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Irish Revenue issues statement of practice on foreign branch double taxation relief

On 23 June 2014, Ireland’s tax authorities issued a statement of practice on the calculation of foreign branch double taxation relief in certain situations where timing differences arise regarding the recognition of income at the level of an Irish company, compared with the recognition of the same income at the level of a foreign branch. In the absence of this statement of practice, where income is recognized for tax purposes in Ireland in an earlier accounting period than that of the foreign branch territory, no double taxation relief would be available because no double-taxed income would arise in Ireland in the relevant accounting period.

The statement of practice applies to foreign tax paid for accounting periods commencing on or after 1 January 2013, and provides relief in the circumstances described above where an overall loss of foreign tax credits otherwise would occur. The relief is provided by way of a carryback of foreign tax credits (the amount of the credit allowed to be carried back is 87.5% of the foreign tax paid at the level of the foreign branch in respect of income that had been previously recognized for Irish tax purposes, at the level of the Irish company, in an earlier accounting period).

The change of practice is of relevance to the insurance sector, particularly in the context of Irish insurance companies with foreign branches, where timing differences for accounting and tax purposes may arise between jurisdictions in relation to when the income or expense is recognized.

A tax refund claim under this statement of practice must be made within four years after the end of the accounting period in which the double-taxed income was first recognized in Ireland.

By way of example, assume that branch profits of EUR 10 million were recognized by an Irish company during FY10 and resulted in an Irish tax charge of EUR 1.25 million, but these same profits are not recognized in the foreign branch jurisdiction until FY13 (as a result of differences in accounting and taxation rules in Ireland, compared with the foreign jurisdiction), and that a foreign tax charge of EUR 900,000 arises. Under the statement of practice, the Irish company is entitled to apply for an Irish tax refund of EUR 787,500 (87.5% of the foreign tax is allowed to be carried back as a credit to FY10, in accordance with the statement of practice), provided the claim is made on or before 31 December 2014.

In computing the level of tax relief available in the earlier accounting period, a taxpayer must consider the Irish corporation tax attributable to the double-taxed income, while ignoring the impact of any other factors that could have affected the level of relief that may have been available (such as differences arising due to tax rates in the two jurisdictions, permanent disallowance or prohibition of expenses, exemption of income, R&D credits or differences arising due to loss relief).

Any unrelieved foreign tax may be carried forward as a credit against Irish corporation tax on branch profits of subsequent accounting periods, as under current rules.

Comments

This is a welcome development for the Irish insurance sector and further enhances Ireland's double taxation relief regime for Irish insurance companies with operations in foreign jurisdictions. Although the statement of practice predominantly was drafted with respect to the insurance sector, it also may apply to other situations.

In light of the revised practice of the tax authorities, taxpayers, particularly insurance companies, should consider whether foreign tax suffered for accounting periods commencing on or after 1 January 2013 may be available to be carried back as a credit against Irish corporation tax previously paid in respect of the same income.

Although no mention is made of it in the statement of practice, where foreign tax is available to be carried back under the statement of practice, it also may be possible to pool any excess foreign tax credits carried back against other branch profits in an earlier accounting period (in accordance with Schedule 24 paragraph 9FA of the Taxes Consolidation Act 1997), to enhance any Irish corporation tax refund that may be available.

As noted above, there is a timing issue in terms of making a claim for a refund; all refund claims must be made no later than four years after the end of the accounting period in which the double-taxed income was first recognized in Ireland. Taxpayers should consider submitting any refund claims at the earliest available opportunity.

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China:

VAT exemption extended to international freight forwarding services provided through chain of forwarders

China's State Administration of Taxation (SAT) issued guidance on 14 July 2014 (Bulletin 42) that extends VAT-exempt treatment to international freight forwarding services provided through all qualifying entities within a chain of forwarders. The new rules will apply as from 1 September 2014.

International freight forwarding services frequently are provided through a chain of forwarders. However, the VAT exemption for international freight forwarding services (which became effective on 1 August 2013) applies only to the last forwarder in the chain; i.e. the exemption applies to the forwarder that is in direct business contact with the international

transportation service supplier (e.g. the shipping company), but not to forwarders that do not have direct contact with international suppliers and do not make direct payments to such suppliers. With the issuance of Bulletin 42, all other forwarders in the chain will be eligible for VAT-exempt treatment, provided all of the forwarder's services income received from customers (or other forwarders) and the international transport and agency fees paid to other forwarders are settled through a financial institution ("settling requirement").

Although Bulletin 42 brings a welcome change to the international freight forwarding business, it is unclear whether the common practice of offsetting receivables and payables by entities in a multinational international freight forwarding service group would result in a failure to meet the settling requirement.

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India: Budget for 2014-15 announced

The Indian finance minister presented the budget for 2014-15 to parliament on 10 July 2014. Both of the houses of parliament must approve the budget proposals and the president must assent to the proposals before they can become law.

Highlights of the budget proposals related to taxes include the following:

- There would be no change to the corporate tax rate, surcharge or cess.
- The 15% investment allowance for manufacturing companies that invest more than INR 1 billion in new plant and machinery would be extended to investments made until 31 March 2017, and an additional 15% deduction would be introduced for investments exceeding INR 250 million in new plant and machinery on or after 1 April 2015.
- Expenditure incurred on corporate social responsibility activities (which are mandatory for certain companies as from 1 April 2014) generally would not be deductible for tax purposes.
- Capital gains from the sale of shares of an unlisted company (private or public) would qualify as long-term capital gains eligible for concessional tax treatment only if the shares have been held for a period of more than 36 months (increased from 12 months).
- The dividend distribution tax (15% plus a 10% surcharge and 3% cess) that currently is payable on the amount of the actual (net) dividends distributed by an Indian company would instead be payable on a "grossed up" basis for dividends distributed on or after 1 October 2014. This would increase the effective dividend distribution tax rate by almost 3%.
- The beneficial 15% tax rate on dividends declared, distributed or paid by specified foreign companies to an Indian company would be extended indefinitely (currently, it applies only to dividends received up to 31 March 2014).
- The concessional withholding tax rate of 5% that applies to interest on amounts borrowed in foreign currency would be extended until 30 June 2017 and would apply to all long-term bonds (currently, it applies only to infrastructure bonds).
- Where withholding tax is not deducted on payments to residents, the nondeductible portion of the payments would be limited to 30% (currently, the payments are 100% nondeductible).
- A special tax regime for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) would be introduced as from 1 October 2014.
- The tax holiday for power sector undertakings would be extended to cover eligible activities that commence from 31 March 2014 to 31 March 2017.
- A "rollback" provision would be introduced as from 1 October 2014 that would permit advance pricing agreements between taxpayers and the Indian tax authorities to apply retroactively to up to four prior years, subject to certain conditions (to be prescribed). Other transfer pricing proposals include the introduction of a "range" concept for determining an arm's length price and the use of multiple-year data for comparability analysis; detailed rules with respect to these proposals are yet to be released.

- For personal tax purposes, the tax exemption limit would be increased by INR 50,000 and the monthly wage limit under the employees' Provident Fund scheme would be increased from INR 6,500 to INR 15,000, among other proposals.
- No changes would be made to the standard rates of customs duty, central excise duty or service tax, although certain changes are proposed to the regimes (e.g. changes to the customs duty on certain imports, to the excise duty on certain goods and to certain service tax exemptions).

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India:

Tribunal rules social networking profiles can be used to determine PE status

The Delhi Tribunal (the Tribunal) issued a decision on 4 July 2014 in which it ruled that the LinkedIn profiles of employees can be used as additional evidence to verify the activities of individuals in India for purposes of determining whether a nonresident company has a permanent establishment (PE) in India.

The case involved an Indian liaison office (LO) of a nonresident group company that was set up to act as a communications channel between the head office and customers in India. During the course of a "survey" of the LO conducted by the Indian tax authorities, it came to light that the LO was engaged in various sales activities of the group in India, for which expatriate employees were appointed to head the Indian operations. The tax authorities took the position that the nonresident taxpayer was carrying on business in India through a PE, and that the income attributable to the PE was taxable in India. The tax authorities asked the taxpayer to provide employment letters for the employees and self-attested declarations from the employees with regard to their responsibilities and work, as well as any self-appraisals submitted, etc. The taxpayer produced the assignment letters, but did not provide the other information requested.

During the course of the proceedings before the Tribunal, the tax authorities produced the LinkedIn profiles of the employees as additional evidence, to which the taxpayer objected. The Tribunal, however, admitted the LinkedIn profiles of the expatriate employees on the grounds that the employees themselves had created the job profiles and the profiles were in the public domain. The effect of the Tribunal's ruling is that the tax authorities may consider profiles updated on networking websites, such as LinkedIn, as substantive evidence in determining various facts; the information provided by the employees could provide an indication of the activities of foreign entities in India.

The Tribunal also observed that the taxpayer is free to rebut the information updated on the networking website by its employees by producing evidence to the contrary. Accordingly, a taxpayer may provide documentation to substantiate its claim that it does not have a PE in India.

The case reinforces the significance of information that appears in the public domain, and the importance of internal documentation to meet any challenge raised by the tax authorities. Nonresident taxpayers should have the proper documentation in place to substantiate the activities or roles of their employees.

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Indonesia:

Guidance issued on exchange of information between governments

As part of its efforts to prevent tax avoidance, tax evasion and tax treaty abuse, Indonesia's Ministry of Finance has issued new guidance on exchange of information (EOI) procedures under relevant tax treaties, tax information exchange agreements (TIEAs) or multilateral agreements. The new guidance is effective from 1 April 2014 and supplements guidance

issued in 2011 by the Directorate General of Taxation (DGT), which provides that two competent authorities can conduct a joint tax audit for the purpose of EOI.

EOI will be carried out by the Director of Tax Regulations II, as the competent authority in Indonesia. EOI can include an EOI upon request, a spontaneous EOI and an automatic EOI from/to the government of a tax treaty partner country (or a country that is a party to a TIEA or multilateral agreement with Indonesia).

In carrying out an automatic EOI, the DGT units that manage and administer tax information will furnish certain tax information to the Director of Tax Regulations II, which may include information on the following, among other items:

- Changes in taxpayer domicile;
- Ownership of, or income from, assets;
- Dividends, interest and royalties; and
- Gains from the sale or transfer of assets.

Under certain conditions (i.e. if insufficient information is obtained, or to speed up the information-collection process), the DGT or the government of a treaty partner country (or a country that is a party to a TIEA or multilateral agreement with Indonesia) may conduct a tax examination or simultaneous tax examination abroad on a reciprocal basis.

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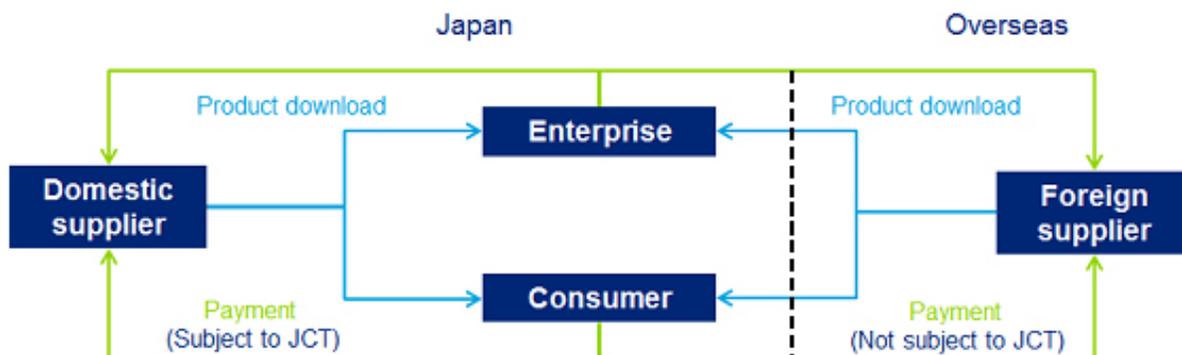
Japan: Update on potential changes to JCT regime for cross-border digital supplies

The Japanese government launched a broad discussion in April 2014 on how to levy Japanese Consumption Tax (JCT) on digital products supplied by foreign companies. If the proposed changes are implemented, foreign digital supplies, which currently are outside the scope of JCT, will be subject to an 8% JCT.

The following provides an overview of the key components of the proposed taxation regime for foreign digital items (such as e-books, music, software, smartphone applications, internet advertising and cloud computing services), and the implications for foreign suppliers of these products.

Background

Under current JCT rules, the place of supply of services generally is the place where the services are physically performed. If the place of performance is not clear, the services are considered to be supplied at the main office of the service provider. As a result, foreign suppliers can sell digital products (which generally are considered “services”) without charging JCT, while the same products are subject to an 8% JCT when provided by Japanese suppliers.



The inequality of treatment places Japanese suppliers at a significant disadvantage. Given the JCT rate increase from 5% to 8% in April 2014, and a further increase to 10% scheduled for October 2015, the price disparity between Japanese and overseas suppliers is expected to increase even more. The government has been discussing methods to collect JCT from foreign suppliers since 2012, as urged by Japanese suppliers, but it has been unsuccessful in introducing any measures.

Potential changes

The following changes to the JCT regime are under consideration:

Items	Current rules	Proposed changes
Definition of digital content	Unclear whether the supply of digital content is a provision of services or a lease of copyrights	Define as a "provision of services"
Place of supply of services	Generally, where a service is physically performed	No change
	If it is difficult to identify the place of performance, it is the place where the main office of the service provider is located	If it is difficult to identify the place of performance, it would be the place where the main office of the service recipient is located
Enforcement	The Japanese tax authorities have limited means to enforce JCT obligations of foreign suppliers	A JCT registration system may be introduced

Even if foreign digital supplies become taxable, some foreign suppliers may enjoy a two-year JCT exemption period.

Potential implications for foreign suppliers

If the proposed changes are implemented, cross-border digital supplies by nonresidents would be subject to JCT. Cross-border digital supplies would be categorized as "B2C supplies" and "B2B supplies," which would be treated differently for JCT purposes. While several options are being discussed to ensure JCT collection, the proposals described below appear to have the most support.

Items	B2C supplies	B2B supplies
Suggested definition	Supply of digital products: <ul style="list-style-type: none"> • Generally intended for individuals; or • Provided to both individuals and businesses, where the service terms do not clearly specify that the products are intended for businesses 	Supply of digital products: <ul style="list-style-type: none"> • Generally intended for businesses; or • Provided to both individuals and businesses, where the service terms clearly specify that the products are intended for businesses
Examples	E-book distribution, video/music streaming, cloud services for individuals	Advertising services, legal services, cloud services for businesses
Potential implications	Foreign suppliers may be required to: <ul style="list-style-type: none"> Charge and collect JCT; Appoint a JCT representative in Japan; and Pay JCT and file JCT returns 	<ul style="list-style-type: none"> • Reverse charge mechanism likely would apply, under which Japanese recipients, instead of suppliers, would be liable to account for output JCT on the supply; • Foreign suppliers would have to notify recipients that a reverse charge applies; and • Japanese recipients may be allowed to deem an amount of output JCT equal to the corresponding input JCT, and be exempt from reporting on a JCT return

Comments

The proposed changes are expected to be incorporated in the 2015 tax reforms, and implemented from April 2015 at the earliest. The new regime may have significant implications for foreign suppliers, and may place an additional burden on their resources. To prepare for the regime, offshore suppliers may want to start considering:

- Whether they can properly categorize each customer as B2B or B2C, and identify the location of each customer;
- JCT reporting requirements and processes; and
- The possible effect on accounting systems.

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Kazakhstan: New investment incentives to become available

A new law aimed at bringing about significant improvements to Kazakhstan's overall investment climate became effective on 24 June 2014 and will apply as from 1 January 2015. The law introduces preferential treatment for investors involved in "priority investment projects," and other beneficial options for projects that do not qualify as priority investment projects.

Although the detailed list of types of priority activities has not yet been published, the list is expected to be available by the end of August 2014. "Priority activities" likely will include a wide range of activities; however, certain activities are excluded from the scope of the incentives law (e.g. subsoil use and the production of excisable goods).

The investment preferences for priority investment projects will be available only to newly established legal entities that engage in certain types of priority activities and that commit to a minimum investment of approximately USD 20 million in Kazakhstan. An investment project for which incentives will be granted will be governed by an investment contract concluded between the investor and the government of Kazakhstan.

According to the new incentives law, the following package of incentives will be available to eligible investors:

Preferences for priority investment projects only

Tax incentives – The following tax incentives will be available for eligible investors that realize at least 90% of their annual income from the relevant priority investment project:

- A corporate income tax exemption for a period of up to 10 years;
- A zero rate of land tax for land used for the project for a period of up to 10 years; and
- A zero rate of property tax for up to eight years in relation to fixed assets (that are subject to property tax) that have been brought into use for the first time in relation to the project.

The tax incentives will be detailed in the relevant investment contract and will be available to eligible investors as from 1 January 2015, when the new incentives become effective.

Investment subsidies and other incentives – Government subsidies may be granted by way of a reimbursement of up to 30% of the actual expenses incurred on construction and assembly work and purchases of equipment (excluding VAT and excise duties, and provided documentation is available to substantiate the expenses), but the subsidy will be limited to the amount of expenses projected in the pre-project documentation.

Investors involved in priority investment projects also may be granted the following incentives:

- A stability regime, to apply in the event of changes in tax legislation or legislation related to attracting foreign labor to Kazakhstan;
- An exemption from quota and work permit requirements for the following foreign individuals:
 - Individuals working for legal entities that have concluded an investment agreement with the government related to a priority investment project; or
 - Individuals working for contractors (or subcontractors) as a general contractor, contractor or executor of services related to architecture, city construction and construction activity (including survey and design activity and engineering services).

The exemption may last for the entire period of the project and up to one year after completion of the project for individuals that serve as project heads or specialists with higher education that are qualified employees, and will be based on the provisions set forth in the related investment contract:

- Application of the “single window” principle, under which the competent authority for investments will provide the bulk of services to a qualifying investor (including the issuance of licenses, permits, etc., if applicable), to limit the need for the investor to contact other state authorities and to reduce the number of documents to be submitted. The relevant rules will be approved by the government; and
- Protection of a qualifying investor’s rights and legal interests by the investment ombudsman, who will cooperate with the state authorities on issues raised by the investor.

Preferential treatment of investment projects (including priority investment projects)

Customs duties exemption – Beneficial treatment will apply to imports of technological equipment, components and spare parts for such equipment, raw materials and other materials:

- In the case of imports of technological equipment, a customs duties exemption may be provided for the period of validity of the investment contract, but the exemption may not last more than five years from the time the investment contract is registered; and
- In the case of imports of components and spare parts for technological equipment, raw materials and other materials, a customs duties exemption may be provided for the period of validity of the investment contract, but the exemption may not last more than five years from the commissioning date for the fixed assets.

Property grants – State property may be provided to a qualifying investor for temporary use, or land may be provided to a qualifying investor for use free of charge. The maximum market price of the assets provided cannot, however, exceed 30% of the total value of the fixed assets of the legal entity applying for the preference.

Comments

Although the measures are relatively straightforward, certain areas require further clarification. For instance, the requirement that there be an investment commitment of USD 20 million is unclear as to whether this amount represents a single minimum investment commitment as of the date an investor applies for the preferences, or whether there also is a “post-application commitment requirement” of an additional USD 20 million. In addition, the list of priority investment projects is not yet available, which is one of the most critical concerns for potential investors considering the applicability of investment preferences. Given these uncertainties, clarifying acts and supporting legislation are expected to be finalized in the coming months. Overall, however, the new measures should be viewed as a positive initiative to stimulate new investment in Kazakhstan.

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Luxembourg: Tax agreement with Taiwan approved

The Luxembourg Chamber of Representatives approved the 2011 tax agreement with Taiwan on 9 June 2014, the first agreement for the avoidance of double taxation between the two jurisdictions. The agreement should boost economic and bilateral ties; stimulate the flow of capital, trade and technologies from Luxembourg to Taiwan (and vice versa); and increase the competitiveness of both jurisdictions.

The main features of the tax agreement are as follows:

Residence – The protocol to the tax agreement provides that a collective investment vehicle will be considered a resident for treaty purposes and the beneficial owner of the income it receives if it is treated as a body corporate for tax purposes in its territory of residence. This provision should be beneficial for the Luxembourg investment fund industry, in particular, for SICAVs/SICAFs that would be allowed to benefit from the tax agreement.

Permanent establishment (PE) – The PE article includes features from the OECD and UN model treaties.

Deviations from the OECD model mainly relate to the time period for creating a PE. The agreement expressly provides that a building site, construction or a dredging project will constitute a PE if such site, project or activities lasts for more than six months. The furnishing of services, including consultancy services, will create a PE if such activities continue (for the same or a connected project) in the other territory for a period or periods aggregating more than six months within any 12-month period.

Shipping and air transport – Under the tax agreement, profits of an enterprise of one of the territories from the operation of ships or aircraft in international traffic will be taxable only in the territory in which the enterprise is resident, and there is a more precise definition of “profits from the operation of ships or aircraft in international traffic” than in the OECD model treaty.

Dividend, interest and royalties –

- The dividends provision will grant lower withholding tax rates than the general rates under Taiwanese and Luxembourg domestic law. Dividends paid by Taiwanese corporations to foreign investors are subject to a 20% withholding tax under Taiwan’s domestic law. The rate on dividends paid to foreign investors generally is 15% under Luxembourg’s domestic law, although the rate may be reduced to 0% for a company located in a treaty partner jurisdiction under certain conditions similar to those in the Luxembourg participation exemption regime. The tax agreement generally provides for a maximum withholding tax rate of 10% on dividend distributions paid to a resident of the other territory (including individuals and corporations). With respect to investment funds, the agreement provides for a 15% withholding tax rate if the beneficial owner is an investment fund with a corporate form (e.g. SICAF/SICAV).
- Interest payments made to residents of the other territory generally will be subject to a 10% withholding tax. However, an exemption will apply in certain cases described by the tax agreement, such as interest paid on loans made between banks or interest paid to a political subdivision, local authority, central bank, etc. The interest provision also includes a 15% rate that will apply in cases where the beneficial owner is a collective investment vehicle treated as a body corporate for tax purposes in its jurisdiction of residence. The provision will not affect the treatment of interest payments made by a Luxembourg resident, since Luxembourg generally does not levy withholding tax on interest paid to a nonresident under its domestic law.
- For royalties, a 10% withholding tax rate will apply to payments to a resident of the other territory under the tax agreement. The definition of royalties is broader than in the OECD model treaty, and also includes cinematograph films and films for television. In contrast with Taiwanese domestic law, under which a 20% withholding tax rate generally applies, the royalties provision in the agreement should be very attractive for Luxembourg investors. The provision will not change the effect of Luxembourg domestic law, since Luxembourg does not levy withholding tax on royalties paid to a nonresident.

Capital gains – The capital gains article reflects the OECD model, but it does not contain any specific disposition rules for real-estate rich companies. As a rule, gains derived from the sale of shares will be taxed in the jurisdiction in which the seller is resident.

Exchange of information – The agreement reflects the OECD standards related to the exchange of information, and the protocol details what kind of information should be included in the information request to demonstrate the relevance of the information to the request (e.g. identity of the person, tax purpose, etc.).

Limitation on benefits – The agreement includes a provision stating that treaty benefits will not be granted if it is established that the main purpose, or one of the main purposes, of a resident's conduct of operations was to obtain the benefits of the agreement. However, this general anti-abuse rule may not be applied without prior consultation between the competent authorities of both territories.

Entry into force – Once the agreement also is ratified by Taiwanese authorities, it will enter into force, and it will become effective in the year following the exchange of ratification instruments between the two jurisdictions.

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Malta:

Treatment of investment committee fees derived by nonresidents clarified

The Maltese tax authorities have clarified the tax treatment of remuneration derived by nonresident investment committee members of a Maltese fund. This clarification, announced on 2 July 2014, is welcome in view of the growth experienced in the Maltese fund industry in recent years.

Background on funds in Malta

Various types of retail and nonretail funds are provided for under Maltese law, all of which must be licensed by the Malta Financial Services Authority and must comply with ongoing regulation and supervision requirements that depend on the category of investors the fund is targeting.

Funds either may appoint a fund manager or may opt to be self-managed. A self-managed fund must fulfil its regulatory and operational obligations by, *inter alia*, forming an investment committee with a minimum of three qualified members, at least one of which must be a local resident. While the investment committee typically may delegate the day-to-day investment management of the fund assets to one or more portfolio manager(s), the committee itself is required to hold meetings on at least a quarterly basis, and the majority of the meetings must be physically held in Malta.

The taxation of funds in Malta is relatively straightforward; a general tax exemption is available for qualifying profits and gains, and no Malta tax is levied on distributions to investors. Similarly, no tax is levied in Malta on profits or gains derived by investors upon the transfer, redemption or liquidation of units in the fund.

However, there has been some ambiguity regarding the tax treatment in Malta of those members of the investment committee who are not Malta residents, as a result of which the Maltese tax authorities now have provided clear guidance.

Clarification of taxation of fees derived by nonresident investment committee members

Nonresidents generally are taxable in Malta on Malta-source income and gains. In principle, directors' fees are considered to have a Malta source if the company is resident in Malta. Other fees for services rendered typically are considered to have a Malta source if the services are physically performed in Malta.

The Maltese tax authorities have clarified that remuneration for the provision of advice as an investment committee member should be regarded as income derived in consideration for services rendered. Consequently, nonresident investment committee members should be taxable in Malta on the portion of the remuneration received that is attributable to the portion of the services that are physically performed in Malta.

Given the complexity surrounding such a determination, the Maltese tax authorities have prescribed that the portion of the remuneration received that should be attributable to the portion of the services that are physically performed in Malta is to be computed on an annual basis, as the higher of:

1. A pro rata amount of the total remuneration received, to be determined on a per diem basis based on the actual number of days of physical presence in Malta; or
2. 1/12 of the investment committee member's compensation.

However, this treatment may be limited by the provisions of an applicable tax treaty. If a treaty is in force between Malta and the country of residence of the nonresident investment committee member, the treaty may allocate taxing rights to the country of residence, in which case Malta would have no jurisdiction to tax the remuneration received. Malta currently has approximately 70 tax treaties in force.

Malta VAT considerations

Services involving the management of an investment scheme are exempt from Malta VAT, provided the services are limited to those activities that are specific to and essential for the core activity of the scheme. Typically, in practice, the exemption is applied to services supplied by external fund managers to a fund.

The basis for the VAT exemption relates to the services themselves, rather than to the status/type of person supplying them, and based on principles resulting from decisions of the Court of Justice of the European Union, the exemption also may apply to services provided by investment committee members, provided the fund in respect of which the services are being provided is a qualifying fund for purposes of the VAT exemption and all other conditions for the exemption are satisfied.

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Mexico:

Requirements for electronic accounting records published

Mexico's 2014 tax reform introduced a requirement for taxpayers to submit certain accounting records to the tax authorities. The rules for this new reporting requirement were published in the official gazette on 4 July 2014, as part of the omnibus tax rules, and will apply to accounting records for periods starting from 1 July 2014. The first records will be due to the tax authorities by 31 October 2014.

Under the new rules, taxpayers generally will be required to keep accounting records in an electronic system capable of generating XML files, and will need to submit certain information to the Mexican tax authorities through the electronic "tax mailbox" system—some submissions are due on a monthly basis, while others are due annually or upon the occurrence of specific events:

- A chart of accounts must be submitted in the first electronic filing for the period and each time the chart is modified. The first chart of accounts is due by 31 October 2014.
- A trial balance must be submitted on a monthly basis, generally by the 25th day (for legal entities) or the 27th day (for individuals) of the following month. However, additional time is provided to submit the trial balances for July to December 2014 (e.g. the July trial balance is due by 31 October 2014). Information on tax adjustments must be reported annually with the year-end trial balance information that is due by 20 April (for legal entities) or 22 May (for individuals) of the following year.

- Information on journal entries must be submitted upon request from the tax authorities, which may occur as part of an audit or when a taxpayer applies for a tax refund or tax offset. Requests for electronic journal entries will be enforced as from 2015.

In addition to these general requirements, the rules contain specific details regarding the records that taxpayers must maintain and submit to the tax authorities.

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Ukraine: Overhaul of tax code/introduction of tax amnesty under consideration

The Ukraine government is considering two tax initiatives; the enactment of either (or both) initiatives would make substantial changes to the domestic tax rules. Both initiatives have the potential to affect a significant number of Ukrainian taxpayers, and businesses operating in Ukraine are monitoring their progress.

The first initiative would provide a comprehensive overhaul of the Ukrainian tax code to simplify tax compliance, reduce the gap between financial and tax accounting principles and reduce the overall number of taxes by abolishing some duties and fees applicable only to specific industries. Apart from these general concepts, very few details of the proposed changes are available to general public, since the reform still is at the design stage. It is too soon to tell how long the public discussion stage will last and when (or if) the changes will be enacted.

The second initiative is a tax amnesty, known domestically as a “tax compromise,” which would apply for corporate income tax and VAT purposes. The government would encourage taxpayers to openly declare tax liabilities that were underpaid during tax years 2011-2013 as a result of tax avoidance schemes. To benefit from the amnesty, taxpayers would have to pay 15% of the “avoided” tax liabilities to the state budget. In return, the government would prohibit the tax authorities from initiating tax audits of such taxpayers for the three most recent tax years and from charging fines or initiating a criminal prosecution against taxpayers that agree to the tax compromise. This bill to create the tax amnesty has passed its first hearing in the parliament.

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In brief

China – The State Administration of Taxation (SAT) has issued a bulletin providing guidance for telecommunication enterprises to compute and pay VAT on a consolidated basis with respect to their VATable services included in the VAT reform. The bulletin is effective as from 1 June 2014, the date from which the VAT reform was expanded to include telecommunications services.

European Union – The EU VAT Forum has published an interim report that sets out its first evaluation of the VAT cross-border rulings pilot program that was launched in June 2013. The program allows taxpayers to obtain advance rulings on the VAT treatment of complex cross-border transactions involving any two or more of the 15 EU member states participating in this project (Belgium, Cyprus, Estonia, Finland, France, Hungary, Latvia, Lithuania, Malta, Netherlands, Portugal, Slovenia, Spain, Sweden and the UK). The interim report contains an outline of the rulings provided, which include views on the treatment of training and conferences; building renovations; and the VAT treatment of machinery and tires supplied separately and assembled at their destination. A further assessment of the pilot program will take place at the end of 2014.

Gibraltar – The chief minister delivered a budget address on 30 June 2014 that introduces a number of tax-related measures. Although implementing legislation is still to be enacted, the measures generally will be effective from 1 July 2014. The measures include a corporate tax incentive to promote construction of luxury residential developments, a reduction in the tax rate for trusts (from 30% to 10%) and reductions in the import duty on yachts and artwork. The corporate tax rate remains unchanged at 10%. For personal income tax purposes, the standard rate of tax is reduced from 30% to 20% and the 24% tax bracket under the allowance-based system is reduced to 18%, among other measures.

Mexico – On 19 June 2014, the Ministry of Finance published on its website a list of 86 companies that have been granted VAT and excise tax certification and that will be granted VAT and excise tax credit for their temporary imports from 1 January 2015. The breakdown of companies by rating is as follows: 38 companies with an AAA rating; 4 companies with an AA rating; and 44 companies with an A rating.

Netherlands – A draft decree was published on 1 July 2014 that, if implemented, would provide the statutory basis for implementing the US Foreign Account Tax Compliance Act (FATCA) rules in Dutch legislation. The intergovernmental agreement (IGA) concluded with the US on 18 December 2013 to implement FATCA provides, among other things, that Dutch financial institutions will be required to provide certain information related to assets of US taxpayers to the Dutch tax authorities, which will then report the information to the US tax authorities. The first information exchanges under the IGA will occur in September 2015. Financial institutions and other interested parties may provide comments on the draft decree online through 26 August 2014.

OECD – The OECD released the full version of a new global standard for the automatic exchange of financial account information in tax matters on 21 July 2014. Under the standard, governments are requested to obtain detailed account information from their financial institutions and exchange that information automatically with other jurisdictions. The standard provides for annual automatic exchange of financial account information (including balances, dividends, interest and sales proceeds from financial assets) reported to governments by financial institutions, and it covers accounts held by individuals and entities, including trusts and foundations. The new version of the standard includes guidance for implementation, model agreements and standards for technical and information technology solutions. The OECD developed the standard under a mandate from the G-20, and it will be formally presented to the G20 finance ministers in September.

United States – The Internal Revenue Service (IRS) has issued a new policy that provides that individual taxpayer identification numbers (ITINs), which are issued by the US government to individuals who are not eligible to obtain a Social Security number, will expire if not used on a US tax return for five consecutive years. Under the previous policy, ITINs issued after 1 January 2013 were subject to expiration after five years, regardless of use; under the new policy, all ITINs (not only those issued after 1 January 2013) potentially are subject to expiration, but expiration will occur only if an ITIN is not used for five consecutive years. The IRS will not begin to deactivate ITINs under the new policy until 2016.

Vietnam – The Ministry of Finance has issued a circular on corporate income tax (Circular 78) that provides guidance on the implementation of a decree issued in December 2013 (for prior coverage of the decree, see the article dated 14 February 2014). Circular 78 provides more detailed instructions and new guidance related to the determination of taxable income, deductible expenses, other income and tax incentives. Topics covered include the effect of a change in the corporate income tax rate (e.g. from 25% to 22% in 2014) on the tax calculation for enterprises with financial years other than the calendar year, and the incentives for new investment projects and business expansion projects. Circular 78 will enter into effect on 2 August 2014 and will apply to tax periods from 2014 onward.

URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140214_8.html

Tax treaty round up

At the end of each month, the *World Tax Advisor* provides an update on recent tax treaty developments, with a focus on items that directly affect the withholding tax rates of the key jurisdictions covered by the Deloitte International Tax Source (DITS). Additional coverage may include stated negotiating priorities and other important tax treaty trends.

URL: <http://www.dits.deloitte.com?id=us:em:na:wta:eng:tax>

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

Australia-Mauritius – The 2010 treaty entered into force on 31 May 2013 and applies as from 1 July 2014 in Australia and as from 1 January 2014 in Mauritius. The treaty does not cover dividends, interest and royalties, so the rates under domestic law apply.

Austria-Montenegro – When in effect, the treaty signed on 14 June 2014 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 5% of the capital of the distributing company; otherwise, the rate will be 10%. The rate on interest will be 10%. A 5% withholding tax rate will apply to royalties paid for a copyright of literary, artistic or scientific work (including cinematographic films and recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission) or computer software; a 10% rate will apply to royalties paid for a patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

Canada-United Kingdom – When in effect, the protocol to the 1978 treaty signed on 21 July 2014 provides for an exemption from withholding tax on dividends paid to qualifying organizations that administer or provide benefits under one or more recognized pension plans. The protocol also will eliminate the exemption on interest paid in connection with the sale of equipment, merchandise or services on credit and instead provides for an exemption from withholding tax on interest (other than certain contingent interest) paid between parties dealing at arm's length. The withholding tax rate on royalties will not be affected by the protocol.

Colombia – The multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, entered into force in respect of Colombia on 1 July 2014 and generally will apply as from 1 January 2015.

Estonia-Luxembourg – When in effect, the treaty signed on 7 July 2014 (to replace the current treaty dating from 2006) provides for a 0% withholding tax on dividends paid to a company that holds directly at least 10% of the capital of the distributing company; otherwise, the rate will be 10%. The rate on interest and royalties will be 0%.

Hong Kong-Korea – When in effect, the treaty signed on 8 July 2014 provides for a 10% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the distributing company; otherwise the rate will be 15%. The rates on interest and royalties will be 10%.

Iceland-Switzerland – When in effect, the treaty signed on 10 July 2014 to replace the 1988 treaty provides for a 0% rate where dividends are paid to a pension scheme or to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company for at least one year prior to the dividend payment; otherwise, the rate will be 15%. Interest will be taxable only in the state of residence of the recipient. The rate on royalties for the use of, or the right to use, a patent, trademark, design or model, plan, secret formula or process will be 5%; otherwise, the rate will be 0%.

India-Fiji – When in effect, the treaty signed on 30 January 2014 provides for a 5% withholding tax rate on dividends and a 10% rate on interest and royalties.

India-Poland – The 2013 protocol to the 1989 treaty entered into force on 1 June 2014 and will apply as from 1 January 2015 for Poland and as from 1 April 2015 for India. When in effect, the protocol provides that the withholding tax rate on dividends and interest will be 10% and the rate on royalties will be 15%.

Ireland-Botswana – When in effect, the treaty signed on 10 June 2014 provides for a 5% withholding tax on dividends and a 7.5% rate on interest. A 5% rate will apply on royalties paid for industrial, commercial or scientific equipment; otherwise, the rate will be 7.5%.

Israel-Panama – The 2002 treaty entered into force on 30 June 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 5% withholding tax on dividends paid to a pension fund and a 20% rate on dividends distributed by a REIT where the recipient holds directly no more than 10% of the capital of the REIT payer; otherwise, the rate will be 15%. A 0% rate will apply to interest paid to a pension fund; otherwise, the rate will be 15%. Royalties will be subject to a 15% rate.

Luxembourg-Taiwan – See article in this issue.

URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140725_8.html

Malta-Liechtenstein – The 2013 treaty entered into force on 1 July 2014 and will apply as from 1 January 2015. When in effect, the treaty provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

Mauritius-Guernsey – The 2013 treaty enters into force on 27 July 2014 and will apply as from 1 January 2015. When in effect, the treaty provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

Mexico-United Arab Emirates – The 2012 treaty entered into force on 9 July 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 0% withholding tax on dividends, a 4.9% rate on interest paid to a bank and a 10% rate on interest in all other cases and a 10% rate on royalties.

OECD – The OECD approved the content of the 2014 update to the model tax treaty on 15 July 2014; the update will be incorporated in a revised version of the treaty in the next few months. The update includes changes to the exchange of information article and related commentary, as well as changes to the artistes and sportsmen article, the meaning of “beneficial owner,” the tax treatment of termination payments and the treatment of trading in emissions permits and credits. The update does not contain any BEPS-related changes.

Poland-Slovakia – The 2013 protocol to the 1994 treaty enters into force on 1 August 2014 and will apply as from 1 January 2015. When in effect, the protocol provides for a 0% rate where dividends are paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company on the date the dividends are paid, and has held the participation or will have done so for an uninterrupted 24-month period within which that date falls; otherwise, the rate will be 5%. The rate on interest will be 5%. The withholding tax rate on royalties will not be affected by the protocol.

Singapore-Seychelles – When in effect, the treaty signed on 9 July 2014 provides that dividends will be taxable only in the state of residence of the recipient. The rate on interest will be 12% and the rate on royalties will be 8%.

Slovenia-Iran – The 2011 treaty entered into force on 30 April 2014 and will apply as from 1 January 2015 for Slovenia and as from 21 March 2015 for Iran. When in effect, the treaty provides for a 7% withholding tax on dividends. 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 5%. The rate on royalties will be 5%.

Spain-Dominican Republic – The 2011 treaty entered into force on 25 July 2014 and applies as from the same date. A 0% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 75% of the capital of the distributing company; otherwise, the rate is 10%. The rate on interest and royalties is 10%.

Taiwan-Kiribati – The 2014 treaty entered into force on 23 June 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 10% withholding tax rate on dividends, interest and royalties.

United Kingdom-Tajikistan – When in effect, the treaty signed on 1 July 2014 provides for a 5% withholding tax rate where dividends are paid to a pension scheme or to a company that holds directly at least 10% of the capital of the distributing company; a 15% rate will apply where dividends are paid out of income (including gains) derived, directly or indirectly, from immovable property by an investment vehicle that distributes most of this income annually and whose income from such property is exempt from tax (other than where the beneficial owner of the dividends is a pension scheme); otherwise, the rate will be 10%. A 0% rate will apply where interest is paid to a bank or to a pension scheme (provided the interest is not derived from the carrying on of a business by the pension scheme or through an associated enterprise); otherwise, the rate will be 10%. The rate on royalties will be 7%.

United States – Intergovernmental agreements (IGAs) to improve international tax compliance and to implement the Foreign Account Tax Compliance Act have been signed between the US and Latvia (on 27 June 2014), the British Virgin Islands (on 30 June 2014) and Israel (on 30 June 2014). The list of jurisdictions that have agreed in substance on the terms of an IGA with the US and will be treated as having signed an IGA until 31 December 2014 (the date by which the IGA must be signed in order for this status to continue without interruption) also has continued to grow to include countries such as China, one of the largest US trading partners. The US Internal Revenue Service has released additional guidance related to FATCA, including an updated foreign financial institution (FFI) agreement for participating FFIs and reporting Model 2 FFIs, instructions for certain FATCA-related forms (including the form used by withholding agents to report US

source payments and amounts withheld on such payments to non-US persons) and an updated qualified intermediary agreement to reflect the impact of FATCA.

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Brazil

Tax amnesty program revised and incentive for exporters reintroduced

The Brazilian government published rules on 10 July 2014 that revise the recently announced tax amnesty program and reintroduce the "Reintegra" program, under which exporters of manufactured goods are entitled to a tax refund of a percentage of the value of their exports.

Issue date: 21 July 2014

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-210714.pdf?id=us:em:na:wta:eng:tax:072514>

Tax authorities revise view on tax treatment of payments for technical services/assistance

The Brazilian tax authorities issued guidance on 20 June 2014 in which they revise their position on the withholding tax treatment of payments made abroad for technical services and technical assistance in cases where a tax treaty is applicable.

Issue date: 27 June 2014

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-270614.pdf?id=us:em:na:wta:eng:tax:072514>

Government reopens tax amnesty program

The Brazilian government published a law on 20 June 2014 that reopens the tax amnesty program created in 2009. The amnesty allows taxpayers (both legal entities and individuals) to pay off their Brazilian federal tax debts under the administration of the federal tax authorities and the Office of the Attorney-General of the National Treasury. The conditions are less stringent than otherwise would apply. However, unlike previous programs, the new amnesty requires taxpayers to make an up-front payment of a portion of the consolidated tax debt.

Issue date: 27 June 2014

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-amnesty-270614.pdf?id=us:em:na:wta:eng:tax:072514>

China

New reporting requirements for foreign investments/income introduced

The Chinese State Administration of Taxation issued a notice on 30 June 2014 that will require Chinese resident enterprises to report holdings in foreign enterprises, as well as other information relating to foreign-source income. The new rules will apply as from 1 September 2014.

Issue Date: 21 July 2014

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-china-210714.pdf?id=us:em:na:wta:eng:tax:072514>

Mexico

SAT extends restructuring period for maquiladoras

On 4 July 2014, Mexico's Tax Administration Service published revised administrative rules that extend the period for maquiladoras to restructure their operations to meet the requirement that all of their income from productive activities be derived exclusively from maquiladora operations. The rules also clarify certain provisions applicable to maquiladoras to mitigate some of the adverse effects of the changes made to the regime in the new income tax law and administrative rules that became effective in January 2014.

Issue date: 8 July 2014

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-mexico-080714.pdf?id=us:em:na:wta:eng:tax:072514>

Peru

Guidance issued on reporting obligations for indirect transfers

The Peruvian tax authorities have issued guidance setting out the reporting procedures that resident legal entities must follow with respect to indirect transfers of their shares or participating interests. The reporting rules, which entered into

effect on 5 June 2014 and are supplemented by additional provisions that entered into effect on 28 June, require resident legal entities to report certain transfers by 31 July 2014.

Issue date: 7 July 2014

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-peru-070714.pdf?id=us:em:na:wta:eng:tax:072514>

Spain

Broad-based corporate tax reform proposed

The Spanish government presented a broad-based draft tax reform package on 20 June 2014 that proposes the introduction of a new corporate income tax law, as well as extensive changes to the personal income tax, nonresident income tax, VAT and general tax law. The reform initiative is designed to address the country's budget deficit, stimulate investment and help to make Spanish companies more competitive abroad. Certain measures, such as a new anti-hybrid rule and changes to the controlled foreign company rules, clearly are Spain's response to the OECD BEPS initiative. If approved, the reform measures would apply as from 1 January 2015.

Issue date: 2 July 2014

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-spain-020714.pdf?id=us:em:na:wta:eng:tax:072514>

United States

Internal Revenue Service Issues Guidance under Section 901(m) on Dispositions Following Covered Asset Acquisitions

On 21 July 2014, the US Internal Revenue Service released Notice 2014-44, which announced that the IRS and Department of the Treasury will issue regulations addressing the application of section 901(m) to the disposition of assets following a covered asset acquisition. The regulations described in the Notice will apply to transactions occurring on or after 21 July.

Issue date: 23 July 2014

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-230714.pdf?id=us:em:na:wta:eng:tax:072514>

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