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In this issue:

Changes to Mexico's maquiladora regime under the 2013 tax reform 1
Bosnia and Herzegovina: Foreign branch offices permitted 7
Brazil: Customs regime for oil and gas companies changed 7
China: Guidance issued on MAP 8
China: Tax reform blueprint released 9
France: New e-audit documentation requirements 10
Germany: New government coalition agreement describes tax policy 10
Kenya: New VAT act enters into force 12
New Zealand: Mutual Assistance Convention ratified 13
Russia: New regional tax incentives introduced 13
Russia: Property tax increase to affect nonresidents 14
Taiwan: New rules on tax treatment of disposal of shares through a FINI account 16
In brief 16
Tax treaty round up 17
Are You Getting Your Global Tax Alerts? 18

Changes to Mexico's maquiladora regime under the 2013 tax reform

The 2013 reforms to Mexico's tax system were published in the official gazette on 11 December 2013, with the new rules now becoming effective on 1 January 2014. The reforms originally were contained in an economic package for the 2014 fiscal year and, in addition to changes made to the general tax law, some broad changes to the maquiladora regime are included. The maquiladora industry association (INDEX) has been in talks with the Mexican tax authorities to request that a presidential decree be issued to grant benefits to maquiladoras to mitigate the effects of the new legislation.

Maquiladoras are Mexican companies that process, transform, assemble or repair imported materials, parts and components into finished goods that subsequently will be exported out of the country. Under the maquiladora regime, which is designed to promote exports and encourage foreign investment, maquiladoras have been allowed to import materials and machinery and equipment (M&E) free of duties and value added tax (VAT), provided the finished products (as transformed or repaired by the maquiladora) are exported to a nonresident parent company that then sells the products and realizes a profit outside Mexico. In addition to the indirect tax benefits available to maquiladoras, there are income tax benefits that have been refined over the years. These benefits provide for a partial income tax exemption and a business flat tax (IETU) credit; they also protect the foreign parent company from exposure to Mexican tax (i.e. protection from permanent establishment (PE) status for the nonresident parent) as a result of its relationship with the maquiladora, to the extent the maquiladora can apply special transfer pricing methodologies.

The tax reform tightens the requirements for a maquila to qualify for benefits and significantly limits some benefits that have been granted to such companies. This article examines the revised maquiladora rules, provides an update on the

INDEX's negotiations with the tax authorities and offers some suggestions that affected companies could take to ease the economic impact of the tax reform.

Income tax law

The new legislation replaces the income tax law with a new law. The corporate tax rate, which was scheduled to be reduced from 30% to 29% in 2014 and then to 28% in 2015, remains unchanged at 30% and the law eliminates and/or reduces many deductions. One provision that affects maquiladora operations is that employers will be able to deduct only 53% of contributions made in respect of certain benefits provided to employees (e.g. contributions to pension and retirement funds, overtime payments, the exempt portion of profit sharing, Christmas bonuses, vacation premiums, food coupons and savings funds, among other benefits), provided the employer contributions to such benefits are not less than the contributions made in the previous year. Otherwise, the deductions are reduced to 47%.

According to a press release issued by INDEX on 6 December, INDEX has asked that a new presidential decree allow a maquiladora to take a deduction equal to 47% of nondeductible expenses, thus effectively offsetting the limit on the deduction of tax-exempt benefits to employees. The deduction would be applicable to maquiladoras using the safe harbor or the APA option to comply with their income tax obligations.

Affected companies should carefully analyze the implications of the new rules, including the impact on individual or collective labor agreements and social security quotas, and any modifications to fringe benefits granted to employees.

Elimination of Business Flat Tax (IETU)

The reform abolishes the IETU that has applied since 2008, as well as the IETU tax credit granted to maquiladoras. Having a single corporate tax should simplify the corporate taxation regime; the IETU had increased the administrative burden on taxpayers due to its complexity and the fact that it was based on cash flow. The elimination of the IETU is a direct consequence of the measures in the new Income Tax Law that limit the deduction of certain expenses.

Definition of maquiladora

The definition of a "maquila operation" historically has been provided in various presidential decrees that have governed the operation of maquiladoras for customs purposes since the 1960s. However, in 2006, the Ministry of Economy decided to consolidate Mexico's export-oriented promotion programs under a new decree, the "IMMEX decree." In late 2010, as part of an initiative to prevent corporate restructuring undertaken for the sole purpose of obtaining the benefits granted to maquiladoras, the IMMEX decree introduced a more restrictive definition of maquila operations for purposes of obtaining IETU, income tax and transfer pricing benefits and protection against PE status. Under this definition (which applies as from 1 January 2011 until the new rules become effective in 2014), all manufacturing operations that create added value – not merely operations that involve the physical export of raw materials (as in the case of service maquiladoras) – are considered "maquila operations."

The 2013 reform revises the definition of a maquila for income tax purposes (a different definition is provided to claim customs benefits) to provide the Mexican tax authorities with more control over the taxpayers that can obtain benefits under the maquila regime. The articulated rationale for the changes to the definition includes the following:

- The maquila definition and requirements have undergone many changes, with the result that some companies that do not fall within the scope for which the program was originally intended are enjoying benefits. For example, when the maquiladora regime was first launched, a maquiladora had to export 100% of the production manufactured at the maquila facilities – the export requirement was reduced to USD 500,000 or at least 10% of production under previous amendments to the rules.
- The OECD has recommended that countries eliminate special tax regimes. The maquila regime has provided preferential treatment that complicates the administration of the tax law and facilitates base erosion and tax evasion.

Under the revised definition, the following requirements must be met for a maquila to qualify for PE protection and be able to apply the safe harbor transfer pricing option:

- The maquila must derive all of its income from designated maquila operations;
- Materials imported on a temporary basis must be returned abroad (including virtual exports); and
- The nonresident parent must provide at least 30% of the M&E for the maquila operations and the M&E may not be owned (currently or previously) by the maquila or a Mexican related party.

Maquila operations Under the original reform proposal, maquiladoras would have been required to export at least 90% of their total annual production to qualify for full benefits under the regime, which would have resulted in income tax benefits accruing only to "pure" exporting maquiladoras. Congress modified this proposal to require that a maquiladora's income associated with "productive activities" be derived solely from its maquila activities for the maquiladora to qualify for PE protection. Although there is some uncertainty about the scope of the term "productive activities," these arguably will encompass the catalog of authorized activities for an IMMEX licensed entity.

Maquiladoras typically derive income from sources other than maquila activities, such as direct sales of products to Mexican customers, cafeteria services provided to employees, the lease and sale of assets (e.g. M&E) and the provision of administrative and shared services to related parties, as well as other incidental income, such as income from the sale of real estate.

Although the productive activities restriction should apply only to activities such as manufacturing and assembly and sales to Mexican customers and not to other auxiliary activities, the tax authorities are expected to issue guidance that may clarify the definition of "productive activities" to confirm whether maquiladoras with other income can qualify for PE protection.

Temporary import A nonresident will be required to provide merchandise that is imported into Mexico on a temporary basis and that will be subject to a "transformation process" (as defined in the law). In addition, the maquiladora will have to export the manufactured products, either physically or through a virtual export under the customs law.

The option of allowing virtual or indirect exports to fulfill the export requirement (for income tax purposes) will provide significant relief to many maquiladoras, particularly those in the automotive and electronics industries. Merchandise imported on a "definitive" basis could be used in a maquila process in addition to items imported on a temporary basis, provided both are exported together when the manufacturing process is completed. This requirement is consistent with the requirements in the IMMEX decree.

Nonresident to provide 30% of M&E – The transformation process will have to be carried out using M&E provided by the nonresident that is a party to the maquila agreement. The original proposal would have eliminated the requirement that at least 30% of the value of M&E used in the maquiladora operation be owned by the nonresident, but this requirement remains intact in the final version of the law and is consistent with the requirements under the IMMEX decree. The tax authorities will issue guidance as to how the 30% test is met. The new rules also state that M&E may not be currently owned or have previously been owned by the maquiladora or another Mexican related party.

Notably, the approved measures – contrary to the IMMEX decree – do not "grandfather" maquiladoras that are below the 30% threshold. All maquiladoras must satisfy the 30% M&E requirement by the end of 2014 or risk losing PE protection.

INDEX has requested that the tax authorities allow maquiladoras that are below the 30% threshold to have access to PE protection, although further details of this request have not been disclosed. INDEX also has requested that molds, tools and instruments be included in the computation of the 30% threshold; the tax authorities currently do not consider these products as part of M&E.

Shelter maquiladoras

The reform contains provisions on "shelter maquilas," i.e. where a nonresident performs manufacturing activities in Mexico through a third party (the shelter maquila); a shelter maquila has the same operational structure as a typical maquila, but is not owned by the foreign principal. Under the reform, the maximum period that a foreign principal can use a shelter maquiladora to determine whether to maintain their investments in Mexico without having permanent establishment exposure or converting to a more permanent operation is limited to four years.

Transfer pricing obligations for maquiladoras

The Income Tax Law was amended in 2003 to provide that maquiladora operations would not create a PE in Mexico for a foreign parent company that maintained an economic and legal relationship with a Mexican maquiladora that habitually processed merchandise using M&E provided directly or indirectly by the foreign parent if the foreign parent was resident in a country that had concluded a tax treaty with Mexico and the maquiladora complied with Mexico's transfer pricing rules. Specifically, there were four ways a maquiladora could obtain protection against PE status:

1. Have taxable income of at least the higher of:
    - (a) 6.9% of the value of the maquiladora's assets, including fixed assets and inventory owned by the foreign parent; or
    - (b) 6.5% of the maquiladora's costs and expenses;
2. Prepare a transfer pricing study using the adjustments and methodologies allowed under the Income Tax Law (i.e. comparable uncontrolled price; resale price; cost plus; profit split; residual profit split; or transactional operating profit margin method) and add an amount equal to 1% of the foreign-owned assets to the result of this analysis; or
3. Prepare a transfer pricing study using the transactional operating profit margin method in which the profitability of M&E owned by the foreign principal would be taken into account.
4. Negotiate an advance pricing agreement (APA) with the Mexican tax authorities, confirming the methodology applied under options 2 and 3.

Options 2 and 3 typically have been used when the safe harbor resulted in profit margins that were not appropriate to a maquiladora's specific circumstances or were not consistent with the economic performance of the relevant industry.

The reform eliminates the two self-compliance methods for a maquiladora to avoid PE status and be deemed to be in compliance with Mexico's transfer pricing rules. Only options 1 and 4 may be used to avoid PE status, i.e. apply the safe harbor or obtain an APA (maquiladoras electing to apply the safe harbor option still will be required to file a notice of the election within the three months after the end of the fiscal year). The safe harbor rules provide less flexibility for companies to recognize a lower taxable base corresponding to the maquiladora operations, although it is possible to obtain an APA if a maquiladora does not consider that the results of the application of the safe harbor are consistent with its economic circumstances (e.g. in the case of asset-intensive operations).

The new measures effectively revert the maquiladora industry to the limited regime that applied before 2003.

The reform also imposes an obligation on all maquiladoras – regardless of their transfer pricing election – to file an information return no later than June of the year following the end of the fiscal year.

Partial income tax exemption

A presidential decree enacted on 30 October 2003 granted a partial income tax exemption to maquiladoras to continue to promote investment in Mexico and dissuade maquiladoras from shifting their operations to other countries. Although the presidential decree continues to apply, the fact that the reform eliminates the current income tax laws referenced in the decree indicates that the exemption likely will be abolished. The government has yet to confirm this publicly, but given that one objective of the reform is to eliminate preferential regimes and benefits and increase tax collection, an announcement is expected.

Considering these changes, maquiladoras will have to pay income tax at the normal corporate tax rate of 30%, thus increasing their current 17.5% rate that encompasses both income tax and IETU.

VAT and excise taxes

VAT in border states The preferential 11% VAT rate that applied in Mexico's border areas and other strategic zones is abolished – the standard rate of 16% will apply. Maquiladoras located in these zones will need to take into account a 5% budget increase for payments to local vendors.

VAT/excise tax on temporarily imported items The original proposal included a controversial measure that would have eliminated VAT and excise tax exemptions on the temporary import of materials and M&E by maquiladoras and would have required maquiladoras to recover the taxes paid after the temporarily imported products were exported. This measure caused concerns in the maquila industry due to the high volume of temporary imports, the financial cost of not being able to recover the VAT until after export and the increased administrative burden associated with requesting a refund from the tax authorities.

The proposal to eliminate the exemption on the import of goods by a maquila was approved, but modified: VAT technically will be imposed on goods imported for use in maquila production activities, but the VAT will be eliminated by a full tax credit so that no cash VAT liability will be imposed on such transactions (the VAT credit will not be creditable or refundable and will not constitute taxable income for corporate income tax purposes). To qualify for the credit, the tax authorities will have to certify on an annual basis that the maquila is operating properly in the maquila program. If a maquiladora is unable to obtain certification, it will be able to satisfy its liability for VAT/excise duty on temporary imports by providing security via a bond issued by an authorized entity.

The requirement to pay VAT and excise tax will begin one year from the date the tax authorities publish the requirements to obtain certification status in order to give maquiladoras sufficient time to obtain certification.

VAT/excise tax liability on change of importation status   The VAT/excise liability arising for a maquiladora when there is a change from using the temporary regime for importing inventory to the "definitive" regime will not trigger VAT again if VAT/excise tax had been paid on the temporary import, such as in cases where the maquiladora was not certified or did not elect to use the bond option. If VAT/excise duty was not paid at the time of the temporary import, the taxes will have to be paid on the change of regime from temporary to definitive.

VAT on sale by nonresident of temporarily imported items   The original proposal would have eliminated the VAT exemption on the sale of maquila-produced goods located in Mexico between nonresidents or between a nonresident and a maquila, and would have subjected such sales to the 16% standard rate VAT. Congress modified the proposal so that the sale of maquila-produced goods located in Mexico between nonresidents will continue to be exempt from VAT, but the sale of such items by a nonresident to a maquila will be subject to the 16% rate. The maquila will have to withhold the VAT, and the VAT withheld will be creditable to the Mexican resident in the VAT return for the following month.

INDEX has asked for a special rule that would allow a maquiladora to apply the VAT credit in the month the products were acquired, thus accelerating the recovery of the VAT and mitigating the cash flow impact.

Next steps for maquiladoras

The new legislation and the likely elimination of the partial income tax exemption for maquiladoras may require maquiladoras to increase their tax provisions starting in 2014. Affected companies should consider various steps to try to mitigate the economic impact of the tax reform:

Examine whether their operations create a PE in Mexico   The safe harbor or APA alternatives are available for maquiladoras that want to eliminate the risk of having the foreign principal create a PE in Mexico. Although it generally is presumed that a maquiladora creates a PE in Mexico for the foreign principal, it is likely that under certain circumstances, the maquila operations would not create PE exposure. Thus, a maquiladora should carefully review its facts and circumstances to assess whether a PE could exist for its foreign principal, based on the Mexican Income Tax Law and the provisions in an applicable tax treaty and taking into account the assets, functions and risks the principal may be undertaking in its relationship with the maquiladora. If there is no PE, traditional transfer pricing rules could apply to determine the compensation for the maquiladora's manufacturing activities.

Assess the feasibility of obtaining an APA   The safe harbor rates are taken from the rates in the Mexico-US mutual agreement concluded nearly 15 years ago, and those rates are now outdated. There are many cases in which the safe harbor option may present inconsistent results, particularly in cases when a maquiladora is asset-intensive (i.e. it has a high value of M&E and inventory or owns land and buildings). Maquiladoras operating in industries that have been affected by the economic recession in their home countries also may face difficulties in meeting the safe harbor.

An important difference between the safe harbor and the transfer pricing methodologies is that the safe harbor requires a maquiladora to report minimum taxable income, while transfer pricing methodologies (including the APA option) determine and test the price of manufacturing services based on comparable arm's length transactions.

As from 2014, the APA alternative (either unilateral or bilateral) for maquiladoras that are deemed to create a PE for their nonresident principals may provide an opportunity to have the SAT consider their specific circumstances (i.e. significant idle assets, operating in an industry experiencing structural changes or reporting low returns or significant impact from the limited deductibility of tax-exempt fringe benefits), which potentially could reduce the risks associated with a tax result that might undermine their competitive position.

It is unclear whether the SAT would use the same methodology to negotiate APAs for maquiladoras as it used in the 2000-2002 campaign (i.e. a methodology based on a return on operating assets (ROA), excluding compensation on financing costs and procurement activities). The methodology likely would require market-based compensation for the M&E owned by the nonresident principal, as opposed to the 1% return required under the current rules that apply until 2014. An important consideration is whether the inventory of raw materials and finished products would be included in the return required for maquiladoras, since this is excluded under the current regulations. Moreover, according to domestic law, the maintenance of inventory of a nonresident for the sole purpose of processing by a different entity does not constitute a PE.

INDEX has asked the tax authorities to issue confirmation that an APA will provide PE protection and to provide a clear methodology and guidelines for APA negotiations, in order to facilitate the analysis of alternatives available to maquiladoras.

To obtain an APA as from 2014, an APA request must be submitted before 31 December 2014. Under the Federal Tax Code, a unilateral APA may cover up to five years (the filing fiscal year, the preceding fiscal year and up to the following three years). The term for a bilateral APA may be longer, depending on what is agreed by the competent authorities.

Consider Mexican sales exposure While the lack of clarity about the scope of the term “productive activities” creates uncertainty for taxpayers that make sales to Mexican clients, it also could present an opportunity for these taxpayers to reevaluate the economic and tax benefits of having a maquiladora make direct sales to domestic clients. Taxpayers should carefully analyze the operational, customs and income tax effects of alternative structures to carry out such transactions efficiently.

INDEX has requested a six-month deferral of the enforcement of the “productive activities” definition to allow maquiladoras to make any necessary assessments and restructure sales to Mexican customers, if necessary.

Conclusion

The new legislation likely will create challenges for virtually all maquiladoras, regardless of their origins, corporate structure, business operations or industry. As the requirements to qualify as a maquila for income tax purposes will now be stricter and the number of compliance options reduced, maquiladoras’ headquarters should reevaluate the circumstances that create a PE as a result of their relationship with a maquiladora. Maquiladoras that cannot avoid creating a PE for their foreign principals should carefully analyze their potential results under the safe harbor and consider the APA alternative. Finally, maquiladoras with sales in Mexico should consider evaluating alternative structures to continue those sales.

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Bosnia and Herzegovina: Foreign branch offices permitted

As from 5 October 2013, foreign entities can set up branch offices in Bosnia and Herzegovina.

The two entities (Federation of BiH (FBiH) and Republika Srpska (RS)) and one district that comprise Bosnia and Herzegovina are considered separate jurisdictions. Direct taxes (corporate income tax, personal income tax, withholding tax, etc.) are governed at the entity and district level by the competent tax authorities, while indirect taxes (value added tax (VAT), customs and excise duty) are governed at the state level by the Indirect Tax Authority of BiH.

Recent changes to the FBiH Company Act enable foreign legal entities to establish branch offices within the territory of the FBiH. The branch office must be registered in accordance with the Law on Registration of Legal Entities in the FBiH. Regulations setting out the process to set up a branch office and obtain a tax ID have not yet been adopted.

Similarly, recent changes in the RS tax and company act provisions enable foreign legal entities to incorporate branch offices within the territory of the RS (i.e. to establish a branch office, enter the branch office into the competent commercial court registry and obtain a tax ID for that branch office), and as from 1 December 2013, the incorporation of branch offices (and legal entities in general) may be carried out through a "single counter system" – the request to incorporate is made at one counter and with a single competent authority and it is no longer necessary to make separate applications to the court, the statistics agency and the tax authorities. A tax ID issued by the RS tax authorities, however, can be used only for direct tax reporting purposes because indirect taxes are governed by the Indirect Tax Authority of BiH (presumably, the same would be true of a tax ID issued by the FBiH tax authorities, but the applicable regulations have not yet been issued).

According to the Indirect Tax Authority of BiH, a branch office cannot register for VAT purposes and obtain a VAT ID; instead, the foreign legal entity that is conducting business operations through the branch must appoint a VAT representative in Bosnia and Herzegovina (i.e. a local VAT payer) to obtain a VAT ID for VAT reporting purposes.

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Brazil: Customs regime for oil and gas companies changed

The Brazilian government issued guidance on 4 December 2013 (Normative Instruction (NI) 1415/2013) that sets out new procedures for qualifying taxpayers to use the special "REPETRO" customs regime that applies to goods used in the exploration and production of oil and natural gas fields in Brazil. The REPETRO regime aims primarily to reduce the tax burden on companies involved in such activities and operates by granting a suspension of federal taxes incurred on the import of specific goods/assets ("temporary admission regime"). Taxes affected include the federal excise tax (IPI), the program for social integration contribution (PIS), the contribution for the financing of social security (COFINS) and the freight tax (AFRMM).

The NI provides that the following items do not qualify for benefits under the REPETRO regime:

- Machinery and equipment and parts with a customs value lower than USD 25,000;
- Goods whose main function is for the transport of persons or of oil, gas and other fluid hydrocarbons;
- Goods destined for personal use; and
- Goods that are the subject of a finance lease contract.

The NI also sets out the following new procedural requirements to benefit from the REPETRO regime:

- The taxpayer must enroll in the Electronic Tax Mailbox to request the application of the regime (or to request an extension of the regime). All communications between the taxpayer and the tax authorities will be electronic, via "e-CAC";
- The taxpayer must demonstrate that it is in compliance with the tax rules by presenting a certificate that it does not have any outstanding federal tax liabilities and that it has paid its tax liability in full;
- The taxpayer must submit certain documents (including a contract summary that contains specified information) to the Brazilian tax authorities; and
- The above documents must be submitted within 30 days after an application is made to use the REPETRO regime.

A REPETRO license will be granted to an applicant through an Executive Act; the license can be reviewed by a tax auditor at any time during the period the regime is in effect and can be revoked (and penalties can be imposed) for noncompliance.

The new NI applies as from 5 December 2013, the date it was published in the official gazette. Taxpayers that already have applied to benefit from the REPETRO regime have 60 days to comply with the new rules.

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China:
Guidance issued on MAP

China's State Administration of Taxation (SAT) issued guidance on 24 September 2013 (Bulletin 56) that aims to make the mutual agreement procedure (MAP) under China's tax treaties and tax arrangements more efficient, transparent and user friendly. Bulletin 56 supersedes previous guidance on the MAP (Circular 115) and took effect on 1 November 2013.

The measures in Bulletin 56 are broader in scope than those in Circular 115: while Circular 115 is applicable only to MAP requests initiated by Chinese residents or nationals, Bulletin 56 also covers MAP requests initiated by the competent authorities of treaty partners and by the SAT itself. In general, the application of the MAP is restricted to matters within the scope of a tax treaty. However, Bulletin 56 provides that the MAP can be invoked to resolve issues outside the scope of a treaty if such issues will result in double taxation or have a significant impact on the interests of one or both of the treaty partners, provided the competent authorities of the treaty partners agree to the application of MAP. Bulletin 56 also provides that the Chinese tax authorities should keep information provided during the MAP process confidential.

Bulletin 56 sets out clear and systematic procedures for a Chinese resident or national to request a MAP. A Chinese tax resident or national that has a dispute with the tax authorities of a treaty partner can submit a MAP request to the SAT through the provincial tax authorities if the person believes that the measures taken by the treaty partner have led or will lead to the levying of tax that is not in accordance with the treaty provisions.

A Chinese resident can request a MAP in the following cases:

- When there is a dispute about the tax residence status of the taxpayer, particularly in cases of dual residence;
- When there is a dispute about the determination of the existence of a permanent establishment or the attribution of profits to a permanent establishment;
- When there is a dispute about the taxability or exemption of income or capital;
- When the nondiscrimination article in a tax treaty is violated;
- When there is a dispute about the interpretation or applicability of treaty provisions that cannot otherwise be resolved; or
- When there are other issues that may cause double taxation.

A Chinese national who is not a resident can request a MAP when the person believes the nondiscrimination article of a treaty has been violated by the treaty partner and, therefore, tax discrimination may arise or has arisen.

Bulletin 56 provides guidance for determining which Chinese tax authorities are responsible for accepting a MAP application in various situations. It also sets out the conditions in which the relevant tax authorities should accept a MAP request and provides a clear timeline for the SAT and the relevant tax authorities to handle MAP cases.

If a taxpayer, withholding agent or other agent provides false information in a MAP request, Bulletin 56 allows the tax authorities to impose penalties in accordance with the Tax Administration and Collection Law and other relevant regulations.

Bulletin 56 specifically states that separate guidance will be issued for MAP requests relating to special tax adjustments, so cases involving these special tax adjustments (such as transfer pricing, controlled foreign corporation or general anti-avoidance issues) will be governed by separate guidance.

Comments

Bulletin 56 provides clarity and certainty on how a Chinese resident or national can initiate the MAP process, and a specific timeline for the SAT and the provincial tax authorities to review and decide whether to accept a MAP request. When an agreement is reached under a MAP that requires the Chinese tax authorities to refund tax, Bulletin 56 also provides a three-month timeline for issuing such a refund. These guidelines should make the MAP process more transparent and bring it in line with international practice. Separate guidance will be issued for the MAP process relating to special tax adjustments, which will be much anticipated, especially in relation to commonly-encountered transfer pricing disputes.

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China:
Tax reform blueprint released

On 15 November 2013, the Chinese government publicly released a much-anticipated general economic "roadmap" for the country, a document that includes a section on tax reform. The salient points relating to taxation are as follows:

- Value added tax (VAT) – The VAT reform will continue, with more service sectors being brought within the scope of VAT, and the VAT rates will be "properly simplified," which seems to indicate that one or more of the current rates (0%, 6%, 11%, 13% and 17% for general taxpayers and 3% for small-scale taxpayers) would be eliminated.
- Individual income tax (IIT) – Reform of the IIT system would establish a tax system with "categorized" and "comprehensive" features. The existing IIT regime is considered a typical "categorized" system, where an individual's income is taxed under different categories without considering his/her income and expenditure on an overall basis (i.e. "comprehensively"). It also is anticipated that more personal deductions may be introduced in the future.
- Property tax – The government would reform the property tax regime, with a view to reducing the tax burden on construction and trading, while increasing the tax in the period during which property is held. This reform would be more relevant for individuals than companies because residential property – unlike business property – still is exempt from property tax (except in Chongqing and Shanghai, where a property tax has been imposed on certain residential property on a pilot basis).
- Consumption tax – Consumption tax currently is imposed on specified goods (e.g. tobacco, alcohol, cosmetics, gasoline, autos, etc.) and most tax is collected from importers or manufacturers. The scope, timing and rate of the consumption tax would be further adjusted and energy-consuming, high-polluting and certain luxury products would be brought within the scope of the tax. It also is possible that the government could move the taxing point from manufacturing to consumption for certain taxable goods.
- Regional tax incentives – To resolve the distortion due to competition among regions, there would be a "clean-up" of existing regional tax incentives and enhanced regulation of such policies, including special tax laws and regulations in the future. Regional incentives that are introduced on a pilot basis would be rolled out nationwide as soon as possible.

The Chinese government is expected to implement the necessary reforms consistently with the direction set out in the roadmap document, although the government likely will proceed with caution. Tax policy initiatives also may be introduced in support of other measures announced in the roadmap, e.g. outbound investment, social security, environmental protection, etc. Companies generally have welcomed the direction expressed in the document and are awaiting details of the necessary reform measures.

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France:
New e-audit documentation requirements

Beginning on 1 January 2014, companies in France will be required to submit a standard audit file (SAF-T) for corporate income tax and VAT purposes. This file will have to be provided in an electronic format to the tax auditor within two weeks of the commencement of an audit. The SAF-T is an electronic file that records key business information in a specified common format for tax audit purposes and aims to simplify tax compliance and tax audit requirements as they relate to information required for tax purposes from business and accounting systems.

The SAF-T contains various data fields (e.g. general ledger, sales, supply management, inventory, etc.) that must be completed in full (and in French) and the taxpayer must include for each entry the relevant date, the French GAAP number and name and supporting documentation, among other information. Failure to submit the file will result in a penalty equal to the greater of the following amounts:

- In the absence of a reassessment, 0.5% of turnover declared;
- In the case of a reassessment, 0.5% of the turnover reassessed; or
- EUR 1,500 when the amount of the penalty in the first two bullets is less than this amount.

The submission of an incomplete and/or unusable file may result in the application of the arbitrary assessment procedure.

The new audit file requirement is in line with a recommendation of the OECD and already has been adopted in one form or another in other countries (e.g. Austria, Canada, Germany Luxembourg, Portugal, the UK and the US).

This article has been prepared by professionals in Taj, French tax and legal firm, member of Deloitte Touche Tohmatsu Limited.

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Germany:
New government coalition agreement describes tax policy

The coalition between the Christian-Democrats and the Social-Democrats that will govern Germany for the next four years issued its “coalition agreement” on 27 November 2013, in which it describes the government’s policy goals and how it intends to achieve these goals. Although the agreement includes few details on concrete tax measures, it offers some insight into what can be expected. The coalition agreement does not mention any major tax reform projects or changes in tax rates – the focus will be combatting tax evasion and harmful tax practices and protecting tax revenue.

The most important points in the coalition agreement are as follows:

- One of the main goals of the new government is to increase the use and importance of electronic data processing for tax administration. The coalition agreement mentions several measures that should be introduced, the most important of which are the introduction of a self-assessment mechanism for corporate taxpayers and an increase in the use of risk-based electronic tools for analyzing tax returns.
- The agreement specifically mentions the fight against cross-border transfers of profits and the prevention of harmful tax competition, with double-dip structures (such as the double nontaxation of profits and the double deduction of payments by international operating companies) being the particular focus of the new government. The agreement refers to several measures that should be embedded in the OECD base erosion and profit shifting (BEPS) initiative, although the German government intends to implement these measures on a unilateral basis if no consensus is reached at the OECD level by 2015:
    - Limitation of the tax deductibility of payments made to recipients that lack sufficient substance/activities (i.e. letterbox companies);
    - Creation of a public register for taxpayers holding economic ownership in trust structures; and
    - Allowance of a deduction for licensing payments only if the payment is subject to minimum taxation at the level of the foreign recipient.
- The following action points:
    - Germany would continue to support the revision of the OECD model treaty provisions on the exchange of information; until the provisions are revised, Germany would seek to conclude bilateral or multilateral information exchange agreements based on the model agreement between six EU member states;
    - Country-by-country reporting would be introduced for multinational companies;
    - Tax neutral share-for-share exchanges or mergers would be disallowed where additional payments or value exchanges are made in connection with such transactions;
    - Germany would support the initiative for the introduction of common corporate income taxation within the EU based on the common corporate tax base (CCTB) project;
    - The benefits under the domestic law implementation of the EU interest and royalties directive would be extended to all types of investment income for individuals and corporations;
    - Subject-to-tax clauses would be included in Germany's tax treaties to avoid nontaxed income and measures would be introduced into domestic law to achieve this goal;
    - Efforts would be made to combat VAT fraud and the use of tax havens;
    - Regulatory measures would be introduced to target banking institutions that systematically violate the tax law; and
    - The current capital gains taxation system for portfolio investments would be reviewed in the context of the general amendment of the Investment Tax Act.
- The coalition agreement confirms that the municipal trade tax is an integral part of the German local self-government structure and that the inheritance tax and property tax will remain in existence. However, the trade tax and property tax system should be modernized on a revenue-neutral basis.
- The new government will support the introduction of a financial transactions tax as part of an EU initiative.

Several points that were discussed during the negotiations between the parties did not make it into the final coalition agreement. These include the application of the interest deduction limitation rules to license and rental payments, a reduction of the threshold to trigger the interest deduction limitation rules from EUR 3 million to EUR 1 million and further restrictions on the use of net operating loss carryforwards. Potential changes that would benefit taxpayers, such as the long-awaited reform of the tax consolidation system and the introduction of R&D tax credits, also are not included.

The coalition agreement still has to be confirmed by both political parties, and even though it is a policy document rather than draft law and taxpayers cannot rely on the statements contained in the agreement, taxpayers should take the announcements into consideration and continue to monitor future developments.

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Kenya:
New VAT act enters into force

A new VAT Act became effective in Kenya on 2 September 2013, repealing the previous VAT law. VAT generally is levied on the supply of taxable goods and services and on the import of taxable goods and services. Active lobbying resulted in a significant number of supplies being added to the exempt and zero-rated categories of the previous VAT legislation over the years, so the tax was not as effective at generating revenue as it otherwise would have been. Under the new legislation, the number of supplies that are exempt or zero-rated has been reduced considerably, which is likely to increase the tax revenue from VAT.

The key changes include the following:

- VAT status - There are three categories of VAT supplies: zero-rated supplies, exempt supplies and all other supplies (the latter generally taxable at the standard VAT rate of 16%). The new law reclassifies many zero-rated supplies as exempt supplies, some exempt supplies have become standard rated and other supplies have been deleted from the schedule of exempt and zero-rated supplies and now are standard-rated (attracting the 16% rate). Certain categories of oil and fuels will continue to be exempt for three years (unless the exemption is revoked earlier). Certain previously standard-rated plant and machinery has become exempt.
- Remissions - Under the former VAT act, the Minister of Finance had discretion to grant a remission from VAT for major projects that were deemed to be in the public interest. While existing remissions will remain in place for five years from the enactment of the new law, no new remissions will be granted under the new VAT act.
- Place of supply rules - The new VAT act introduces place of supply rules and provides that a supply of services is made in Kenya when:
    - The supplier's place of business from which the services are supplied is in Kenya; or
    - Where the supplier is nonresident, the recipient is nonregistered and the services are:
        - Physically made in Kenya by a person who is in Kenya at the time of the supply;
        - Directly related to immovable property;
        - Radio or television broadcasting received at an address in Kenya;
        - Electronic services (as defined) delivered to a person in Kenya at the time of supply; or
        - The transfer or assignment of, or grant of a right to use, a copyright, patent, trademark or similar right in Kenya.
- Tax representative - A nonresident person that is required to register for VAT must appoint a tax representative. If a nonresident fails to appoint a representative, one will be appointed. A tax representative must be resident in Kenya, be responsible for all the VAT obligations of the nonresident and be jointly and severally liable with the nonresident for taxes, penalties and interest imposed under the VAT act.
- Reverse charge on imported services - Reverse charge VAT no longer applies to the extent a taxable person is able to claim VAT input tax on the reverse charge. Where a taxpayer is 100% taxable, no reverse charge is payable. Where a taxpayer is partially exempt, the reverse charge must be paid only on the amount of nonrecoverable VAT. Fully exempt persons must account for the reverse charge in full.
- Input tax - Input tax must be claimed within a six-month period (previously 12 months) from the time of supply. Given the increased risk of being unable to claim VAT input tax, especially where VAT invoices are not received in a timely fashion or there is a dispute relating to the supply, systems will be required to ensure input VAT is claimed within the six-month period.
- Other changes - The transfer of a business as a going concern is now a zero-rated supply, with no need for the approval of the tax authorities that previously was required. There also are changes to the de minimis limit for claiming input VAT (i.e. the amount of exempt supplies that can be made before the deduction of input tax is limited).

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New Zealand:
Mutual Assistance Convention ratified

In late November 2013, the New Zealand government announced that it had completed the final steps for ratification of the multilateral Convention on Mutual Administrative Assistance in Tax Matters. This convention authorizes the tax authorities of the signatory countries to assist each other regarding the exchange of information, recovery of unpaid taxes and service of documents. New Zealand is one of 54 countries that have signed the convention.

The mutual administrative assistance convention significantly increases New Zealand's ability to detect and prevent tax avoidance. A key practical benefit of New Zealand signing the multilateral convention is a reduction in the future resources and administrative costs of having to negotiate new bilateral treaties or update existing treaties. For example, at least 14 of the countries that have signed the multilateral convention are countries that have not concluded a tax treaty or tax information exchange agreement with New Zealand.

Exchange of information is growing in importance internationally, particularly with the backdrop of base erosion and profit shifting (BEPS) concerns. In addition to specific requests from one country to another, it is becoming increasingly common for automatic exchanges of information to take place; for example, where certain tax authorities make arrangements to provide another country with certain generic information (e.g. all nonresident withholding tax deducted from interest payments). New Zealand Inland Revenue already receives one million documents in bulk from the Australian Tax Office each year as a result of an automatic exchange arrangement.

More spontaneous exchanges of information are now occurring, i.e. where a tax authority passes on information uncovered during an investigation that it considers of interest to another tax authority. It also is more common for tax authorities to conduct simultaneous tax examinations; for example, two tax authorities may investigate the affairs of a multinational company at the same time and share the information discovered.

Signing the multilateral Convention on Mutual Administrative Assistance in Tax Matters provides yet another tool in New Zealand's arsenal to tackle international tax avoidance and tax evasion.

The convention will enter into force for New Zealand on 1 March 2014.

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Russia:
New regional tax incentives introduced

A law introduced in Russia on 30 September 2013 provides profits tax and mineral resources extraction tax incentives to investors in certain regions in the far eastern part of the country and Siberia. Qualifying investors will be entitled to a profits tax rate of 0% to 10% for the first five years of income generation and from 10% to 18% for the following five years. The incentives will apply as from 1 January 2014 and are likely to make far eastern Russia an attractive region for manufacturers.

The law removes the federal portion from the total 20% profits tax rate (the profits tax rate comprises federal and regional parts, with 2% payable to the federal budget and 18% payable to the regional budget) for 10 years. The regional portion of the rate will be a maximum of 10% for the first five years and at least 10% for the next five years, subject to any changes to the relevant regional laws. Only a few regions have thus far adopted such changes (e.g. the regional portion of the profits tax for investors in the Sakha (Yakutia) Republic and the Khabarovsk territory will be 0% for the first five years and 10% for the next five years). If other regions do not make any changes, the regional portion of the profits tax in those regions will be 10% for the first five years and 18% for the next five years.

In addition, the mineral resources extraction tax rates for investors will be:

- Not payable for the first two years;
- Reduced by 80% for the third and fourth years;
- Reduced by 60% for the fifth and sixth years;
- Reduced by 40% for the seventh and eighth years; and
- Reduced by 20% for the ninth and tenth years.

To qualify for the tax incentives, a company will be required to meet the following requirements:

- Be a Russian legal entity registered in one of the following 13 specified regions and not have any subdivisions located in other regions:
    - Republics of Buryatia, Sakha (Yakutia) and Tyva;
    - Zabaikalsk, Kamchatka, Primorsk and Khabarovsk territories;
    - Amur, Irkutsk, Magadan and Sakhalin regions;
    - Jewish Autonomous Region; and
    - Chukotka Autonomous District.
- Be a producer of goods (except for oil and gas and excisable goods).
- Earn income from the sale of goods produced under an investment project that represents at least 90% of the company's taxable income.
- Have a minimum investment of up to RUB 50 million over three years or RUB 500 million over five years. Investments for the modernization of current assets also will qualify.

Each region in the country can adopt changes to regional laws and introduce additional qualifying criteria; no regions have thus far adopted such additional requirements.

Comments

Potential investors should consider the following issues related to the new tax incentives:

- Investors will be required to prepare certain documents demonstrating compliance with the requirements, including an investment declaration (whose official form has not yet been specified) to be included in the register of investors and investment projects. Separate tax accounting for project and nonproject activities will be required to be maintained, which may create challenges in certain cases.
- The incentives will cover only producers of goods, but the definition of "goods" is not clear and requires more detailed guidance.
- The period during which the incentives are available may be insufficient for some large investment projects with long payback periods.
- No retroactive claims will be possible.

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Russia:
Property tax increase to affect nonresidents

New property tax rules enacted in Russia on 2 November 2013 (Federal Law 307-FZ) that will apply as from 1 January 2014 likely will have a substantial impact on real estate developers (both Russian and foreign) engaged in commercial real estate and owners of real property. The tax burden is expected to increase by up to 10-15 times, due to a change in the tax base for purposes of calculation of the property tax.

Under the new law, the tax base for certain types of real estate will be based on their "cadastral value," rather than their net/book value. (The cadaster is a register of real estate in Russia and the cadastral value is a value indicated in the register.)

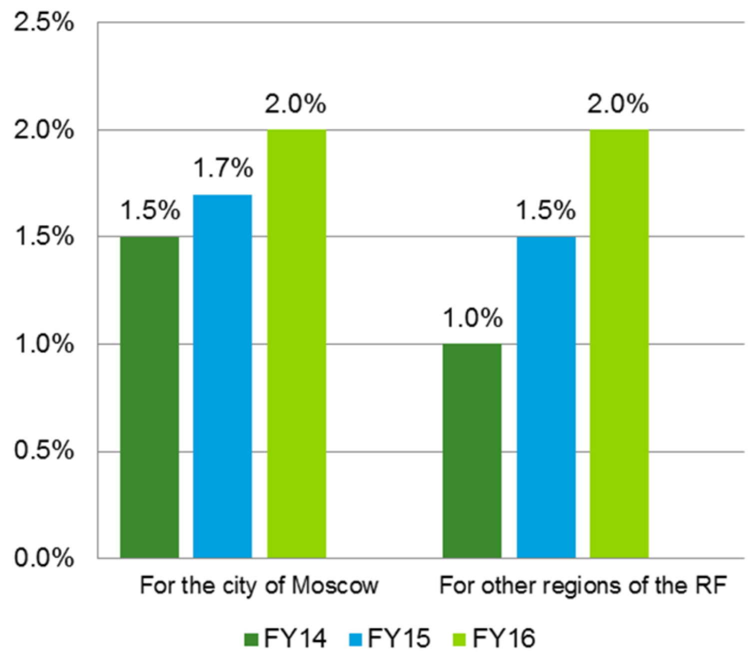
The reason for using the cadastral value is to create a mechanism in Russia to help bring property values for tax purposes closer to market levels (or even higher), since the current net/book value for most property in the country represents the residual value after a long period of depreciation without any revaluation. The following types of real estate will be subject to property tax based on their cadastral value:

1. Business centers, shopping malls and premises in these types of buildings;
2. Nonresidential premises used as offices or retail facilities or to provide catering or consumer service businesses, and any premises actually used for these purposes; and
3. Real estate owned by foreign companies that do not have a permanent establishment (PE) in Russia, as well as real estate that is not related to the activities of foreign companies with a PE in the country.

Property tax is managed at the regional level in Russia, and, therefore, the regional authorities are in the process of enacting new laws that will establish a special procedure for determining the tax base of property according to its cadastral value; however, the new federal law specifically states that, in respect of items (1) and (2), these regional laws may be enacted only after the regional authorities have determined the cadastral value of the real estate. If the cadastral value is not determined, the tax base for items 1) and 2) will be calculated based on the net book value (i.e. the current mechanism for calculation of the property tax). With respect to the property in (3), if the cadastral value is not determined, the tax base should be deemed to equal zero.

If the amount of tax is calculated based on a property's cadastral value, the tax rates should not exceed the following:

Property tax rate



For tax that is not calculated based on a property's cadastral value, the standard property tax rates will apply.

In some regions, the regional authorities already have modified the tax rates to be in line with new federal tax requirements. For example, a new rate of 0.9% will apply in Moscow for 2014 and in the Moscow region (oblast), a 1% rate will apply to commercial real estate assets larger than 5,000 square meters as from 1 January 2014 (the rate will increase to 1.5% in 2015 and 2% in 2016).

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Taiwan:
New rules on tax treatment of disposal of shares through a FINI account

Taiwan's Ministry of Finance (MOF) issued a ruling on 14 November 2013 that requires a 15% Taiwan income tax to be paid on capital gains derived by a nonresident individual employee on the disposal of his/her Taiwan securities through a Foreign Institutional Investors (FINI) account. This rule applies retroactively as from 1 January 2013.

Under the Taiwan Income Tax Act, both resident and nonresident individuals and domestic business entities are subject to capital gains tax when they dispose of Taiwan securities. The Financial Supervisory Commission (FSC) also has issued rules for when a Taiwan listed company provides Taiwan securities to foreign individuals working in its overseas subsidiaries or branches. The FSC ruling provides that such employees can open an account individually as a Foreign Individual Investor (FIDI) or, alternatively, open an account collectively as FINIs in the name of the overseas subsidiary or branch to hold the securities issued to the employees. If an individual elects to hold Taiwan securities through a FINI account, a disposal of the securities can only be done by the FINI account. According to the new tax ruling, if foreign individual employees have disposed of these securities through such a FINI account, a tax agent must be appointed in Taiwan to report the capital gain and pay the tax to the Taiwan tax authorities within a prescribed period.

Based on the ruling, a potential Taiwan income tax risk may arise for an offshore company used by foreign individual employees and registered as a FINI account to hold Taiwan securities.

Since the tax ruling applies retroactively from 1 January 2013, foreign individual employees with Taiwan securities held through a FINI account should take steps to ensure they are in compliance and avoid potential penalties.

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In brief

Angola – The government published legislation on 1 October 2013 that includes a new transfer pricing regime. The new rules, which apply to transactions that take place on or after 1 January 2013, cover commercial transactions (those involving goods, rights or services) and financial transactions between related parties and require the preparation of an annual transfer pricing file.

China – The Beijing State Tax Bureau issued guidance on 27 November 2013 that clarifies the application and documentation requirements to obtain VAT exemption treatment for cross-border services and should enable Beijing taxpayers to enjoy the exemption. Although a VAT exemption has been available for qualifying cross-border services since the launch of the VAT reform pilot in Beijing in September 2012, the lack of local implementation guidance has precluded many taxpayers from applying for the exemption.

Colombia – The tax authorities have announced that transactions involving the supply of services related to the licensing of software should be analyzed to verify the nature of the supply received by the recipient, because the use of intangibles in Colombia is subject to VAT at the standard rate of 16%.

European Union – The European Commission has started infringement proceedings against Belgium, France and Latvia. The Commission has referred Belgium to the Court of Justice of the European Union (CJEU) with respect to its taxation of dividends and interest paid to foreign investment funds. The Commission has sent reasoned opinions to France and Latvia asking them to fully transpose the mutual assistance directive into domestic law. EU member states were supposed to have implemented the directive into domestic law as from 1 January 2013. France and Latvia have two months to respond to the Commission; failure to take action could lead to a referral to the CJEU.

International – Colombia, Greece, Iceland, Liechtenstein, Luxembourg and Malta declared on 27 November 2013 that they would join the pilot scheme on multilateral automatic exchange of information. France, Germany, Italy, Spain and the UK agreed in April 2013 that they would work on a pilot multilateral information exchange facility based on the FATCA agreement with the US. Under the agreement, a broad range of financial information will be exchanged automatically between the participating countries.

Puerto Rico – Legislation enacted on 27 November 2013 postpones the effective date of the sales and use tax reduction (from 7% to 6.5%) to 1 February 2014. The Puerto Rico legislature may further postpone the effective date if it acts before 1 February.

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.

Barbados – The prime minister has announced Barbados' intention to sign a Model 1 intergovernmental agreement (IGA) with the US to improve international tax compliance with respect to the Foreign Account Tax Compliance Act (FATCA), as well as his willingness to join the OECD Multilateral Automatic Exchange of Information Convention. The prime minister expects to formally announce the negotiation of the IGA with the US and to work toward concluding the agreement by the end of the year.

China-France – When in effect, the treaty signed on 26 November to replace the current treaty dating from 1984 provides that a 5% withholding tax 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 generally will be 10%. However, where dividends are paid out of income or gains derived from immovable property by a tax-exempt investment vehicle that distributes most of its income or gains annually and the beneficial owner of the dividends directly or indirectly holds 10% or more of the capital of the vehicle paying the dividends, the dividends may be taxed at the domestic rate applying in the source state. The withholding tax rate on interest will be 10% (with some exemptions for interest on loans guaranteed, insured, financed or subsidized by certain government entities). The rate on royalties will be 10%.

Czech Republic-Kosovo – When in effect, the treaty signed on 26 November provides for a 5% 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%. Interest will be taxable only in the state of residence of the recipient. A 0% rate will apply to royalties for copyrights; otherwise, the rate will be 10%.

Hong Kong-Guernsey – The 2013 treaty entered into force on 5 December 2013 and will apply as from 1 January 2014 in Guernsey and as from 1 April 2014 in Hong Kong. When in effect, the treaty provides that dividends and interest will be taxable only in the state of residence of the recipient. A 4% withholding tax will apply to royalties.

Hungary-Kosovo – When in effect, the treaty signed on 3 October 2013 provides for a 0% withholding tax on dividends paid to a company (other than a partnership that is not liable to tax) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 5%. Interest and royalties will be taxable only in the state of residence of the recipient.

Ireland-Switzerland – The 2012 protocol to the treaty entered into force on 14 November 2013 and will apply as from 1 January 2014. When in effect, dividends will be exempt if paid to a pension scheme or 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 protocol does not address interest or royalties, which are exempt under the treaty.

Japan-Sweden – When in effect, the protocol signed on 5 December 2013 provides for a 0% withholding tax on dividends paid to a company (other than a partnership) that has held, directly or indirectly, at least 10% of the voting power of the payer company for the six-month period ending on the date entitlement to the dividends is determined; otherwise, the rate will be 10%. The 0% rate will not apply, however, if the payer company is entitled to a deduction for dividends paid to its beneficiaries in computing taxable income in its state of residence. Interest (with exceptions for certain contingent interest) and royalties will be taxable only in the state of residence of the recipient.

Korea-Kyrgyzstan – The 2012 treaty entered into force on 22 November 2013 and will apply as from 1 January 2014. When in effect, the treaty 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%. A 0% rate will apply to interest paid in connection with the sale of industrial, commercial or scientific equipment on credit or in connection with the sale of any merchandise by an enterprise to another enterprise on credit; otherwise, the rate will be 10%. A 5% withholding tax rate will apply to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate will be 10%.

Netherlands-Norway – The 2013 protocol to the Netherlands-Norway treaty entered into force on 30 November 2013 and will apply as from 1 January 2014. When in effect, the protocol will amend the dividends article to provide that a 0% withholding tax will apply to dividends paid to a company that holds directly at least 10% of the capital of the payer company and to dividends paid to pension funds. The default rate of 15% will remain unchanged.

OECD – The OECD has published a public discussion draft of its proposed changes to the OECD model treaty dealing with the operation of ships and aircraft in international traffic, as well as a public discussion draft of a number of proposed technical changes to the treaty. The latter changes include clarifications, corrections and additions to the commentary on the application of article 13 to capital gains and on the application of articles 10 and 13 to cases involving the redemption of shares. Comments on both drafts are due by 15 January 2014.

Singapore-Guernsey – The 2013 treaty entered into force on 26 November 2013 and will apply as from 1 January 2014. When in effect, the treaty provides that dividends will be taxable only in the state of residence of the recipient. A 12% withholding tax will apply to interest and an 8% rate on royalties.

United States – Intergovernmental agreements (IGAs) to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) have been signed between the US and France (on 14 November 2013), Costa Rica (on 26 November 2013) and the Cayman Islands (on 29 November 2013). The France IGA substantially resembles the Model 1 IGAs signed by other European countries, and the Costa Rica and Cayman Islands IGAs are Model 1 IGAs. Under Model 1 IGAs, entities will satisfy their FATCA requirements by reporting information to their respective tax authorities, followed by the automatic exchange of that information on a government-to-government basis with the United States.

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European Union
Changes proposed to parent-subsidiary directive to tackle tax avoidance
The European Commission published a draft amended parent-subsidiary directive on 25 November 2013 to tackle corporate tax avoidance in Europe. Specifically, the Commission has proposed two changes to tackle hybrid financial mismatches within the scope of application of the directive and to introduce a general anti-abuse rule to protect the functioning of the directive.
[Issue date: 26 November 2013]
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-eu-261113.pdf?id=us:em:na:wta:eng:tax:121313

Mexico

Tax reform passed

The 2013 Mexican tax reform package was published in the official gazette on 11 December 2013 and will apply as from 1 January 2014. The broad-based reform contains a number of measures that will affect companies doing business in Mexico, including companies operating in the maquila industry. The reform eliminates some taxes, but increases rates on other taxes. It eliminates many tax benefits and preferential tax regimes that, according to Mexico's tax authorities, have been used by taxpayers to reduce their tax liabilities. Specific measures are included to prevent tax treaty abuse and to limit the deduction of payments made to related parties in Mexico and abroad.
[Issue date: 12 December 2013]
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-mexico-121213.pdf?id=us:em:na:wta:eng:tax:121313

United Kingdom

Autumn statement delivered

The UK economy was at the heart of the Autumn Statement delivered on 5 December 2013, but it also included a number of tax and tax-related measures affecting companies and individuals. Included in the statement are changes to the CFC and worldwide debt cap rules.
[Issue date: 5 December 2013]
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-051213.pdf?id=us:em:na:wta:eng:tax:121313

United States

Baucus international tax reform proposals: impact on foreign multinationals

Senate Finance Committee Chairman Max Baucus issued a staff-level discussion draft of a comprehensive international tax reform proposal on 19 November 2013. Although the headline proposals in the Baucus draft are targeted at outbound issues such as deferral of offshore income and the matching of related onshore expenses, there are a number of important provisions that may impact inbound companies.
[Issue date: 3 December 2013]
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/gx-tax-alert-unitedstates-031213.pdf?id=us:em:na:wta:eng:tax:121313

Final and new proposed dividend equivalent regulations issued under Section 871(m)

On 5 December 2013, the US Treasury and the IRS released final and proposed regulations under section 871(m) outlining the treatment of dividend equivalents. The existing temporary regulations are continued as final regulations for two years and sunset for all payments on or after 1 January 2016; for payments made on or after that date, new proposed regulations replace the January 2012 proposed seven-factor tests for determining specified notional principal contract (NPC) status with an objective delta measurement. The same test applies to all equity linked instruments that are not NPCs as of the ELI acquisition date. Finally, new portfolio interest proposed regulations provide that contingent interest that is a dividend equivalent under section 871(m) does not qualify as portfolio interest.
[Issue date: 6 December 2013]
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-061213.pdf?id=us:em:na:wta:eng:tax:121313

Have a question?
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