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In this issue:

China's MOFCOM issues new rules on equity contributions 1
Colombia: Tax reform bill submitted to Congress 4
Latvia: Transfer pricing documentation requirements introduced 5
Luxembourg: Government presents amended budget 2013 6
Netherlands: Draft administrative guidance released on "excessive" debt rules 7
South Africa: Campaign to ensure retroactive transfer pricing adjustments declared for customs purposes 8
United States: Year-end considerations for U.S. investment managers with ownership in foreign entities 9
In brief 10
Are You Getting Your Global Tax Alerts? 11

China's MOFCOM issues new rules on equity contributions

China's Ministry of Commerce (MOFCOM) released new rules on 24 October 2012 aimed at facilitating and promoting foreign investment in the country by allowing domestic and overseas investors to use the equity in Chinese companies as capital for foreign-invested enterprises (FIEs) (Provisional Rules Concerning Equity Interest Contributions to Foreign-Invested Enterprises (Order No. 8)). Previously, there were no well-established rules on equity contributions, and it was difficult for a company to obtain approval for such a contribution. Order No. 8, which applies as from 22 October 2012, contains detailed rules on the types of transactions covered, requirements for contributing equity, the valuation and pricing of equity, and limits. The order is based on draft rules issued on 4 May 2011.

This analysis looks at the salient points of Order No. 8, as well as the implication of China's M&A tax rules on transactions permitted under the order.

Transactions covered

Order No. 8 applies to two types of transactions:

1. A contribution by a Chinese or foreign investor of its equity interest in a Chinese domestic company to:
    a. Establish a new FIE;
    b. Increase the capital of a non-FIE to convert that entity to an FIE; or
    c. Increase the capital of an FIE to change the shareholding of the company.
2. The acquisition by a foreign investor, in exchange for its equity interest in a Chinese company, of an equity interest of another investor in a Chinese company, i.e. a share swap.

These two types of transaction are illustrated below.

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In Diagram 1, Investor B contributes its equity interest in Chinese Co B1 to Chinese FIE A1.

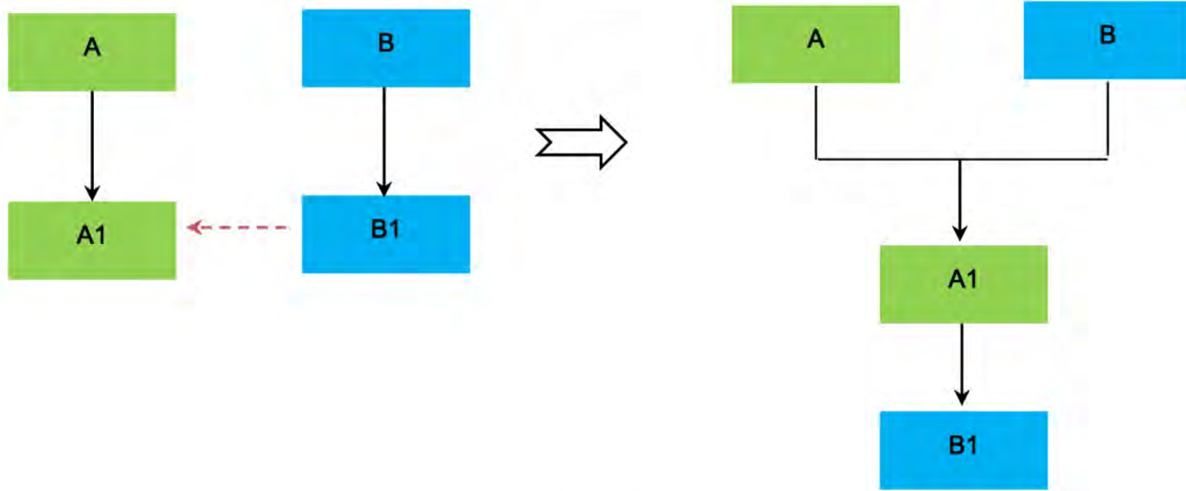

Diagram 1

In Diagram 2, Foreign Investor A acquires an equity interest in Chinese Co B1 from Investor B in exchange for Foreign Investor A's equity interest in Chinese Co A1.

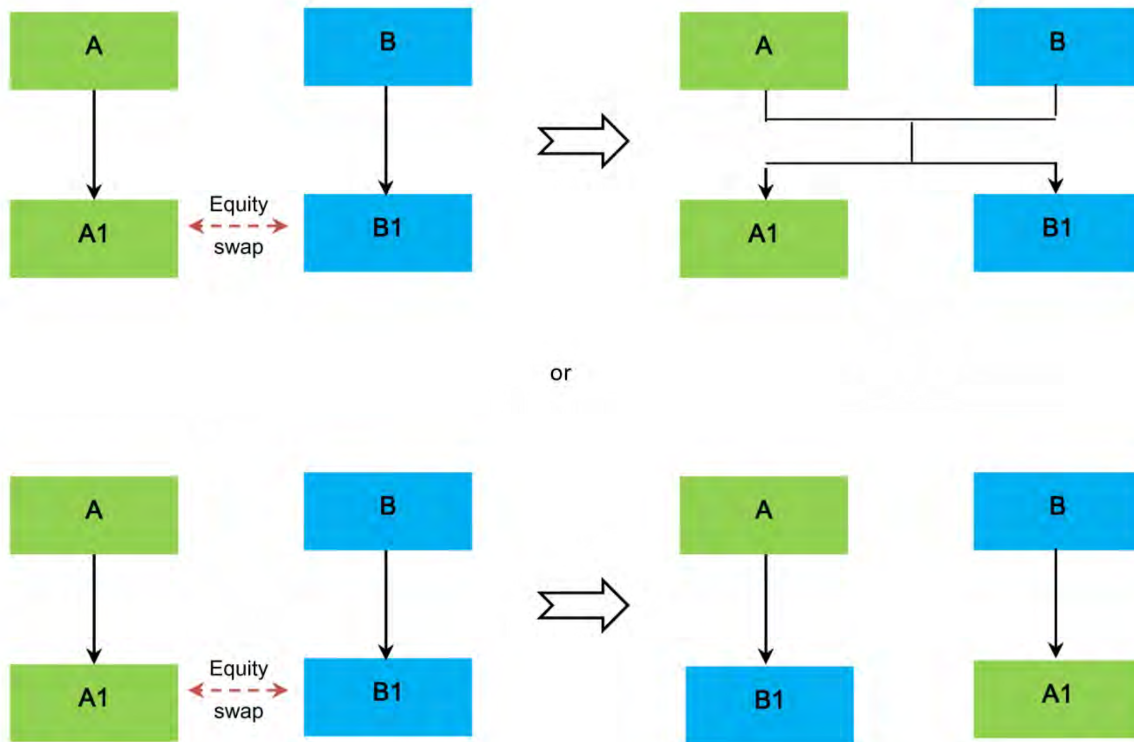

Diagram 2

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Equity interests not allowed for contribution

Order No. 8 provides that an equity interest cannot be used for a capital contribution in the following circumstances:

- The registered capital of an enterprise has not been paid in full;
- The equity has been pledged;
- The equity is frozen under a court order;
- The equity cannot be transferred according to the articles of association of the enterprise;
- The enterprise fails to pass the annual joint inspection required for FIEs;
- The equity interest is in a real estate enterprise, foreign-invested investment enterprise or foreign-invested venture capital (or equity investment) enterprise; or
- Any other circumstances in which equity may not be transferred according to law.

Definitions of equity interest price and equity contribution and limits

According to Order No. 8, the equity interest price refers to the value of an equity interest contribution jointly agreed by the investor that contributes the equity interest and the shareholders or other investors of the enterprise that receive the equity interest contribution ("Invested Enterprise"). An equity contribution is the amount accounted for in the registered capital of the Invested Enterprise.

Order No. 8 also provides that both the equity interest price and the contribution can be negotiated based on the valuation of the equity interest contribution.

The equity interest contribution, together with any other non-monetary contributions of other investors, may not exceed 70% of the total registered capital of the company.

An enterprise whose equity interest has been contributed, the Invested Enterprise and their shareholdings in other enterprises must comply with the Chinese regulations on foreign investment. If the equity contribution would create noncompliance, a restructuring of the relevant assets, business or shareholding must be undertaken before applying to MOFCOM to make the equity interest contribution. (Investors must apply to MOFCOM (or its local branches) to establish or make a contribution to an FIE, regardless of whether they use cash or other non-monetary assets (including an equity interest). Order No. 8 sets out the application procedure and the required documents for the contribution of an equity interest.)

Comments

Eligibility for special reorganization – While the Implementation Rules to China's Enterprise Income Tax Law (EIT Law) do not specifically provide that a contribution is a taxable transaction, it is commonly understood that, when making a non-monetary property contribution, a taxpayer must recognize gain or loss in an amount equal to the fair market value of the contributed property, less its tax basis. Therefore, when an investor makes an equity interest contribution under Order No. 8, the contribution would be taxable under the EIT Law. Further, guidance issued by the Ministry of Finance and the State Administration of Taxation (SAT) in 2009 (Circular No. 59), which currently governs reorganizations in China and provides for tax-free treatment of certain reorganizations, does not specifically list contributions. (Reorganizations covered in Circular 59 include changes of legal form, debt restructuring, equity and asset acquisitions, mergers and de-mergers.) The only type of "contribution" addressed in Circular 59 is where a resident enterprise makes a contribution to its 100%-owned nonresident subsidiary. Therefore, some Chinese tax officials believe that contributions generally are not covered by Circular No. 59 and, thus, may not be eligible for special reorganization treatment. If this is the case, as a type of contribution, an equity interest contribution would not be eligible for special reorganization treatment under Circular No. 59.

An equity interest contribution potentially would be covered by Circular No. 59 if the transaction is considered an equity acquisition. For example, in Diagram 1, Investor B contributes its equity interest in Chinese Co B1 to Chinese Co A1. The transaction can be viewed as Chinese Co A1 acquiring the equity interest in Chinese Co B1 from Investor B in exchange for its own equity interest, which meets the definition of an equity transaction in Circular No. 59. Therefore, if Chinese Co A1 purchases 75% or more of the equity interest of Chinese Co B1, the transaction could potentially qualify for special reorganization treatment (provided the other relevant conditions are satisfied).

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The question, therefore, for purposes of Circular No. 59 is: (1) whether the Chinese tax authorities will view an equity interest contribution as a share acquisition and allow Circular No. 59 to apply; or (2) whether an equity interest contribution must be described as a share acquisition for Circular No. 59 to apply. If the answer to question 2 is in the affirmative, it would be logical to believe that the tax authorities would expect the legal documents effecting the equity interest contribution to describe the transaction as an equity acquisition rather than a contribution. In this case, would the regulatory authority still apply Order No. 8 to the transaction?

In a share swap transaction, as described above, Investor A purchases the equity interest of Chinese Co B1 from Investor B in exchange for Investor A's equity interest in Chinese Co A1. According to 2010 guidance issued by the SAT (Bulletin No. 4), an acquirer can use the shares of the companies controlled by it as consideration for share acquisition. Therefore, such a transaction is covered by Circular No. 59. However, whether the transaction would qualify for special reorganization treatment must be analyzed under Circular No. 59.

Implications for foreign debt borrowing capacity and duty-free import quota – Order No. 8 provides that if the Invested Enterprise is an FIE, for purpose of determining its foreign debt-borrowing capacity and duty-free import quota, the total investment should be determined with reference to the amount of registered capital reduced by the amount equal to the equity contribution. In another words, an equity interest contribution does little to increase the company's foreign debt-borrowing capacity and duty-free import quota.

In China, an FIE may borrow foreign funds up to an amount that is equal to the difference between the total investment and the registered capital. It also may enjoy a duty-free quota up to the total investment for the import of equipment. The amount of registered capital determines the maximum amount of the total investment since a prescribed ratio must be maintained.

In the past, it has been difficult for foreign investors to obtain approval for an equity interest contribution or a share swap transaction. Order No. 8 provides more restructuring opportunities to foreign investors. While Circular No. 59 covers a share swap transaction, it is yet to be seen how equity contributions will be treated for tax purposes.

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Colombia:
Tax reform bill submitted to Congress

The Colombian government submitted a bill to Congress on 24 October 2012 that would make a number of important reforms to the corporate and personal income tax rules and VAT. If enacted before the end of 2012, the new measures would apply as from 1 January 2013.

Proposals affecting companies

- The corporate tax rate would be reduced from 33% to 25%, but a new tax, called an "equity tax," would be introduced at a rate of 8% on net income and be imposed in addition to the corporate income tax. The equity tax would replace the existing payroll tax.
- The tax on capital gains derived from the sale of assets and shares would be reduced from 33% to 10%.
- The transfer of profits by a branch of a foreign company to its head office abroad would be taxed at the 8% rate to the extent such profits had not been subject to tax in Colombia.
- A definition of permanent establishment (PE) would be introduced: "A *permanent place of business located in the country, in which a foreign company, not resident in Colombia, carries on its activities*." A nonresident that carries out activities through a PE in Colombia would be considered a taxpayer for Colombian tax purposes and the PE would be required to comply with Colombia's transfer pricing rules.
- New anti-avoidance rules would be introduced in accordance with international standards.

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- New rules would be introduced on mergers and spin offs: (1) the tax-neutral effect of mergers and spin offs would be repealed; (2) specific conditions would need to be satisfied for a transfer of assets not to be considered a sale and, therefore, avoid the recognition of taxable income; otherwise, gains on such a transaction would be deemed to be taxable income (taxed at the corporate income tax rate); and (3) a merger or spin off involving a Colombian company and a foreign company both with assets in Colombia would be regarded as a taxable sale if the assets transferred did not exceed 15% of the total value of the assets owned by the parties to the transaction.

Individual income tax

- Two new alternative minimum taxes would be introduced: a national alternative minimum tax and a simple alternative minimum tax. The alternative minimum taxes would be levied at progressive rates, and the existing presumptive minimum tax would be abolished.
- Pensions that exceed COP 10 million annually would be taxable at a 5% rate (currently, these are exempt).
- The proceeds of voluntary and mandatory pension contributions and contributions to a savings account for the acquisition of real property would be exempt from tax up to 30% of employment income (up to a maximum of 3,800 tax value units (about COP 98.8 million)), provided the contributions were not withdrawn (except to acquire a residence) for at least 20 years.

Value added tax

- To simplify the VAT rules, there would only be three VAT rates of 0%, 5% and 16% (the latter being the standard rate). The existing rates of 1.6%, 10% and a number of rates exceeding 16% would be repealed.

The proposals are being reviewed by the Colombian Congress, with a vote is expected before December.

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Latvia:
Transfer pricing documentation requirements introduced

Latvian corporate taxpayers (both resident companies and permanent establishments of foreign companies) will be required to submit transfer pricing documentation as from 1 January 2013.

The documentation requirements will be triggered if a company's annual turnover exceeds LVL 1 million and the value of its related party transactions exceeds LVL 10,000. The transfer pricing documentation requirements will apply to transactions with:

- Foreign related companies;
- Latvian companies that qualify for group relief;
- Companies that benefit from tax relief;
- Related individuals; and
- Companies that operate in or are established or set up in low or no tax jurisdictions.

The following information will need to be included in the documentation:

- An industry analysis that includes a general description of the industry in which the taxpayer operates;
- A company analysis that contains relevant information about the company, such as strategy, forecasts and legal and operational structure;
- A functional analysis that includes a description of functions, risks and assets employed by the parties to the transaction;
- The method selected to establish the market price; and

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- An economic analysis based on the transfer pricing method selected and that contains an analysis of financial data or values of transactions between comparable unrelated companies.

Taxpayers will be required to maintain the transfer pricing documentation for five years and provide the tax authorities with the documentation within one month of receiving a request. If all of the required information is not provided or if the taxpayer fails to submit the documentation in a timely manner, the tax authorities can establish the market price for the transaction based on the information available.

Taxpayers will have the option to enter into advance pricing agreements with the tax authorities to negotiate the market price for the relevant transaction if the value of the transaction or planned value exceeds LVL 1 million during the year.

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Luxembourg:
Government presents amended budget 2013

Luxembourg's Finance Minister presented the draft 2013 budget law at the beginning of October 2012. Despite the EU and worldwide economic climate, the Finance Minister presented on 6 November a rather light revised version of its initial budget proposal. The key tax measures in the budget are as follows:

Measures affecting companies

- The Employment Fund surcharge would increase from 5% to 7%, which would increase the combined income tax rate (i.e. the corporate income tax, municipal income tax and Employment Fund surcharge) from 28.8% to 29.22% for companies located in Luxembourg City. The surcharge is levied on the final income tax due by companies (and individuals) to finance the Employment Fund. There are, however, no particular measures to increase the taxable basis to which the income tax rate is applied.
- The minimum flat income tax on finance and holding companies would be increased from EUR 1,500 to EUR 3,000. This minimum flat tax would only apply to entities paying no taxes or less than EUR 3,000 of tax. No such tax would be applied to the extent finance or holding entities are paying more than EUR 3,000 of income tax.
- A new minimum tax on enterprises would be introduced at rates ranging from EUR 500 to EUR 20,000 and may depend on turnover. This tax should not apply to finance or holding companies.
- Tax credits for an investment would be reduced from 13% to 12% for increasing an investment and from 3% to 2% for a global investment exceeding EUR 150,000.

Measures affecting individuals

- A 40% upper tax rate would be added to apply to income exceeding EUR 100,000 for single taxpayers (EUR 200,000 for couples taxed jointly). The upper rate currently is 39% for individuals (excluding the Employment Fund surcharge) and applies to income exceeding EUR 41,793 for single taxpayers (EUR 83,586 for couples taxed jointly).
- As in the case of companies, the Employment Fund surcharge for individuals would increase from 4% to 7% (for income not exceeding EUR 150,000 (EUR 300,000 for couples taxed jointly), and from 6% to 9% (for the portion of income exceeding EUR 150,000 (EUR 300,000 for couples taxed jointly). The upper marginal tax rate would therefore increase to 43.6%.
- The government proposes to introduce changes to the taxation of stock options, which generally would consist of a clarification of the scope but no increase in the taxable base.
- Restrictions would be made to the lump-sum deduction for travel expenses of employees and the deduction for interest on debt as a special expense.

The parliament will discuss the proposed rules in December.

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Netherlands: Draft administrative guidance released on "excessive" debt rules

The Netherlands Council of Ministers approved a draft decree on 12 October 2012 that would clarify certain issues that will arise in the implementation of the new "excessive" debt rules. The new rules, which go into effect on 1 January 2013, will restrict the deductibility of interest and other costs relating to the acquisition of domestic and foreign participations. The administrative guidance addresses three specific aspects of the excessive debt financing rules: (1) application of the rules in the context of restructurings; (2) interaction of the rules with the fiscal unity regime; and (3) interaction of the rules with the restriction on interest deductibility for acquisition holding companies (that became effective on 1 January 2012).

The Parliament also is debating a bill that will abolish the thin capitalization rules, which the new rules will effectively replace, as from 1 January 2013.

Overview of the excessive debt rules

The salient points of the excessive debt rules are as follows:

- The restriction will be triggered where the combined acquisition price of all participations held by a company exceeds the company's equity for tax purposes; in this case, the company will be deemed to have financed the acquisitions with debt ("acquisition debt"), and the acquisition of the participations will be deemed to be excessively leveraged.
- Interest expense and related costs incurred on the excess financing will be nondeductible to the extent the excess financing expense exceeds EUR 750,000.
- The interest deduction restriction will apply to loans obtained from third parties as well as group members, and regardless of whether the loans are used to finance Dutch or non-Dutch participations.
- The restriction on deductibility will apply to existing financing relationships and existing participations. However, under a transitional rule, a taxpayer will be able to elect to disregard 90% of the acquisition price of participations acquired in tax years that commenced on or before 1 January 2006.
- In principle, the restriction on deductibility will not apply to investments made in a participation to expand the operating activities of the group (an "expansion investment"). The acquisition price of such participations will not be taken into account for purposes of calculating the acquisition debt. An expansion investment made by a (foreign or Dutch) group company that is transferred to a Dutch company in the group within 12 months after the initial investment also will still be regarded an expansion investment made by that Dutch company. In principle, a transfer that takes place after the 12 month-period will not be regarded an expansion investment, but as an internal transfer.
- The transitional rule and the exception for expansion investments will not apply to acquisitions that aim to achieve a double interest deduction or the deduction of interest without a corresponding tax liability, nor will they apply where the decision to have the Dutch company concerned make the expansion investment is driven by a desire to create a deductible interest expense in the Netherlands.
- Special rules will apply to active financing operations.

Draft decree

Restructurings – The draft decree contains an exception to the main rule that a participation acquired by a Dutch company from another group company after the expiration of the 12-month period referred to above will not qualify as an expansion investment. The exception applies only if the following conditions are satisfied:

- The original acquisition of the shares by the other group company qualified as an expansion investment; and
- The shares are transferred to the Dutch company in the course of a qualifying reorganization, such as a merger or demerger.

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In these circumstances, the original acquisition price paid by the other group company for the shares will be regarded as being paid for a qualifying expansion investment and, as such, will not be taken into account when calculating the participation debt. Adjustments to the amount so excluded will have to be made when there are capital contributions after acquisition, the activities of the acquired company change, etc.

Interaction with fiscal unity rules – The draft decree addresses the issue of how the acquisition price is to be calculated if a company that itself has one or more participations is consolidated into a Dutch fiscal unity. The original acquisition price for the shares in the subsidiary that is included in the fiscal unity disappears (there is no participation after inclusion in a fiscal unity), but must be replaced by the acquisition price of the participations held by the consolidated subsidiary.

The basic rule is that the acquisition price of such participations would be based on the acquisition price paid by the subsidiary that is being consolidated. This could place the taxpayer in an unintended advantageous position if the acquisition price paid in the past by the subsidiary for the participations was substantially lower than the acquisition price paid for the shares in the subsidiary that is being consolidated. The decree stipulates that, in these circumstances, the acquisition price after the inclusion of the subsidiary in the fiscal unity will be at least equal to the "allocable" acquisition price (i.e. where the assets of the subsidiary that is being consolidated include not only the participation(s) but also other assets, only the acquisition price allocable on a *pro rata* basis to the participation(s)) of the shares in the subsidiary that is being consolidated.

Finally, the regulation contains provisions for determining the acquisition price when a subsidiary leaves a fiscal unity, including the acquisition price of any participations the departing subsidiary may hold.

Interaction with the restriction on the deductibility of interest for acquisition holding companies – The new rules might apply simultaneously with the existing restriction on interest deductions with respect to loans related to acquired subsidiaries that are included in a fiscal unity after acquisition. The regulations propose rules that would prevent interest from being excluded from deduction twice in such circumstances.

Further debate

The rules in the draft decree show that the new interest deduction limitation is not meant to restrict interest deductions related to real business investments of a group of companies through the Netherlands. The rules are complicated, but should enable groups to restructure their activities through the Netherlands without losing an interest deduction.

The draft decree has been submitted to the Council of State and the House of Representatives for their substantive opinion, and it may be amended during the parliamentary debate.

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South Africa: Campaign to ensure retroactive transfer pricing adjustments declared for customs purposes

The South African Revenue Service (SARS) has launched an initiative to ensure that taxpayers making retroactive adjustments for transfer pricing purposes also declare these adjustments for customs purposes.

The customs value of goods imported into South Africa is mainly determined using the price paid or payable for the goods when sold for export, i.e. the price as determined using a transfer pricing policy for related party transactions. In some instances, this transfer price may be subject to a self-initiated adjustment (upwards or downwards), especially for limited risk distributors, to bring their profit margins within a range as determined by the transfer pricing policy (i.e. an arm's length range). These adjustments impact the customs value of imported goods, particularly where the price paid or payable was declared as the customs value to SARS on importation, thus necessitating a similar adjustment for customs purposes.

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The Customs Valuation and Transfer Pricing divisions within SARS are collaborating with a view to eliminate duplication, to share information and to conduct joint audits. As a result of this collaboration, it has become apparent to SARS that, in some cases, year-end retroactive transfer pricing adjustments between related parties were not appropriately declared by taxpayers. To encourage importers to come forward and declare these adjustments, SARS issued a communication on 21 August 2012 alerting importers of their legal duty to declare the transfer pricing adjustments to customs, and it has requested that all taxpayers engaging in related party transactions answer questions to verify whether transfer pricing adjustments have been taken into account for customs valuation purposes. In particular, affected taxpayers must declare whether they made retroactive transfer pricing adjustments in the last five years of assessment and whether the adjustments were taken into account for customs valuation purposes.

SARS is requesting information on transfer pricing adjustments going back five years, even though the Customs Act only allows them to go back two years (unless SARS can prove there was an intent to defraud the government). It also should be noted that if customs valuation adjustments are made after a specific year-end, the taxpayer is required to inform SARS of the adjustment in the following year.

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United States:
Year-end considerations for U.S. investment managers with ownership in foreign entities

Absent congressional action, the Bush-era individual ordinary income tax rates, including favorable treatment for qualified dividends, will sunset at the end of 2012. U.S. individuals who own interests in foreign entities, either directly or through a pass-through entity (LP or LLC), should consider the impact of the impending change in rates with respect to qualified dividends.

Background

Many investment managers who establish operations offshore must decide whether a foreign subsidiary should be treated as a pass-through entity or as a corporation for U.S. tax purposes. Consideration must be given to both the local country tax rules and the U.S. individual tax rules. While pass-through status does not provide for the ability to defer income of the non-U.S. entity from immediate U.S. taxation, it does provide a U.S. individual with the ability to claim a direct foreign tax credit under Internal Revenue Code section 901. Compare that to the scenario in which the non-U.S. entity is treated as a corporation for U.S. tax purposes; in that case, the income may be deferred for U.S. tax purposes, but a foreign tax credit is not available under section 902 for any dividends paid by the foreign entity to its non-corporate shareholder(s).

Under current tax rules, the highest individual tax rate imposed on U.S. individuals is 35%. That rate will increase to 39.6% in 2013 if the Bush-era tax cuts are permitted to expire. Qualified dividends, including those paid by a qualified foreign corporation, are currently taxed at the rate of 15%; as from 1 January 2013, however, dividend income will be taxed at ordinary income tax rates, the upper limit of which will be 43.4% (including the new Medicare contribution tax of 3.8% assessed on unearned income including interest, dividends and capital gains). Thus, U.S. individuals with investments in foreign entities could see a significant increase in their worldwide tax liability beginning in 2013.

For example, assume an investment manager owns an interest in an entity in a country with a low corporate tax rate such as Ireland, which generally imposes corporate income tax at the rate of 12.5%. As from 2013, if the Irish entity is treated as a pass-through for U.S. tax purposes, the income earned by such entity would be taxed in the U.S. at the level of the U.S. individual owners at the rate of 39.6%, with a foreign tax credit available for the 12.5% tax paid in Ireland. The resulting worldwide tax burden on the Irish entity would be 39.6%.

However, if the Irish entity is treated as a corporation for U.S. tax purposes, and it pays a qualified dividend, under current tax rules, the dividend would be taxed at the rate of 15%. The global tax burden on distributed profits, taking into account the 12.5% tax in Ireland and the inability to claim a deemed paid credit for such tax in the U.S., is 25.625%.

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In contrast, if, beginning in 2013, dividends are subject to tax at ordinary income tax rates, plus the 3.8% Medicare contribution tax, treating the Irish entity as a corporation for U.S. tax purposes will yield a global tax cost for distributed earnings of approximately 50.4%. This is a dramatic shift in the global tax burden of the U.S. individual owners when comparing a pass-through to a corporate structure.

Conclusion

Any conversion of a non-U.S. entity from treatment as a corporation to a pass-through entity (or vice versa) has U.S. tax consequences. Thus, consideration must be given to the consequences of such a conversion for U.S. owners of foreign entities.

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In brief

Estonia – As from 1 January 2013, the unemployment insurance contribution rates will reduce from 1.4% to 1% for employers and from 2.8% to 2% for employees.

European Union – The European Court of Justice (ECJ) has gone straight to judgment in two (joined) cases referred from Sweden, concerning VAT refund claims filed by nonresident businesses. In both cases (Daimler AG and Widex A/S), the Swedish tax authorities denied the claims, arguing that the companies had a fixed establishment in Sweden and, hence, were not entitled to make intra-Community VAT refund claims. According to the Swedish authorities, the fact that Daimler regularly sent cars and staff to Sweden for winter testing, using facilities owned by an associated company there and that Widex had a research operation based in Sweden, meant that the businesses were outside the scope of the intra-Community refund arrangements. The ECJ disagreed and confirmed that both companies were entitled to make the refund claims, since in both cases they "...cannot be regarded as having in that other Member State a 'fixed establishment from which business transactions are effected."

Netherlands – The new coalition government has announced that the Netherlands will join 10 other EU member states in supporting the introduction of a financial transaction tax (FTT), provided all banking and tax revenue from the tax are returned to the member states and certain other conditions are satisfied. The European Commission recently presented a formal proposal for enhanced cooperation on the FTT, which must be approved by the Council of Ministers. The other EU countries that want to proceed with the tax are: Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain. The current proposal for the FTT provides for a 0.1% tax on trades in shares and bonds, and at 0.01% on derivatives trades.

Slovakia – The parliament is discussing a proposal to increase the corporate income tax rate from 19% to 23% as from 1 January 2013.

United States – The Internal Revenue Service (IRS) has announced tax relief for taxpayers affected by Hurricane Sandy by postponing certain filing and payment deadlines for returns due starting in late October 2012. This relief is available to taxpayers in specifically designated counties in the states of Connecticut, New Jersey and New York. As a result, affected individuals and businesses will have until 1 February 2013 to file these returns and pay any taxes due. The postponement of time generally covers individual, corporate, and estate and trust income tax returns; partnership returns, S corporation returns; and employment and certain excise tax returns. The IRS will abate any interest, late payment or late filing penalty that is imposed for filings within this postponement period. This relief will be granted automatically.

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United States – The IRS has released guidance (Announcement 2012-42) that extends the deadlines for certain FATCA requirements. The announcement presents new timelines for due diligence, withholding and reporting requirements that are closely aligned with those in the Model International Governmental Agreement, and provides additional guidance on grandfathered obligations.

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Canada
"Upstream loan" rules and other foreign affiliate proposals reintroduced
On 24 October 2012, the Minister of Finance tabled in the House of Commons a Notice of Ways and Means Motion that consolidates draft legislation that has been outstanding for many years. The legislation includes extensive technical amendments to most aspects of the foreign affiliate rules, including the computation of foreign accrual property income and surplus and reorganizations of foreign affiliates. [Issued: 29 October 2012]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/74fc0cabefdaa310VgnVCM2000003356f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dttl_tax_alert_Canada_291012.pdf

Denmark
New bill proposed to ease taxation of capital gains on portfolio shares
The government presented a bill to parliament on 1 November 2012 that would grant a tax exemption for capital gains derived by companies from the sale, etc. of unlisted portfolio shares. If enacted, the exemption would apply as from 1 January 2013. [Issued: 1 November 2012]
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