditions above is fulfilled, the group may designate a Peruvian taxpayer to submit the CbC report.

Filing deadlines

The master file and CbC report generally must be submitted in September of the year following the fiscal year to which the reports correspond. However, the guidance extends the deadlines for the submission of the master file and CbC report corresponding to fiscal year 2017 to a specific date in November depending on the taxpayer's identification number. Taxpayers with a good compliance rating from the tax authorities have until 23 November 2018 to file their master file and CbC report, regardless of the last digit of their taxpayer identification number.

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Ukraine:
Tax on distributed profits proposed to replace corporate income tax

A draft law that would fundamentally change Ukraine's corporate tax regime by introducing a tax on distributed profits to replace the current system of corporate income taxation was submitted to the parliament on 5 July 2018. The proposed regime, which would be similar to the regimes in Estonia, Georgia and Latvia (for prior coverage, see *World Tax Advisor*, 13 October 2017 and *World Tax Advisor*, 27 January 2017), generally aims to stimulate investment in Ukraine and reduce the tax burden on companies, and if approved in 2018 would apply as from 1 January 2019 (if approved after 2018, the effective date would be delayed). Qualifying banking institutions, however, would be allowed to remain taxable under the current corporate income tax regime through 2021.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171013_2.html
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170127_ib.html#Georgia

Ukraine currently operates a classic corporate income tax system under which companies are taxed at a rate of 18%. Under the proposal, resident entities carrying on business within and/or outside Ukraine, as well as nonresident entities and permanent establishments (PEs) of foreign entities carrying on business in Ukraine, would be subject to tax only on profits distributed or deemed to be distributed, with undistributed profits remaining untaxed. The proposed tax generally would be levied on distributions of profits to non-payers of Ukrainian tax (i.e. mainly nonresidents, but also residents that would not be subject to the tax on distributed profits, such as certain small businesses that would remain subject to the "simplified regime" and non-profit organizations), and Ukraine's current withholding tax system would be abolished. The tax on distributed profits generally would be due on the date of the distribution (or, for certain distributions, with the annual return).

The draft law proposes three different tax rates that would apply depending on the type of transaction:

- 15% on payments of dividends;
- 5% on payments of interest on loans from nonresident related parties or taxpayers from countries that are on Ukraine's list of low-tax jurisdictions, where the company meets Ukraine's thin capitalization threshold (i.e. where the company's debt does not exceed 3.5 times its equity);
- 20% on payments of interest on all loans where the company exceeds the 3.5 thin capitalization threshold; and
- 20% on all other transactions deemed to be profit distributions, such as:

- Royalties paid to nonresidents in excess of specific limits;
- Transfers of property without consideration;
- Certain financial assistance that is not repaid within 12 months;
- Transfer pricing adjustments made under the transfer pricing rules;
- Transactions between a nonresident and its PE in Ukraine; and
- Purchases of goods and services from Ukrainian related parties that are taxed under the simplified regime.

The draft law also provides the following:

- Under a transition rule, dividends distributed on or after 1 January 2019 for tax periods ending on 31 December 2018 (31 December 2021 for qualifying banking institutions) would be subject to the tax on profit distributions on the amount exceeding the payer's corporate income tax base for the relevant tax period;
- The current transfer pricing rules would not be affected and would continue to apply; and
- Tax returns reporting the profit distributions and taxes paid would be due for each calendar quarter.

If the proposal is enacted, the government would need to issue guidance to clarify certain issues, such as whether tax attributes under the current regime (e.g. net operating loss carryforwards) could be utilized and whether credits for foreign taxes paid would be allowed under the new regime.

Comments

The proposed tax on distributed profits is being reviewed by the parliament, and it is uncertain whether and when the new tax system will be adopted. Nevertheless, businesses should consider evaluating the potential effect of the proposed changes on their operations (including the effect on deferred tax positions) to be prepared for the new rules.

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In brief

Australia: Draft legislation released on 1 August 2018 contains provisions that would improve the integrity of the thin capitalization rules (for prior coverage, see *World Tax Advisor*, 11 May 2018). The changes would require entities to align the value of their assets for thin capitalization purposes with the value included in their financial statements and ensure that foreign controlled Australian consolidated entities and multiple entry consolidated groups that have foreign operations are treated as both outward and inward investing entities. The changes would apply from income years commencing as from 1 July 2019. A consultation on the proposed legislation closes on 17 August 2018.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180511_ib.html#Australia

Belgium: The draft 2018/19 budget agreed on 24 July 2018 by the federal government contains proposals to impose tax reporting and withholding obligations on a Belgian subsidiary where a foreign group company grants free shares, shares at a discount or any other benefit-in-kind to employees of the subsidiary. If enacted, the obligation to report the income on the Belgian employee or director's wage certificate would first apply to equity incentives (and other benefits-in-kind) granted as from 1 January 2018, with an obligation to withhold tax under Pay-As-You-Earn and social security contributions for equity incentives (and other benefits-in-kind) granted as from 1 January 2019.

China: Guidance issued by the government on 25 June 2018 reinstates the research and development (R&D) super deduction for certain cross-border contract R&D arrangements as from 1 January 2018. A Chinese enterprise is entitled to a deduction for 80% of the actual expenses incurred in engaging a foreign organization to carry out cross-border contract R&D up to a maximum of two-thirds of the enterprise's qualifying domestic R&D expenses, provided the certain administrative and documentation requirements are met.

European Union: The Court of Justice of the European Union (CJEU) issued a decision on 25 July 2018 in a VAT case relating to the exemption for payment handling. The taxpayer is a UK-based company that provides dental plan administration for patients, who pay a fixed monthly amount by direct debit to cover the costs of dental work and for insurance coverage for emergency treatment. The taxpayer subsequently would request its bank to transfer the funds to the dentists (less an amount for its services). The principal issue under dispute was whether the fee charged to the patients for operating the payment arrangements (i.e. collecting the amounts due by direct debit and remitting them to the dentists and insurers concerned) was an exempt supply of payment or money transfer services under the EU VAT directive. The CJEU concluded that the services provided do not constitute an exempt supply of payment or transfer services because the company simply facilitates the payments made by patients; it does not carry out the transfers, but merely asks the relevant banks to effectuate the transfers. Thus, the supply does not result in the legal and financial changes that are characteristic of the transfer of a sum of money.

Hong Kong: The law codifying the country's transfer pricing rules and documentation requirements was published on 13 July 2018, with a number of changes made to the draft issued in December 2017 (for prior coverage, see *World Tax Advisor*, 26 January 2018). The law requires the rules be interpreted in a way that is consistent with the OECD transfer pricing guidelines and BEPS initiatives. Among other measures, the law adopts the three-tier documentation framework in BEPS action 13 (master file, local file and CbC report), with exceptions for taxpayers falling under certain thresholds; exempts "specified" domestic related party transactions from the transfer pricing rules and the documentation requirements; and introduces the OECD's DEMPE framework for evaluating the economic ownership of intellectual property. The law confirms that the definition of permanent establishment (PE) for countries that have concluded double taxation arrangements (DTAs) with Hong Kong would follow the PE article in the existing DTA and adopts a definition for non-DTA countries that generally follows the recommendations under BEPS action 7. The law also adopts the "authorized OECD approach" to attribute income and profits to Hong Kong PEs as if the PE were a separate enterprise. The tax authorities are expected to provide more information on certain measures and have deferred the implementation date of the DEMPE and PE rules for another 12 months (i.e. to the year of assessment 2019/20) to give taxpayers time to prepare.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180126_bc.html#HK

Luxembourg: The law introducing a VAT group regime became effective on 31 July (for prior coverage, see *World Tax Advisor*, 11 May 2018). Broadly, the new regime allows two or more Luxembourg entities that are closely connected by simultaneously existing financial, economic and organizational links to opt to be treated as a single taxpayer for Luxembourg VAT purposes. The final law follows the draft bill with one exception – the law does not allow the VAT authorities to exclude certain members from a VAT group when their participation in the group may lead to a distortion of competition. However, the VAT authorities have the authority to invoke the principle of abuse of rights to exclude taxpayers from a VAT group.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180511_1.html

Malaysia: Bills to repeal the goods and services tax (whose rate reduced from 6% to 0% as from 1 June 2018) and reintroduce the sales tax and service tax (SST) were introduced for the first reading before parliament on 1 August 2018 (for prior coverage, see *World Tax Advisor*, 8 June 2018). There are a number of differences between the proposed legislation and the previously enacted version of the SST. The proposed effective date for the SST is 1 September 2018.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180608_4.html

OECD: On 23 July 2018, the OECD announced the release of three reports: a report from the OECD Secretary General to the G20 Finance Ministers, a progress report from the OECD/G20 Inclusive Framework on BEPS and an update from the OECD and the International Monetary Fund (IMF) for the G20 on tax certainty. The report to the G20 finance ministers contains two parts covering the progress on the OECD's tax agenda and a progress report from the Global Forum on Transparency and Exchange of Information for Tax Purposes. The report from the inclusive framework covers developments in the period from July 2017 to June 2018 and the progress by jurisdictions in implementing the BEPS package. The OECD/IMF update responds to a request from the G20 Leaders following the release of a March 2017 report on the sources of uncertainty in tax matters and covers a variety of practical approaches for improving tax certainty.

On 5 July 2018, Lithuania deposited its instrument of accession to the OECD Convention and became a full member of the OECD (for prior coverage, see *World Tax Advisor*, 8 June 2018). The OECD now has 36 members.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180608_ib.html#OECD

Pakistan: Finance Act 2018, which was enacted on 1 July 2018 and applies from that date, gradually reduces the corporate tax rate beginning in 2019 by 1% each year from 30% until it reaches 25% in 2023 (the rates of "super tax" also are reduced by 1% each year until the tax is abolished in 2021). The tax rate on undistributed profits of public companies is reduced from 7.5% to 5%, and the threshold triggering the tax (now applied only to cash distributions) is reduced from 40% to 20%. The Act also introduces a controlled foreign company (CFC) regime that attributes the income of certain greater-than-40%/50% held nonresident companies to greater-than-10% resident shareholders; amends the domestic definition of a permanent establishment (PE) dealing with dependent agents in line with BEPS action 7; introduces PE anti-avoidance measures including a "cohesive business operation" concept to address tax avoidance resulting from splitting up contracts for overall arrangements for supplies of goods and related activities; subjects gains from the disposal of assets located in Pakistan of a nonresident company to Pakistan tax (previously, only gains on specific disposals (including direct or indirect disposals of immovable property) were taxable); and introduces a 5% withholding tax on certain payments made for "offshore digital services."

Singapore: The Inland Revenue Authority of Singapore (IRAS) issued the second edition of its e-Tax Guide on the *Avoidance of Double Taxation Agreements* on 8 June 2018. The guide provides the IRAS' interpretation of Singapore's tax treaties and how they should be applied, as well as guidance on the mutual agreement procedure. The primary amendment to the guide relates to a mutual agreement reached between the competent authorities of Singapore and Australia on the interpretation of the phrase "profits of a Singapore enterprise" or "profits of an Australian enterprise" under article 2(1)(k) of the Singapore-Australia tax treaty. The competent authorities will apply the agreed-upon interpretation, among others, as from 1 May 2018.

Spain: A law implementing the tax measures from the fiscal year 2018 state budget entered into force on 5 July 2018 (for prior coverage, see *World Tax Advisor*, 11 May 2018). Key direct tax measures affecting corporations relate to the patent box regime and the corporate income tax installment payment calculations for venture capital entities. The changes to the patent box regime aim to align it with the recommendations under action 5 of the OECD/G20 BEPS project and are effective for tax periods beginning on or after 1 January 2018. The changes to the corporate income tax installment payments for venture capital entities will exclude tax-exempt income from the installment payment calculation base and will apply starting with the October 2018 installment.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180511_ib.html#Spain

Sweden: On 14 June 2018, the parliament adopted proposals presented by the government in March 2018 to restrict the deduction of interest expense and reduce the corporate tax rate as from 1 January 2019 (for prior coverage, see *World Tax Advisor*, 27 April 2018 and *World Tax Advisor*, 21 July 2017). The corporate income tax rate will be reduced from the current 22% to 21.4% as from 1 January 2019, and then to 20.6% as from 1 January 2021. A general interest deduction limitation rule will restrict a company's deduction for net interest expense to 30% of tax EBITDA and specific limitations on intragroup hybrid arrangements will be introduced.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180427_7.html
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170721_8.html

United Arab Emirates: The latest version of the Federal Tax Authority's (FTA's) VAT Refund User Guide includes an important new requirement for taxpayers to submit a bank account validation letter issued and stamped by the bank when submitting a VAT refund request form. The letter must include the account holder's name; bank's name and address; SWIFT code/Business Identifier Code (BIC); and International Bank Account Number (IBAN). If the taxpayer's bank is international and does not have a correspondent bank in the UAE, refunds may take more than five business days and the taxpayer must bear the transfer fees charged by the bank.

The FTA has published a guide on the VAT treatment of designated zones, areas specified by the UAE cabinet as being outside the state for the purposes of VAT in certain cases. How to apply VAT to transactions with businesses established in the zones has been a major area of concern for businesses since the introduction of VAT in the UAE as from 1 January 2018. The guide addresses the supply of goods and services within a designated zone, the transfer of goods into a zone and the import of goods from a zone.

United Kingdom: On 23 July 2018, the Department for Business, Energy and Industrial Strategy launched a consultation on draft legislation to establish a new beneficial ownership register of overseas entities that own UK

property. The purpose of the register, which the government intends will be operational in 2021, is to combat money laundering and achieve greater transparency in the UK property market (for prior coverage, see *World Tax Advisor*, 9 February 2018 and *World Tax Advisor*, 28 April 2017). Overseas entities will be required to register their beneficial ownership information with Companies House before obtaining legal title to UK property via the Land Registries to enable them to undertake transactions such as selling or leasing the land, or creating a legal charge over the land. The consultation closes on 17 September 2018.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180209_ib.html#UK
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170428_ib.html#UK

United States: The Internal Revenue Service issued proposed regulations on 8 August 2018 on the 20% deduction for qualified business income of passthrough businesses available under Internal Revenue Code section 199A. The proposed regulations provide guidance on operational rules; the wage and basis limitation; rules for calculating qualified income; aggregation rules; the definitions of specified service trade or business and the trade or business of performing services as an employee; and rules for passthrough entities. Notice 2018-64, which addresses the calculation of wages for purposes of section 199A and the proposed regulations, was released on the same date. With certain exceptions, the regulations are proposed to apply to taxable years ending after the date on which they are finalized.

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.

Austria-Kosovo: When in effect, the treaty signed on 8 June 2018 provides for a 0% 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 15%. The rate on interest will be 10%, and royalties will be taxable only in the state of residence of the recipient.

Cyprus-United Kingdom: The 2018 treaty to replace the 1974 treaty entered into force on 18 July 2018 and will apply as from 1 January 2019 for withholding tax purposes. When in effect, the treaty provides for a 15% withholding tax rate on dividends paid out of income (including gains) derived directly or indirectly from certain immovable property by an investment vehicle that distributes most of this income annually and whose income from such immovable property is exempt from tax (other than dividends paid to pension schemes, which will be exempt); otherwise, the rate will be 0%. Interest and royalties will be taxable only in the state of residence of the recipient.

India-Iran: When in effect, the treaty signed on 17 February 2018 provides for a 10% withholding tax rate on dividends, interest and royalties.

Latvia-Singapore: The 2017 protocol to the 1999 treaty entered into force on 3 August 2018 and will apply as from 1 January 2019 for withholding tax purposes. When in effect, the protocol provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership); otherwise, the rate will be 10%. A 0% rate will apply to interest paid: i) by one company (other than a partnership) to another or ii) to a financial institution; otherwise, the rate will be 10%. A 5% rate will apply to royalties.

Latvia-Vietnam: The 2017 treaty entered into force on 6 August 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; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%. A 7.5% rate will apply to technical services fees.

Mauritius-United Kingdom: The 2018 protocol to the 1981 treaty entered into force on 13 July 2018 and applies as from 28 February 2018. The protocol provides for a 15% withholding tax rate on dividends paid out of income (including gains) derived directly or indirectly from certain immovable property by an investment vehicle resident in a contracting state whose income from such property is exempt from tax and that distributes most of that income annually (other than dividends paid to pension schemes, which are exempt); otherwise, the rate is 0%. The withholding tax rates on interest and royalties are not affected by the protocol.

OECD: Antigua and Barbuda signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended) on 27 July 2018.

Three additional jurisdictions have signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA): Hong Kong (on 26 July 2018), Kazakhstan (on 12 June 2018) and United Arab Emirates (on 24 June 2018), bringing the total number of signatories to 72.

Ukraine signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 23 July 2018. For the MLI to enter into force for Ukraine, Ukraine must ratify the convention in line with its domestic constitutional requirements and deposit its ratification instrument with the OECD.

Singapore-Nigeria: The 2017 treaty will enter into force on 1 November 2018 and will apply as from 1 January 2019 for withholding tax purposes. When in effect, the treaty provides for a 7.5% withholding tax rate on dividends, interest and royalties.

Turkey-Ukraine: When in effect, the protocol to the 1996 treaty signed on 9 October 2017 provides for a 10% 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 15%. A 10% rate will apply to interest and royalties.

United Kingdom-Belarus: The 2017 treaty to replace the 1985 treaty between the UK and the former USSR as it applies in relations between the UK and Belarus, entered into force on 27 July 2018 and will apply as from 1 October 2018 for withholding tax purposes. The new treaty supersedes the treaty signed between the two countries in 1995, but that never entered into force. When in effect, the treaty provides for a 15% withholding tax rate on dividends paid out of income (including gains) derived directly or indirectly from certain immovable property by an investment vehicle resident in a contracting state whose income from such property is exempt from tax and that distributes most of that income annually; otherwise, the rate will be 5%. A 0% rate will apply to interest paid to a bank; otherwise, the rate will be 5%. A 5% rate will apply to royalties. In the case of royalties paid in respect of the use of or right to use industrial, commercial or scientific equipment: i) the 5% rate applies to an amount calculated as the difference between the gross amount of the payment and verified related expenses incurred on the equipment insurance, interest paid to a bank and reimbursement of the equipment value; and ii) a 0% rate applies where the contract under which the royalties are payable was concluded and the equipment provided under the contract delivered to the territory of the other contracting state before 26 September 2017.

Global tax alerts

France
Decree published on new transfer pricing documentation requirements
The French government issued a decree on 29 June 2018 that provides comprehensive guidance on its transfer pricing documentation requirements applicable for fiscal years that begin on or after 1 January 2018.
Issue date: 7 August 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-023-7-august-2018.pdf

OECD
OECD releases discussion draft on transfer pricing of financial transactions
On 3 July 2018, the OECD released a non-consensus discussion draft on the transfer pricing aspects of financial transactions, which is based on follow-up work mandated by the 2015 final report on actions 8-10 of the BEPS project. Interested parties are invited to submit comments by 7 September 2018.
Issue date: 26 July 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-021-26-july-2018.pdf

United States

Transition tax guidance: proposed regulations released

On 1 August 2018, the Department of the Treasury and the Internal Revenue Service released proposed regulations on the “transition tax” under section 965 of the US tax code, which was enacted as part of the 2017 tax reform legislation.

Issue date: 10 August 2018

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-10-august-2018.pdf

IRS issues Transfer Pricing Examination Process to replace Transfer Pricing Roadmap

On 29 June 2018, the Internal Revenue Service released the Transfer Pricing Examination Process, which is a guide for IRS agents when auditing transfer pricing issues and replaces the Transfer Pricing Audit Roadmap that was issued in 2014.

Issue date: 7 August 2018

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-022-7-august-2018.pdf