In this issue:

French constitutional court rules 3% surtax on dividends is unconstitutional

The French constitutional court published a decision on 6 October 2017, concluding that the 3% surtax on profit distributions – in its entirety – violates the constitution.

The 3% surtax has been the target of intense criticism since it was introduced in 2012, and has given rise to claims that the surtax is contrary to the French constitution, as well as EU law and France's tax treaties. Challenges to aspects of the surtax have been before various French courts and the Court of Justice of the European Union (CJEU).

Background

The 3% surtax, imposed on French entities subject to corporate income tax, including French permanent establishments of foreign companies, is levied on most dividend distributions (including deemed dividends) at the level of the French payer, although certain distributions are exempt. The surtax is calculated on the gross amount of the dividends, with the tax due at the time the distribution is made. French tax law does not provide any mechanism to avoid a double (or multiple) levying of the surtax where dividends are distributed up a chain of companies.

The scope of the exemption from the surtax was broadened as from 1 January 2017, after the constitutional court ruled in 2016 that the exemption that applied only to distributions made within a French tax-consolidated group violated constitutional principles (for prior coverage, see France tax alert, 5 October 2016 and France tax alert, 23 December 2016).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-5-october-2016.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-23-december-2016.pdf

On 17 May 2017, the CJEU ruled that dividends distributed by a French company that represent a redistribution of dividends the company previously received from its EU subsidiaries cannot be subject to the 3% surtax on profit distributions, because this would be a form of a double taxation prohibited by the EU parent-subsidiary directive (for prior coverage, see EU tax alert, 18 May 2017).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-18-may-2017.pdf

Constitutional court decision

Following the release of the CJEU decision, the French supreme administrative court (SAC) requested a preliminary ruling on the constitutionality of the 3% surtax from the constitutional court (for prior coverage, see *World Tax Advisor*, 18 August 2017). According to the SAC, the CJEU decision created "reverse discrimination," since redistributions of dividends received from a French or non-EU subsidiary still will fall within the scope of the surtax, while redistributions by a French company of dividends received from an EU subsidiary will not be subject to the surtax.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170818_ib.html

The constitutional court now has ruled that this difference in treatment violates the equality principle and, therefore, the 3% surtax must be declared unconstitutional and invalid. The court decided that the entire surtax is incompatible with constitutional principles. As a result, the surtax no longer has to be paid.

The constitutional court decision applies as from the date of publication, and can be invoked by taxpayers for claims that have not yet been definitively settled or subject to a final court decision. In other words, taxpayers may file claims for reimbursement of the surtax paid in the past provided the claim has not been settled and the statute of limitations has not expired.

It should be noted that the government recently announced that the 3% surtax may be abolished in December 2017 within the framework of the next finance act (for prior coverage, see France alert, 28 September 2017).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-28-september-2017.pdf

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Latvia moves to taxation of corporate profit distributions

A law adopted by the Latvian parliament on 28 July 2017 will introduce fundamental changes to the corporate income tax regime, as well as changes to the tax rates affecting individuals, beginning on 1 January 2018. The new corporate regime, which is similar to the regimes in Estonia – and, more recently, Georgia – will tax corporate profits only at the time profits are distributed or deemed to be distributed. However, the tax rate will be increased and certain tax deductions and incentives will be eliminated (although incentives in the four free economic zones (FEZs) will remain available).

The new rules aim to stimulate the economy and are expected to provide a major benefit to investors in Latvian entities.

Tax on profit distributions

Companies in Latvia currently are subject to a 15% tax on net taxable income. Under the tax reform, the tax rate will be increased to 20%, but tax will be levied only on distributed profits or profits that are deemed to be distributed, with undistributed profits generally remaining untaxed. Amounts loaned to related parties in certain situations will be deemed to be distributions of profits and subject to the 20% rate (except for amounts loaned to directly owned subsidiaries or associated companies).

Certain expenses will be deemed to be taxable similar to profit distributions under the new law. However, these items will be subject to tax at an effective rate of 25% (*i.e.* the new rate of 20% multiplied by the taxable base attributable to these items divided by a coefficient of 0.8) that must be paid immediately. Expenses falling in this category include the following:

- Interest expense exceeding the ratio established under Latvia's thin capitalization rules;
- Adjustments made to increase profit under the transfer pricing rules;
- Expenses for representational or entertainment-related activities that exceed certain limits;
- Certain non-business expenses and donations; and
- Penalties.

Most tax deductions will be abolished, including depreciation, extra tax allowances on new equipment and deductions for research and development costs, and as discussed below, the tax relief for large-scale investments will be phased out.

The new law also includes the following rules:

- Profits earned through 31 December 2017 (and subject to tax under the current regime) will not be subject to corporate income tax under the new regime when distributed.
- Dividends received from nonresident entities (which normally are exempt from corporate income tax) will be subject to tax as deemed distributions of profit in cases where the payer of the dividends does not pay corporate income tax in the country in which it is resident or where the payer is registered in a jurisdiction included on Latvia's black list.
- The current regime for holding company income will be maintained, but with a new restriction under which capital gains on the sale of shares will be exempt from corporate income tax only if the shares have been held for at least three years.
- A transitional rule will allow tax losses incurred through 2017 to be carried forward to reduce up to 50% of taxable distributed profits in the following five years, *i.e.* through 31 December 2022.

Tax incentives

The large-scale investment regime allows taxpayers to obtain a corporate income tax credit equal to 25% of an investment amount between EUR 10 million and EUR 50 million, and 15% for investments exceeding this amount, which generally may be used to reduce tax on profits distributed during the 16-year period following the year in which the project is completed. The large-scale incentive will be phased out – applications for the credit no longer will be accepted as from 1 January 2018. However, foreign investors that currently operate in Latvia or that plan to invest in the near future still may be able to qualify for the large-scale investment incentive credit under the new regime, provided they apply for the incentive by 31 December 2017.

The special tax regime available for companies operating in a Latvian FEZ or free port will continue to be available for investments made through 31 December 2035. Companies operating in these areas benefit from an 80% reduction of corporate income tax otherwise payable. Taking the tax on profit distributions into account, this will result in an effective tax rate of as low as 4% on distributed profits from FEZ/free port operations as from 2018.

Personal income tax changes

The personal income tax rate on individuals with taxable income of EUR 55,000 or more will be increased by replacing the current flat rate of 23% with the following progressive rates:

- 20% on taxable income up to EUR 20,000;
- 23% on taxable income over EUR 20,000 and up to EUR 55,000; and
- 31.4% on taxable income over EUR 55,000.

The total rate of social security contributions will be increased by 1% (*i.e.* both the employer's and the employee's contributions will be increased by 0.5%), from 34.09% to 35.09%.

The tax rate on capital income derived by individuals (currently 10% on dividends and 15% on interest and capital gains) will be increased to 20%. However, dividends paid by Latvian companies to individuals will be exempt from personal income tax where corporate tax is paid on the dividends under the new rules. Dividends paid to individuals from retained earnings accumulated through 31 December 2017 are subject to a 10% personal income tax if distributed by the end of 2019 (the new 20% rate will apply to dividends from pre-2018 retained earnings that are distributed after 2019).

Comments

Beginning in 2018, tax on profits of companies will be levied only when the profits are distributed or deemed to be distributed. The resulting tax exemption on undistributed profits and the ability for companies to continue to benefit from large investment tax relief provided they act before the end of 2017 should make Latvia an attractive location for investors.

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France:
Deadline for SMEs to file transfer pricing form approaching

The deadline for small and medium-sized enterprises (SMEs) to file a newly applicable French transfer pricing form is 3 November 2017.

In late 2016, France lowered the threshold for filing the simplified transfer pricing form (Form 2257) from EUR 400 million to EUR 50 million of annual pretax turnover or total gross assets on the balance sheet, effective for fiscal years that ended on 31 December 2016, and thereafter. SMEs and middle-market companies are directly affected by the rules because the reduced threshold applies at the level of the French legal entity, as well as to any other company within the relevant group that has a 50% or more direct or indirect shareholder or subsidiary that meets the new threshold. The filing obligation also applies to legal entities that are members of a tax group if one of the group companies meets the above criteria (except in certain circumstances).

Form 2257 contains general information on the multinational group, as well as specific information on the French entity. Affected legal entities must submit the form electronically within six months of the filing of their tax return; for fiscal years ending 31 December 2016, the deadline is 3 November 2017.

The transfer pricing documentation form is separate from the master and local file requirements, and the lowered threshold brings many more companies within the scope of the French transfer pricing documentation requirements. The rules confirm that they are designed to allow the French tax authorities to examine the transfer pricing policies of more companies, regardless of their size. Therefore, groups should ensure that their transfer pricing processes are sufficiently robust so they can demonstrate the arm's length nature of their policies in the event of a challenge or tax audit.

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Mexico:
Extended repatriation deadline under capital repatriation program is 19 October 2017

Mexico's Tax Service Administration (SAT) released interpretative guidance on 29 August 2017 that affects taxpayers that have elected to take advantage of the capital repatriation program that was launched on 18 January 2017 (for prior coverage, see *World Tax Advisor*, 10 February 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_8.html

The capital repatriation program allows taxpayers (both entities and individuals) that earned income from previously unreported direct and indirect offshore investments that were held abroad until 31 December 2016 to bring the funds back to Mexico. Taxpayers can pay a specified tax on the funds and be deemed to have met their tax obligations in Mexico for the fiscal year in which the payment is made and for the previous fiscal years in which the investment was held. The requirements to benefit from the capital repatriation program include the following:

- The taxpayer must pay an 8% tax on the repatriated amount within 15 days following the date the amount is brought back into Mexico;
- The repatriation must be made during the period 19 January 2017 to 19 October 2017 (the previous deadline of 19 July has been extended by three months); and
- The funds must be "invested in Mexico" for at least two years.

Initially, funds were deemed to be invested in Mexico if the investment was made through financial instruments issued by residents of Mexico or in shares issued by Mexican companies. The SAT has now re-interpreted the investment requirement, so that the benefits of the repatriation initiative may not be available in one of two circumstances:

1. The Mexican taxpayer is able to exercise control over the investment decisions taken by the company whose shares have been acquired; or
2. The Mexican company whose shares have been acquired uses the repatriated funds to invest abroad.

In both cases, the SAT will consider the transactions to constitute an unacceptable practice and the benefits of the capital repatriation regime may be forfeited. Additionally, any person that advises, renders services or participates in the implementation of such a transaction will be deemed to have engaged in an unacceptable practice and may be subject to examination and sanctions by the SAT.

Comments

The SAT has taken the position that, since one of the purposes of the capital repatriation program is to encourage capital investment, allowing an investment in the shares of a Mexican company and then allowing the capital to leave the country thwarts the objective of the program.

Persons that have control over corporate decisions to invest abroad should be aware that they potentially are subject to the unacceptable practice consequences and should perform a careful analysis to determine whether they have any exposure in the context of the capital repatriation regime.

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Puerto Rico: Tax and administrative relief due to hurricane announced

The Puerto Rico Treasury Department (PRTD) has issued a series of administrative determinations that implement tax and administrative relief measures as a result of the declaration of the emergency caused by Hurricane Maria, including an exemption from personal income tax for "qualified disaster relief payments" and certain interest-free loans. The measures are effective immediately.

Qualified disaster relief payments

On 4 October 2017, the PRTD issued an administrative determination that establishes a temporary exclusion from taxable gross income for "qualified disaster relief payments" made to or for the benefit of an individual by his/her employer to help compensate for the damages caused by Hurricane Maria.

Qualified disaster relief payments include the following payments made by an employer in an effort to assist its employees as a result of the hurricane:

- Payments made directly to suppliers of goods or services for necessary and reasonable expenses of the individual or his/her family members, such as food, medicine, gas, living quarters, medical expenses, child or dependent care, power generators and funeral expenses incurred as a result of the disaster;
- Payments made directly to suppliers of goods or services for expenses incurred for the repair or rehabilitation of a principal residence, or for the repair or replacement of its contents, to the extent that the need for such repair, rehabilitation or replacement is attributable to the disaster; or
- Payments made directly to the employee to help cover the costs of damages suffered as a result of the disaster.

The following requirements must be met for the exclusion from gross income to apply to a payment:

- The payment must be made between 21 September 2017 and 31 December 2017;
- Payments made directly to an individual must be in lieu of lost wages as a result of the disaster, and may not exceed a total of USD 1,000 per month; and
- The payment must be in addition to other compensation paid by the employer to the employee on account of employment.

Payments that discriminate in favor of highly compensated employees, or that take into account an employee's position or salary, will not be considered qualified disaster relief payments.

Employers may deduct qualified disaster relief payments from their taxable income. Each employer making qualified disaster relief payments must provide to the PRTD, no later than 31 January 2018, a sworn statement that provides the name and social security number of each employee who received qualified disaster relief payments, including the total amount of relief payments made.

Interest-free loans

Interest-free loans granted by employers to employees between 21 September 2017 and 30 June 2018 to assist with necessary expenses or for repair or construction of a principal residence due to the hurricane are excluded from the employee's taxable income, provided the amount of the loan does not exceed USD 20,000.

Other relief measures

The administrative determinations provide for the following sales and use tax, real property tax and administrative relief:

- Effective 3 October 2017, a temporary exemption from sales and use tax applies to donations of tangible personal property and services by foreign donors to hospitals, nonprofit organizations, public bodies and municipalities (including their legislative and judicial branches) and individuals.

- The previously announced sales and use tax exemption for sales of prepared food is extended until further notice.
- The requirement to remit sales and use tax bimonthly is suspended from 1 September to 30 November 2017, except for large taxpayers.
- The imposition of interest, surcharges and penalties on late payments of real property taxes due for the first semester of the 2017-2018 fiscal year is suspended through 31 December 2017.
- Various extensions of due dates are granted, *e.g.* to file returns, to file administrative complaints before the PRTD and to submit requested information or documents for audits.

The US Internal Revenue Service (IRS) also has postponed certain tax filing and payment deadlines for individuals and businesses in Puerto Rico and other locations that have been affected by hurricanes in recent months. The IRS also issued guidance on 4 October 2017 to provide relief to residents of Puerto Rico and the US Virgin Islands who evacuated or could not return because of Hurricane Irma or Hurricane Maria. The relief extends the usual 14-day absence period to 117 days (beginning 6 September 2017 and ending 31 December 2017) for purposes of the presence test for residency under the US tax rules.

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Russia:
General anti-avoidance rules introduced

A law that applies as from 20 August 2017 introduces a general anti-avoidance rule (GAAR) in Russia and codifies the concept of an "unjustified tax benefit." The law, approved by the State Duma on 7 July 2017 and signed by the president on 19 July, originally was submitted to the State Duma in 2014 and underwent some changes during the legislative process.

The unjustified tax benefit concept was first articulated by the Supreme Arbitration Court in in 2006 and, since that time, has been relied on extensively by both the tax authorities and the Russian courts.

A new article (article 54.1) added to the tax code defines an unjustified tax benefit as a taxpayer's understatement of its tax base and/or tax payable due to the taxpayer's "misrepresentation of its business operations and/or taxable assets." In such circumstances, the tax authorities, for instance, can assess additional tax liabilities by disallowing the deduction of certain expenses. The burden will be on the tax authorities to demonstrate the presence of an unjustified tax benefit. The applicability of the unjustified tax benefit concept will be tested primarily by assessing the genuineness of the transaction – in other words, whether the taxpayer intended to misrepresent the tax data.

If there is no misrepresentation, the taxpayer will be entitled to reduce its taxable base and/or tax payable, provided both of the following conditions are fulfilled:

- The primary purpose of the transaction is not the avoidance (or the partial avoidance) of tax and/or to obtain a tax refund; and
- The obligations under the transaction were performed by a party to the relevant agreement with the taxpayer, and/or its legitimate assignee.

The law expressly states that the following factors, in and of themselves, will not be considered evidence of an unlawful reduction of the taxable base or tax due:

- The signing of source documents by an unidentified/unauthorized person;
- A violation of tax legislation by a counterparty (*e.g.* failure to pay tax due); or
- The possibility of using other options to achieve the same economic result.

The new rules apply to desk audits of tax returns filed after the date the law was enacted and to field audits and transfer pricing audits scheduled by the tax authorities after the enactment date.

Comments

The law leaves open a number of questions and includes some ambiguous terms that may be subject to differing interpretations. For instance, the taxpayer is entitled to reduce its taxable base or the tax due only if the avoidance (or partial avoidance) of tax is not the primary purpose of the transaction. However, the law does not include any criteria for how the taxpayer's primary purpose should be assessed, leaving the interpretation at the discretion of the tax authorities, who may be expected to interpret the provision in their favor and find tax avoidance elements in many of the taxpayers' operations/transactions. In tax disputes, decisions by the courts will be decisive; however, it is difficult to anticipate the criteria that the courts may apply to assess the purpose of a transaction.

The introduction of the concept of an unjustified tax benefit may have a significant impact in practice, affecting a wide range of business operations, especially where taxpayers have a reason to question their counterparties' integrity. Taxpayers should consider the following actions:

- Review and update their counterparty selection process;
- Confirm that the counterparties actually perform their contractual obligations;
- Validate whether the counterparties have the resources required to perform their obligations under the contracts; and
- Continue monitoring the practical application of the new provisions as court decisions are issued in this area.

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In brief

Brazil: A provisional measure published on 29 September 2017 extends the deadline for taxpayers to enroll in the "Special Tax Regularization Program" (PERT) from 29 September 2017 to 31 October 2017. The PERT is a tax amnesty that allows taxpayers to settle their outstanding federal tax liabilities. This is the second extension of the deadline; the application originally was due by 31 August 2017 (for prior coverage, see *World Tax Advisor*, 8 September 2017). Taxpayers joining the program in October must pay the tax installments due for August, September and October at the time of enrollment, in accordance with the various settlement options provided by the PERT.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170908_ib.html

Canada – EU: The Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada provisionally entered into force on 21 September 2017. This means that almost all provisions under the CETA, comprising 95% of its benefits, are available to companies and consumers. One of the main benefits of the CETA is that goods that originate in Canada or the EU can be traded between the two signatories at a reduced or zero import duty rate, subject to certain conditions.

European Union: On 10 October 2017, the Council of the European Union approved a new directive for resolving double taxation disputes between EU member states. The directive aims to improve existing mechanisms for resolving tax disputes between EU member states arising from the interpretation of double tax agreements, by improving access to and the effectiveness of the mutual agreement procedure and establishing procedures for dispute resolution by arbitration. The directive will take effect as from 1 July 2019 and will operate alongside the arbitration provisions of the multilateral instrument (MLI) from the OECD BEPS project. Sixteen EU member states have agreed to the MLI and almost all agreed to the last best offer (baseball) arbitration. In future, taxpayers will face a choice, as it will not be possible to seek arbitration under both provisions. The EU directive is potentially broader in scope, but it appears to be a lengthier process that is not guaranteed to be final, as it allows for court challenges. The directive allows member states to choose the method of arbitration through bilateral agreement.

European Union: On 4 October 2017, the European Commission announced a legislative proposal to fundamentally reform the EU VAT rules in order to improve and modernize the VAT system for both governments and businesses and to reduce cross-border VAT fraud. The proposal sets out fundamental principles for cross-border supplies of goods: (i) taxation based on a destination-based system; (ii) vendors to be liable for charging and collecting VAT (unless the customer is a certified taxable person); and (iii) an extension of the "one stop shop" rules. The legislative proposal will be sent to the European Parliament and the European Economic and Social Committee for consultation, and will require unanimous agreement from all member states in the Council before it can enter into force. Following the consultation, the European Commission will issue a detailed proposal in 2018.

Greece: A law passed on 4 October 2017 extends the deadline for taxpayers to participate in the Voluntary Disclosure Program (VDP) to 31 October 2017 (for prior coverage, see *World Tax Advisor*, 13 January 2017). The VDP allows Greek taxpayers to report previously undeclared funds, in exchange for which the taxpayer will be subject to reduced additional taxes and will avoid further tax, administrative or criminal penalties. The deadline for taxpayers to sign up for the VDP previously was extended to 30 September 2017, although for funds declared after 31 May, the additional tax that had to be paid was increased from 8% to 12%. In addition, taxpayers that were under audit were assessed additional taxes at rates ranging from 18% to 36% (instead of the 15% and 30% rates initially imposed under the VDP). Despite the extension of the deadline to 31 October 2017, the rates of the additional tax due remain unchanged at 12% for taxpayers that are not under audit, and from 18% to 36% for taxpayers that are under audit.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170113_6.html

Ireland: The Minister of Finance presented Budget 2018 to the parliament on 10 October 2017, in which the Minister reiterated that the 12.5% corporate tax rate is competitive and core to the Irish tax system. The budget proposes to reintroduce the minimum 20% corporate tax on profits from intangible property (IP) purchased on or after 11 October 2017 where IP amortization and/or interest is claimed against the IP income. The budget also contains a range of property-related measures and measures to reduce the personal tax burden for employees. The Minister formally announced a consultation on the recently published "Coffey report" on the corporate tax code that opens immediately and will run until 30 January 2018. Further coverage of the budget will be provided in the 27 October 2017 issue of *World Tax Advisor*. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171013_bc.html#Ireland

Jersey: The 2018 budget, announced on 5 October 2017, includes some proposals that would affect companies: (i) the definition of "financial services company" would be broadened to bring more companies within the scope of the 10% tax rate; (ii) a 20% income tax would be introduced on larger retailers with permanent establishments in Jersey (*i.e.* those with profits exceeding GBP 500,000 per year); and (iii) the fees payable by International Service Entities would be increased. In addition, the minimum amount of tax payable by high value residents would be increased from GBP 125,000 to GBP 145,000 per year.

Netherlands: The coalition parties in the new government presented their coalition agreement on 10 October 2017, which sets out the new government's policy intentions. The measures include the following: (i) gradual reduction of the corporate income tax rate; (ii) limits on the ability to carry forward losses; (iii) limits on the deduction of interest expense; (iv) abolition of the dividend withholding tax; (v) introduction of source taxation of interest and royalties; and (vi) introduction of a black list of countries and a requirement for multinationals to report on their activities in other EU member states.

Netherlands: The government has confirmed that the VAT reverse charge mechanism applies to business-to-business supplies of telecommunications services as from 1 September 2017 (for prior coverage, see *World Tax Advisor*, 23 June 2017). Requiring the reverse charge for such supplies is designed to combat carousel fraud in the communications sector, and is applicable only to transactions where both the supplier and the customer are telecommunications service providers and where the place of supply is in the Netherlands. The reverse charge does not apply to supplies to end-users (*i.e.* private individuals and entrepreneurs who purchase telecommunications services for use in their own businesses).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170623_ib.html

South Africa: On 15 September 2017, the National Treasury suggested certain changes to its July 2017 proposal to repeal the foreign employment income tax exemption for resident individuals, which would prevent the exemption from being repealed in its entirety. Instead, the first ZAR 1 million of foreign remuneration would remain exempt for qualifying individuals, and the effective date of the change would be deferred by one year to 1 March 2020.

Switzerland: On 1 January 2018, the standard VAT rate will drop from 8% to 7.7% and the special rate will reduce from 3.8% to 3.7%. The reduced rate of 2.5% will remain unchanged.

BEPS corner

In each issue that provides updates on developments in the OECD BEPS initiative, *World Tax Advisor* includes a "BEPS corner" covering these developments.

Argentina: The government issued CbC reporting rules on 20 September 2017. See Global Transfer Pricing Alert 2017-042, 9 October 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-042-9-october-2017.pdf

Bermuda: The government has updated its tax information reporting portal to accept CbC reporting filings. The CbC reporting deadline is 12 months after the last day of the reporting fiscal year of the MNE group, for reporting fiscal years starting on or after 1 January 2016 (*i.e.* the first CbC reporting deadline will be 31 December 2017, for reporting fiscal years ending 31 December 2016).

European Union: On 10 October 2017, the Council of the European Union approved a new directive for resolving double taxation disputes between EU member states that will operate alongside the arbitration provisions of the multilateral instrument. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171013_ib.html#EU

#Ireland
Ireland: On 12 September 2017, the government published a report (the "Coffey report") prepared by an independent academic expert who was appointed to undertake a review of the corporation tax code to further implement Ireland's commitments with respect to transfer pricing under the BEPS project. See the alert dated 22 September 2017. On 10 October 2017, the Minister of Finance announced that a consultation on the recommendations in the Coffey report has opened and will run until 30 January 2018. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171013_ib.html#Ireland

Italy: A decree issued on 26 July 2017 postponed the income tax return filing deadline for entities with calendar-year reporting periods from the end of September to 31 October 2017. Because the notification identifying the entity within a multinational entity group that will be filing the CbC report for the group is made in the annual income tax return, the deadline for that notification also is postponed. The postponement of the tax return filing deadline also is relevant for transfer pricing documentation for penalty protection purposes, since the availability of such documentation must be communicated to the tax authorities by checking a box in the annual tax return.

Malaysia: The Internal Revenue Board has issued sample notification letters to be used by entities subject to the CbC reporting notification requirement. See Global Transfer Pricing Alert 2017-040, 25 September 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-040-25-september-2017.pdf

OECD: On 11 October 2017, the OECD announced a wave of additional activations of automatic exchange relationships under the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA). Over 1,000 automatic exchange relationships now have been established among jurisdictions committed to exchanging CbC reports in accordance with the BEPS action 13 minimum standard as from mid-2018, including those between EU member states under the directive regarding the mandatory automatic exchange of information in the field of taxation. More jurisdictions are expected to nominate partners with which they will undertake the automatic exchange provision under the CbC MCAA in the coming weeks. In addition, the US now has signed 27 bilateral competent authority agreements for the exchange of CbC reports under double tax treaties or tax information exchange agreements. The OECD will continue to publish updates on exchange relationships on its website.

OECD: On 6 October 2017, the OECD published the responses it received to consultations on profit splits and the allocation of profits to permanent establishments. The first discussion draft on the attribution of profits to a PE deals with work in relation to action 7 of the BEPS project, and a second draft on the revised guidance on profit splits deals with work in relation to actions 8-10.

Global tax alerts

Argentina
CbC reporting rules issued
Argentina's tax authorities published a general ruling on 20 September 2017 that implements CbC reporting for fiscal years beginning on or after 1 January 2017.
Issue date: 9 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-042-9-october-2017.pdf

Australia
ATO publishes general purpose financial statement guidance
The Australian Taxation Office released guidance on 28 September 2017 that addresses the obligation of certain multinationals with Australian operations to file general purpose financial statements for each income year starting on or after 1 July 2016.
Issue date: 28 September 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-28-september-2017.pdf

France
Finance bill for 2018 published
The French finance bill for 2018 released on 27 September 2017 would reduce the corporate income tax rate and abolish the 3% surtax on profit distributions of French entities, and contains others measures that would make the corporate tax environment more attractive for companies.
Issue date: 28 September 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-28-september-2017.pdf

Ireland
Report on corporation tax code includes transfer pricing recommendations
On 12 September 2017, Ireland's government published a report prepared by an independent academic expert who was appointed to undertake a review of the corporation tax code to further implement Ireland's commitments with respect to transfer pricing under the OECD BEPS project.
Issue date: 22 September 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-039-22-september-2017.pdf

Malaysia
Malaysia issues sample notification letters for CbC reporting
Malaysia's Internal Revenue Board (IRB) has issued sample notification letters to be used by entities subject to the CbC reporting notification requirement. Such entities must provide the written notification to the IRB identifying the reporting entity for the multinational group by the last day of the reporting financial year.
Issue date: 25 September 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-040-25-september-2017.pdf

United States
IRS files notice of appeal in cost sharing case
The IRS on 29 September 2017 filed a notice of appeal to the US Court of Appeals in a case involving the valuation of payments under a cost sharing arrangement between a US company and its foreign subsidiary.
Issue date: 11 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-043-11-october-2017.pdf

Notice 2017-57 defers applicability date of section 987 regulations
On 2 October 2017, the US Department of the Treasury and the IRS issued Notice 2017-57, announcing their intent to defer the applicability date of the final section 987 regulations (and certain temporary section 987 regulations) by one year.
Issue date: 6 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-notice-2017-57-6-october-2017.pdf

Treasury report proposes withdrawal, partial revocation of 2016 regulations
On 4 October 2017, the US Department of the Treasury released a report that recommends the partial revocation or complete withdrawal of eight significant tax regulations issued in 2016 and identified as imposing an undue financial burden on taxpayers, adding undue complexity to US tax laws or exceeding the statutory authority of the tax authorities.
Issue date: 6 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-6-october-2017.pdf

IRS APMA Program issues draft APA template for comment
On 19 September 2017, the IRS Advance Pricing and Mutual Agreement Program issued a revised draft advance pricing agreement (APA) template for public comment that incorporates new changes in the APA process.
Issue date: 27 September 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-041-27-september-2017.pdf