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## New Greek tax code strengthens thin cap rules, introduces CFC rules

The Greek parliament approved a tax bill on 23 July 2013 that will replace the existing income tax code. The new law, which generally applies from 1 January 2014, makes a number of notable changes to the tax rules affecting companies and includes measures designed to combat tax avoidance and evasion. These include a revision to the definition of a "preferential tax regime," a strengthening of the thin capitalization rules and the introduction of controlled foreign company (CFC) rules.

### Anti-avoidance rules

Preferential tax regime jurisdictions  The new law retains the rules restricting the deduction of payments made to entities established in "non-cooperative" jurisdictions or in countries with preferential tax regimes, but it changes the definition of a preferential tax regime to mean a country that does not impose income tax or that imposes income tax at a rate less than 13% (i.e. 50% of the Greek rate), even if the country is an EU member state (under existing rules, the income tax rate must be lower than 12% (i.e. 60% of the Greek rate). The new definition will apply to payments made during fiscal years commencing on or after 1 January 2014.

Thin capitalization rules  Changes have been made to the thin capitalization rules to bring them into line with international practice and the guidelines of the EU Council:

- The new rules will apply to all loans, regardless of their nature (whether intragroup or non-intragroup, bank loans, etc.).
- The amount of a company's loans and the company's net position will no longer be taken into account in determining whether interest is deductible. Instead, the amount of "net interest" (interest payable minus interest receivable) will be determinative.



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- Net deductible interest will be limited to 25% of EBITDA (earnings before interest, tax, depreciation and amortization). Companies that are not members of a group, however, will be able to deduct net interest up to EUR 1 million per year without restriction.
- Disallowed interest expense will be able to be carried forward to the following five tax years, subject to certain conditions.

The new rules will apply to interest expense incurred in tax years beginning on or after 1 January 2014. The rules will not apply to interest expense incurred by credit institutions.

Controlled foreign company rules The new law introduces CFC rules, under which the undistributed income of a foreign legal entity will be considered the taxable income of a Greek resident that controls the foreign entity, if all of the following requirements are met:

- The taxable person holds, alone or with other persons, directly or indirectly, more than 50% of the capital of the foreign entity.
- The foreign entity is resident in a black-listed country or in a non-EU country that has a preferential tax regime (a CFC located in an EU member state will not be caught by the rules unless it is established to avoid tax).
- More than 30% of the CFC's pretax income is passive income, such as:
    - Dividends or capital gains from the transfer of shares;
    - Interest or income from other financial assets;
    - Royalties;
    - Income from securities;
    - Income from movable assets;
    - Income from real estate; and/or
    - Income from insurance, banking and other financial activities.
- More than 50% of the CFC's relevant income is derived from transactions with the Greek taxpayer or persons related to the taxpayer.

## Other changes

Other measures in the new income tax code are as follows:

- The place of effective management is added to the definition of residence of a legal entity. As a result, a legal entity will be deemed to be tax resident in Greece if it is established or incorporated in Greece, has its registered seat in Greece or has its place of effective management in Greece. The place of effective management may be the place where day-to-day administration is carried out, where strategic decisions are made or where the annual meeting of shareholders is held. In addition, the residence of the majority shareholders may be taken into account.
- The income tax rate applicable to legal persons and legal entities that maintain double-entry books according to the Code for the Tax Recording of Transactions will continue to be 26%. The rate for legal persons that maintain single-entry books will be 26% for taxable income up to EUR 50,000 and 33% on income in excess of that amount.
- Any increase in income from an illegal, unjustified or unknown source will be subject to income tax at a rate of 33%.
- The tax exemption for intercompany dividends will be extended to apply to dividends paid to any Greek resident legal entity or branch, by any entity except an entity resident in a noncooperative jurisdiction, provided the recipient company holds at least 10% of the capital of the payer company for at least 24 months. (The existing regime applies only in respect of EU subsidiaries and certain Greek companies.) The exemption may apply even if the required participation is not held for the full 24 months, provided the recipient company provides a cash guarantee equal to the amount of the exemption.
- The deductibility of expenses will be restricted.
- The five-year tax loss carryforward will be retained, but it will not be available when there is a change of more than 33% in the direct or indirect shareholder composition or in the ownership of the voting rights in the taxpayer entity, unless the taxpayer can show that the change was not aimed at tax avoidance or evasion.
- The concept of a transfer of functions (business restructuring) will be introduced and will require that transfers of functions between related parties comply with the arm's length principle. These provisions follow OECD guidance on business restructurings.


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- The new income tax code incorporates the provisions of the EU merger directive, which provides for a common system of taxation applicable to mergers, demergers, partial demergers, contributions of assets and exchanges of shares concerning companies in different EU member states.

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## China:
## SAT issues guidance on zero-rated VAT treatment and VAT exemption

China's State Administration of Taxation (SAT) has issued two sets of guidance on the VAT reform:

- Nationwide implementation guidance for the application of zero-rated VAT treatment on qualifying taxable services was issued on 28 August 2013 (Bulletin 47); and
- Guidance on the implementation of a VAT exemption for cross-border services was issued on 18 September 2013 (Bulletin 52).

Zero-rated VAT treatment provides greater potential refund benefits than a VAT exemption because when a service is zero-rated, no output VAT is payable, but input VAT incurred on costs is fully recoverable; as a result, there is no VAT cost. By contrast, when a service is VAT-exempt, no output VAT is payable but the input VAT incurred on costs is not recoverable and, therefore, becomes a cost to the business.

### Zero-rated VAT treatment

Bulletin 47, which addresses the nationwide implementation of zero-rated VAT treatment on qualifying taxable services, applies retroactively from 1 August 2013 and supersedes guidance issued in 2012 on the procedures for claiming zero-rated treatment for taxable services under the VAT pilot program (Bulletin 13).

Bulletin 13 provided that the following services are subject to the zero rate:

- International transport services, including the cross-border and overseas transport of passengers and cargo (transportation from/to/in Hong Kong, Macau and Taiwan also is eligible for the zero-rate VAT according to other guidance);
- R&D services provided for overseas entities; and
- Design services provided for overseas entities (except design services provided for domestic immovable property).

Bulletin 13 also clarified how the calculation of the "exempt, credit and refund" method is to be used and required qualifying service providers to register with the competent tax authorities before applying that method.

Although Bulletin 47 retains the main provisions of Bulletin 13, it makes the following changes/clarifications:

- When international transport is provided using vehicles obtained under a voyage charter, time charter or "wet lease" (a leasing arrangement that includes both the leased aircraft and the crew), the lessee, rather than the lessor, can apply for zero-rated VAT treatment.
- The "exempt and refund" method applies to trading companies that provide services eligible for zero-rated VAT treatment. (The VAT refund mechanism under this method is generally less complicated than that under the exempt, credit and refund method, which requires taxpayers to perform additional calculations to determine the amount of refundable VAT that is effectively credited against the VAT payable arising from domestic sales.)
- The tax base under the exempt, credit and refund method is the total proceeds collected for the provision of qualified services, whereas the tax base under the exempt and refund method is the amount on the VAT special invoice for domestically purchased services or the amount on the VAT withholding certificate for imported services.
- When a nontrading company that provides zero-rated services also exports goods and provides processing, repair and replacement services to overseas, the VAT refund applicable to these different types of businesses can be


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calculated together because the applicable calculation method will be the same in all cases (the exempt, credit and refund method). However, when the tax authorities are examining and approving an export VAT refund, the total amount of the refund must be apportioned based on the relevant percentage of each business (the respective proportions of zero-rated services and the goods/processing, repair and replacement services provided to overseas).

- The "six-month monitoring period" for companies newly engaged in the provision of zero-rated services is abolished.
- Taxpayers may elect to relinquish the right to apply zero-rated treatment and elect VAT-exempt treatment or to pay VAT for the provision of zero-rated services. Once such an election is made, however, it cannot be changed for 36 months.

## VAT exemption

The guidance on the implementation of a VAT exemption for cross-border services under the VAT reform program has been highly anticipated. A list of VAT-exempt cross-border services was first introduced in 2012, at the time the Shanghai pilot VAT reform was launched, but many taxpayers have been unable to obtain exempt treatment in practice due to the absence of implementation guidance.

Bulletin 52 introduces some new requirements for a cross-border service to benefit from the VAT exemption:

- The service provider must enter into a written contract with the service recipient;
- If the service was provided to overseas entities, all service fees must be collected from overseas; and
- The taxpayer must apply for the VAT exemption.

To apply for the exemption, a taxpayer must submit the following documents to the tax authorities:

- VAT Exemption Form for Cross-Border VAT-able Services;
- Cross-border service contract (original and photocopy);
- Documents showing that the services were provided outside China (if applicable);
- Documents showing that international transportation services were provided (if applicable);
- Documents showing that the service recipient was outside China (if applicable); and
- Any other documents requested by the tax authorities (for example, a notary letter issued by an authorized foreign institution).

Any documents drafted in a foreign language must be accompanied by a Chinese translation.

Bulletin 52 is effective from 1 August 2013, but it also may apply to cross-border services provided before that date that qualified for VAT-exempt treatment. The following rules apply for services provided before the effective date:

- If the VAT exemption already has been applied, the taxpayer must nevertheless satisfy the filing requirements provided under Bulletin 52; or
- If VAT has been collected, the taxpayer may apply for the VAT exemption by satisfying the filing requirements under Bulletin 52; any overpaid tax will be refunded or offset against tax payable in the future. However, if a VAT special invoice has been issued, the VAT exemption will not be granted until all copies of such invoices are withdrawn and cancelled.

## Comments

The SAT's guidance on both zero-rated and VAT-exempt treatment is welcome.

Companies providing services to overseas customers that have not enjoyed the zero-rated VAT treatment should consider the following steps:

- Review the nature of services provided to overseas and assess whether the services can qualify for zero-rated treatment. Although there continue to be some areas of uncertainty, if a company can make a good business case, it can make an argument for zero-rating;


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- Establish proper internal control processes and track all information required to request zero-rated treatment;
- Collect the necessary information and apply for zero-rated treatment; and
- Explore options, such as business model restructuring, by separating zero-rated services from other services or businesses to maximize the VAT savings.

Taxpayers that have not been able to obtain VAT-exempt treatment for cross-border services should take action to complete the filing procedures described in Bulletin 52 to claim any overpaid VAT.

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## Germany:
## Federal Tax Court rules on requirements for partnership to head a tax group

Germany's Federal Tax Court has ruled that when a partnership is the controlling entity of a German tax group (Organschaft), the partnership does not have to carry out its own genuine business activities from the beginning of the first year of the Organschaft; it is sufficient if the partnership commences such activities during the first year in which the tax grouping is effective.

German tax law provides for the establishment of an Organschaft, under which participating companies can pool their profits and losses for corporate and trade tax purposes. One of the requirements to set up a tax group with a partnership as its head is that the partnership must carry out its own genuine business activities (no similar requirement applies when a corporation is the head of a group). As a result, a partnership that is merely a holding/financing entity cannot act as the head of a group. "Genuine business activities" typically means that the partnership must earn income from engaging in a trade or business, such as providing services to other affiliated entities.

The Federal Tax Court (BFH) recently ruled on whether a partnership that is the head of an Organschaft is required to carry out its own genuine business activities from the beginning of the first year for which the Organschaft is effective, or whether the activities can begin at a later point during that first year. In the case, the taxpayer applied for Organschaft treatment from 1 January 2006, even though the head of the group (a limited commercial partnership, or KG) did not commence its own business activities until 1 March 2006. The BHF ruled in favor of the taxpayer, holding that it is sufficient if the partnership starts its own genuine business activities during the first year of the Organschaft.

The BFH decision may provide some relief in M&A transactions where the parties intend to set up a tax group between the acquisition vehicle (a partnership) and the target entities, and Organschaft treatment is to become effective on or shortly after the date the deal is closed. In such cases, it previously was necessary for the acquisition vehicle to engage in genuine business activities between the time the deal was signed and the time it closed. The BFH decision should offer more flexibility from a timing perspective in these cases.

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## Indonesia:
## Guidance issued on 1% final income tax

Indonesia's minister of finance has issued guidance on a regulation issued by the government in June 2013 (and effective 1 July 2013) that introduces a 1% final tax on the monthly gross turnover of corporate and individual taxpayers that earn income from certain business activities (but not permanent establishments of nonresidents) whose annual gross turnover is less than IDR 4.8 billion. At the time the regulation was issued, it was announced that the Ministry of Finance would be issuing detailed guidance on the criteria for commercial operations and the calculation, settlement and reporting of the 1% tax. This guidance applies retroactively from 1 July 2013.

The important points of the new guidance are as follows:

- The IDR 4.8 billion threshold is determined based on the gross business revenue generated (including from branches) from the previous tax year, excluding income from independent professional work and income that already is subject to another final tax regime. Foreign-source income and tax-exempt income are part of this exclusion.
- Taxpayers that are subject to the 1% final tax must pay the tax on a self-assessment basis. The tax must be remitted monthly based on monthly turnover, no later than the 15th day of the month following the end of the tax period. At this stage, the tax remittance also will serve as the submission of a monthly tax return (that is, no reporting is required). However, from the January 2014 tax period, taxpayers will be required to submit a monthly income tax return form (yet to be released) by the 20th of the month following the end of the tax period.
- If income that is subject to the 1% final tax also is subject to withholding tax under prevailing tax rules (e.g. rental income from non-building assets, repair and maintenance services, etc.), such income may be exempt from withholding tax if the taxpayer can present an exemption certificate. A taxpayer can apply for the certificate with the tax office where it is registered.

The tax authorities will be issuing further implementing regulations regarding the format for monthly tax payments and reporting, as well as procedures for the granting of an exemption certificate.

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## Netherlands:
## Tax package for 2014 announced

Details of the 2014 tax package were released on 17 September 2013 as part of the 2014 Dutch budget. No changes are proposed to the 25% corporate income tax rate, but the tax package proposes the following:

- The basis for calculating the applicable interest rate on corporate tax assessments would be changed. Currently, the 3% legal interest rate for noncommercial transactions is used, but the package proposes that the applicable rate change to the statutory interest rate for commercial transactions (currently 8.5%), with a minimum rate of 8%. The interest on tax due and late payment interest with respect to other taxes would continue to be based on the rate for noncommercial transactions, but it would be subject to a minimum rate of 4%. The period for which interest is due (or to be refunded) would remain unchanged. As a result of transition rules, the new rules would apply from 1 April 2014.
- The research and development (R&D) deduction introduced in 2012 to grant certain taxpayers an additional deduction for qualifying innovation costs and expenses would be increased from 54% to 60%, and the conditions for the application of the wage tax deduction for R&D activities would be relaxed.
- The minimum investment amount for claiming the energy investment allowance or the environment investment allowance would be increased from EUR 450 to EUR 2,500.
- The 16% final levy on employee salaries that was introduced in 2013 for a one-year period would be extended to apply to tax year 2014. The levy would apply to salaries that exceed EUR 150,000 in 2013.


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- The Dutch tax authorities would no longer be required to notify a taxpayer in advance when they provide information to a foreign tax authority per a request or through a spontaneous exchange (as is currently the case for automatic information exchanges).

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## Puerto Rico:
## Income tax law changes enacted

On 30 June 2013, the governor of Puerto Rico enacted into law a substitutive version of House Bill 1073 (now Act 40 of 2013, known as the Tax Burden Redistribution and Adjustment Act). Among other items, Act 40 makes significant changes to the alternative minimum tax (AMT) regime applicable to corporations engaged in a trade or business in Puerto Rico and to the net operating loss carryover and deductibility rules, introduces a 1% tax on insurance companies in Puerto Rico and allows a reduction of the sales and use tax rate by December 2013. Act 40 was enacted as part of the Puerto Rico budget for fiscal year 2013-2014.

Since the enactment of Act 40-2013, the Puerto Rico Treasury Department has issued guidance on the new measures, specifically with respect to requests for the reduction of the additional tax on gross income, the reduction of the tax rate applicable to related party purchases, the exclusion of expenses paid to a related party from the computation of the AMT and an exemption from the disallowance of a percentage of expenses incurred on related party payments. In those cases, taxpayers will be required to submit a memorandum supporting the request, a report containing certain information for the prior four years and, for a rate reduction with respect to related party purchases, a transfer pricing study.

The income tax law changes outlined below are applicable to taxable years beginning after 31 December 2012. The sales and use tax rate reduction will be effective on 1 December 2013, unless the date is extended by the Puerto Rico legislature.

### Additional tax on gross income

Companies in Puerto Rico are subject to income tax based on a graduated tax rate structure (normal tax plus surtax). In addition, companies are subject to an AMT. Act 40 introduces a new additional tax on gross income as part of the AMT regime that applies to corporations, partnerships, special partnerships and corporations of individuals engaged in a trade or business in Puerto Rico. The additional tax on gross income is applied on a graduated scale at the following rates:

| Gross income (USD) | Rate (%) |
|---|---|
| 1 million to 3 million | 0.20 |
| More than 3 million and up to 300 million | 0.50 |
| More than 300 million and up to 600 million | 0.70 |
| More than 600 million and up to 1.5 billion | 0.80 |
| More than 1.5 billion | 0.85 |

Financial institutions are subject to the additional tax on gross income at a special rate of 1%.

Taxpayers other than financial institutions may be able to request a reduction of the additional tax on gross income (but not below 0.2%) if the additional tax is found to be significant when compared to the gross margin of the taxpayer or if the tax results in undue economic hardship.

### Alternative minimum tax calculation

Act 40 makes significant changes to the rules governing the calculation of the AMT (which includes the new additional tax on gross income) and introduces new provisions pertaining to related-party transactions. The AMT will be calculated as the greater of the following items:


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- AMT net income taxed at an increased 30% rate, plus the additional tax on gross income; or
- 20% of expenses incurred or payments made to related parties that are not subject to tax in Puerto Rico (including head office expenses allocated to a branch), plus 2% of the value of personal property purchased from related parties (if certain thresholds are met), plus the additional tax on gross income.

The related party purchases computation will not apply in the following cases:

- A purchaser that has gross receipts of less than USD 10 million in any of the three preceding years is not required to perform the computation;
- Purchases from related persons engaged in a trade or business in Puerto Rico are excluded from the computation; and
- Purchases of property used in exempt operations under Puerto Rico Act 73 or similar tax incentives laws are excluded from the computation.

Taxpayers can request a ruling from the secretary of treasury that reduces the 2% tax rate applicable to related party purchases (but not to less than 0.2%, except for gas and crude oil products), if the taxpayer can demonstrate that the value of the property purchased from related parties is equal or similar to what the value would be in an arm's length transaction.

### Surtax

The applicable surtax rates for taxable years beginning after 31 December 2012 are the following:

| Net taxable income (USD) | Surtax rate |
| --- | --- |
| Up to 75,000 | 5% |
| 75,001 – 125,000 | 3,750 + 15% of the excess over 75,000 |
| 125,001 – 175,000 | 11,250 + 16% of the excess over 125,000 |
| 175,001 – 225,000 | 19,250 + 17% of the excess over 175,000 |
| 225,001 – 275,000 | 27,750 + 18% of the excess over 225,000 |
| Over 275,000 | 36,750 + 19% of the excess over 275,000 |

Thus, the maximum corporate tax rate is 39%. The surtax credit is reduced from USD 750,000 to USD 25,000. The USD 25,000 surtax exemption also applies to taxable years beginning after 31 December 2012.

### Other changes

The bill also includes the following measures:

- Insurance companies are subject to a 1% special tax imposed on insurance premiums accrued after 30 June 2013.
- Fifty-one percent of amounts paid to or incurred by related parties that are not subject to tax in Puerto Rico are nondeductible (including payments made to the head office of a branch).
- The net operating loss (NOL) deduction is limited to 90% of net taxable income for the year.
- The carryforward period for NOLs incurred is as follows:
    - For taxable years beginning before 1 January 2005: seven years;
    - For taxable years beginning after 31 December 2004 and before 1 January 2013: 12 years (extended from 10 years); and
    - For taxable years beginning after 31 December 2012: 10 years.
- Effective 1 December 2013, the sales and use tax rate will be reduced from 7% to 6.5%, unless the rate reduction is postponed by the Puerto Rico legislature (but not beyond February 2014).
- A three-year moratorium is imposed on certain tax credits, under which the credits will not be granted during taxable years beginning after 31 December 2012 and before 1 January 2016. The use of credits purchased or granted before 30 June 2013 will be allowed, however, but only up to 50% of the tax outstanding.

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## Thailand:
## Foreign exchange control regulations relaxed

The Bank of Thailand has announced that the regulations on foreign exchange control are being relaxed to allow for increased liquidity in investments abroad and to provide flexibility in managing foreign currency. A notification dated 25 June 2013 makes the following changes:

- Eliminates restrictions on the remittance of funds by a Thai individual for (i) the incorporation of an entity or for a joint investment in an overseas business, if the individual's ownership or shareholding is not less than 10%; (ii) lending to such business entity; or (iii) investment or lending to overseas affiliates of such business entity. The remittance can be made without limitation, as necessary and appropriate.
- Eliminates restrictions on deposits into a foreign currency account by a Thai resident with future obligations to pay in foreign currency. A resident can deposit foreign currency purchased, exchanged or borrowed from authorized juristic persons (e.g. commercial banks) in an amount not exceeding the future obligations to pay in foreign currency.

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## In brief

Costa Rica – An executive decree issued on 13 September 2013 introduces transfer pricing rules for the first time in Costa Rica. The rules, which generally follow the OECD transfer pricing guidelines, apply to related-party transactions involving goods, services and intangible assets. The decree sets out the applicable transfer pricing methodologies and documentation requirements. An advance pricing agreement will be possible.

European Union – The Court of Justice of the European Union (CJEU) has ruled against the taxpayer in the French case of *Société le Crédit Lyonnais*, about whether the activities of foreign branches should be taken into account when calculating how much input VAT should be reclaimed. The bank argued that its overseas activities should be taken into account when determining the level of French input VAT recovery, while the tax authorities' view was that only domestic turnover could be included in the calculation. The Advocate General's opinion in the case suggested that EU member states are not *required* to take the activities of branches in other countries into account when computing the amount of deductible input VAT, which seemed to leave open the possibility that member states *could* (but did not have to) permit the recovery of VAT connected with foreign operations. However, the CJEU decision goes further and indicates that EU law does not permit the turnover of foreign branches to be taken into account when determining how much input VAT can be reclaimed.

India – Final transfer pricing safe harbor rules issued on 18 September 2013 set out the circumstances in which the Indian tax authorities will accept transfer prices declared for cross-border transactions. The main features of the rules are as follows:

- The safe harbor will apply for a five-year period beginning with fiscal year 2012-2013;
- The minimum safe harbor profit margin for software development services and IT enabled services is 20% for taxpayers with turnover of up to INR 500 crores and 22% for taxpayers with turnover exceeding that amount;
- The rules apply only to eligible taxpayers and for specified international transactions;
- The rules apply only if a taxpayer opts to be governed by the rules before the due date for filing the annual income tax return for the first eligible year;
- The taxpayer must maintain documentation under the transfer pricing rules;


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- The safe harbor does not apply to transactions with an associated enterprise located in a low-tax jurisdiction (a jurisdiction with a tax rate of less than 15%) or a "notified" country; and
- A taxpayer opting to use the safe harbor rules may not invoke the mutual agreement procedure under a relevant tax treaty.

Netherlands – Resident taxable persons and nonresident taxable persons with a tax representative must electronically file their VAT returns. Taxable persons currently receive a "return letter" by mail, reminding them to file their returns; these letters also include "giro collection" forms that can be used to pay the VAT due. In a notification published on their website, the tax authorities have announced that the VAT return letters will be abolished (and giro collection forms will no longer be sent), meaning that entrepreneurs will have to monitor the due dates for filing their VAT returns. In January 2014, VAT taxpayers will receive a list of VAT return periods, due dates for filing and payment and payment references to facilitate a smooth transition. If a taxpayer wishes to receive email notifications to remind it to file its VAT returns, the taxpayer must access the secure part of the tax authorities' website, enter its email address in the user settings and check the box indicating it wishes to receive email messages.

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## 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

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

Belgium-Uruguay – When in effect, the treaty signed on 23 August 2013 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. The treaty also provides for a 0% withholding tax on dividends paid to a pension fund, provided certain requirements are met. A 10% withholding tax rate will apply to interest, although interest paid to a pension fund in certain cases will be exempt. The rate on royalties will be 10%.

China – China signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 27 August 2013. All G20 countries have now fulfilled the commitment they made at the Cannes G20 Summit to sign the convention and move towards automatic exchange of information as the global standard.

China-Bahrain – When in effect, the protocol to the 2002 treaty signed on 16 September 2013 provides that a 10% withholding tax rate will apply to dividends. The withholding tax rates on interest and royalties will not be affected by the protocol.

China-Switzerland – When in effect, the treaty signed on 25 September 2013 to replace the current treaty dating from 1990 provides that dividends will be exempt from withholding tax if paid to the government or a local authority, an institution or fund wholly owned by the other contracting state or the central bank. A 5% withholding tax rate will apply to 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 will be 10% (with some exemptions for interest on loans guaranteed or insured by the government or a local authority, the central bank or any agency or entity that is wholly owned by the other contracting state). The rate on royalties will be 9%.

Cyprus-Ukraine – The 2012 treaty entered into force on 7 August 2013 and will apply from 1 January 2014; this will replace the existing treaty with the former USSR dating back to 1982. When in effect, the treaty will provide for a 5% withholding tax on dividends paid to a company that holds at least 20% of the capital of the payer company or has invested at least EUR 100,000 in the acquisition of shares or other rights of the payer company; otherwise, the rate will be 15%. The withholding tax rate on interest will be 2%. The rate on royalties paid for a copyright of scientific work, a patent, trademark, secret formula, process or information concerning industrial, commercial or scientific experience will be 5%; otherwise, the rate will be 10%.


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Finland-Tajikistan – The 2012 treaty entered into force on 5 September 2013 and will apply from 1 January 2014. When in effect, the treaty will provide 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 15%. A 0% rate will apply to interest paid on bank loans and the credit sale of merchandise and equipment; otherwise, the rate will be 10%. The rate on royalties will be 5%.

Germany-Norway – When in effect, the protocol to the 1991 treaty signed on 24 June 2013 will amend the dividends article to provide for a 0% withholding tax when dividends are 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 protocol eliminates the paragraphs in the dividends article addressing taxation when different rates apply to undistributed and distributed profits.

Germany-Philippines – When in effect, the treaty signed on 9 September 2013 to replace the current treaty dating back to 1983 will provide for a 5% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 70% of the capital of the payer company and 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 0% rate will apply to interest paid in connection with the sale of commercial or scientific equipment on credit or in connection with the sale of goods by an enterprise to another enterprise on credit; otherwise, the rate will be 10%. Royalties will be taxed at a rate of 10%.

Hungary-Switzerland – When in effect, the treaty signed on 12 September 2013 to replace the current treaty dating back to 1981 will provide for a 0% withholding tax rate on 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, or dividends paid to a pension scheme or to the central bank of the other contracting state. Otherwise, the rate will be 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

International – The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended by a 2010 protocol, which updated the convention in accordance with the OECD standards for the exchange of information), entered into force on and applies from 1 September 2013 in Belize, Ghana, Greece, Ireland and Malta. The convention provides for the mutual exchange of tax information and assistance in the recovery of taxes and the service of documents. Additionally, the protocol to the convention applies from 1 September in the Kingdom of the Netherlands, including its four constituent countries (Aruba, Curaçao, the Netherlands and St. Maarten) and the Caribbean Netherlands (the islands of Bonaire, St. Eustatius and Saba).

Korea-Luxembourg – The 2012 protocol entered into force on 4 September 2013 and applies from the same date. A 10% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate is 15%. A 5% rate applies to interest paid to a bank; otherwise, the rate is 10%. A 5% rate applies to royalties paid for the use of, or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific equipment; otherwise, the rate is 10%.

Luxembourg-Macedonia – The 2012 treaty entered into force on 23 July 2013 and will apply from 1 January 2014. When in effect, the treaty will provide 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 15%. The rate on interest will be 0% and that on royalties 5%.

Luxembourg-Poland – The 2012 protocol entered into force on 25 July 2013 and applies from 1 September 2013 for withholding taxes and from 1 January 2014 for all other tax matters. A 0% rate applies to dividends paid to a company that holds directly at least 10% of the share capital of the payer company for a continuous period of 24 months before the dividends are paid; otherwise, the rate is 15%. The rate on interest and royalties is 5%.

Luxembourg-Russia – The 2011 protocol entered into force on 30 July 2013 and will apply from 1 January 2014. When in effect, the protocol will provide that a 5% withholding tax will apply to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company and has invested at least EUR 80,000 or the equivalent in rubles in that company. The withholding tax rates on interest and royalties will not be affected by the protocol.

Luxembourg-Seychelles – The 2012 treaty entered into force on 19 August 2013 and will apply from 1 January 2014. When in effect, the treaty will provide for a 0% withholding tax on dividends paid to a company (other than a partnership)


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that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest paid by a financial institution or on credit sales will be 0%; otherwise, the rate will be 5%. The rate on royalties will be 5%.

Luxembourg-Tajikistan – The 2011 treaty entered into force on 27 July 2013 and will apply from 1 January 2014. When in effect, the treaty will provide for 0% 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 for an uninterrupted period of at least 12 months; otherwise, the rate will be 15%. A 0% rate will apply, inter alia, to interest paid to a mutual fund or financial institution; otherwise, the rate will be 12%. The rate on royalties will be 10%.

Malta-Ukraine – When in effect, the treaty signed on 4 September 2013 will provide for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

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Brazil
New accounting and tax rules and reporting requirement under Transition Tax Regime
The Brazilian tax authorities issued guidance on 17 September 2013 that introduces several new rules that could have a significant – and potentially negative – impact on the mechanisms for calculating the corporate income tax and the social contribution on profits, and that could lead to a retroactive assessment of tax. The guidance also introduces a new reporting requirement for companies that likely will increase the administrative burden and compliance costs.
[Issue date: 24 September 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/b7da5069ec051410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:wta:eng:tax:092713
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United States
US Tax Court Holds That Elective Rev. Proc. 99-32 Accounts Receivable Are for Certain Tax Purposes "Indebtedness" Existing at the End of the Year to Which the 482 Adjustment Relates
On 18 September 2013, the Tax Court held that when controlled taxpayers elected the benefits of Rev. Proc. 99-32, and therefore established accounts receivable from a CFC by its US shareholder in an attempt to minimize the fallout from agreed section 482 adjustments, the accounts receivable constituted "indebtedness" of the CFC to a related person, and were deemed established as of the close of each year to which the section 482 adjustments related.
[Issue date: 23 September 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/c27d9b3934651410VgnVCM3000003456f70aRCRD.htm?id=us:em:na:wta:eng:tax:092713
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