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In this issue:

Mexico's controversy with expenses involving operating and services companies

It has been common practice for a number of years for a Mexican corporate group to set up separate services companies to hold its employees and provide personal services to other companies in the group. While such structures are a legitimate way to manage the mandatory profit sharing obligation, they have been the subject of abuse, with the result that the Mexican tax authorities now challenge all structures using a services company. The resulting examinations have given rise to a number of disputes between taxpayers and the tax authorities.

Under Mexican law, all employees of a company are entitled to a share of the employer company's profits, the employer being required to distribute 10% of its annual net profits to its employees. The profit sharing amount is calculated on a special (higher) taxable base, which differs from the taxable base used for income tax purposes. The main difference between the normal income tax taxable base and the profit sharing taxable base is that the latter includes additional income that results in an artificially higher base. In addition, the profit sharing base cannot be offset by any net operating losses, so a taxpayer may be in a loss position for all purposes but still be obligated to make a profit sharing payment to its employees. The profit sharing payment made to employees can reduce the taxable base, but, since 2005, has not been deductible for income tax purposes.

The services company structure works as follows: A group establishes a services company to provide personnel (payroll) services to an operating company (and the group) and the operating company pays the services company an arm's length amount for the services rendered. This strategy enables the employees to obtain (under the services company's profit sharing obligation and additional deductible fringe benefits) a payment similar to what they would have received by way of profit sharing had they been employed by the operating company, and for the operating company to deduct the services payment it makes to the services company. The structure usually requires an intragroup services agreement between the services company and the operating company. One of the tools typically used to manage the services company costs for the group is to have the operating company absorb some of the costs and expenses as a normal contractual arrangement between the parties.

"*Cooperativas*" and their role in audit-triggering structures

Structures such as the above functioned for a number of years without attracting scrutiny or challenges by the Mexican tax authorities, but the government recently has taken steps to crack down on the illegal use of payroll tax planning structures that are focused on avoiding the payment of income tax and social security contributions. Unfortunately, legitimate services company structures have been caught up in this initiative.

The illegal payroll structure involves the substitution of a special entity ("*cooperativa*" in Spanish) for a *bona fide* services company and the transfer of all employees to that entity. These *cooperativas* were originally designed to allow non-management level personnel to render their services (masons, electricians, plumbers, etc.) through an entity, instead of rendering them as individuals, allowing for a restructuring of the employees' taxable base for income tax and social security purposes, which dramatically lowers, and can even eliminate, income tax and social security payments.

Some advisory firms have promoted the idea that the *cooperativa* scheme (although the scheme has evolved to include other types of entities, including unions) can be used to integrate any and all types of employees, including management-level personnel, increasing both the amount of income tax and social security that is being avoided and the number of employees transferred from the regular service company to the *cooperativa*. These structures have significantly raised the stakes and have attracted the attention of the tax authorities.

As a result, a nationwide audit program has been launched to review all corporate structures using services companies to ensure they do not include *cooperativas* or similar entity structures for the purpose of avoiding income tax and social security contributions.

Issue with service companies

As a byproduct of the audit program, the Mexican tax authorities have scrutinized the manner in which all services companies operate and have discovered that many structures, even those that do not include a *cooperativa*, have been able to manage expenses in a way the tax authorities do not find acceptable. Therefore, for the last couple of years, the tax authorities have denied operating companies all deductions related to employee benefits, such as fringe benefits, uniforms, travel expenses, etc. The reasoning underlying this position is that, because the operating company no longer has employees of its own (other than managerial staff), it should not be allowed to absorb employee-related expenses. Taxpayers, however, have continued to maintain that the service agreement between the operating company and services company allows the former to absorb some of these expenses.

According to the tax authorities, however, the operating company should not be allowed to deduct the employee expenses because they do not qualify as expenses for purposes of article 31, section I of the Mexican Income Tax Law, which provides as follows:

> *"Article 31. The deductions authorized under this Title must satisfy the following requirements:*
>
> 1. ***<u>They are strictly indispensable for the taxpayer's activity</u>****, except in cases of non-onerous and non-remunerative donations satisfying the requirements established hereunder and in the general rules issued by the Tax Administration Service in the following cases:*
>
>   *(…)"*

It is the tax authorities' position that, in the context of the above structures, when such expenses are borne by the operating company and not the services company, they are not strictly indispensable and, therefore, are nondeductible.

Taxpayers have countered this argument by pointing out that, as they are contractually and legally obligated to cover the expenses, the "indispensable" requirement is met, and as long as the services rendered by the services company are intimately connected with the operating company´s trade or business, there should be no challenge to the indispensable nature of the expenses. This issue is being litigated by some taxpayers, although others have decided to settle with the tax authorities by self-correcting their situation, provided the tax authorities are willing to allow the deductions to be allocated to the services company.

In practice, allocating deductions to the services company is more complicated than it appears because documentation supporting the deductibility of the expenses usually is issued to the wrong company, i.e. the operating company, and the ability to comply with formal requirements is thrown into question because the services company would be taking deductions on the basis of documentation bearing the information of the operating company. As the substitution of invoices is not an option, taxpayers are left with an exposure that may not be easy to resolve.

Taxpayers also have tried to argue that there is no logic to the tax authorities' position because the expenses, or at least an amount equal to them, will be deducted by the operating company anyway, either by way of continuing absorption or by the inclusion of the expenses in the calculation of the fee to be paid to the services company. The service agreement usually calls for a cost-plus methodology to determine the arm´s length fee to be paid to the service company so, either way, the expenses will be taken as a deduction by the operating company. The tax authorities, however, have been resolute in their position that the expenses should be part of the services company´s tax results and nondeductible for the operating company.

It also is important to keep sight of the VAT implications of the nondeductibility of the expenses because VAT can be credited only if it relates to deductible expenses for income tax purposes. The risk of a tax assessment resulting from the denial of a deduction creates potential additional exposure in the VAT area.

Dilemma for corporate groups

Taxpayers using services companies to manage their profit sharing obligation are in a dilemma: they can amend their services arrangements and modify their transfer pricing, thus increasing the profit sharing burden on the services company because a higher service fee will give rise to a higher annual profit sharing amount. Alternatively, they can dispute the tax assessment derived from these arrangements and wait to see how the Mexican courts rule on the issue (the first decisions are expected sometime in 2012).

The predicament is further complicated by the fact that the legal arguments in support of the services company structure seem strong. Historically, the fact that two parties – even related parties – agree on certain rights and obligations generally has been viewed as a sufficient basis for the incurring of deductible expenses. Where the taxpayer is in compliance with its transfer pricing obligations, the combination of the two factors has traditionally led the tax authorities to view such structures in a favorable light. Taxpayers are faced with the alternative of modifying a practice that seems to be anchored in a sound legal defense in order to avoid litigation, or staying the course and accepting a tax assessment and a potential two to four-year litigation process that may or may not yield favorable results.

In our view, the recent position of the tax authorities on the services company issue is further confirmation that the authorities are aiming at using substance-over-form arguments to challenge deductions and will go so far as to ignore legal and contractual arrangements between the parties even if the arrangements are legal and represent common commercial practice.

Affected companies should consider the following:

- Services company structures should be reviewed for their handling of employee-related expenses.
- Any expense that may be viewed as possibly being attributable to the services company likely will be deemed a disallowed deduction by the tax authorities when borne by the operating company.
- The benefits of relying on a legal argument to defend these types of arrangements should be weighed.
- Although self-correction is an option, each case must be assessed on its own merits to ascertain any potential benefits in this approach.

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Austria:
Tax treaty signed with Switzerland on taxation of undisclosed assets

Austria signed a treaty with Switzerland on 13 April 2012 on the taxation of income from certain undeclared capital assets of Austrian citizens where the assets are located in Switzerland. The treaty addresses the tax treatment of both past undeclared income and future capital investment income. Although both countries still must complete their national ratification procedures, the treaty is expected to enter into force on 1 January 2013.

The treaty applies to Austrian resident individuals with an account or portfolio at a Swiss bank or who are authorized users of assets held by an offshore company, a life insurance company under a life insurance wrapper (i.e. a life insurance policy into which stock, private equity holdings and/or other bankable assets are placed) or another individual (trustee). Austrian companies, partnerships, private foundations, associations and other corporations are not within the scope of the treaty.

Previously undeclared income

Taxpayers with previously undeclared income can opt to be subject to a withholding tax or have the Swiss bank report the income to the Austrian authorities. Where the withholding option is selected, the Swiss bank will withhold an amount of money from the accounts, representing a tax on the income. The withholding tax rate will be between 15% and 30%, calculated on the basis of a formula (a rate of up to 38% may apply in cases where the capital assets exceed EUR 2 million). The withholding tax will represent payment for Austrian income tax, VAT and the former inheritance and gift tax (abolished in 2008), as well as penalties for evading these taxes.

If the taxpayer opts for voluntary disclosure, the Swiss bank will forward information on the income to the Austrian tax authorities. The bank report will be considered a voluntary self-disclosure of the taxpayer to avoid penalties and the taxpayer will be required to amend his/her prior Austrian tax returns and declare the relevant circumstances that led to the tax evasion. Taxation will then be imposed retroactively (back to 2003), according to the taxpayer’s actual circumstances.

Notably, it will not be possible to avoid penalties if the capital assets derive from criminal activities (listed in the money laundering catalogue) or if the tax authorities had discovered the tax evasion by the date the treaty was signed (i.e. 13 April 2012) and the taxpayer was aware of this fact, or if the authorities had already initiated criminal proceedings.

Taxpayers have until 31 May 2012 to inform their Swiss banks whether they are opting for withholding or disclosure, with withholding to apply if notification is not timely made.

Future income

After the treaty enters into force, taxpayers will have the right to choose whether their income will be subject to the Austrian withholding tax on capital income (25%) levied by Swiss banks on behalf of the Austrian tax authorities (anonymous taxation) or whether this income will be declared in the annual tax return. The 35% Swiss withholding tax on certain interest income (generally interest derived from bank deposits, bonds, etc.) will remain unchanged. The treaty contains simplified provisions for claiming a tax refund or foreign tax credit.

If an Austrian taxpayer transfers his/her Swiss assets to another country before the treaty with Switzerland enters into force, Switzerland will be obliged to provide to the Austrian authorities a list of relevant jurisdictions.

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Germany:
New treaties with Netherlands and Luxembourg contain "real estate" clauses

Germany signed new tax treaties with the Netherlands and Luxembourg on 12 and 23 April 2012, respectively, to replace the existing treaties dating from 1959 and 1958. The treaties, which will become effective on 1 January 2013 or 1 January 2014, both contain a real estate clause in the capital gains article that will impact German inbound real estate investors.

Under the new treaties, capital gains derived from the alienation of shares in a real estate company may be taxed in the state in which the property is located rather than the state in which the seller is resident. According to article 13(4) of the OECD model treaty (capital gains), a real estate company is a company that derives more than 50% of its value directly or indirectly from immovable property.

As mentioned above, application of the real estate clause will impact German inbound real estate investors that have structured their investment in such a way that a Dutch or Luxembourg holding company holds shares in a German GmbH that, in turn, holds real estate located in Germany. Capital gains from the sale of shares in the German GmbH currently are not taxable in Germany and they often fall within the scope of the participation exemption in the Netherlands or Luxembourg. In future, 5% or even 100% (i.e. in the case of short-term trading) of such gains may be subject to corporate income tax in Germany.

The real estate clause in the new treaty with Luxembourg is in line with the wording of the OECD model, but the clause in the Dutch treaty differs significantly from the OECD model and from any other German treaty. The clause in the Dutch treaty provides as follows:

- The clause applies if the (real estate) company derives more than 75% of its value directly or indirectly from immovable property.
- When determining the 75% requirement, immovable assets on which the real estate-owning company or its shareholders carry on their business will be disregarded.
- In the German language version (but not the Dutch language version), the real estate clause lacks the usual reference to the location of the immovable property. The right to tax capital gains, subject to other requirements, is shifted only because a company derives more than 75% of its value from immovable property. The location of the property in the company's country of residence is irrelevant. As a result, the sale of shares in a German GmbH by a Dutch shareholder may be taxed in Germany even if the property is situated in the Netherlands or in another country. It is currently unclear whether this mistake in the German version will be corrected.
- The real estate clause only applies if the seller holds at least 50% of the shares of the real estate company before the first share disposal.
- The new tax treaty makes use of the exceptions mentioned in section 28.7 et seqq. of the OECD commentary on article 13. The right to tax therefore remains with the state in which the seller is resident in the case of the sale of shares of companies listed on an approved stock exchange or as part of a corporate reorganization.

Other provisions in the new treaties

As is the case under the existing treaty with the Netherlands, no tax will be withheld on interest or royalties. The treaty provides for a 5% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company, a 10% rate if the beneficial owner is a Dutch-resident pension fund and 15% in all other cases (the 15% rate is the same as under the existing treaty).

The revised treaty with Luxembourg also retains the exemption from withholding tax on interest and the 5% rate on royalties. The rate on dividends will be 5% if the dividends are paid to a company (other than a partnership or investment company) that holds directly at least 10% of the capital of the distributing company, and 15% in all other cases (the 15% rate is the same as under the existing treaty). The 15% rate also will apply if the distributing company is a real estate investment company whose profits are completely or partially tax exempt or if it is able to deduct the amount distributed when calculating its profit.

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Sweden:
Court halts aggressive tax avoidance schemes through Peruvian holding companies

The Swedish Supreme Administrative Court published two decisions on 26 March 2012 on the former Sweden-Peru tax treaty, in which the court held that capital gains derived by a Swedish resident from the liquidation of a Peruvian company may be taxed in Sweden. The court ruled that the Swedish anti-avoidance rules may be applicable to tax treaty situations and that the transaction was taxable in Sweden under Swedish domestic law and the treaty with Peru.

The 1996 Sweden-Peru tax treaty was terminated in 2006 because it primarily used the exemption method (rather than the credit method) to eliminate double taxation and it did not correspond to changes made to the OECD model treaty. Further, the language used in the treaty was not entirely clear, giving rise to some issues as to how the articles should be interpreted. A new treaty has not yet been negotiated.

The cases involved two brothers who owned a Swedish limited liability company that held real property. The Swedish property holding company was transferred to a Peruvian company, which later sold the holding company to another Swedish limited liability company held by the brothers. The Peruvian company subsequently was liquidated.

The Supreme Administrative Court regarded the liquidation of the Peruvian company as a taxable event for the two brothers under Swedish domestic law, and concluded that the treaty was not as clear as Swedish law because it did not contain any provisions specifically addressing liquidations or guidance on how the treaty should be interpreted under the circumstances. Under Swedish law, proceeds from a liquidation are taxed as capital gains, which prompted the court to apply article X (capital gains article) of the Sweden-Peru treaty to govern the taxation of the sale of the shares. Article X provided that only the contracting state in which the shares were situated had the right to tax liquidation proceeds.

To ascertain the state in which the shares were situated, the court weighed all the circumstances relevant to determining where the Peruvian company was incorporated and where the owners were domiciled. The court concluded that the shares were situated in Sweden at the time of the liquidation and, therefore, Sweden had the right to tax the liquidation proceeds. The court found that the only factor connecting the situation to Peru was that the liquidated company was Peruvian. The company had no actual business in Peru, and all of its assets were connected to Sweden. Thus, the court ruled that Sweden's right to tax the liquidation proceeds was not limited by the treaty.

The decisions of the Supreme Administrative Court potentially are far-reaching, although it is difficult at this juncture to assess to what extent the decisions could be applied in similar situations. The wording of article X of the former Sweden-Peru tax treaty is somewhat different than that of the equivalent article in Sweden's other treaties and, although that is not clearly stated in the decisions, it may have impacted the court's conclusions. Although each case will be determined on its own merits, the decision emphasizes that the Swedish courts may look at substance rather than form when applying treaty provisions.

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Taiwan:
Capital gains tax proposed on sale of securities

Taiwan's Ministry of Finance issued a press release on 12 April 2012 outlining a draft proposal that would introduce a tax on capital gains derived from the sale of shares, futures and options ("securities"). The draft is being approved by the Executive Yuan and then will be submitted to the Legislative Yuan. Once approved, the capital gains tax is planned to be effective as from 2013. Under current rules, capital gains from the sale of qualified securities are exempt from income tax for both individual and corporate taxpayers, but the gains are deemed to be a taxable item under the alternative minimum tax (AMT) regime.

According to the proposal, a resident individual with annual gains exceeding NTD 3 million from the sale of listed and unlisted shares, futures and options traded on the Taiwan Futures Exchange would be subject to a flat 20% capital gains tax. Capital gains from the sales of qualified securities would no longer be included in the calculation of AMT for the resident individual taxpayer. Losses would be able to be carried forward for up to three years, and 50% of the gains would be exempt if the individual held the securities for more than three years. The implications for gains derived by a nonresident are somewhat unclear under the proposal.

Gains derived by a profit-seeking enterprise from the sale of listed and unlisted shares, bonds, futures and options traded on the Taiwan Futures Exchange, and other marketable securities, would remain within the scope of the AMT regime. However, the tax-free amount would decrease from NTD 2 million to NTD 500,000 and the AMT rate would increase from 10% to 12%. Losses would be available for carryforward for up to five years, and 50% of the capital gains would be exempt if the securities were held for more than three years.

The draft further clarifies that a nonresident profit-seeking enterprise that does not have a fixed place of business or business agent (i.e. a permanent establishment (PE)) in Taiwan would not be required to pay AMT on gains from the above transactions. However, if a foreign profit-seeking enterprise does have a PE in Taiwan, the tax treatment would be the same as for a resident profit-seeking enterprise.

Potentially affected taxpayers should monitor the progress of the proposal through the legislative process because it is possible that the provisions could be revised by the Legislative Yuan. Although the current draft provides that a foreign institutional investor (FINI) would not be subject to capital gains tax if it does not have a PE in Taiwan, other multinational companies with Taiwan operations (theoretically, those that are not considered FINIs), and especially those that intend to enter into M&A projects in the future, should begin reviewing their current investment structures to ascertain the tax implications.

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United States:
IRS releases final regulations on reporting interest paid to nonresident aliens

On 19 April 2012, the U.S. tax authorities (IRS) published final regulations requiring certain U.S. financial institutions to report bank deposit interest paid to nonresident aliens in certain countries. The new rules expand the current requirement to only report bank deposit interest paid to Canadian citizens. Along with the final regulations, the IRS released guidance (Revenue Procedure 2012-24) listing 78 countries with which the U.S. has bilateral agreements in place.

Although the IRS will only require reporting for residents of the countries listed in Revenue Procedure 2012-24, the regulations allow U.S. financial institutions to report bank deposit interest paid to all nonresident aliens regardless of the country of residence to help reduce compliance burdens. The IRS also indicated that the revenue procedure will be periodically updated with new countries and U.S. financial institutions will be required to include the new countries in their reporting if the country is listed in the Revenue Procedure as of 31 December of the year before the payment is made.

The rationale underlying the new requirement is two-fold:

- The new regulations will help the IRS negotiate intergovernmental cooperation of FATCA (Foreign Account Tax Compliance Act) implementation by granting reciprocity to foreign governments so that they will allow the information exchange under FATCA; and
- The new regulations will enhance U.S. tax compliance by increasing the difficulty for U.S. taxpayers with U.S. deposits to falsely claim to be non-U.S. residents and evade taxation.

FATCA creates a new tax information reporting and withholding regime for foreign financial institutions and other foreign persons holding investments for U.S. persons. Under FATCA, U.S. withholding agents, foreign financial institutions and certain non-financial foreign entities are required to report information about offshore accounts and investments held by U.S. taxpayers to the IRS annually. Such institutions include banks, insurance companies, hedge funds, mutual funds and private equity firms. Foreign financial institutions must enter into agreements with the IRS or they will face a 30% withholding charge. The provisions of FATCA generally become effective on 1 January 2013.

The main intersection with the new bank deposit interest regulation and FATCA is that the U.S. can now incentivize foreign governments to enter into agreements with the U.S. to provide the FATCA reporting information from foreign financial institutions within its jurisdiction and/or allow foreign financial institutions to directly report the FATCA information to the IRS without local law restrictions. This is crucial given the IRS's interest in entering into joint agreements with foreign governments for FATCA reporting. As noted in the preamble to the regulations, this new reporting requirement will give foreign governments information about interest payments made to their residents in exchange for the reporting information the U.S. is trying to obtain through FATCA.

U.S. financial institutions should consider whether to report all payments to nonresident aliens rather than constantly updating the list of reportable countries to reduce compliance risk and cost. Moreover, U.S. financial institutions should begin to assess the changes required in their internal reporting systems and procedures (or changes to third party provider procedures) and begin to plan for any required system and process updates (or coordinate changes with third party providers).

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In brief

European Union – European Court of Justice Advocate General Kokott has given her opinion in the *Philips Electronics* case on the U.K.'s foreign branch loss rules. AG Kokott considers that the rules on the surrender of losses constitute a restriction on the freedom of establishment principle in the EU Treaty and the restriction cannot be justified by the need to preserve the allocation of taxing powers between EU member states or to prevent the double use of losses. On remedies, the AG concludes that the freedom of establishment must extend to a contracting partner disadvantaged as a result of the breach, or it will be rendered ineffective.

France – The French government has removed Panama from the list of tax haven jurisdictions.

Mongolia – Changes to the Economic Entity Income Tax Law affect the withholding tax on interest and other payments made to foreign providers of goods and services. Effective 1 January 2012, the payment of interest of whatever kind to a nonresident is subject to a 20% withholding tax, as is income earned by or through the use of the internet or other electronic means. Further, all income sourced from Mongolia, interpreted to mean payments made by a Mongolian-registered taxpayer for goods or services sold or rendered outside the Mongolian territory, are now clearly subject to withholding tax.

Tax treaty round up

At the end of each month, the 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

Unless otherwise noted, the developments discussed are not yet in force.

Austria-Switzerland – See article in this issue under Austria.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/120427_2.html

Austria-Tajikistan – The 2011 treaty to replace the existing treaty with the former USSR will enter into force on 1 July 2012 and will apply generally as from 1 January 2013. When in effect, the withholding tax rate on dividends will be 5% if paid to a company (other than a partnership) that holds directly at least 15% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest and royalties will be 8%, with an exemption for interest paid to a financial institution or arising from the sale on credit of any equipment, merchandise or services.

Chile-Mexico – The Cooperation, Mutual Administrative Assistance and Customs Information Exchange Agreement signed on 8 July 2011 aims to help Mexican and Chilean Customs authorities prevent infringement of the customs laws of the two countries. The agreement requires that both parties exchange information about trade operations, specifically in relation to information on import or export declarations, the destination of goods, customs seizures and/or any infringements. The sharing of information is expected to ensure a proactive and consistent application of the rules and reduce tax avoidance in supply chains, and the customs declaration information will allow the Customs authorities to verify the accuracy of declarations. The agreement will enter into force 30 days after both countries have amended their legislation.

Egypt-Ireland – When in effect, the treaty signed on 9 April 2012 provides for a 5% withholding tax 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%.

Estonia-United Arab Emirates – The 2011 treaty and protocol entered into force on 29 March 2012 and applies retroactively as from 1 January 2011. Dividends, interest and royalties are exempt from withholding tax.

Germany-Luxembourg – See article this issue under Germany.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/120427_3.html

Germany-Netherlands – See article this issue under Germany.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/120427_3.html

Germany-U.S. – A 19 March 2012 competent authority agreement clarifies application of the dividend exemption to "pension funds" under the Germany-U.S. treaty (as amended) in the case of employer-established contractual trust arrangements holding assets set aside to fund simple employer-sponsored pension plans, as well as to certain pension-related special German investment funds, group trusts and common trust funds. The agreement also addresses the person responsible for making the claim of benefits in each of the above cases.

Hong Kong-Indonesia – The 2010 treaty entered into force on 28 March 2012 and will apply as from 1 April 2013 in Hong Kong and 1 January 2013 for Indonesia. When in effect, the withholding tax on dividends will be 5% if paid to a company (other than a partnership) that holds at least 25% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest will be 10% and that on royalties, 5%.

Hong Kong-Malaysia – When in effect, the treaty signed on 25 April 2012 provides that the withholding tax rate on dividends will be 5% if paid to a company (other than a partnership) that holds directly or indirectly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest will be 10% and that on royalties, 8%.

Hong Kong – A number of tax agreements entered into effect in Hong Kong as from 1 April 2012 (also the New Zealand treaty's effective date), and with effect from 1 January 2012 in the treaty partner jurisdiction.

Treaty	Dividends	Interest	Royalties
France	10	10	10
Hungary	5/10	5	5
The 5% rate applies to dividends paid to a company (other than a partnership that is not liable to tax) that holds directly at least 10% of the capital of the payer company			
Ireland	0	10	3
Japan	5/10	10	5
The 5% rate applies to dividends paid to a company that has owned directly or indirectly at least 10% of the voting shares of the company paying the dividends for the six-month period ending on the date on which entitlement to the dividends is determined (the 5% rate will not apply if the company paying the dividends is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in Japan)			
Liechtenstein	0	0	3
Netherlands	0/10	0	3
Dividends are exempt from withholding tax if paid to a (1) company that holds at least 10% of the payer company and the shares are regularly traded on a recognized stock exchange or at least 50% of the shares of the recipient company are owned by a company whose shares are regularly traded on a recognized stock exchange, but only if the latter company is a resident of a contracting state, or a resident of an EU member state and that company would be entitled to similar or more favorable benefits as provided by the dividends article under a tax treaty; (2) a bank or insurance company established and regulated as such under the laws of the treaty partner jurisdiction of which it is a resident, provided it holds at least 10% of the share capital of the dividend paying company; (3) a contracting party, or a political subdivision or local authority thereof; (4) an institution created by the government of a contracting party, or a political subdivision or local authority thereof that is recognized as an integral part of that government as agreed by the competent authorities of the contracting parties; (5) a headquarters company for a multinational corporate group that provides a substantial portion of the overall supervision and administration of the group and that has, and exercises, independent discretionary authority to carry out these functions, provided it holds at least 10% of the share capital of the payer company; (6) a pension fund or scheme; or (7) a company other than a company mentioned under subparagraphs (1), (2), (4) or (5), provided the competent authority of the contracting party that has to grant the benefits concludes that the establishment, acquisition or maintenance of the company does not have as its main purpose or one of its main purposes to secure the benefits of the dividends provision.			
New Zealand	0/5/15	10	5
The exemption applies to dividends paid to a company that holds directly or indirectly at least 50% of the voting power of the payer company and the recipient company (1) has its principal class of shares listed and regularly traded on a recognized stock exchange; (2) is owned directly or indirectly by one or more companies (a) whose principal class of shares is listed and regularly traded on a recognized stock exchange, or (b) which, if that company or each of those companies owned directly the holding in respect of which the dividends are paid, would be entitled to equivalent benefits in respect of the dividends under a tax treaty between the party of which that company is a resident and the contracting party in which the payer company is resident; or (3) does not meet the requirements of (1) or (2) but the competent authority of the first-mentioned contracting party determines that there is no motive to take advantage of the dividends article. The 5% rate applies if paid to a company that holds directly at least 10% of the voting power of the payer company.			

Hungary-Georgia – When in effect, the treaty signed on 16 February 2012 provides that dividends are exempt from withholding tax if paid to a company (other than a partnership) that has held directly at least 25% of the capital of the payer company for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends; otherwise, the rate will be 5%. Interest and royalties will be exempt from withholding tax.

Hungary-Qatar – When in effect, the treaty signed on 18 January 2012 provides that dividends will be exempt from withholding tax if paid to a company; otherwise, the rate will be 5%. Interest will be exempt from withholding tax and the rate on royalties will be 5%.

India-Mozambique – The 2010 treaty entered into force on 28 February 2011 and applies from 1 April 2012 in India (1 January 2012 in Mozambique). The withholding tax rate on dividends is 7.5% and that on interest and royalties, 10%.

India-Switzerland – The 2010 protocol to the 1994 treaty entered into force on 10 October 2011 and applies in India as from 1 April 2012 (1 January 2012 in Switzerland). The protocol adds an exemption for interest paid to a resident of the other contracting state that is engaged in the operation of ships or aircraft in international traffic, so that interest will be taxable only in the residence state to the extent the interest is paid on funds connected with those activities. Otherwise, the rate is 10%.

India-Taiwan – The 2011 treaty entered into force on 12 August 2011 and applies to income derived from India on or after 1 April 2012 (after 1 January 2012 for Taiwan). The withholding tax rate on dividends is 12.5% and that on interest and royalties, 10%.

Korea-Panama – The 2010 treaty entered into force on 1 April 2012 and will apply generally as from 1 January 2013 (exchange of information provisions, however, apply to requests relating to tax evasions and criminal offenses committed after 1 January 2011). When in effect, the withholding tax rate on dividends will be 5% if 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 general rate on interest will be 5% and that on royalties, 10%.

Peru-Sweden – See article this issue under Sweden.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/120427_4.html

Poland-Saudi Arabia – The 2011 treaty will enter into force 1 June 2012 and will apply from 1 January 2013. When in effect, the withholding tax rate on dividends and interest will be 5% and that on royalties, 10%.

South Africa-Sweden – The 2010 protocol to the 1995 treaty entered into force 18 March 2012 and applies from 1 April 2012, the date the new South Africa dividends tax to replace the Secondary Tax on Companies entered into force. (The protocol does not affect withholding taxes on interest or royalties.) The 5% withholding tax rate applies to dividends paid to a company (other than a partnership) that holds at least 10% of the capital of the payer company; otherwise, the rate is 15%. The protocol also includes a most favored nation clause in favor of Sweden with respect to dividends.

Spain-Armenia – The 2012 treaty entered into force on, and applies from, 21 March 2012. Dividends are exempt from withholding tax if paid to a company (whose capital is wholly or partly divided into shares or stakes) that holds directly or indirectly at least 25% of the capital of the payer company for a minimum of two years before the payment date, provided that the dividends are not subject to profit taxation in the recipient's country of residence. Otherwise, the rate is 10%. The rate on interest is 5%. The rate on royalties is 5% if paid for the use of, or right to use, any copyrights of literary, artistic or scientific works, including cinematographic films, or films, tapes, and other means of transmission or reproduction of image or sound; otherwise the rate is 10%.

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Denmark
Corporate income tax bill presented to Parliament
A tax bill presented to the Danish Parliament on 25 April 2012 contains a number of provisions designed to ensure, in particular, that multinational companies contribute to the financing of Danish welfare and to collect more revenue from such companies. [Issued: 25 April 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/758e5114ffae6310VgnVCM2000001b56f00aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dttl_tax_alert_Denmark_250412.pdf

United States
Regs expand reporting of interest paid on bank deposits held by certain nonresident aliens
The Treasury Department has amended final regulations that require Form 1042-S reporting of certain deposit interest paid to nonresident alien individuals by extending the requirement from reporting only on payments to Canadian residents to residents of 77 other countries, effective for interest paid after 2012. [Issued: 23 April 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/197c614fd30e6310VgnVCM1000001956f00aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dttl_tax_alert_UnitedStates_230412.pdf

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