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In this issue:

Russia enacts law introducing fundamental changes to taxation of foreign entities

On 24 November 2014, Russia's president signed a law (Law No. 376-FZ) that makes fundamental changes to the taxation of foreign entities (for previous coverage, see *World Tax Advisor*, 25 April 2014 and *World Tax Advisor*, 26 September 2014). The law, *inter alia*, introduces the concept of "beneficial ownership," a new definition of corporate residence, a controlled foreign company (CFC) regime, new rules on the indirect disposal of shares of Russian real estate-rich companies and requirements that Russian legal entities and individuals disclose information on their interests in foreign companies. The law will enter into force on 1 January 2015.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140425_1.html
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140926_10.html

The new law is part of Russia's national strategy for counteracting tax abuse, referred to as "de-offshoring of the economy," under which the government intends to use a multi-pronged approach to limit the use of offshore jurisdictions for tax planning purposes and to ensure that the ownership structures of Russian companies are more transparent.

The most important changes affecting multinational companies are as follows:

Beneficial ownership

Law No. 376-FZ incorporates a statutory definition of the concept of beneficial ownership into the Russian tax code.

Russia's tax treaties generally are based on the OECD model treaty and provide for reduced rates of withholding tax on dividends, interest and royalties where the recipient of the income is the beneficial owner. Even though beneficial ownership is a standard requirement in many of Russia's treaties, the term currently is not defined in the tax code. The new rules formalize the concept and give the Russian tax authorities a stronger basis for challenging issues relating to the beneficial owner of Russian-source income.

Benefits under tax treaties (an exemption from tax or a reduced withholding tax rate) will be denied if a foreign company recipient of income:

- Has limited authority to dispose of the income;
- Carries out intermediary functions in respect of the income and does not bear the economic risks corresponding to its functions; and
- Directly or indirectly transfers the income (in whole or in part) to another entity that would not have a right to the treaty benefits if it received the income directly from the Russian payer.

To apply the provisions of a tax treaty to the payment of income to a foreign company, the Russian payer will have to first obtain a tax residence certificate from the nonresident that is the beneficial owner of the income. According to the law, the Russian payer is entitled to request a confirmation that the recipient is the beneficial owner of the income (and, in practice, likely will do so to support that it verified the foreign recipient's right to treaty benefits).

The law introduces a "look-through" approach with respect to determining the beneficial owner of dividends. If the Russian payer is informed that the beneficial owner is not the direct recipient of the dividends, the Russian payer may apply the tax treaty between Russia and the country of residence of the beneficial owner (the indirect owner) to the payment, provided proper documentation is furnished to the Russian payer.

Corporate residence

The new law amends the definition of tax residence for companies to be based on the place of effective management of the company. Residence currently is based on the place of incorporation (i.e. the place where the company is registered), meaning that a company is considered a Russian tax resident if it is incorporated in Russia. Foreign legal entities are taxed in Russia only if their activities constitute a permanent establishment (PE) or if they derive Russia-source income. Under the new rule, however, a legal entity incorporated abroad but meeting the place of effective management test will be subject to unlimited tax liability in Russia, i.e. it will be subject to tax on its worldwide income.

As from 1 January 2015, a foreign company will be deemed to be resident in Russia if any of the following requirements are met:

- The majority of the board of directors' meetings are held in Russia;
- Executive management of the company is regularly exercised in Russia; or
- The top management officers carry out their functions in Russia.

If none of the criteria above are met, a foreign organization still may be recognized as a tax resident in Russia based on any of the following criteria:

- The company's accounting or management records are maintained in Russia;
- The company's records and other administrative documents are managed from Russia; or
- The hiring and supervision of personnel is conducted from Russia.

The relatively broad definition of tax residence potentially could create dual residence issues when a company may be subject to unlimited tax liability in two jurisdictions. In accordance with the OECD model treaty, issues involving dual residence generally should be resolved in favor of the jurisdiction where the company's place of effective management is located, although the actual language of a particular treaty could provide otherwise. The provisions of Russia's treaties should prevail in determining tax residence status.

According to the law (and unless otherwise stated in an applicable treaty), a foreign company that is a tax resident in a Russian treaty partner country may elect to become a Russian tax resident, provided it conducts activities through a PE in Russia.

It also should be noted that the new definition of corporate residence applies for purposes of Russia's profits tax, as well as for purposes of VAT and other taxes.

Controlled foreign companies

Law 376-FZ introduces CFC rules in Russia, under which a Russian corporation or individual will be taxed currently on the undistributed profits of controlled companies and structures, at a rate of 20% or 13%, respectively. Controlled companies for purposes of the CFC rules include legal entities, as well as foundations, partnerships, trusts and other forms of collective investment.

A Russian tax resident will be deemed to be controlling a foreign entity/structure if any of the following criteria are met:

- The Russian resident's participation in the foreign entity/structure exceeds 25%;
- The total shareholding of all Russia tax residents exceeds 50% and the Russian resident's participation in the foreign entity/structure exceeds 10% (together with the spouse and minor children, in the case of an individual); or

- The Russian resident exercises, or has the power to exercise, a decisive influence on decisions regarding the distribution of profits of the foreign company/structure, regardless of the legal basis for such control.

During a transition period that will apply until 1 January 2016, a person will be deemed to control a foreign entity/structure only if that person's share (together with the shares of the spouse and minor children for an individual) exceeds 50%.

The applicable rules for calculating a CFC's profit will depend on whether the CFC is tax resident in a jurisdiction that has concluded a tax treaty with Russia and whether the CFC is required to prepare audited financial statements.

The law also provides for certain exemptions from taxation for CFC income, including where the following conditions are satisfied:

- The CFC is a nonprofit organization that, under the law of its jurisdiction of residence, does not distribute profits to its participants;
- The CFC is registered in a country in the Eurasian Economic Union (Armenia, Belarus and Kazakhstan, and potentially Kyrgyzstan from 2015);
- The CFC is resident in a country that has concluded a tax treaty with Russia, other than a country that does not exchange information with Russia (a "blacklist" is expected to be issued by the Ministry of Finance in the near future), and
    - The effective tax rate of the CFC is at least 75% of the weighted average tax rate that would apply in Russia; or
    - At least 80% of the CFC's overall profit is from active income (dividends, interest, royalties, capital gains and income from certain types of services (e.g. consulting, accounting, marketing, advertising, data processing, R&D, personnel outsourcing, etc.) are not considered active income).
- The CFC is a structure established in any form other than a legal entity and the founders'/settlors' rights to ownership of the assets, to transfer rights in the structure or to receive profits are limited, as specified under the law;
- The CFC is a bank or an insurance company that operates under a license and is resident in a jurisdiction that has concluded a tax treaty with Russia and that country exchanges information with Russia; or
- Other specific conditions provided under the law are satisfied.

Reporting requirements will apply to controlling Russian taxpayers, with penalties imposed for noncompliance.

Capital gains on the indirect transfer of real property

Law 376-FZ makes significant changes to the taxation of gains on the sale of Russian real estate- rich companies. Currently, capital gains derived by a nonresident are subject to Russian tax only if the nonresident sells shares in Russian real estate-rich companies (i.e. companies where more than 50% of the assets consist of real property in Russia). The new law expands this rule to include capital gains derived by a nonresident from the *indirect sale* of a domestic or foreign company, where a nonresident indirectly owns Russian real estate through one or more entities (except for capital gains from sales of publicly traded shares). The tax rate on such capital gains will be 20%. The new law also contains disclosure requirements (see below).

Transfer of assets without consideration

Income received by a Russian legal entity in the form of assets received without consideration is exempt from taxation, provided that at least 50% of the share capital of the recipient company consists of a participation in the grantor company, or vice versa. The law introduces an additional test to qualify for exemption: the foreign grantor company may not be a resident of a country included on the blacklist of offshore jurisdictions.

Disclosure obligations

The new law imposes requirements on Russian legal entities and individuals to disclose information on their interests in foreign companies, as well as in structures established in a form other than a legal entity, and their control over such entities/structures.

As from 1 January 2015, a Russian tax resident will be required to notify the tax authorities of the following:

1. A direct and/or an indirect participation in a foreign company if the interest exceeds 10%;
2. The establishment of a foreign structure without a legal personality (in any form other than a legal entity), as well as of control over such a structure or where the Russian taxpayer has actual rights to the income received by such structures; and
3. Any interest in a CFC, by 20 March of the year following the tax year (the notification must be submitted annually, with the first notification due by 20 March 2016).

If grounds for notification of a participation in a foreign company arose before 1 January 2015, the tax authorities must be notified by 1 April 2015.

Failure to comply will result in a penalty of RUB 50,000 per company/structure for disclosures due under the first two items above, and RUB 100,000 per company in the case of a CFC.

The law also requires a foreign organization (a structure established in any form other than a legal entity) that owns immovable property in Russia to annually provide information on its members (shareholders, founders, beneficiaries, trustees, etc.) when submitting the annual property tax return. The disclosure of indirect participations of individuals or public entities is required if their ownership interest in a foreign company (or structure established in any form other than a legal entity) that owns immovable property in Russia exceeds 5%. The penalty for nondisclosure or failure to file a timely disclosure will be 100% of the property tax due.

Comments

Russian taxpayers with operations outside Russia and foreign taxpayers with business operations in Russia should carefully review the new law in order to assess the impact on their activities.

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Brazil:
Income tax rate threshold for tax haven classification lowered

An ordinance (Ordinance 488/2014) published in Brazil's official gazette on 1 December 2014 reduces the income tax rate threshold for the application of the low-tax jurisdiction and privileged tax regime rules from 20% to 17% for countries that follow the OECD international fiscal transparency standards. The income tax rate is one of the criteria used to determine whether a country is classified as a low-tax jurisdiction or a jurisdiction that has a privileged tax regime. Inclusion on either list results in higher withholding taxes on certain outbound payments and the automatic application of Brazil's transfer pricing and thin capitalization rules.

A low-tax jurisdiction – also known as a blacklisted jurisdiction – is a jurisdiction that does not tax income or that imposes tax at a rate lower than 17% (previously 20%), or does not allow access to information on a corporate structure or on the identity of the beneficial owner of income.

A privileged tax regime jurisdiction – also known as a grey-listed jurisdiction – is a jurisdiction that has one or more of the following features: (1) it does not tax income (domestic or foreign-source) or it imposes tax at a rate lower than 17% (previously 20%); (2) it grants tax benefits to nonresident legal entities or individuals without requiring that substantial economic activities be carried out in the country; or (3) it does not allow access to information on the corporate structure, ownership of assets or rights or economic transactions.

References to low-tax jurisdictions and privileged tax regimes are found in Brazil's transfer pricing, thin capitalization, nonresident capital gains, interest, royalties and services outbound remittances regulations, as well as in the controlled foreign company (CFC) rules. However, the CFC rules use a separate legal basis to define a low-tax jurisdiction based on a 20% income tax rate threshold. Ordinance 488/2014 does not affect this provision and there is no indication that the Brazilian tax authorities intend to realign the CFC criteria with the 17% rate established in the ordinance (even though the CFC legislation allows the Minister of Finance to reduce the threshold to as low as 15%).

It should be noted that the ruling (Normative Ruling 1,037/2010) that contains the lists of blacklisted countries and grey-listed privileged tax regimes has not been revised to reflect the new income tax rate standard established by Ordinance 488/2014. It seems that the Brazilian authorities may intend to wait for interested countries to take action and request an exclusion from the relevant list through appropriate diplomatic channels.

Comments

The definitions of low-tax jurisdiction and privileged tax regime are key to determining the Brazilian tax impact of transactions with foreign entities. The new reduced income tax rate threshold seems to relax the application of the rules, and ultimately may result in some jurisdictions/regimes being removed from the lists in Normative Ruling 1,037/2010. However, until the Brazilian authorities actually take steps to formally exclude jurisdictions/regimes, the reduced rate will have no practical effect.

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Brazil:
New tax treatment of vessel charter payments in the oil and gas industry

The Brazilian government published a law (Law 13,043) on 13 November 2014 that introduces new rules on the tax treatment of a contractual structure commonly used in the oil and gas industry to carry out remittances for the charter of vessels, an area that has been fraught with controversy. The rules will apply as from 1 January 2015.

Under the structure, a Brazilian company concludes a vessel charter agreement with a nonresident and a service agreement with a Brazilian resident for services related to the operation of the vessel (a split contract). The Brazilian tax authorities have challenged split contract structures on the grounds that no distinction should be made between charter and services agreements, and that the supply of a drilling unit, vessel and/or platform actually is a component of a single comprehensive contracted service. If this is the case, the 0% withholding tax that normally would apply would be denied (resulting in a 15% withholding tax (25% if the payment is made to a tax haven jurisdiction)) and the contribution for the intervention in the economic domain (a tax on technology transfers and fees paid for technical assistance, etc.) would have to be paid on amounts related to both contracts as if they were a single contract.

Law 13,043 clarifies that, when a vessel charter or lease agreement and a service agreement related to oil and gas exploration are executed simultaneously between related parties, they should be treated as a single contract. However, the portion of the total contract amount related to the charter cannot be higher than the percentages below:

- 85% for vessels with floating production systems and/or storage and landing (floating production systems or FPS);
- 80% for vessels with drilling, completion or maintenance systems (drilling rigs); and
- 65% for other vessels.

The Minister of Finance may reduce or increase these percentages by up to 10%.

The portion of the charter contract that exceeds the above percentages will be subject to a 15% or 25% withholding income tax.

The new rules apply only to contracts between related parties. For this purpose, foreign legal entities that own the vessels and legal entities that provide the relevant services will be deemed to be related if they jointly participate directly or indirectly in a company that owns the chartered or leased assets.

The provisions of Law 13,043 are applicable for new contracts and for existing contracts that are renegotiated or subject to a price adjustment; there are no “grandfathering” provisions for existing contracts.

Comments

Law 13,043 indicates that the Brazilian authorities have agreed on a compromise solution in providing guidance on the taxation of contractual structures involving the charter of vessels combined with services. However, since there is no specific provision addressing the treatment for contractual arrangements previously set up, some uncertainty will remain until further guidance is provided. It also should be noted that such split contracts can have consequences for other types of taxes, but these are not addressed in Law 13,043.

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Brazil:
New regulations issued on transition tax regime, new CFC rules

The Brazilian tax authorities have issued two rulings (Normative Rulings (NR) No. 1,515/14 and No. 1,520/14) that provide additional guidance on Law 12,973/14, which repeals the transition tax (RTT) regime as from 1 January 2015 and introduces new controlled foreign company (CFC) rules. (For prior coverage, see Brazil Tax Alert, 15 May 2014 and Brazil Tax Alert, 3 June 2014.)
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-160514.pdf?id=us:em:na:wta:eng:tax:121214
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-030614.pdf?id=us:em:na:wta:eng:tax:121214

NR 1,515/14, published on 26 November 2014, contains 188 articles consolidating the corporate income tax computation rules that were addressed by a 1997 ruling (NR 93/1997), and revoking the 1997 ruling. It also revokes and replaces an NR issued earlier in 2014 (NR 1,493/14), which focused on the initial adoption of the measures in Law 12,973/14. NR 1,515/14 provides that where there are differences (positive or negative) between the accounting GAAP assets reported on the digital accounting bookkeeping return and the tax GAAP assets reported on the transition tax regime control return and the “sub-accounts” (which are used to track certain tax figures) are properly maintained, tax neutrality should prevail. Clarification is provided on the mechanisms that apply to the corporate taxable income computation for accounting for such differences to ensure tax neutrality.

NR 1,520/14, published on 8 December 2014, provides further guidance on the rules governing the tax treatment of CFCs and includes new procedures for electronically reporting information regarding the taxpayer's CFC entities under the corporate tax income electronic reporting regime. The NR includes some clarifications and further details on the mechanics that apply for CFCs and the required disclosures of CFC attributes on certain schedules, including:

1. Active and passive income;
2. Income from abroad;
3. Consolidation information;
4. Loss carryforwards;
5. Corporate structure; and
6. Foreign tax information.

NR 1,520/2014 also revokes certain articles of NR 213/2002, which addresses the current tax treatment of CFCs.

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Germany:
Anti-hybrid and anti-double-dip rules unlikely to be implemented

In a statement issued on 12 November 2014, Germany's federal government announced that it does not intend to support the recently proposed anti-hybrid/anti-double-dip rules or the introduction of a 10% minimum shareholding to qualify for the 95% participation exemption on gains from the sale of shares (for prior coverage, see Germany Tax Alert, 7 November 2014). The draft tax bill passed by the lower house of the German parliament on 4 December no longer includes either measure. A final decision about the pending law will be made by the upper house of the parliament on 19 December.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-germany-071114.pdf?id=us:em:na:wta:eng:tax:121214

The upper house of parliament approved a draft tax bill on 7 November 2014 that included a new anti-hybrid rule and other measures. The draft bill is part of a legislative process initiated by the federal government in September, but the version approved by the upper house includes several new measures, including the following:

- In response to the OECD base erosion and profit shifting (BEPS) initiative, a deduction for business expenses would be disallowed to the extent there is no corresponding income inclusion (deduction/no-inclusion) or to the extent there is a reduction of the taxable income in another country for the same expenses (double deduction).
- A 10% minimum shareholding requirement would be introduced to qualify for the 95% participation exemption on gains from the sale of shares.

The federal government announced shortly after the approval by the upper house that it will not support the introduction of the anti-hybrid/anti-double dip rules at this time. Instead, the government intends to wait until the final BEPS reports are issued in 2015 and measures are discussed and/or implemented at an international level. This announcement comports with the policy statement issued by the government at the end of 2013.

The government also has taken the position that any proposed changes to the participation exemption should be part of a broader reform of investment taxation. Such a reform would require detailed discussions and the participation of the federal states.

The pending law, as passed by the lower house on 4 December, no longer includes either proposal. In addition, the broadening of the intragroup restructuring exception for purposes of the change-in-ownership rules and the shift of the competency for certain withholding tax claims to the Federal Tax Office no longer are included in the pending law.

As a result, it seems unlikely that the anti-hybrid/anti-double dip measures and the other proposed changes will be implemented as part of the current initiative. A final vote by the upper house of parliament on the current proposal is expected on 19 December.

In the meantime, government officials have confirmed that a task force will be appointed to come up with a proposal on how to implement the BEPS recommendations into German tax law. Legislative action on this initiative is not likely until 2016; however, any such action could have retroactive effect.

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Ireland:
SARP and FED regimes enhanced

Changes made to two of Ireland's employee incentive regimes in the 2014 Finance Bill published on 23 October 2014 are designed to enhance the country's competitiveness in attracting mobile employees, and are particularly welcome at a time when the focus of the OECD base erosion and profit shifting (BEPS) project is on aligning substance with taxing rights and key people functions. The revisions to the Special Assignee Relief Program (SARP) and the foreign earnings deduction (FED) may favorably affect the level of income taxes paid by individuals working in Ireland, and may create cost-saving opportunities for employers of tax-equalized employees.

Special Assignee Relief Program

The SARP is an incentive scheme designed to attract international executives to work in Ireland during 2012, 2013 or 2014. Where certain requirements are met, an employee can request that 30% of his/her income between EUR 75,000 and EUR 500,000 be disregarded for income tax purposes for a maximum period of five years. A government consultation on SARP in May 2014 showed that only 15 SARP claims were made in 2012, confirming that the relief was unattractive in its current form.

The 2014 Finance Bill extends the SARP for an additional three years, through 2017; as from 2015, the requirements for application of the incentive will be relaxed for new applicants to ensure that more individuals qualify for the relief. Currently, the employee must have worked outside Ireland for at least 12 months for the relevant employer before being assigned/transferred to work in Ireland, and the employee must be tax resident in Ireland in the year of the SARP claim and not tax resident in another jurisdiction. The latter requirement has proved difficult for employees to meet in their year of arrival in Ireland. The new form of the relief will be available to individuals employed outside Ireland by the relevant employer for a minimum period of six months, regardless of their overseas tax residence status. The "residence elsewhere" requirement also is removed for individuals who arrived in Ireland in 2014, although all other conditions of the current SARP regime remain in place for that year.

The Finance Bill also confirms that the upper income threshold of EUR 500,000 is being removed and, in a welcome change, this applies from 2015, regardless of the year of arrival in Ireland. Finally, the Finance Bill provides that the employer must certify to the Irish tax authorities that the employee meets the requirements for the relief within 30 days of the employee's arrival in Ireland.

Foreign Earnings Deduction

For tax years 2012, 2013 and 2014, employees who carry out part of the duties of their employment in one of the BRICS countries (i.e. Brazil, Russia, India, China or South Africa) may claim the FED. To qualify, the employee must work for at least 60 "qualifying days" in a 12-month period. A qualifying day is a day that is one of at least four consecutive days devoted substantially to carrying out the duties of the relevant employment where the individual is present in the relevant BRICS country. An employee can claim a tax deduction against employment income based on the number of qualifying work days spent in the foreign location. Maximum tax relief is capped at EUR 35,000 and does not apply to the Irish Universal Social Charge or Pay-Related Social Insurance.

For 2013 and 2014, the relief also applies to employees spending more than 60 qualifying work days in Algeria, the Democratic Republic of the Congo, Egypt, Ghana, Kenya, Nigeria, Senegal or Tanzania.

A government consultation on the FED held in May 2014 confirmed that the relief was not as successful as intended, with only 83 FED claims submitted in 2012.

The 2014 Finance Bill extends the FED for an additional three years, through 2017, and relaxes the qualifying conditions as from 2015. The 60 work-day requirement will be reduced to 40 days, and the required minimum stay will be reduced to three consecutive days (including travelling time). For the years 2015 – 2017, "qualifying countries" will include Bahrain, Chile, Indonesia, Japan, Korea, Malaysia, Mexico, Oman, Qatar, Saudi Arabia, Singapore, Thailand, United Arab Emirates and Vietnam.

Comments

Since its introduction in 2012, the SARP has been limited in impact due to the stringent conditions to qualify for the benefits. The relaxation of qualifying criteria, particularly the residence criteria, is welcome in the context of attracting key personnel to Ireland, although it is disappointing that the relief was not extended to new hires. The SARP may provide employers with cost savings in cases where individuals are assigned to Ireland on a tax-equalized basis. There will be no maximum on the relief for key executives with compensation packages (including bonuses and share awards) that exceed EUR 500,000 in total; in contrast, the current maximum relief is limited to EUR 127,500 and provides a maximum annual tax saving of EUR 52,275 (for executives taxed at the highest marginal rate). While the employer certification requirement creates further reporting obligations, the intent is that this will provide real-time information regarding the number of claimants.

The relaxed requirements for the FED may provide real tax cost-saving opportunities for individuals temporarily working in qualifying countries, particularly those with which Ireland does not have a tax treaty and where a tax credit would not be available. Employers should ensure processes are in place for the company to receive tax relief arising as a result of Irish employment in cases where the individual is tax equalized. Employers also should consider implementing tax-equalization policies where employees make frequent business trips to qualifying countries.

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Mexico:
Requirement to submit electronic accounting records modified

On 4 December 2014, Mexico’s tax authorities (SAT) issued a bulletin and draft modifications to the rules regarding the requirement for taxpayers to electronically upload accounting records to the tax authorities’ website, including some modifications to the rules previously announced (for prior coverage, see *World Tax Advisor*, 25 July 2014 and *World Tax Advisor*, 22 August 2014. The new set of rules appears to be the SAT’s official plan for implementing the requirement, arrived at after discussions with representatives of the private sector and the Mexican public accounting institute. The draft includes the following provisions:
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140725_10.html
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140822_6.html

- The obligation to submit the monthly trial balance and chart of accounts in an electronic format will start with periods beginning in January 2015. Information related to the July to December 2014 period that was to be due in January 2015 no longer is required to be submitted.

- Only entities that reported taxable revenue exceeding MXN 4 million in their 2013 tax return and those that are part of the financial system (financial and banking institutions) will be required to submit their records electronically starting in 2015.
- Entities in the primary sector (farming, fishing, agricultural), nonprofits, individuals and taxpayers that register for their federal tax identification number in 2014 and 2015 will be required to submit their accounting records electronically starting in 2016.
- The journal entries the SAT may request upon an audit or to validate a tax refund or offset will be required only for information generated in periods starting in January 2015 or 2016, depending on when the taxpayer is required to begin submitting electronic accounting records.
- The due date for filing the monthly trial balance will be the third day of the second month after the month for which the information is submitted; for example, information for the period beginning in January 2015 will have to be submitted no later than 3 March 2015. The initial chart of accounts will be due on the same date and need not be submitted again until it is modified.
- Entities that issue securities on the Mexican stock exchange or on foreign recognized exchanges will submit electronic accounting information on a quarterly basis, rather than a monthly basis. The same treatment will apply to their subsidiaries. The first reporting deadline for these entities will be 3 May 2015.

Comments

Implementation of the requirement to submit electronic accounting records continues to be a challenge for Mexican taxpayers, both from an accounting and from an information technology capability perspective. With the new draft rules, the SAT appears to be ready to start requiring implementation in 2015 for some taxpayers, and those companies with revenue above the MXN 4 million threshold or that are part of the financial system should continue their implementation plans for initial delivery in 2015.

However, it is important to note that the electronic reporting requirement currently is being challenged through the court system – Mexico's Supreme Court issued a decision on 26 November that temporarily suspends the requirement for taxpayers that have challenged the requirement on the grounds that it violates the Mexican constitution, and the decision must be applied by all courts in Mexico. The suspension will be in effect until the Supreme Court decides whether the new obligation violates the constitution. Taxpayers that have not yet challenged the obligation can do so and obtain a suspension of the obligation once they have complied with the first reporting deadline.

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New Zealand:
Tax policy briefing released

New Zealand's Inland Revenue has released its post-election briefing for the incoming Minister of Revenue, which provides an inventory of current tax policy and administration issues and the challenges ahead. It states that New Zealand's broad-based low-rate (BBLR) approach to taxation provides a coherent tax policy setting, with the result that there is no need for an urgent or radical shift in policy. In the long term, challenges are likely to arise due to New Zealand's aging population, which will increase the demands placed on the health and social security systems.

The following are some key points of the briefing:

- New Zealand collects most of its income from three major tax bases: personal income tax, company income tax and goods and services tax (GST). One notable change in recent years is that the proportion of revenue from personal income tax has decreased, while the proportion of revenue from GST and company income tax has increased. This "switch" in tax revenue is partially attributable to the increase in GST rate from 12.5% to 15% and reductions in personal tax rates.
- The BBLR approach should continue and there currently is no case for company tax rate cuts, but this issue should be kept under review, particularly if Australia moves to cut its company tax rate in the future.
- The Business Transformation program for modernizing the tax and social policy system, which is expected to take eight to 10 years and could cost in excess of NZD 1 billion, provides an opportunity to make tax simpler, more transparent and more certain; it should enable Inland Revenue to be more agile, effective and efficient, customers to self-manage tax matters and the government to make timely policy changes. However, while the program is being implemented, there may be difficulties in implementing some policy changes, as the current tax administration system is at capacity. As part of the program, Inland Revenue is working on the following:
  - Finalizing a consultation document on secure digital services for consultation early in 2015;
  - Developing a consultation document on GST and pay as you earn (PAYE) collection of information; and
  - "Tax administration for the 21st century" policy work in a series of discussion documents to be released in 2015 and subsequent years.
- Compared with other countries, New Zealand has fairly robust international tax rules that make it less vulnerable to base erosion and profit shifting (BEPS). However, some projects on the tax policy work program involve consideration of domestic law changes that would help to combat BEPS:
  - BEPS should not be seen as anti-business. Its goal is to make company taxes more even and transparent in their application across companies and countries.

It is not in the interests of New Zealand business and individual taxpayers if multinational companies are able to avoid paying their fair share of taxes in New Zealand or elsewhere.

  - The issue of purchases of goods and services from abroad escaping the GST that would be applied on domestic purchases is a growing problem. The most productive way forward likely will be to work with the OECD, which currently is examining a way for countries to cooperate to levy GST on imported services, including intangibles, and is likely to recommend the GST registration of nonresident suppliers as the best solution (an option that also could be extended to low-value goods).
- Inland Revenue will report to the Ministers of Revenue and Finance on possible measures for the tax policy work program early in 2015.

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Thailand:
New investment promotion strategy announced

On 25 November 2014, the Thailand Board of Investment (BOI) approved the "Seven-Year Investment Promotion Strategy" (2015-2021) that will come into effect and apply to all applications submitted as from 1 January 2015.

The new investment strategy focuses on giving priority to investments that will contribute to, and have a positive effect on, society and the environment. The strategy primarily aims to enhance the competitiveness of the country and drive it toward sustainable economic growth by promoting inbound value-added investment (as well as Thai investment overseas).

The investment strategy gives priority to high-tech and creative industries, service industries that support the development of the digital economy and activities that develop and utilize local resources. Eligible activities will be divided into two groups:

- Group A activities that will receive a corporate income tax exemption; and
- Group B activities (activities that do not use high-technology, but are deemed to be important to the manufacturing and supply chain) that will receive nontax incentives and certain tax privileges.

The list of eligible activities has not yet been announced.

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Ukraine:
Currency control restrictions extended

National Bank of Ukraine (NBU) Decree No. 758, which became effective on 3 December 2014, extended a number of currency restrictions that lapsed on 2 December, and proposed new mechanisms for currency market regulation. (For prior coverage of the restrictions that applied through 2 December, see *World Tax Advisor*, 10 October 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/141010_7.html

The following restrictions are extended through 3 March 2015:

- The settlement deadline for import and export transactions remains 90 calendar days;
- The percentage of foreign currency earnings subject to mandatory exchange remains 75% (with limited exceptions);
- Tightened control remains over currency transactions;
- The ban remains on early repayment of loans or credits in foreign currency under agreements/contracts with nonresidents;
- The sale of foreign currency cash or precious metals to an individual on one business day through one banking institution remains restricted to the equivalent of UAH 3,000;
- Foreign currency remittances abroad by individuals from Ukraine remain limited to the equivalent of UAH 15,000 per business day for transfers without supporting documentation, and to the equivalent of UAH 150,000 per month for remittances with supporting documentation;
- Cash withdrawals through cash desks and ATMs remain limited to UAH 150,000 per day per client;
- Cash withdrawals in foreign currency or precious metals from current and deposit accounts remain limited to the equivalent of UAH 15,000 (at the official NBU exchange rate) per day, per client;
- The prohibition remains on cash withdrawals within Ukraine through electronic payment instruments issued by residents or nonresidents in any currency other than UAH; and
- The ban remains on the following foreign currency transactions:
  - Payment of funds to foreign investors abroad following the over-the-counter sale of securities of Ukrainian issuers (except Ukraine government bonds);
  - Payment of funds to foreign investors abroad following the sale of equity rights, other than rights in the form of shares of joint-stock companies;
  - Payment of dividends to foreign investors abroad (except for refunds of dividends on exchange-traded securities); and
  - Foreign currency transactions performed under individual licenses from the NBU (some exceptions apply).

The following changes to market regulation are proposed:

- Banks would be allowed to issue registered savings (deposit) certificates denominated in both UAH and a foreign currency, with a maturity of no less than six months; however, the banks would be required to suspend the issuance of bearer savings (deposit) certificates; and

- Resident guarantors holding individual licenses from the NBU would have the right to remit foreign currency to fulfil guaranteed obligations under loans granted by international financial institutions or foreign export credit agencies.

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United States: One-year extenders package pending

The US House of Representatives approved a one-year retroactive extension of most – but not all – of the temporary tax deductions, credits and incentives that expired at the end of 2013 on 3 December 2014.

The House action came after the Obama administration threatened to veto a tentative deal that called for permanently extending several expired provisions (such as the research credit and certain increased expensing limits), extending most other expired provisions for two years and phasing out the production tax credit for wind and other forms of alternative energy. The administration opposed the emerging deal because it was, in its view, too heavily skewed toward corporate taxpayers.

The expired provisions that would be renewed through the end of 2014 under the House-passed extenders legislation include the following:

- The research and experimentation credit;
- Bonus depreciation and the election to accelerate alternative minimum tax credits in lieu of additional first-year depreciation;
- Increased expensing limits for “section 179” property and the expanded definition of section 179 property;
- The “subpart F” exception for active financing income;
- Lookthrough treatment of payments between related controlled foreign corporations under the foreign personal holding company rules;
- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements and qualified retail improvements;
- The production tax credit for wind and other alternative forms of energy;
- The credit for alternative fuel vehicle refueling property;
- The deduction for energy-efficiency improvements to commercial buildings;
- The credit for construction of energy-efficient new homes;
- The deduction for energy-efficiency improvements to existing homes;

- The New Markets Tax Credit;
- The Work Opportunity Tax Credit;
- Special rules for contributions of capital gain real property made for conservation purposes;
- The deduction for state and local sales taxes; and
- The income exclusion for employer-provided mass transit and parking benefits.

As approved by the House, none of the extenders provisions is modified from prior law.

The bill would not renew a handful of provisions related to, among other things, expensing of certain refinery property, manufacturing of energy-efficient appliances and health insurance tax credits for certain unemployed individuals.

The legislation must be considered and approved by the Senate before it can be submitted to the President for enactment. Senate Finance Committee Chairman Ron Wyden told reporters on 4 December that the Senate likely would accept the House's one-year tax extenders package, although a procedural path for moving the measure through the upper chamber had yet to be made clear. Majority Leader Harry Reid raised the possibility on 4 December that the Senate might not consider the bill before the end of the year, but most observers expected it to come up for a vote during the week of 8 December.

For the latest status, visit the *Tax News and Views* archive.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/tax-news-and-views-newsletter.html?id=us:em:na:wta:eng:tax:121214

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In brief

Albania: The withholding tax rate on dividends, interest and royalties will increase from 10% to 15% on 1 January 2015 and a new VAT law that is harmonized with the EU VAT Directive will enter into force on the same date.

European Union: The Economic and Financial Affairs Council approved an anti-abuse clause for the amended EU parent-subsidiary directive on 9 December 2014 that will allow EU member states to apply stricter national rules, provided they meet the minimum EU requirements in the directive. The anti-abuse clause aims to prevent misuses of the directive and ensure more consistency in its application in the member states; the clause requires governments to refrain from granting the benefits of the directive where there is an arrangement, or a series thereof, that are not genuine and have been put in place to obtain a tax advantage. (For prior coverage, see *World Tax Advisor*, 9 May 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140509_5.html

Guatemala: The application of the transfer pricing rules was suspended from 22 December 2013 to 31 December 2014, although the tax authorities have been permitted to request information from related parties during this period. The rules are reinstated as from 1 January 2015.

Indonesia: The deadline for taxpayers that make new investments in certain business sectors (pioneer industries) to apply for a tax holiday (a tax exemption or reduction of income tax) has been extended from 15 August 2014 to 15 August 2015.

Indonesia: Following the government's announcement on the new social security schemes, companies must register all of their employees, including expatriate employees (who work or intend to work for at least six months in Indonesia), for both the national healthcare and national workers social security schemes. The deadline for companies to register for the national healthcare scheme is 1 January 2015. Registration with the national workers scheme became mandatory when the regulation was announced on 1 January 2014, but private sector contributions will not start until 1 July 2015.

Portugal: The necessary changes have been made to the VAT code to implement the new EU VAT place of supply rules for "B2C" supplies of telecommunications, broadcasting and e-services and the mini one-stop shop regime, and will apply as from 1 January 2015.

BEPS corner

In the first issue of each month, *World Tax Advisor* includes a monthly "BEPS corner" that provides updates on developments in the OECD's base erosion and profit shifting initiative.

Germany: See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/141212_5.html

New Zealand: On 26 November 2014, the Revenue Minister released two tax officials' policy reports that outline the progress to date and an expected timeline for BEPS-related policy work. The reports also offer a glimpse of New Zealand's view of the approaches taken by the OECD on the action plan reports and likely domestic law changes as a result. While New Zealand's international tax policy settings generally are robust, there are areas in which the country is considering reform to its domestic rules to bring them in line with the OECD's recommendations. These include:

- Neutralizing the effects of hybrid mismatch arrangements (Action 2); and
- Limiting base erosion via interest deductions (Action 4).

Discussion documents will be released in late 2015 after the OECD work is finalized, to ensure that any New Zealand initiatives are guided by the approaches recommended by the OECD.

OECD: United States Alert, 3 December 2014 provides additional coverage of the OECD's discussion draft on BEPS Action 7: preventing the artificial avoidance of permanent

establishment status. For prior coverage of the discussion draft, see OECD Alert, 4 November 2014.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-031214.pdf?id=us:em:na:wta:eng:tax:121214
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-051114.pdf?id=us:em:na:wta:eng:tax:121214

United Kingdom: The 2014 Autumn Statement delivered on 3 December 2014 contains BEPS measures. See United Kingdom Alert, 4 December 2014.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedkingdom-041214.pdf?id=us:em:na:wta:eng:tax:121214

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.

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

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 Moldova (on 26 November 2014), the Turks and Caicos Islands (on 1 December 2014), Cyprus (on 2 December 2014), Bulgaria (on 5 December 2014) and Singapore (on 9 December 2014).

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Norway
Advisory panel proposes tax reform
A panel appointed by the Norwegian government in March 2013 presented its report, “Capital Taxation in an International Economy,” to the Ministry of Finance on 2 December 2014. The report makes a number of recommended changes to the tax system, in particular, to the corporate tax rules and VAT rules.
Issue date: 2 December 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-norway-021214.pdf?id=us:em:na:wta:eng:tax:121214

Spain

Corporate tax reform enacted

The broad-based tax reform originally proposed by the Spanish government in June 2014 was published in the official gazette on 28 November 2014. The reform, which will become effective on 1 January 2015, includes the introduction of a new corporate income tax law, as well as extensive changes to the personal income tax, nonresident income tax and VAT.

Issue date: 2 December 2014

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-spain-021214.pdf?id=us:em:na:wta:eng:tax:121214

United Kingdom

2014 Autumn Statement contains BEPS measures

The UK's 2014 Autumn Statement delivered on 3 December 2014 by the Chancellor reaffirms the UK government's continued support for the OECD's work on BEPS and the modernization of the international framework for taxing multinational companies. The Chancellor announced a consultation process on new rules to counter "hybrid mismatches." An announcement also was made with respect to country-by-country reporting of information to tax authorities and the introduction of a 25% "diverted profits tax."

Issue date: 4 December 2014

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedkingdom-041214.pdf?id=us:em:na:wta:eng:tax:121214

Draft legislation on diverted profits tax released

The UK government published further details on the new diverted profits tax (DPT) on 10 December 2014, including draft legislation for Finance Bill 2015 and a Technical Note with some examples of cases where the UK tax authorities consider that the DPT could apply.

Issue date: 11 December 2014

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/gx-tax-united-kingdom-alert-11-12-14.pdf?id=us:em:na:wta:eng:tax:121214