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New income tax treaties in Peru create opportunities for holding structure planning

Until recently, Peru's tax treaty network comprised only the treaties with Brazil, Canada, Chile and the Andean Community members (Bolivia, Colombia and Ecuador), which provided limited options for multinationals seeking tax-efficient corporate structures and alternatives for divestitures. Four new income tax treaties – those with Korea, Mexico, Portugal and Switzerland – entered into force in 2014 and will apply as from 1 January 2015. These treaties, which are based on the OECD model, may provide benefits, including mitigation of tax burdens on the divesting of a business (in certain circumstances), for multinationals whose investment structures involve Peruvian operations.

Traditional holding structures

Operating in Peru under the current tax system requires a basic knowledge of the domestic rules applicable to the type of entity selected, as well as an understanding of how the choice of business vehicle may affect the tax treatment applicable to the foreign owner and other entities in the ownership chain when the corporate structure is implemented.

The available tax treaty network is an important factor when assessing a jurisdiction as a location for the direct owner of a Peruvian company, due to Peru's relatively high withholding tax rates. The tax system applicable to an intermediary holding company would play a role in determining how to mitigate the burden of Peru's withholding tax on dividends paid by the Peruvian legal entity (at a 4.1% tax rate) and the capital gains tax that may apply (at a 5% or 30% tax rate) to gains derived from a direct or indirect sale of the shares (or participating interests) representing the equity capital of the Peruvian entity.

Peru's limited tax treaty network has not helped to reduce the tax burden for most multinationals. In the absence of a treaty, countries offering a competitive "holding company regime" generally have provided a better alternative. However, the addition of four countries to the Peruvian tax treaty network should prove beneficial to efficient corporate structuring for multinationals.

New tax treaty relief available as from 2015

Certain features of the tax relief provided by the new treaties with respect to dividends and capital gains on the sale of shares of (or participating interests in) a Peruvian legal entity are described below.

Dividends – The new treaties follow the same trend as those signed by Peru with Canada, Chile and Brazil. Dividends paid by a Peruvian legal entity to a beneficial owner that is resident in Korea, Mexico, Portugal or Switzerland may be taxed in Peru at maximum rates of 10% or 15%. However, since Peru's domestic legislation provides for a flat 4.1% tax rate on dividends, in practice, this rate will apply to investors that are resident in the new treaty jurisdictions, since it is lower than the treaty rate.

Capital gains tax on sales of shares (or participating interests) – All of the new treaties allocate taxing rights to Peru on gains derived from the sale of shares (or participating interests) in a legal entity if more than 50% of the value of the entity's assets consists, directly or indirectly, of immovable property located in Peru (the "50% value test"). If the value of the shares (or participating interests) transferred does not reach this threshold, there will be no taxation in Peru unless the supplementary rules described below apply.

In situations where the 50% value test is not satisfied, the treaties with Korea, Mexico and Portugal still allocate taxing rights to Peru where the sale is connected with shares of (or participating interests in) a legal entity incorporated in Peru and the transferor and its related parties held interests representing 20% or more of the equity capital of the Peruvian entity during the 12 months before the transfer (the "20% test"). The same rule applies to indirect transfers under the Korea and Portugal treaties, but not under the Mexico treaty. Qualifying transfers not covered by the 20% test or the 50% value tax generally will not be subject to tax in Peru.

In contrast with the other treaties, the Mexico treaty provides that capital gains not specifically covered by other provisions of the capital gains article may be taxed by both contracting states; this wording could entitle Peru to levy tax on other indirect transfers. Additionally, under the protocol to the treaty, where the right to tax capital gains is allocated exclusively to Mexico as the residence jurisdiction, Peru still will be able to levy tax on direct and indirect transfers within the scope of the treaty where the transferor or the gain is not subject to tax under Mexican domestic law.

With regard to the Switzerland treaty, in situations where the 50% value test is not satisfied, Peru still will be entitled to impose capital gains tax on gains derived from the direct or indirect sale of shares (or participating interests) in a legal entity incorporated in Peru, but the tax may not exceed the following:

- 2.5% of the net gain from transactions undertaken through a Peruvian stock exchange in relation to shares recorded on the public registry of the securities market;
- 8% of the net gain from transactions "undertaken" in Peru (the treaty does not define when a transaction is "undertaken in Peru"); and
- 15% of the net gain in all other cases.

The 2.5% rate under the Switzerland treaty would reduce by 50% the tax applicable for any sales transaction involving shares that are quoted and transferred through the Peruvian stock exchange (under domestic law, the general tax rate for these transactions is 5%). The 8% and 15% rates applicable for other transactions also will provide significant relief to nonresident taxpayers, as the applicable domestic tax rate for transactions performed outside a Peruvian stock exchange is 30% (even though, from the treaty wording, the scope of situations that would fall within the 8% rate cap is unclear).

Comments

The widening of Peru's treaty network as from 1 January 2015 may allow for mitigation of the burden of the Peruvian capital gains tax on direct and indirect sales of shares, which is becoming an increasing area of risk for investors.

Nonresident entities with subsidiaries or investments in Peru, as well as potential investors, should assess the provisions in the new treaties to determine what benefits they may offer in the context of their existing or contemplated investment structures.

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Bahamas:
Government revises proposed VAT bill

On 23 July 2014, the Bahamas government released a revised version of the draft value added tax (VAT) bill and regulations that originally were released in November 2013. The new proposals are expected to be debated in the House of Assembly in the near future, with VAT to be implemented on 1 January 2015. The government also has released a guide detailing proposed changes for customs duties (reduction in the rates in various tariff categories) that would be effective 1 January 2015, to coincide with the introduction of VAT.

The proposed introduction of VAT is part of an attempt to reform the Bahamas' tax system to increase revenue in a sustainable and responsible manner, with a view to reducing recurring fiscal deficits. The Bahamas currently does not impose income, capital gains or sales taxes; instead, its tax structure relies heavily on customs duties. The implementation of VAT is part of a comprehensive tax reform strategy that aims to increase revenue by broadening the tax base and, at the same time, to reduce dependence on customs duties.

Key changes to the proposed VAT regime include the following:

Rate – The new proposal would set the VAT rate at 7.5% rather than 15%, and the pricing of goods would be inclusive of VAT.

Registration – The registration threshold would be BSD 100,000 of turnover (revenue) for all VAT payers. Businesses that meet the threshold would be required to register, and registration as a group would be possible for groups of related companies.

Exemptions – The revised bill contains fewer exempt financial services. Savings and lending products would continue to be exempt, but certain life insurance and annuity products would not be exempt. A delayed implementation date for VAT on insurance products is proposed to be 30 June 2015. An exemption would apply to public clinics and hospitals that provide free healthcare.

VAT returns – The filing periods for VAT returns are proposed to be monthly, quarterly or semi-annually, depending on the company's turnover.

Miscellaneous – Other changes include a longer period of time to file the VAT return, simplified procedures for claiming tax credits, a shorter time for refund payments, options for deferral of payments for select industries and simplified accounting.

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Germany:
Lower Tax Court of Muenster rules on intragroup use of trademarks

Germany's Lower Tax Court of Muenster ruled on 14 February 2014 that the gratuitous use of a trademark by a foreign subsidiary triggers an adjustment of the tax base of the related German person under Germany's controlled foreign company (CFC) rules.

Under the CFC rules, the tax base of a German company or individual must be adjusted if, inter alia, (i) the German person engages in a business transaction with a foreign related party; (ii) the business transaction is not carried out on arm's length terms; and (iii) the German person owns, directly or indirectly, at least 25% of the shares of the foreign related party.

The case involved a Polish entity related to a German individual, which was granted the gratuitous right to use a trademark owned by the German individual. The entity used the trademark on its website, on company cars and in trade fairs. The German tax authorities applied the CFC rules and increased the individual's tax base on the grounds that allowing the affiliated party to use the trademark was a business transaction that was not remunerated on an arm's length basis.

The taxpayer appealed to the Lower Tax Court, arguing that the use of a trademark can be considered a business transaction within the meaning of the CFC rules only if the trademark has an inherent value and that, in this case, it lacked such a value.

Referring to the fact that the Polish entity used the trademark for its business, the Lower Tax Court held that the trademark had an inherent value and confirmed the adjustment of the German individual's tax base under the CFC rules. The court also stated that the adjustment of the tax base typically should be in the range of 1%-5% of the sales realized by using the trademark; the court applied the lower end of the range because the products sold by the Polish entity were industry-specific and the trademark was not a widely known consumer brand.

The Lower Tax Court's decision supports the German tax authorities' recent approach of scrutinizing the intragroup use of trademarks within German-headquartered groups. The taxpayer is expected to appeal the decision to the Federal Tax Court.

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Changes to UK tax residence rules offer greater flexibility for offshore fund structures and their managers

The UK Finance Act 2014, enacted on 17 July 2014, includes legislation that exempts certain non-UK incorporated alternative investment funds (AIFs) from being tax resident in the UK, even if the central management and control of the fund is carried out in the UK. The legislation has retroactive effect from 5 December 2013 and may affect the offshore finance industry in Guernsey, Jersey and the Isle of Man ("the Islands").

Previously, certain UCITS (collective investment) funds were treated as not being resident in the UK if they were resident in another EU member state for the purposes of any tax imposed under the law of that member state on income. This provision was of no relevance to the Islands because their funds fall outside the scope of the UCITS regime.

The scope of the exemption from UK tax residence now has been extended to include certain entities that fall within the definition of an AIF under the Alternative Investment Fund Managers Directive (AIFMD). Additionally, the requirement for the fund to be an "offshore fund" (broadly speaking, a fund that is open ended or has such characteristics) has been removed. This is a significant broadening of the exemption. The conditions to satisfy the extended exemption are as follows:

- The fund is a corporate entity;
- The fund is not incorporated in the UK or treated as a UK authorized unit trust;
- The fund is treated as resident in its foreign state for the purposes of any tax imposed on income; and
- The fund is a UCITS authorized in a foreign state or is an AIF that is authorized or registered in a foreign state, or is not authorized or registered but has its registered office in a foreign state.

The "tax imposed on income" condition may appear to carve out tax-exempt funds from the legislation, but this is not the case. The UK tax authorities have confirmed to industry bodies that, where there is a tax on income in the foreign state, funds in that jurisdiction would fall within the definition even if they are tax exempt, so this would include funds located in the Islands. However, funds located in jurisdictions with no tax on income, such as the Cayman Islands, are not expected to fall within the scope of the exemption.

Impact on funds and their managers

Many funds in the Islands take the form of corporate AIFs. A significant portion of these funds have (or would like to have) some form of "footprint" in the UK, but, until now, there has been a concern about the potential UK tax residence risk (caused, for example, by having a UK-based director or related party advisor/manager). Accordingly, many corporate AIFs may now wish to consider the impact of the extended exemption.

Funds that are tax transparent (such as limited partnerships) will not be affected and corporate partners of such funds (including general partners) will not fall within the terms of the exemption.

Relevant considerations for funds in the Islands and their managers may include the following:

- Fund domicile – The extension of the exemption is unlikely to reduce the number of funds that are domiciled offshore. The reasons for establishing a fund vehicle offshore (e.g. tax neutrality, an advantageous regulatory regime, flexible company law, specialist service providers and cost efficiencies) remain as relevant as ever. In fact, as discussed below, some funds may choose to establish or re-domicile themselves in the Islands.
- Board of the fund – While the extension of the exemption may result in an increased presence of UK directors on the boards of offshore funds, this will not be appropriate in many cases. A broad range of potential UK tax issues could arise from management activities being carried on in the UK (in particular, the potential creation of a VAT establishment), and having appropriate offshore substance remains critical to the tax efficiency of offshore-based fund structures.
- Fund managers – The relief provided protects the residence status of funds only, so fund managers that want to remain offshore must continue to be aware of tax residence risks. Onshore fund managers will need to be wary of creating tax exposures for their funds, such as a permanent establishment for corporation tax purposes or a VAT establishment. Any change to the activity of an onshore fund manager also will require consideration from a transfer pricing perspective.
- UK regulation – Although the exemption is being extended to alleviate tax residence concerns from the application of the AIFMD, this could lead to issues with a fund structure's UK regulatory position. For example, where an offshore fund wants to be considered self-managed under the AIFMD, there is a possibility that the fund may be considered to be carrying on regulated activity in the UK if it conducts all its activities in the UK.

Comments

Certain funds may have been established in the UK rather than offshore because they could not easily or efficiently maintain non-UK tax residence (e.g. funds with unusual asset classes, start-up and small-scale managers and funds that are actively managed on a regular basis in the UK). The extension of the exemption may lead managers to domicile new funds in the Islands, when this previously may not have been a realistic option. Alternatively, some funds with a UK connection may re-domicile from no-tax jurisdictions, such as the Cayman Islands, to fall within the scope of the exemption.

The extension of the exemption is a significant relaxation of the UK tax rules in relation to the taxation of funds, and will be relevant to many funds in the Islands looking to manage their UK tax residence position. The exemption should give funds greater flexibility in how they operate and provide the Islands with a competitive advantage over jurisdictions with no tax on income. However, any change to the operation of fund structures carries risk, and offshore funds likely will need to seek tax and legal advice if considering any such changes.

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Korea:
Tax treaty updates

Korea has signed new tax treaties with Ethiopia and Hong Kong, and the 2010 treaty with Colombia has entered into force. Korea also has agreed to tax cooperation with China (a jurisdiction with which it already has a tax treaty).

Treaty with Colombia

Korea's treaty with Colombia entered into force on 15 July 2014 and will apply as from 1 January 2015, with the following provisions:

- Dividends – The treaty provides for a maximum 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the distributing company; otherwise, the rate will be 10%.
- Interest and royalties – A maximum withholding tax rate of 10% will apply.
- Capital gains – Gains derived by a resident of one of the treaty partners from the alienation of shares or other rights representing the capital of a company resident in the other jurisdiction may be taxed in the source jurisdiction, if (1) the gains are derived from the alienation of shares or other rights representing the capital of a company deriving more than 50% of its value, directly or indirectly, from immovable property situated in the other jurisdiction; or (2) at any time during the 12-month period preceding the alienation, the recipient of the gains directly or indirectly owned shares or other rights representing 25% or more of the capital of such a company.
- Exchange of information – The treaty contains an exchange of information provision that will allow the competent authorities of both jurisdictions to exchange financial information for the purpose of preventing tax evasion.

Treaty with Ethiopia

On 24 July 2014, the Ministry of Strategy and Finance approved (but did not officially sign) a draft tax treaty with Ethiopia at the treaty negotiation meeting held in Seoul from 21-24 July. The main features of the draft treaty are as follows:

- Dividends – The treaty 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 distributing company; otherwise, the rate will be 8%.
- Interest and royalties – Maximum withholding tax rates of 7.5% and 5% will apply to interest and royalties, respectively.
- Permanent establishment – Business profits generated from a construction site in Korea (or Ethiopia) that has been in existence for a period of less than 12 months would not be taxed by the other country.
- Capital gains – Capital gains arising from a disposal of shares generally would not be taxed by the source jurisdiction, but gains that arise from a disposal of shares in a real estate-rich company could be taxed in the jurisdiction where the real estate is located.
- Exchange of information – The draft treaty contains an exchange of information provision that will allow the competent authorities of both jurisdictions to exchange financial information for the purpose of preventing tax evasion.

The treaty still must be officially signed by the parties; it will enter into force once it is ratified by the National Assembly and by the appropriate Ethiopian authorities.

Treaty with Hong Kong

Korea signed its first tax treaty with Hong Kong on 8 July 2014. The main features of the treaty are as follows:

- Dividends – The treaty 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%.
- Interest and royalties – A maximum withholding tax rate of 10% will apply.

- Capital gains – Gains derived by a resident of one of the treaty partners from the alienation of shares of a company that derives more than 50% of its asset value, directly or indirectly, from immovable property situated in the other jurisdiction may be taxed in the source jurisdiction.
- Exchange of information – The treaty contains an exchange of information provision that will allow the competent authorities of both jurisdictions to exchange financial information for the purpose of preventing tax evasion.

The treaty must go through the ratification process in both jurisdictions before it can enter into force. According to an officer of Korea's Ministry of Foreign Affairs, the National Assembly will consider the signed treaty in September 2014.

Tax cooperation with China

The 20th Korea-China National Tax Services (NTS) conference was held in Beijing on 14 July 2014; during the conference, commissioners of both countries shared and discussed experiences concerning the trend on global tax administration, reporting of offshore financial accounts and international tax cooperation. Korea's Commissioner of the NTS sought China's support and cooperation with the Study Group on Asian Tax Administration and Research Task Force, a team organized to draw up specific action plans, strengthen international tax cooperation and tighten the probe against offshore tax evasion in the Asia Pacific region. Additionally, the commissioners agreed to share ideas and experiences for advanced tax administration systems.

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Mexico:
Date for submitting electronic accounting records extended

Mexico's tax authorities (SAT) published rules on 19 August 2014 that extend the period for companies to electronically submit detailed accounting records and journal entries to the SAT internet portal. The new rules amend rules published on 4 July, as follows (for previous coverage, see the *World Tax Advisor* article dated 25 July 2014):
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140725_10.html

- Monthly company trial balances for the period from July to December 2014 that previously were to be submitted between October 2014 and January 2015 (depending on the month covered) now must be submitted no later than 31 January 2015.
- Journal entries requested during the course of an audit, or to validate a tax refund or offset, will be required for information generated in periods starting from 1 January 2015; if information is requested for the period from July to December 2014, the journal entries may be submitted with the trial balance no later than 31 January 2015.
- The chart of accounts grouped with the tax authority's group codes must be submitted no later than 31 January 2015 (rather than 31 October 2014).

The three-month extension should be welcomed by Mexican companies, many of which would likely have experienced difficulties in complying with the October filing obligation, due to uncertainties as to whether their accounting and information technology systems would be capable of uploading the data to the SAT portal.

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Netherlands:
MOF updates APA/ATR guidance

The Dutch State Secretary for Finance published five decrees on 12 June 2014 that provide updated guidance on various aspects of the advance pricing agreement (APA) and advance tax ruling (ATR) regimes. While the new decrees do not significantly change the approach under previous decrees, the content of the new guidance should be of interest to companies investing in the Netherlands. The decrees address the following areas:

- Access to the specialized foreign investors' desk and the APA/ATR team of the Dutch tax authorities;
- Conditions and procedures for obtaining APAs and ATRs (in two separate decrees);
- Substance requirements for holding companies that apply only if a company wishes to obtain an APA/ATR and is part of a group that does not intend to have operational activities in the Netherlands; and
- Substance and equity-at-risk requirements for certain group financing, licensing and leasing companies that apply for an APA/ATR, and a policy regarding the exchange of information for these companies.

The new decrees apply as from 13 June 2014.

Foreign investors' desk

A special foreign investors' desk provides advance certainty on relevant tax issues and consults with the APA/ATR team to ensure a consistent approach to tax and transfer pricing issues of an investor.

The foreign investors' desk serves non-Dutch groups that currently do not have significant Dutch operations, but that intend to make an investment of at least EUR 4.5 million (which can be spread over the years of the investment). Smaller investments that generate significant employment also are eligible for services.

The foreign investors' desk works closely with the Netherlands Foreign Investment Agency, which provides foreign investors starting or expanding their business operations in the Netherlands with advice, information and practical assistance (e.g. on business locations, labor and permits, contacts with potential business partners, etc.).

APA/ATR team

Foreign investors in the Netherlands can submit an application to the specialized APA/ATR team to obtain advance certainty on the Dutch tax and transfer pricing implications of international structures. APAs/ATRs generally are concluded for a period of four to five years.

Centralized processing of rulings facilitates a standard and uniform policy, and publication of the policies underlying APAs/ATRs should enhance the uniformity and predictability of the policies.

APA/ATR procedures

An APA provides certainty to taxpayers on the method for determining the appropriate transfer prices for cross-border transactions between affiliated entities. APAs can be unilateral or bilateral, and can cover all transfer pricing aspects related to a taxpayer. In this respect, the Netherlands adheres to the OECD transfer pricing guidelines.

An APA procedure generally will begin with a pre-filing meeting, during which the tax authorities clarify what information they will need to issue the APA. A case management plan will be agreed upon between the tax authorities and the taxpayer, in which steps and an expected timeline will be set.

An ATR is used to obtain advance certainty on the Dutch tax implications of a contemplated transaction or series of transactions, such as the application of the participation exemption, the treatment of hybrid instruments or whether a nonresident has a permanent establishment in the Netherlands.

Under the ATR procedures, the Dutch tax authorities will issue a confirmation of receipt within five working days of receipt of the ATR request. ATR requests that do not give rise to questions will be processed immediately. The tax authorities aim to conclude other ATR requests within eight weeks of filing.

The decrees provide certain clarifications related to the APA/ATR procedures that apply to holding companies and to certain group financing, licensing and leasing companies.

Holding companies – There are no specific statutory substance requirements for Dutch holding companies. However, the decrees clarify that, to efficiently allocate the tax authorities' resources to only those entities with sufficient nexus with the Netherlands, a holding company must satisfy certain minimum operational substance requirements to obtain an ATR. The requirements apply only to obtain an ATR; a holding company also can function without an ATR.

Under the decrees, an ATR will be issued on the tax aspects of international holding company structures only if (i) the group to which the requesting company belongs carries out operational activities in the Netherlands, or has concrete plans to do so; or (ii) if the requesting entity meets the following substance requirements (unless the ATR is being requested to confirm the absence of a Dutch permanent establishment):

- At least half of the statutory board members with decision-making power reside or are effectively established in the Netherlands;
- Board members residing or effectively established in the Netherlands have the required professional knowledge to perform their duties properly;
- The entity has qualified (own or third-party) employees at its disposal for adequate execution and registration of the transactions to be entered into by the entity;
- Management decisions are carried out in the Netherlands;
- The main bank accounts of the entity are held in the Netherlands;
- The administration of the entity is performed in the Netherlands;
- The entity is compliant with its Netherlands tax filing obligations (e.g. corporate income tax, payroll taxes, VAT);
- The business address of the entity is located in the Netherlands;
- The entity is – to the best of its knowledge – not considered a resident for tax purposes in a country other than the Netherlands; and
- The entity has a minimum amount of equity that is appropriate with respect to its functions (considering the assets used and risks assumed). For holding companies, at least 15% of the acquisition price of subsidiaries should be financed with equity.

Group service entities – The decrees contain specific rules for entities that are engaged primarily in financing, licensing and leasing activities to and from entities within the same group (group service entities). Group service entities can apply for advance certainty only by obtaining a combined APA/ATR ruling on tax and transfer pricing issues. In addition to the minimum substance requirements listed above, group service entities must meet financial substance requirements.

The financial substance conditions require a group service entity to incur real risks with respect to its activities, and to have sufficient equity to bear these risks. For group financing activities, there is a safe harbor that real risks are deemed to be incurred if the equity at risk is at least 1% of the outstanding loans, or EUR 2 million. For licensing and leasing activities, the safe harbor requires minimum equity of 50% of the annual royalty and lease income received, or EUR 2 million.

The remuneration for group financing activities of group service entities should be split between (i) remuneration for the equity at risk, and (ii) a handling fee for the group service entity's financing activities. The decrees contain examples of calculations that provide guidance on pricing, and confirm common practice to limit the risks of a group service entity through guarantees or nonrecourse clauses. If structured properly, the real-risk safe harbor amount may equal the appropriate equity amount required by the last of the minimum substance requirements listed above.

Meeting the minimum substance requirements allows group service entities to access the Netherlands tax treaty network and to claim withholding tax credits.

However, if a group service entity does not meet the minimum substance requirements, the Netherlands may spontaneously exchange information with the relevant foreign tax authorities. Information on an APA may be exchanged if the group does not plan to carry out operational activities in the Netherlands.

Comments

The decrees position the Netherlands as a jurisdiction that welcomes new investment, by providing taxpayers easy access to a uniform and predictable APA/ATR practice with clear conditions, streamlined procedures and minimal processing time. The European Commission has acknowledged that the Dutch APA/ATR system is a sound one (in its press release of 11 June 2014).

The decrees contain welcome clarifications regarding minimum operational and financial substance requirements, which emphasize the active support for groups with operational activities in the Netherlands, as long as the taxpayers have sufficient substance.

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Puerto Rico: Changes made to tax rules

Act 77-1014, enacted on 30 June 2014, makes a number of changes to the Puerto Rico Internal Revenue Code; significant changes include the following:

Additional tax on gross income (ATGI)

For taxable years commencing after 31 December 2013, the ATGI no longer is part of the alternative minimum tax computation, but rather is an additional tax on gross income at rates ranging from 0.35% to 1%. The new ATGI is a deductible expense in computing net taxable income of the taxpayer, provided the tax is paid on or before the due date for filing the tax return for the relevant year. The ATGI must be paid in quarterly installments.

Alternative minimum tax (AMT)

The credit for prior years' AMT is limited to 25% of the excess of the taxpayer's regular tax liability over the AMT liability for the taxable year.

Capital gains and losses

The holding period for short-term capital gains or losses is increased from not more than six months to not more than one year; for long-term capital gains or losses, the increase is from more than six months to more than one year.

The capital gains tax rate for corporations is increased from 15% to 20% on sales or exchanges taking place after 30 June 2014.

Losses incurred on the sale or exchange of capital assets are allowable up to 90% of capital gains. Furthermore, the net capital loss carryforward period for losses incurred in taxable years beginning after 31 December 2013 is increased from five to seven years.

For the period from 1 July 2014 to 31 October 2014, taxpayers can elect to prepay tax on the increase in value of long-term capital assets and certain other assets (e.g. corporate stock or ownership interests in limited liability companies or partnerships, real property). The tax rate for corporations is 12%.

Tax on deemed dividends

For taxable years commencing after 31 December 2013, a new 10% tax is levied on deemed dividends received by a "foreign owner" from a corporation. A foreign owner for these purposes is a nonresident person, not engaged in a trade or business in Puerto Rico, who owns (directly or indirectly) 50% or more of the capital of the corporation.

The deemed dividend is the lesser of the average value of the total foreign assets or the accumulated earnings and profits of the corporation at the end of the taxable year.

The tax must be paid at the time the corporation income tax return is filed, and it may be credited against the withholding tax requirements on actual dividend distributions. It does not apply to corporations subject to the branch profits tax.

Branch profits tax

The definitions of Puerto Rican assets and liabilities are revised to exclude loans or credit transactions between branches, except in the case of banking entities or when the assets/liabilities arise from the sale or transfer of property; the definitions also exclude certain cash deposits held in banking institutions or brokerage firms outside Puerto Rico, if not for the exclusive use by the branch in Puerto Rico.

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Russia:
MOF clarifies provisions of treaty with Venezuela

Russia's Ministry of Finance (MOF) issued guidance on 11 March 2014 clarifying the tax treatment of interest paid by a Russian company to a Venezuelan bank under a loan agreement.

Under article 246 of Russia's tax code, foreign legal entities that operate in Russia through a permanent establishment (PE) or that derive taxable income from Russian sources are subject to Russian corporate income tax. Foreign legal entities that do not have a PE in Russia are taxable on Russia-source income under article 309 of the code.

Under article 309, interest income received by a Venezuelan company (including a Venezuelan bank) from a Russian company in connection with a debt obligation should be treated as Russia-source income and, therefore, should be subject to corporate income tax. Article 310 requires that the tax be withheld upon payment of the interest and paid to the state budget by the Russian company.

In its guidance, the MOF pointed out that, based on article 7 of the tax code, the provisions of an applicable tax treaty should be taken into account in determining the tax treatment of the interest income. Article 11(2) of the Russia-Venezuela tax treaty provides that interest received by a Venezuelan bank from a Russian company under a loan agreement should be subject to a 5% withholding tax; otherwise, the rate is 10%. (Although not specifically addressed in the MOF's clarifications, the Russia-Venezuela tax treaty also provides for a 0% interest withholding tax rate if interest is paid or received by the government of a contracting state, the central bank of a contracting state or a political subdivision/local authority, or paid in connection with certain loans that have the objective of promoting exports and development.)

However, the reduced interest withholding tax rate provided by the Russia-Venezuela tax treaty may be applied only in cases where, in addition to being a tax resident of a contracting state, the recipient also is the beneficial owner of the interest. This requirement should be carefully considered if the recipient of the interest is a Venezuelan company.

The condition related to beneficial ownership of passive income (dividends, interest and royalties) is included in the majority of Russian tax treaties (including the Russian-Venezuela treaty); however, a draft law proposed in connection with the policy to counteract the "de-offshoring" of the Russian economy would amend Russian tax legislation to incorporate the "beneficial owner" concept directly into the Russian Tax Code (for prior coverage of the de-offshoring policy, see the article dated 25 April 2014). The proposed draft law specifically mentions that the tax benefits provided by tax treaties should not apply if the recipient of income bears very limited power in respect of the contemplated income; acts as an intermediary; neither performs any functions nor takes any risks; and pays (directly or indirectly, in part or in its entirety) the income (at any time and in any form) to another entity that would not be able to receive the tax benefits provided by a tax treaty concluded with Russia if the income were distributed directly to that entity.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140425_1.html

The MOF also clarified that, where interest is paid by a Russian bank to a Venezuelan bank, the Venezuelan bank should not be required to submit a certificate of tax residence confirming that it is a tax resident in Venezuela under the Russia-Venezuela treaty, provided the tax residence can be confirmed by publicly available information sources, such as the international directory, the "Banker's Almanac," the international catalogue, the "International bank identifier code," the "BIC directory" guide or similar sources.

The items mentioned above should be considered when applying the reduced withholding tax rate to interest payments received by Venezuelan banks/companies from a Russian company.

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In brief

European Union – The revised EU parent-subsidiary directive was published on 25 July 2014. The amendments contain measures to avoid double nontaxation resulting from mismatches in the tax treatment of profit distributions between EU member states, in particular, in relation to hybrid financing arrangements. (For prior coverage, see the *World Tax Advisor* article dated 9 May 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140509_5.html

France – In a decision issued on 6 August 2014, the Constitutional Court upheld all of the provisions in the Amended Finance Law for 2014. The law was published in the official gazette on 9 August and generally applies as from 10 August.

Guernsey/Jersey/Isle of Man – The governments of each of the UK Crown Dependencies have issued updated draft guidance notes intended to provide practical assistance to businesses regarding the impact of the US Foreign Account Tax Compliance Act (FATCA), which supersede the previous draft guidance notes issued in April 2014. Changes from the previous guidance were made in response to discussions between each government and local industry, as well as discussions between the governments to ensure that there is as much consistency as possible across the Crown Dependencies. Among other changes, the guidance notes generally are brought in line with changes to the relevant US regulations.

India – The Authority for Advance Rulings has concluded that the most favored nation clause in the protocol to the India-France tax treaty may not be used to import a more restrictive definition of fees for technical services from the India-UK tax treaty into the India-France tax treaty.

OECD – The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has published 13 new peer review reports demonstrating progress toward implementation of the international standard for exchange of information on request. The Forum also issued compliance ratings for 10 jurisdictions. The Forum now has completed 143 peer reviews and assigned compliance ratings to 64 jurisdictions that have undergone Phase 2 reviews.

OECD – The OECD has issued a request for input on BEPS Action 11, which concerns work on establishing methodologies for the OECD governments to collect and analyze data on BEPS and the actions to address it. The request covers the following areas: indicators of the scale and economic impact of BEPS; economic analysis of the scale and impact of BEPS;

economic analysis of the impact and effectiveness of actions to address BEPS; and new types of data to be collected and tools to monitor the effectiveness of the actions taken to address BEPS on a continuing basis. This work is being undertaken by Working Party 2, responsible for tax policy statistical analysis at the OECD. The deadline for comments is 19 September 2014.

Portugal – The Court of Justice of the European Union (CJEU) has decided that the Tribunal Arbitral Tributário – CAAD (an arbitration tribunal dealing with taxation cases) possesses all the characteristics necessary to be regarded as a court or tribunal of a member state for the purposes of the Treaty on the Functioning of the European Union and, accordingly, that the tribunal can refer questions to the CJEU. This is an important decision for indirect tax issues in Portugal, as taxpayers increasingly are using CAAD as a way to obtain quicker decisions, compared to the alternative of appealing to the common tribunals.

Thailand – The application of the 7% VAT rate will remain in effect for another year (i.e. until 30 September 2015). A standard rate of 10% is provided under the revenue code, but the rate was scheduled to be reduced to 7% until 30 September 2014.

United Kingdom – In April 2013, the UK, along with France, Germany, Italy and Spain, set up a pilot to explore the possibility of developing a common approach to automatic exchange of financial account information. This was adopted by the G20 and, in February 2014, the OECD delivered the Model Competent Authority Agreements for a Common Reporting Standard (CRS), which was approved by the G20 as the Global Standard for Automatic Exchange of Financial Account Information. Domestic legislation will be required to implement the standard. Draft regulations now have been published in the UK that would require financial institutions to capture information in relation to accounts in existence as of 31 December 2015, and new accounts opened on or after 1 January 2016, with first reporting to begin in 2017.

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.

China-Netherlands – The 2013 treaty to replace the 1987 treaty enters into force on 31 August 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 company (other than a partnership) that holds directly at least 25% of the capital of the distributing company; otherwise, the rate will be 10%. The rate on interest will be 10%. Royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment will be subject to a 10% withholding tax on 60% of the gross amount; otherwise, the rate will be 10%.

Colombia-Korea – See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140822_5.html

Cyprus-Guernsey – A treaty was signed on 15 and 29 July 2014, but is not yet in force. When in effect, the treaty provides that dividends and interest will be taxable only in the recipient's state of residence and royalties will be taxable only in the beneficial owner's state of residence. The treaty does not specify maximum withholding tax rates.

Cyprus-Lithuania – The 2013 treaty entered into force on 17 April 2014 and applies as from 1 January 2015. When in effect, the treaty provides for a 0% withholding tax on dividends where the beneficial owner is a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company; otherwise, the rate will be 5%. Interest will be taxable only in the state of residence of the recipient. The rate on royalties will be 5%.

Cyprus-Switzerland – When in effect, the treaty signed on 25 July 2014 provides that a 0% rate will apply where dividends are paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company for an uninterrupted period of at least one year or where dividends are paid to a pension fund or similar institution; otherwise, the rate will be 15%. Interest and royalties will be taxable only the state of residence of the recipient.

Czech Republic-Luxembourg – The 2013 treaty to replace the 1991 treaty enters into force on 31 August 2014 and will apply as from 1 January 2015. When in effect, the new treaty will provide for a 0% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company for an uninterrupted period of at least one year; otherwise, the rate will be 10%. Interest will be taxable only in the state of residence of the recipient. A 0% rate will apply to royalties for copyrights (except of computer software); otherwise, the rate will be 10%.

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

Hong Kong-Korea – See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140822_5.html

India-Fiji – The 2014 treaty entered into force on 15 May 2014 and will apply as from 1 April 2015 for India and as from 1 January 2015 for Fiji. When in effect, the treaty provides for a 5% withholding tax rate on dividends and a 10% rate on interest and royalties.

Italy-Republic of the Congo – The 2003 treaty entered into force on 26 June 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for an 8% withholding tax rate on dividends paid to a company (other than a partnership) that holds at least 10% of the capital of the distributing company; otherwise, the rate will be 15%. No rate is provided for interest and a 10% rate is provided for royalties.

Japan-Oman – The treaty signed on 9 January 2014 will enter into force on 1 September 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company that holds, directly or indirectly, at least 10% of the voting shares of the distributing company for a period of six months ending on the date on which entitlement to the dividends is determined; otherwise, the rate will be 10%. The 5% rate will not apply, however, if the distributing company is entitled to a deduction for dividends paid to its beneficiaries in computing taxable income in Japan. The withholding tax rate on interest will be 10%. The rate on royalties will be 10%.

Korea-Ethiopia – See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140822_5.html

Luxembourg-Isle of Man – The 2013 tax treaty entered into force on 5 August 2014 and will apply as from 1 January 2015. When in effect, the treaty provides that a 5% withholding tax rate will apply on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company; otherwise, the rate will be 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

Luxembourg-Jersey – The 2013 treaty entered into force on 5 August 2014 and will apply as from 1 January 2015. When in effect, the treaty provides that a 5% withholding tax rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company; otherwise, the rate will be 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

Luxembourg-Taiwan – The 2011 treaty entered into force on 25 July 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 15% withholding tax on dividends and interest where the recipient is a collective investment vehicle in the other state and treated as a body corporate in that other state; otherwise, the rate will be 10%. Interest on loans between banks will be exempt. The rate on royalties will be 10%.

Malta-Mexico – The 2012 treaty entered into force on 9 August 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 0% withholding tax on dividends. A 5% rate will apply to interest paid on a bank loan; otherwise, the rate will be 10%. The rate on royalties will be 10%.

Mauritius-Rwanda – The 2013 treaty to replace the terminated 2001 treaty entered into force on 4 August 2014 and applies retroactively as from 1 July 2013 for Mauritius and as from 1 January 2013 for Rwanda. The treaty provides for a 10% withholding tax rate on dividends, interest and royalties.

Peru – See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140822_1.html

Poland-Guernsey – The 2013 treaty enters into force on 1 October 2014 and will apply as from 1 January 2015. When in effect, the treaty will cover only individuals and does not address the taxation of dividends, interest and royalties, so the domestic rates will continue to apply.

Russia-Venezuela – See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140822_9.html

Singapore-Liechtenstein – The 2013 treaty entered into force on 25 July 2014 and will apply as from 1 January 2015. 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.

Sweden-Georgia – The 2013 treaty entered into force on 26 July 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 0% withholding tax on dividends paid to a company (other than a partnership) that holds at least 10% of the capital or voting power of the distributing company; otherwise, the rate will be 10%. Interest and royalties will be taxable only in the state of residence of the recipient.

United States – Intergovernmental agreements to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) have been signed between the US and the Czech Republic (on 4 August 2014) and Sweden (on 8 August 2014).

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France
Amended Finance Law for 2014 passed
The French national assembly adopted the Amended Finance Law for 2014 on 23 July 2014. The law now must be reviewed by the Constitutional Court; should the court invalidate any measures, the president will sign the law without those measures and the law will be published in the official gazette to enter into force. The amended law contains measures relating to the exceptional surtax on companies, the apprenticeship tax and the penalty for failure to provide accounting records. (For subsequent developments, see the related "in brief" item in this issue.)
Issue date: 25 July 2014
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140822_ib.html#France
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-250714.pdf?id=us:em:na:wta:eng:tax:082214

United States
"Stop Corporate Earnings Stripping Act of 2014"
In response to the announcements of international acquisitions facilitating the global growth of US businesses (politically referred to as inversions), Rep. Sander Levin is developing a legislative proposal tentatively titled the "Stop Corporate Earnings Stripping Act of 2014." According to draft explanatory materials that have been circulated, the measure is intended to reduce the US tax benefits available to a US-based multinational whose ultimate parent shifts from being a US corporation to a foreign corporation pursuant to an international acquisition, and proposes changes to both the subpart F regime and to the earnings stripping rules of section 163(j).
Issue date: 1 August 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-040814.pdf?id=us:em:na:wta:eng:tax:082214

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