Deloitte.

International Tax

World Tax Advisor

28 November 2014

In this issue:

PRC authorities clarify tax treatment of investment through Shanghai Hong Kong Stock Connect program and of QFIIs/RQFIIs 1
Bangladesh: New transfer pricing rules in effect 4
Denmark: New central registry to report tax losses and tax-free restructurings in effect 6
Estonia: Upcoming changes to taxation of directors' fees 6
Hong Kong: BOR rules on source of director's fee income 7
Malta: New tax treaty with Mexico in force 9
New Zealand: Timetable announced for global crackdown on tax evasion 10
Serbia: Ruling issued on payments to related parties 11
In brief 12
Tax treaty round up 14
Are You Getting Your Global Tax Alerts? 17

PRC authorities clarify tax treatment of investment through Shanghai Hong Kong Stock Connect program and of QFIIs/RQFIIs

China's Ministry of Finance (MOF), the State Administration of Taxation (SAT) and the China Securities Regulatory Commission (CSRC) have issued two circulars (Circulars 81 and 79) that clarify the tax treatment of investors that invest through the new Shanghai Hong Kong Stock Connect program, as well as the treatment of qualified foreign institutional investors (QFIIs) and renminbi qualified foreign institutional investors (RQFIIs). Although the two circulars are dated 31 October 2014, they were not published on the MOF website until 14 November, the last business day before the Shanghai Hong Kong Stock Connect program officially launched on 17 November.

In a major liberalization of the PRC stock markets, the Shanghai Hong Kong Stock Connect program allows foreign investors (both Hong Kong investors and non-Hong Kong/non-Mainland China investors in the Hong Kong market) to purchase "A" shares (renminbi-denominated shares issued by Mainland companies and listed on Mainland stock exchanges) in companies listed on the Shanghai stock exchange (SSE) via the Hong Kong stock exchange (HKSE), and allows Mainland investors to purchase shares listed on the HKSE via the SSE.

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Previously, foreign investors were allowed to invest in A shares only through QFIIs and RQFIIs.

The circulars provide enterprise and individual investors with certain temporary exemptions (as yet undefined) from PRC income tax and business tax on gains derived from disposals made under the new program that links the Shanghai and Hong Kong stock exchanges, and clarify that a 10% or 20% dividend withholding tax will be applied in certain situations. QFIIs and RQFIIs are granted a corresponding exemption from tax on gains derived from transfers of shares. (Chinese law provides for a 10% capital gains tax, although the tax authorities have not been enforcing collection of this tax on QFIIs and RQFIIs.)

Circular 81

Circular 81 sets out the PRC tax implications for foreign investors trading A shares on the SSE and Mainland investors trading shares on the HKSE under the Shanghai Hong Kong Stock Connect program.

A. Foreign investors that invest in A shares listed on the SSE

Type of investor	Dividends and bonus share issues	Gains on disposal
Foreign investors (enterprises and individuals)	10% income tax will be withheld by the payer; qualifying investors may apply for a tax refund	Gains derived from 17 November 2014 are temporarily exempt from enterprise income tax, individual income tax and business tax

B. Mainland investors that invest in shares listed on the HKSE

Type of investor	Dividends and bonus share issues	Gains on disposal
Mainland individual investors	20% income tax will be withheld, with a foreign tax credit granted in appropriate cases*	• Gains derived between 17 November 2014 and 16 November 2017 are exempt from individual income tax • A temporary exemption is provided for business tax (no time limit set)
Mainland enterprise investors	No special tax treatment (dividends and gains are included in gross income and subject to income tax, with an exemption or foreign tax credit granted in appropriate cases (e.g. dividends may be exempt if shares of relevant Mainland resident companies are held continuously for at least 12 months), and gains on disposal generally are subject to a 5% business tax)	

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Type of investor	Dividends and bonus share issues	Gains on disposal
*A 20% income tax will be withheld by H share companies (i.e. Mainland-incorporated companies with shares listed in Hong Kong) for H share dividends, and by China Securities Depository and Clearing Corporation Limited (CSDC) for non-H share dividends. The 20% dividend tax and withholding requirements also will apply to Mainland securities investment funds.		

Chinese and Hong Kong stamp duty will continue to be payable in accordance with the applicable rules.

Circular 79

Circular 79 sets out the income tax treatment of gains derived by QFIIs and RQFIIs on the transfer of an equity interest (typically, A shares).

Type of investor	Dividends and bonus share issues	Gains on disposal
QFIIs/RQFIIs (with no permanent establishment (PE) in Mainland China or if the gains are not connected to a PE in Mainland China)	Not covered by Circular 79 (a 10% income tax will be withheld by the invested company according to guidance issued in 2009, and qualifying investors may apply for a tax refund if eligible for a lower treaty rate)	Gains derived as from 17 November 2014 are temporarily exempt from enterprise income tax (a business tax exemption already applies under guidance issued in 2005)

Comments

The PRC government's clarification of the tax treatment of investments through the Shanghai Hong Kong Stock Connect program, as well as the treatment of QFIIs and RQFIIs was eagerly anticipated and is welcome. However, the following matters remain outstanding:

- Gains derived by QFIIs and RQFIIs before 17 November 2014 remain subject to enterprise income tax. The relevant authorities appear to be considering the period for which, and the basis on which, applicable taxes are to be collected. Details also are awaited on how tax treaty claims by qualifying investors will be handled.
- The circulars specifically cover gains derived from the transfer of A shares, but are silent on gains derived from the transfer of other securities. Clarification on the tax treatment of such gains would be welcome.

It appears likely that no late payment penalties or surcharges will be applied to gains that are subject to tax.

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Bangladesh:
New transfer pricing rules in effect

Transfer pricing provisions in Bangladesh that are effective from 1 July 2014 require taxpayers to comply with contemporaneous transfer pricing documentation requirements for cross-border transactions with associated enterprises, and to ensure that these transactions are made on arm's length terms.

Transfer pricing rules that were included in Finance Act, 2012 inserted a new chapter incorporating transfer pricing provisions into the Income Tax Ordinance, 1984 ("the ordinance"). These provisions contain definitions for terms such as associated enterprise, international transaction, etc. and provide rules for the computation of an arm's length price by the tax officer, referrals to the transfer pricing officer (TPO) to determine the arm's length price, maintenance of documentation, furnishing of an accountant's report and penalties for noncompliance. The National Board of Revenue (NBR) simultaneously issued amendments to the Income-tax Rules, 1984 dealing with transfer pricing methods, the most appropriate method, factors to be taken into account for judging comparability, a list of documents to be maintained and the form for the accountant's report.

The 2012 amendments to the ordinance stated that the transfer pricing provisions would come into force from the date specified by the NBR through a notification in the official gazette. The NBR has issued a notification making these provisions effective from 1 July 2014.

Highlights of the transfer pricing provisions include the following:

Associated enterprise: The definition of an "associated enterprise" in the ordinance is comprehensive and, *inter alia*, includes the following relationships:

- Direct or indirect participation in the management/control/capital of an enterprise;
- Direct or indirect holding of shares carrying more than 25% of the voting power in the enterprise;
- Cumulative borrowings of more than 50% of the book value of total assets of the borrowing enterprise;
- Cumulative guarantees of more than 10% of the book value of total borrowings of the other enterprise;
- Power to appoint more than 50% of the board of directors/members of the governing board of an enterprise;
- Practical ability to control the decisions of the other enterprise; and
- Certain other relationships of mutual interest that would connect enterprises, which may be prescribed.

Computation of arm's length price: The arm's length price in relation to an international transaction is determined by applying the most appropriate method or methods from the six transfer pricing methodologies prescribed in the ordinance. These are the comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin methods, or, if application of these methods is not reasonably possible, any other method that yields consistent results.

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Documentation and accountant report: Taxpayers that have entered into an "international transaction" are required to maintain prescribed documentation if the aggregate value of the international transactions in the income year exceeds BDT 30 million (approximately USD 380,000). Taxpayers that have undertaken international transaction(s) exceeding this threshold also are required to furnish a report from a chartered accountant in a prescribed form and manner on or before the relevant deadline.

Referrals to transfer pricing officer: With prior approval of the NBR, the tax officer may refer the determination of an arm's length price to the TPO, and with the approval of the NBR, the TPO may determine the arm's length price in relation to "any international transaction."

Audits and penalties for noncompliance: The ordinance contains a specific procedure for a transfer pricing audit. The audit process begins with the regular scrutiny assessment, followed by an appeal to the Commissioner of Tax (Appeal), an appeal to the Tax Appellate Tribunal and an appeal to the higher courts (if necessary).

The penalty for failure to keep, maintain or furnish transfer pricing documentation may not exceed 1% of the value of each international transaction. The penalty for failure to furnish a report from a chartered accountant may not exceed BDT 300,000.

Comments

- The most appropriate transfer pricing method must be evaluated in each case, since the ordinance does not prescribe a hierarchy of methods.
- Use of prior year data is permitted for the comparability analysis, provided such data contains facts that may affect the analysis.
- The provisions are silent on whether a single arm's length price is allowed, or whether a range concept is preferred. No guidance is provided with regard to the determination of an arm's length price when more than one comparable price is available.
- Guidance is needed on how taxpayers should gather information related to comparable data or local companies for computing the arm's length price.
- Although not explicitly provided in the ordinance, use of a mutual agreement procedure also is available as a possible dispute resolution route for most treaty countries.
- The documentation requirements largely are based on the OECD/UN practice manual.

Affected taxpayers should monitor and document intercompany transactions with associated enterprises from 1 July 2014 onward and ensure that these transactions are on arm's length terms, consistent with the ordinance.

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Denmark:
New central registry to report tax losses and tax-free restructurings in effect

As from 1 October 2014, companies, associations and foundations that have limited or unlimited tax liability under the Danish Corporation Tax Act or the Funds Tax Act (including foreign companies subject to Danish taxation) must report tax losses incurred between income year 2002 and the end of 2013, as well as tax-free restructurings, to the tax authorities via an electronic web portal.

Failure to comply or failure to timely report the tax losses by 1 August 2015 will result in forfeiture of the losses.

Tax-free restructurings carried out as from 1 October 2014 must be reported within one month after the restructuring; failure to do so will result in the restructuring being considered a taxable event.

Under current Danish tax rules, tax losses incurred as from 2002 may be carried forward indefinitely; losses may not be carried back. As from income year 2013, tax losses carried forward can be set off against taxable income up to approximately DKK 7.6 million (2014), but any remaining losses cannot reduce the taxable income exceeding DKK 7.6 million by more than 60%. The DKK 7.6 million threshold is applied at the level of a Danish jointly taxed group.

The parliament passed the bill introducing the reporting requirement on 28 May 2014. Failure to comply with the reporting requirement will result in the forfeiture of the losses.

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Estonia:
Upcoming changes to taxation of directors' fees

Changes to Estonia's tax rules that will apply as from 1 January 2015 will expand the taxation of fees paid to nonresident board members of Estonian companies to include situations where the fees are paid by a nonresident.

Under the current income tax rules, fees paid to a nonresident member of a management or controlling body of an Estonian company (i.e. directors' fees) are taxable in Estonia at a rate of 21% (dropping to 20% on 1 January 2015) if the fees are paid by an Estonian resident or by an Estonian permanent establishment (PE) of a nonresident, regardless of where the board services or management activities are carried out (unless otherwise provided by an applicable tax treaty). However, where a director of an Estonian company is a nonresident who receives directors' fees paid by a nonresident, no income tax is due in Estonia.

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As from 1 January, directors’ fees paid to nonresident board members of an Estonian company will be taxable in Estonia, even if the payer is not a resident legal entity or an Estonian PE of a nonresident. The rationale for this change is that directors’ fees paid to board members of an Estonian company should be subject to taxation in Estonia, regardless of whether such fees are paid by a resident or nonresident person; the key factor determining taxation should be the fact that the remuneration is paid for carrying out directors’ duties for an Estonian company or PE of a nonresident (irrespective of where director`s duties are performed). Nonmonetary income (benefits) also will be taxable.

It should be noted, however, that the treatment of directors’ fees for social tax purposes will not change. Social tax will remain due on fees paid to a nonresident director, regardless of who pays the fees or where the management activities are performed, although an exemption from social tax may be available if the director has a certificate evidencing that he/she has social security insurance in another country.

The Estonian Tax and Customs Board has suggested that, to fulfill a nonresident’s tax obligations relating to directors’ fees, a nonresident payer of directors’ fees should register as a nonresident employer in Estonia and account for and withhold taxes from the payments. Alternatively, it will be possible for the nonresident payer to authorize other persons (e.g. the Estonian company) to act on its behalf or to make the payments through an Estonian resident (i.e. the Estonian company could account for the taxes in its own name). If only income tax will be due on such fees (i.e. the nonresident is covered by social security in another country), it would be possible for the recipient of directors’ fees to fulfil its income tax obligation by filing an annual personal income tax return (by 31 March of the year after the relevant tax year) and paying the tax due. It would not be possible to fulfil a social tax obligation due in Estonia through the fee recipient’s personal income tax return, since the social tax obligation is borne by the person making the payment, i.e. the nonresident payer or the Estonian resident it authorizes to make payments.

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Hong Kong:
BOR rules on source of director’s fee income

In a recently published case, the Hong Kong Board of Review (BOR) determined that director’s fee income received from a foreign-incorporated investment holding company listed on the Hong Kong stock exchange was sourced in Hong Kong and subject to Hong Kong tax.

Background

The source of director’s fee income for Hong Kong salaries tax purposes is governed by the place of residence of the company paying the director’s fee. In determining a company’s residence, the Inland Revenue Department commonly has followed the case law principle of looking at the location of a company’s “central management and control.” The place where the

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company’s directors hold board meetings generally has been regarded as an important factor in determining where a company’s central management and control are located. However, the BOR stated in a previous decision that the source of income is fact-dependent and should not be determined through a strict formula (e.g. by considering the location of board meetings to be the sole relevant factor).

In the case, many of the company’s board meetings were conducted via teleconference. The taxpayer argued that this made it difficult to determine the location of the meetings, and that the company’s central management and control were located outside of Hong Kong based on the following grounds:

- The company was formed as an investment vehicle for its mainland China subsidiaries;
- The majority of the company’s directors were mainland China residents; and
- The company’s head office was headquartered in mainland China.

Accordingly, the taxpayer claimed that the company was not a Hong Kong resident, and that the director’s fee income should be sourced outside of Hong Kong and not subject to Hong Kong tax.

BOR decision

The BOR dismissed the taxpayer’s appeal and determined that, irrespective of whether the company also was a resident elsewhere, it was resident in Hong Kong; hence, the director’s fees the company paid to the taxpayer were sourced to and taxable in Hong Kong.

The BOR opined that modern-day companies organize their activities in a wide variety of ways, and that no single factor is determinative of residence – in this case, the location of board meetings was not so paramount as to lead to a conclusion that the company’s management and control were located in mainland China. In determining that the company was resident in Hong Kong, the BOR considered a number of factors in addition to the location of board of directors’ meetings, including the following:

- The company maintained its status as a listed company in Hong Kong to leverage the Hong Kong bank and financial infrastructure to obtain corporate financing;
- The company maintained its principal place of business, branch share registrar and transfer office in Hong Kong;
- Some of the company’s directors’ and committee meetings were held in Hong Kong; and
- The company maintained staff and bank accounts in Hong Kong.

Comments

All circumstances related to the way in which a company paying director’s fees conducts its business may need to be taken into account to determine where the company’s central management and control are located (and, hence, the source of director’s fee income), although the weight to be applied to each factor will differ from case to case. In determining the location of management and control for a nontrading company (such as the investment holding

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company in this case), it may be particularly important to consider the nature of the company's corporate activities.

This case illustrates that the central management and control of a company can be divided and, similar to an individual, it may have more than one place of residence, and that the source of income may be difficult to determine in practice.

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Malta:
New tax treaty with Mexico in force

The tax treaty between Malta and Mexico and the accompanying protocol signed on 17 December 2012 entered into force on 9 August 2014, and will apply as from 1 January 2015.

With the official entry into force of the treaty, Malta's tax treaty network consists of 70 treaties, including treaties with all members of the North American Free Trade Agreement and the EU. Mexico's tax treaty network currently consists of 54 treaties, including treaties with 24 of the 28 EU member states.

The treaty generally is based on the UN model treaty, with a few deviations. The following are some of the salient features.

Residence: The corporate tiebreaker rule differs from the UN model in that it includes a mutual agreement procedure. In addition, a specific residence provision is included for partnerships, under which they will be considered a resident of a contracting state only to the extent the income they derive is subject to tax in that state; the mode of application will be settled by mutual agreement in accordance with the protocol.

Permanent establishment (PE): The PE article contains a six-month period for establishing a construction PE; a service PE (including professional services) will exist when activities continue within a contracting state for a period exceeding, in the aggregate, 183 days in any 12-month period; and an insurance enterprise (except in regard to reinsurance) that collects premiums or insures risks situated in the other contracting state through a person other than an independent agent will be deemed to have a PE.

Business profits: The business profits article includes a provision under which the profits attributable to a PE may include sales in the other contracting state of goods or merchandise of the same (or similar) kind as the goods or merchandise sold through the PE.

Dividends, interest and royalties: The treaty with Malta is one of few Mexican tax treaties that provides for no withholding tax on dividends. For interest, withholding tax rates of 0%, 5% or 10% will apply, depending on the circumstances. The withholding tax on royalties is set at 10%. Malta, however, generally does not impose withholding tax on interest or royalties. An

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anti-treaty shopping provision is included in the protocol that stipulates that the treaty will not apply where a recipient of interest or royalties pays, directly or indirectly, more than 50% of the income (at any time and in any form) to another person who is not resident in a contracting state and who would not have been entitled to an equivalent or a more favorable treaty benefit under a direct treaty with the source contracting state.

Capital gains: Gains from the sale of shares of a company may be taxed in the state where the company is resident if the recipient and any related persons held 25% or more of the capital of the company at any time during the 12-month period preceding the sale. The protocol, however, provides for various exceptions and grants exclusive taxing rights to the country of residence of the transferor in specific circumstances.

Other provisions: Pensions paid in consideration for past employment will be exclusively taxed in the state of residence of the recipient. Other income may be taxable in the source state.

Comments

The treaty appears to have been influenced by the increasing global discussion on tax avoidance and treaty abuse. In addition to the general provisions on exchange of information and mutual assistance in the collection of taxes, the treaty includes certain safeguards aimed at preventing treaty abuse and tax avoidance, such as the tiebreaker rule by mutual agreement for determining the treaty residence of dual-resident persons other than individuals (specifically considered by the OECD commentary since 2008 and also included in Action 6 of the OECD base erosion and profits shifting project); the inclusion of an anti-abuse rule for the granting of treaty benefits to partnerships only when such partnerships are subject to tax; and the specific anti-treaty shopping provisions for interest and royalties included in the protocol.

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New Zealand:
Timetable announced for global crackdown on tax evasion

On 28 October 2014, New Zealand's Revenue Minister announced the country's timetable for participation in the global automatic exchange of information aimed at cracking down on tax evasion. The measure is part of the base erosion and profit shifting (BEPS) project and follows an endorsement by the G20 finance ministers of a standard automatic exchange agreement. Earlier, New Zealand, along with all OECD countries, had joined in a general declaration of support for the move.

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Automatic exchange of information involves the systematic and periodic transmission of “bulk” taxpayer information between countries. It can provide timely information on noncompliance where tax has been evaded, either on an investment return or on the underlying capital sum, even where tax administrations have had no previous indications of noncompliance.

The standard for automatic exchange of financial account information in tax matters calls on governments to obtain detailed account information from their financial institutions and exchange that information automatically with other jurisdictions on an annual basis. The standard provides for the annual automatic exchange between governments of financial account information (including balances, interest, dividends and sales proceeds from financial assets) reported to governments by financial institutions and covering accounts held by individuals and entities (including trusts and foundations). It sets out the financial account information to be exchanged, the financial institutions that need to report, the types of accounts and taxpayers to be covered and common due diligence procedures to be followed by financial institutions.

Australia, which currently holds the G20 presidency, announced its implementation timetable in September 2014. New Zealand intends to align its timetable with Australia’s. Thus, compliance by financial institutions will be voluntary from 1 January 2017, but mandatory from 1 January 2018. The first reporting of financial information to New Zealand’s tax authorities would begin on 1 January 2019, and that information would first start to be exchanged with tax treaty partners from September 2019.

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Serbia:
Ruling issued on payments to related parties

In a ruling issued on 20 August 2014, Serbia’s Ministry of Finance (MOF) confirmed that non-arm’s length royalties paid by a Serbian company to a related company resident in France are subject to the 20% domestic withholding tax, rather than the 0% rate prescribed under the Serbia-France tax treaty. This is the first ruling issued by the MOF on the withholding tax consequences of income paid to a nonresident related entity in the context of an applicable tax treaty.

The royalties article (and the interest article) in the Serbia-France tax treaty allocates the sole taxing rights with respect to royalties (and interest) to the state of residence of the beneficial owner of the income. However, where there is a special relationship between the payer and the beneficial owner, the 0% source state withholding tax will apply only where the royalties are at an arm’s length amount; the amount that exceeds an arm’s length range may be taxed in accordance with the domestic law of the country of residence of the payer (i.e. the source country). In the case, this meant that Serbia’s 20% domestic rate (rather than the 0% rate) applied on the portion of the royalties that exceeded an arm’s length range.

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The MOF ruling implies there has been a shift in the withholding tax practice and in potential tax audits. Historically, Serbia's tax authorities have not scrutinized non-arm's length royalties and interest paid by a Serbian entity to a related entity located in a tax treaty partner country for withholding tax purposes. Instead, the tax authorities have focused primarily on whether the requirements for application of the treaty were met (e.g. the existence of a certificate of residence of the recipient), and not on the withholding tax rate applied on non-arm's length income. This practice now is likely to change and, in light of the MOF ruling, withholding tax compliance could be examined on a retroactive basis (up to five years under Serbia's statute of limitations).

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In brief

Estonia: As from 1 January 2015, the income tax rate applicable to individuals, resident legal persons and nonresident legal persons that have a permanent establishment in Estonia will be reduced from 21% to 20%. The new rate will apply to income actually received (for individuals) or any taxable distribution made (since Estonia taxes companies at the time profits are distributed to shareholders rather than at the time the profits are earned) or expense incurred (for legal persons) as from 1 January. In the case of legal entities, the technical tax rate of 21/79 will be replaced by 20/80.

European Union: The Court of Justice of the European Union (CJEU) has issued a decision in a Finnish case on the application of different rates of VAT to printed books and digital books published on physical means other than paper (e.g. CDs, USB flash drives, etc.). The Finnish tax authorities took the position that only hard copies of books or books produced by comparable means could be regarded as a "book" for VAT purposes. The CJEU held that EU law permits different VAT treatment for hard copies of books and those on other mediums, provided that this does not breach the principle of fiscal neutrality, which depends on the views of an "average consumer." The court held that it is up to the referring court to determine whether the supplies are different with reference to the market penetration, etc., taking into account how the consumer views the items.

France: The "Sarkozy bonus" enacted in 2011, under which French companies that increase dividend payments to their shareholders over two consecutive fiscal years must grant a bonus to all of their employees, likely will be repealed by the Social Security Finance Law for 2015. Accordingly, the bonus would not be payable, starting in 2015. The French Senate already voted to abolish the bonus, and all indications suggest that the National Assembly will follow suit. The government has repeatedly indicated that the bonus would be repealed since 2012, but has been waiting for a global reform of employee savings arrangements to be put into place (the bill introducing this reform will be publicly announced in the near future). The final vote on the repeal of the Sarkozy bonus is expected in the next few weeks.

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Germany: The Federal Constitutional Court has ruled that the air passenger duty introduced in 2011is not contrary to the German constitution and that it does not violate the principle of equality or the fundamental right of freedom to exercise a trade or profession of either the airlines or the passengers.

International: Fifty-two countries have signed the Multilateral Competent Authority Agreement on the implementation of the global standard for the automatic exchange of financial account information. The signatory jurisdictions have committed to adopting the Common Reporting Standard (CRS), most from 1 January 2016, and other countries will follow later. Under the new standard, governments are required to collect detailed information from financial institutions to be shared with other jurisdictions annually. All EU member states, except Austria, will introduce the CRS from 1 January 2016 and it is expected that the EU savings directive gradually will be phased out. The first automatic exchanges of information will take place in September 2017.

Japan: Prime Minister Abe has announced his intention to postpone the effective date of the planned Japanese consumption tax (JCT) rate increase to 10% (from 8%) from 1 October 2015 to 1 April 2017. He also called for "snap" elections to take place in December 2014 to seek a public mandate for his economic policies. Current opinion polls suggest that Abe and his political party appear likely to stay in power, in which case the JCT rate hike likely would be delayed as proposed.

OECD: The OECD has released its strategy for Deepening Developing Country Engagement as part of its base erosion and profit shifting (BEPS) project. Ten or more developing countries (including Albania, Jamaica, Kenya, Nigeria, Peru, Philippines and Tunisia) will be invited to participate in meetings of the key BEPS decision-making body, the Committee on Fiscal Affairs and its technical working groups. Several other developing countries also are expected to participate. There will be number of regionally organized networks of tax officials to coordinate discussion on BEPS issues with a broader group of developing countries.

Serbia: Annual corporate and personal income tax returns must be submitted electronically as from 1 April 2015, and withholding tax returns must be submitted electronically as from 1 January 2016. The introduction of e-filing originally was scheduled to apply as from 1 October 2014 and 1 January 2015, respectively. The dates were extended to give taxpayers and the tax administration more time to prepare for electronic filing.

Thailand: The 20% corporate income tax rate, originally intended to apply for years 2013 and 2014, has been extended.

United Kingdom: The Court of Justice of the European Union (CJEU) has ruled that the "old" version of the UK's legislation attributing gains to members of close companies infringed the free movement of capital. Taxable gains derived by a nonresident close company, including a company resident in another EU member state or the European Economic Area, were attributed to UK-resident participators that held more than 10% of the company's shares immediately after the disposal of the assets. Where the close company was UK resident, tax was charged only when the gains were distributed to the participators or when the participators disposed of their interests in the company. The CJEU ruled that the UK had failed to meet its obligations under the Treaty on the Functioning of the European Union and the EEA

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Agreement, as the rules constituted a restriction of the free movement of capital. It made no difference that the tax charge might be reduced or eliminated in some cases, and the restriction could not be justified by the aim of combating tax evasion and avoidance because it was not targeted at artificial arrangements, but also caught purely commercial transactions. The law was amended with retroactive effect from 6 April 2012 to include a motive test, though many argue that it is still not acceptable, and a further complaint has been submitted to the European Commission.

United States: Financial institutions seeking to obtain qualified intermediary status to be effective for calendar year 2014 must submit the required forms to the Internal Revenue Service no later than the close of business on 5 December 2014. All applications received after that date will be effective for calendar year 2015.

Tax treaty round up

At the end of each month, *World Tax Advisor* provides an update on recent tax treaty developments, with a focus on items that directly affect the withholding tax rates of the key jurisdictions covered by the Deloitte International Tax Source (DITS). Additional coverage may include stated negotiating priorities and other important tax treaty trends.
URL: http://www.dits.deloitte.com?id=us:em:na:wta:eng:tax

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

Australia-Switzerland: The 2013 treaty to replace the 1980 treaty entered into force on 14 October 2014 and will apply for withholding tax purposes as from 1 January 2015. When in effect, the treaty provides that dividends will be exempt from withholding tax if the recipient of the dividends has held directly or indirectly shares representing 80% or more of the voting power of an Australian payer company or 80% or more of the capital of a Swiss payer company for a 12-month period ending on the date the dividend is declared and the recipient company: (a) has its principal class of shares listed on a recognized stock exchange, as specified in the treaty, and regularly traded on one or more recognized stock exchanges; (b) is owned directly or indirectly by one or more companies: (i) whose principal class of shares is listed on a recognized stock exchange and regularly traded on one or more recognized stock exchanges; or (ii) each of which would be entitled to equivalent benefits under a tax treaty if it directly held the shares in respect of which the dividends are paid; or (c) does not meet the requirements of (a) or (b) but the competent authority of the dividend-paying state determines that obtaining treaty benefits was not one of the principal purposes for creating or assigning the property in respect of which the income is paid or for becoming a resident of a contracting state. Dividends also will be exempt from withholding tax if the recipient of the dividends holds directly no more than 10% of the voting power in an Australian payer company or no more than 10% of the capital in a Swiss payer company, and the recipient is an Australian resident deriving the dividends from complying superannuation activities or a Swiss pension scheme whose income is exempt from Swiss tax. A 5% rate will apply if the recipient of the dividends is a company that holds directly at least 10% of the voting power in an Australian payer company or a company that holds directly at least 10% of the capital in a Swiss payer company; otherwise, the rate will be 15%. Interest will be exempt from withholding tax if it is derived by a

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financial institution that is unrelated to and dealing wholly independently with the payer (except in a back-to-back loan or similar arrangement). Interest also may be exempt from withholding tax if it is derived by an Australian resident deriving the interest from complying superannuation activities, or by a Swiss pension scheme whose investment income is exempt from Swiss tax. However, this exemption does not apply when the recipient of the interest participates directly or indirectly in the management, control or capital, or has a right to participate in the financial, operating or policy decisions of the issuer of the debt claim. Otherwise, the rate will be 10%. The withholding tax rate on royalties will be 5%.

Canada-Spain: When in effect, the protocol to the 1976 tax treaty signed on 18 November 2014 provides that a 0% rate will apply to dividends paid to a qualifying pension fund or retirement plan that holds the shares on which the dividends are paid as an investment and does not own directly or indirectly more than 5% of the capital or 5% of the voting stock of the distributing company, and the class of shares of the company on which the dividends are paid is regularly traded on an approved stock exchange. A 5% 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; otherwise, the rate will be 15%. Interest (other than certain contingent interest) will be exempt from withholding tax where it is paid in respect of a loan on arm's length terms; otherwise, the rate will be 10%. The tax treatment of royalties will not be affected by the protocol.

China-Russia: When in effect, the treaty signed on 13 October 2014 to replace the 1994 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 and this holding amounts to at least EUR 80,000 or the equivalent in any other currency; otherwise, the rate will be 10%. A 5% withholding tax rate will apply to interest and a 6% rate to royalties.

China-Switzerland: The 2013 treaty to replace the 1990 treaty entered into force on 15 November 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 5% withholding tax rate where dividends are 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% and the rate on royalties will be 9%.

Cyprus-Iceland: When in effect, the treaty signed on 13 November 2014 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company; otherwise, the rate will be 10%. Interest will be taxable only in the state of residence of the recipient, and a 5% rate will apply to royalties.

Estonia, Latvia, Luxembourg, Romania: The multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, entered into force in respect of Estonia, Latvia, Luxembourg and Romania on 1 November 2014 and will apply as from 1 January 2015.

Hungary-Switzerland: The 2013 treaty to replace the 1981 treaty entered into force on 9 November 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 0% withholding tax rate where dividends are paid to a company (other than a partnership that is not liable to tax) that holds directly at least 10% of the capital of the distributing

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company, or dividends paid to a pension scheme; otherwise, the rate will be 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

Japan-United Arab Emirates: The 2013 treaty between Japan and the United Arab Emirates enters into force on 24 December 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 that owns directly or indirectly at least 10% of the voting shares of the distributing company for the six-month period ending on the date entitlement to the dividends is determined; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%.

Japan-United Kingdom: The 2013 protocol and exchange of notes to the 2006 tax treaty enter into force on 12 December 2014 and will apply as from 1 January 2015 for withholding tax purposes. When in effect, the protocol provides for a 0% withholding tax on dividends paid to (i) a company that has owned shares representing directly or indirectly, for the six-month period ending on the date entitlement to the dividends is determined, at least 10% of the voting power of the company paying the dividends, or (ii) a pension fund, provided the dividends are not related to the carrying on of the pension fund's business; otherwise, the rate will be 10%. Interest will be taxable only in the state of residence of the recipient, except for certain contingent interest that will be subject to a 10% withholding tax. The tax treatment of royalties will not be affected by the protocol.

Latvia-Qatar: When in effect, the treaty signed on 26 September 2014 provides for a 0% withholding tax rate on dividends and interest paid to a company (other than a partnership); otherwise, the rate will be 5%. A 5% withholding tax rate will apply to royalties.

Malta-Mauritius: When in effect, the treaty signed on 15 October 2014 provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

Malta-Mexico: See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/141128_6.html

Mauritius-Republic of Congo: The 2010 treaty entered into force on 8 October 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 0% withholding tax rate where dividends are paid to a recipient that holds at least 25% of the capital of the distributing company; otherwise, the rate will be 5%. The rate on interest will be 5%. Royalties will be taxable only in the state of residence of the recipient.

Romania-Uruguay: The 2012 treaty entered into force on 22 October 2014 and will apply as from 1 January 2015 for withholding tax purposes. 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 and royalties will be 10%.

Singapore-United Arab Emirates: When in effect, the protocol to the 1995 tax treaty signed on 31 October 2014 provides that dividends and interest will be taxable only in the state of residence of the recipient. The withholding tax rate on royalties will not be affected by the protocol.

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Slovenia-United Arab Emirates: The 2013 treaty entered into force on 27 August 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 5% withholding tax rate on dividends, interest and royalties.

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 Bahamas (on 3 November 2014), Hong Kong (on 13 November 2014) and Barbados (on 17 November 2014).

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Australia
Australia issues final guidance on ATO's controversial transfer pricing reconstruction powers
The Australian Taxation Office issued a ruling on 12 November 2014 that grants the Commissioner of Taxation broad powers to "reconstruct" transactions undertaken by Australian taxpayers if they are deemed not to have occurred at arm's length.
Issue date: 15 November 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tpalert-24-151114.pdf?id=us:em:na:wta:eng:tax:112814

Brazil
Tax amnesty reopened, Reintegra program made permanent
A law published in Brazil's official gazette on 14 November 2014 reopens a tax amnesty and makes permanent a program that entitles exporters of manufactured goods to a tax refund of a percentage of the value of their exports.
Issue date: 21 November 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-211114.pdf?id=us:em:na:wta:eng:tax:112814

France
Amended Finance Bill contains proposal to allow horizontal tax consolidation
The 2014 Amended Finance Bill submitted to the French National Assembly includes a proposed amendment to the tax consolidation regime that would allow "horizontal consolidation" between French sister companies sharing a common parent company established in an EU member state or in a state in the European Economic Area that has concluded an administrative assistance agreement with France.
Issue date: 14 November 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-141114.pdf?id=us:em:na:wta:eng:tax:112814

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OECD

OECD issues discussion draft on low-value-adding intragroup services

The OECD, as part of its work on the Action Plan to address Base Erosion and Profit Shifting (BEPS), on 3 November 2014 released a discussion draft in relation to Action 10 proposing a simplified transfer pricing approach for low-value-adding intragroup services that will ultimately lead to revisions in Chapter VII of the OECD's *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*.

Issue date: 14 November 2014

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tpalert-23-141114.pdf?id=us:em:na:wta:eng:tax:112814

United States

Final Regulations Address Gain Recognition Agreements and Other Cross-Border Transfer Reporting

On 19 November 2014, the US Internal Revenue Service and Treasury Department issued final regulations revising the reporting rules applicable to stock and property transfers under Internal Revenue Code sections 367 and 6038B, including section 367(a) gain recognition agreements. Most notably, the regulations provide common standards to address untimely and incomplete filings, including revised coordination of the sections 367 and 6038B rules. The final regulations are effective for filings that are due on or after 19 November 2014, and requests for late or incomplete filing relief that are submitted on or after 19 November.

Issue date: 24 November 2014

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-241114.pdf?id=us:em:na:wta:eng:tax:112814

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