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Luxembourg publishes new BEPS-compliant draft of IP regime

The Luxembourg parliament published a draft law on 7 August 2017 that would replace the IP box regime that was abolished in 2016 (for prior coverage, see *World Tax Advisor*, 12 February 2016). The draft law would introduce a new article in the Income Tax Law (ITL) that would provide for an 80% exemption on income derived from the commercialization of certain intellectual property (IP) rights, as well as a 100% exemption from net wealth tax. If approved, the new rules would be applicable as from fiscal year 2018.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_6.html

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Background

The proposed legislation is in line with the agreement reached as part of the OECD/G20 BEPS project for patent box regimes, under which preferential IP regimes must comply with the "modified nexus approach" set out in the final report on action 5. The nexus approach requires substantial economic activities in the benefiting country and a direct link between the income benefiting from preferential treatment and the research and development (R&D) expenditure that contributes to the income. Taxpayers must track and trace expenditure and income to IP assets to justify a claim that expenditure qualifies under the regime.

Luxembourg's regime, like the regimes in several other countries, was not in line with the requirements of the report on action 5 and, therefore, had to be abolished. The regime was abolished as from 1 July 2016 for corporate income tax/municipal business tax purposes, and as from 1 January 2017 for net wealth tax purposes; however, transition rules allow the previous IP regime to be maintained during the period 1 July 2016 through 30 June 2021.

The key features of the draft law are summarized below.

Qualifying assets

According to the OECD nexus approach, the only IP assets that can qualify for tax benefits under an IP regime are patents and other IP assets that are considered functionally equivalent to patents if such assets are both legally protected and subject to similar approval and registration procedures, where such procedures are relevant. IP assets that are functionally equivalent to patents include patents defined broadly (e.g. plant breeder rights), copyrighted software and, for small entities, certain other IP assets that are non-obvious, useful and novel. Luxembourg's draft law includes these IP assets, but it is narrower than under the previous IP box regime, since marketing-related IP cannot benefit from a preferential regime under the nexus approach.

IP assets under the draft law would need to have been developed or improved after 31 December 2007.

Qualifying net income

Income qualifying for the new regime would include the following:

- Income derived from the use of, or a concession to use, qualifying IP rights (i.e. royalty income);
- IP income embedded in the sales price of products or services directly related to the eligible IP asset. The principles in the ITL would be used to separate income unrelated to the IP (*e.g.* marketing and manufacturing returns);
- Capital gains derived from the sale of the qualifying IP rights; and
- Indemnities based on an arbitration ruling or a court decision directly linked to a breach of a qualifying IP right.

The regime would apply on a net income basis, meaning that expenses relating to the qualifying IP asset would have to be deducted from the gross qualifying income.

An important difference from the previous regime is that the exemption would apply only when the global net income derived from qualifying IP assets exceeds the global expenditure linked to qualifying IP rights. As a result, if net losses were incurred on qualifying IP rights in previous tax years, the losses would have to be taken into account in the first year in which the taxpayer has net positive income. The draft law contains two methods to adjust previous losses, depending on whether the costs were capitalized from an accounting perspective. As required by the OECD and the EU, this mechanism is intended to ensure that net losses incurred in relation to the preferential IP regime would not be able to offset other income taxable at the standard rates on a permanent basis.

Nexus ratio

The nexus ratio – the cornerstone of the new regime – would determine the proportion of qualifying net income entitled to the benefits based on the ratio of qualifying expenditure and overall expenditure. Qualifying expenditure would include all R&D expenditure incurred by the taxpayer for the creation, development or improvement of qualifying IP rights. It would not include interest and financing charges, the costs of acquisition of the IP, real estate costs or costs that cannot be linked directly to the eligible IP asset.

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The following expenditure also would qualify:

- R&D expenditure incurred by a permanent establishment located in a country within the European Economic Area, provided the permanent establishment is operating at the time the eligible income is derived and does not benefit from a similar IP regime in its country of establishment;
- R&D expenditure outsourced to an unrelated party (including when outsourcing is channeled through a related party, but only if the latter does not mark-up the outsourcing costs); and
- Expenditure for general and speculative R&D or expenditure for unsuccessful R&D that can be linked or prorated across qualifying IP assets to the extent documented by the taxpayer.

Overall expenditure would be defined as the sum of qualifying expenditure, IP acquisition costs and outsourcing costs to related parties, with principles in the ITL used to determine the amount of the IP acquisition costs and outsourcing costs to related parties.

The nexus ratio would be determined on a cumulative basis, and expenditure would be included at the time incurred, regardless of the treatment for accounting or tax purposes.

Finally, a 30% uplift would apply to qualifying expenditure up to the amount of overall expenditure.

Documentation requirements

The new regime would require taxpayers to track income and expenditure to determine the nexus ratio and the net eligible income per type of qualifying IP asset and provide evidence of this to the tax authorities.

If a taxpayer is engaged in a sufficiently complex IP-related business and tracking per individual asset would be unrealistic and based on a subjective determination, it would be allowed to use a product-based approach, where expenditure and income would be tracked and traced to products or services, or families of products or services, arising from qualifying IP assets. These groupings would include all IP assets that arise from overlapping expenditure and contribute to overlapping streams of income. Taxpayers using this approach would have to produce objective and verifiable documentation that justifies the appropriateness of the approach.

Finally, in an intragroup context, all transactions would have to be properly determined and documented according to the new transfer pricing guidelines deriving from BEPS actions 8-10.

Comments

Based on the draft rules, if a company incurs all of the expenditure to develop a qualifying IP asset, all income derived from the commercialization of that IP would qualify for benefits, leading to an effective tax rate of approximately 5.2%.

The text of the draft law incorporates the requirements of BEPS action 5 and would align Luxembourg's IP regime with global standards. It also contains provisions intended to deal with the coexistence of the new regime with the transition provisions that remain applicable until 30 June 2021.

The draft law now must be reviewed by parliament and approved by the EU and the OECD.

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Indonesian DGT issues guidance on tax treaty benefits

Indonesia's Directorate General of Taxation (DGT) has issued two sets of regulations addressing the application of tax treaties. A regulation (PER-08) dated 12 May 2017 sets out rules for Indonesian resident taxpayers to obtain a certificate of domicile (COD) to apply for treaty benefits, and a regulation (PER-10) dated 19 June sets out the

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requirements for a nonresident to obtain benefits under Indonesia's tax treaties. Both regulations replace previous guidance in these areas. PER-08 is effective as from the date of issuance and PER-10 is effective as from 1 August 2017.

Certificate of domicile for resident taxpayers

PER-08 provides as follows:

- An application for a COD can be made for the fiscal year or part thereof in which the application is submitted, or for a prior fiscal year or part thereof, as long as the prior year falls within Indonesia's statute of limitations period.
- The most recent monthly tax return for taxpayers required to pay income tax in monthly installments, or the most recent withholding income tax return for taxpayers subject to final income tax, must have been properly submitted for the taxpayer to obtain a COD.
- The COD request form must contain additional information, such as the name and tax ID number of the offshore counterparty and the validity period requested for the COD. The Indonesian taxpayer must prepare an additional statement declaring its Indonesian tax residence and/or a separate declaration if its income is subject to final tax (for taxpayers with certain types of gross income).
- The tax office must issue a decision on the COD application within 10 business days after receipt of the application; otherwise, the request will be considered granted. The tax authorities must issue the COD within five days following the expiration of the 10-day deadline.

General requirements for nonresidents to obtain treaty benefits

According to PER-10, a nonresident entity must satisfy all of the following conditions to enjoy treaty benefits:

- The entity must have economic substance, *i.e.* it must not have been established for the purpose of obtaining treaty benefits;
- The entity's own management must manage its business activities and must have sufficient authority to carry out transactions, and the entity must have a sufficient number of employees with sufficient expertise appropriate for the business that is carried out;
- The entity's fixed and non-fixed assets, other than assets that generate income from Indonesia, must be sufficient to carry on business activities in the treaty partner jurisdiction; and
- The entity must carry out activities or an active business other than receiving income in the form of dividends, interest and/or royalties originating from Indonesia.

In addition, if the relevant treaty contains a beneficial ownership requirement, a nonresident individual cannot act as an agent or a nominee in respect of the income, and a nonresident corporation cannot act as an agent, a nominee or a conduit in respect of the income, which requires it to fulfill the following conditions:

- It must have the right to use or enjoy the funds, assets or rights that derive income from Indonesia;
- No more than 50% of its income may be used to fulfill obligations to other parties;
- It must bear the risks of the assets, capital and/or liabilities that it owns; and
- It may not have an obligation (written or unwritten) to provide all or part of the income derived from Indonesia to another party.

PER-10 does not include the requirement from the previous regulation that required the income derived from Indonesia to be subject to tax in the residence state of the recipient.

If there is a difference between the legal form of the structure/scheme for a transaction and its economic substance, the Indonesian tax authorities may deny treaty benefits and apply the appropriate tax treatment based on the "substance over form" principle.

Procedure for nonresidents to claim treaty benefits

To claim relief under a tax treaty, a nonresident must complete a COD form (Form DGT-2 for a company that is a banking institution or that earns income from bonds or stock listed on the Indonesian stock exchange or DGT-1 for all other nonresidents) and submit it to the Indonesian withholding agent. The COD must be certified by the tax

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authorities of the treaty partner jurisdiction. A nonresident that is unable to obtain the certification may use any form of COD commonly verified or issued by the tax authorities of its residence state, provided certain requirements are met, and attach the form to a completed Form DGT-1 or DGT-2. Treaty relief will be denied if the nonresident fails to fulfill these requirements.

Under PER-10, the nonresident must confirm that one of the principal purposes of the relevant arrangements or transactions was not to obtain benefits under the treaty that are contrary to the object and purpose of the treaty.

The templates for Forms DGT-1 and DGT-2 have been updated. The forms now state the validity period for the COD, which is a maximum of 12 months from the date the foreign tax authorities certify the COD. In addition, a copy of the original or "legalized" copy of Form DGT-1 or DGT-2 or other COD of the nonresident must be submitted by the Indonesian withholding agent, along with the relevant monthly withholding tax returns.

PER-10 also contains clarifications about a request for a refund of excess withholding tax where a treaty has been mistakenly applied or in the event of a late submission of the COD. Additionally, if a nonresident that receives or generates Indonesia-source income does not receive a treaty benefit and the Indonesian withholding agent and/or collector did not submit the monthly tax return for the period in which tax was payable, the nonresident still may be able to enjoy the treaty benefits by invoking the mutual agreement procedure in the relevant treaty.

Although PER-10 is effective as from 1 August 2017, a Form DGT-1 or 2 or other COD that is valid based on the previous regulations and whose validity has not yet expired still may be used until the end of the validity period.

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Argentina:
Rules on tax treatment of capital gains on sale of shares issued, then suspended

The tax authorities published a resolution (General Resolution (AFIP) 4094/2017) on 18 July 2017 that set out rules that clarify how Argentine income tax is to be paid on the sale of shares of Argentine companies (and other similar securities and equity participations) by nonresidents. The resolution became effective on the date of publication and provided special payment terms for transactions carried out during the period 23 September 2013 until 29 September 2017. However, on 20 July, the tax authorities issued another resolution that suspends the effective date of AFIP 4094/2017 for 180 days. Based on comments in the media, because the measures also would apply to certain transactions carried out on the Argentine stock exchange, there are concerns that the measures could have a detrimental effect on trading volume.

Capital gains and income obtained by nonresidents from the sale of shares of Argentine companies (and other similar securities) became subject to tax in Argentina on 23 September 2013; such gains previously were exempt (for prior coverage, see *World Tax Advisor*, 13 September 2013). However, the tax authorities never issued guidance on how the tax should be paid where both the purchaser and the seller were nonresidents, so it is likely that some transactions escaped taxation.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130913_3.pdf

According to the new resolution, where a transaction involves shares listed on an Argentine stock exchange, the broker who represents the nonresident seller must act as the withholding agent. In all other cases, the withholding agent will be the purchaser, even if the purchaser is a nonresident.

At the option of the seller, the amount to be withheld is either 13.5% of the sale price or 15% of the gain (measured in ARS). The 15% rate applies to 90% of the gross proceeds or to the entire gross profit less expenses incurred in deriving the gain. If the seller opts for the 15% rate, it must provide documentation to support the determination of the taxable gain.

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If the withholding agent is a resident, it must pay the tax according to the general withholding rules. However, where the purchaser is a nonresident, it must pay the tax via an international bank transfer (in USD) by the end of the fifth business day following the transaction. The transfer instructions must include information that clearly identifies the transaction, and the transfer will be rejected if the information is not provided.

The person filing the notice of the change in ownership with the applicable public registry will have to collect and submit information about the transaction and supply a certified copy of the proof of payment of the applicable tax.

Comments

It is possible that the authorities will issue further guidance that grants a tax exemption for transactions that could affect the development of the domestic stock exchange. In the meantime, companies that have been involved (or that expect to be involved) in transactions subject to this regime should prepare documentation that evidences the actual gain if they wish to apply the 15% rate, and buyers should prepare to review the calculations and take steps necessary to formalize the transfer.

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China:
Government to take steps to promote foreign investment

China's State Council held an executive meeting on 28 July 2017 to call for the promotion of foreign investment. Some key policies to be introduced are set out below, although more details are expected in the next two months:

- No withholding tax will be imposed on the distribution of profits by Chinese companies to foreign investors where the profits are used to invest in domestic projects encouraged by China;
- The lower enterprise income tax rate of 15% applicable to Advanced Technology Service Enterprises (ATSEs) will be expanded nationwide (the 15% rate currently is available to ATSEs in pilot areas);
- Local governments will be encouraged to promote a "headquarters economy";
- Foreign shareholding restrictions will be relaxed or lifted in certain manufacturing and service sectors and on foreign investors in mergers and acquisitions;
- The formalities for foreign investors to set up a Chinese entity will be streamlined, and the "negative list" approach piloted in free trade zones will be rolled out nationwide (i.e. foreign investors engaged in activities that are not included on the negative list will enjoy the same treatment as domestic investors and, therefore, will be able to apply for the simplified entity set up procedures); and
- The process for foreign individuals working in China to obtain a work permit/visa will be streamlined.

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Hong Kong:
Government releases BEPS consultation report

The Hong Kong SAR government released a report on 31 July 2017 that summarizes the outcome of the 2016 consultation on measures the government plans to introduce as part of its commitment to the OECD BEPS project. The report re-affirms the government's commitment to implement the four BEPS minimum standards, but at the same time to uphold Hong Kong's territorial-based and predictable tax regime. The key outcomes from the consultation are summarized below.

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Transfer pricing regime

- Transfer pricing standards will be codified in line with OECD transfer pricing guidelines, *i.e.* enterprises operating in Hong Kong will be required to transact with their associated enterprises on arm's length terms. The tax authorities will have the power to adjust the profits or losses of an enterprise where the arrangement between two associated persons is not on arm's length terms and has created a tax advantage.
- Domestic transactions will not be excluded from the transfer pricing regime.
- Thin capitalization rules will not be introduced, but there will be an arm's length requirement for intragroup borrowing transactions.
- Provisions will be introduced to ensure that a person carrying on the functions of development, enhancement, maintenance, protection and exploitation of intellectual property in Hong Kong will be compensated with an arm's length return.
- An arm's length return safe harbor rule will not be introduced.
- Penalty provisions will be introduced.

Transfer pricing documentation and CbC reporting

- In accordance with the OECD's requirements, certain enterprises operating in Hong Kong will be required to prepare a master file, local file and a country-by-country (CbC) report.
- Exemptions from the master and local file requirements will apply in certain cases.
- A multinational enterprise with annual consolidated group revenue equal to or exceeding EUR 750 million (*i.e.* about HKD 6.8 billion), with its ultimate holding company or one of its constituent entities in Hong Kong, will be required to file a CbC report.
- The tax authorities will utilize Hong Kong's tax treaty network and tax information exchange agreements as the basis for conducting automatic exchanges of CbC reports.
- Hong Kong will accept parent surrogate filing as a transitional arrangement for CbC reporting for accounting periods commencing between 1 January 2016 and 31 December 2017.

Multilateral instrument (MLI)

Hong Kong, by way of territorial extension of China, was one of the signatories to the MLI on 7 June 2017, and has chosen to implement only the minimum standards of the MLI. Hong Kong will adopt the "principal purpose test only" option to prevent treaty abuse for all of its tax treaties.

Double taxation relief and dispute resolution mechanism

Hong Kong's tax credit system will be enhanced, and the time limit to claim a credit for foreign tax paid on income will be extended to the later of (a) six years after the end of the year of assessment; or (b) six months after the date of notice of the relevant assessment issued by the Inland Revenue Department (IRD). The government will continue to expand Hong Kong's tax treaty network and negotiate with potential partners to include a mandatory arbitration article in treaties, as appropriate.

Comments

The government aims to introduce the amendments into Legislative Council by the end of 2017, with the exception of those related to the MLI, which will be introduced by mid-2018. The IRD will issue/update relevant Departmental Interpretation & Practice Notes to provide more guidance in specific areas.

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Hungary:
Rules to qualify for participation exemption revised

The Hungarian parliament enacted a law on 19 June 2017 that amends the rules governing the corporate income tax exemption for capital gains on the sale of shares by abolishing the 10% minimum shareholding requirement. The new rules will apply as from 1 January 2018.

Under current rules, the exemption is available provided the following requirements are met:

- At least 10% of the shares of a Hungarian or foreign entity (except for an acquisition of shares of a controlled foreign company) are acquired;
- The Hungarian acquiring entity reports the acquisition to the Hungarian tax authorities within 75 days from the date of the acquisition/contribution; and
- The participation is held for at least one year. Losses incurred on a transfer or capital contribution are nondeductible, regardless of how long the participation is held.

Under the new rules, the participation exemption will be available provided the acquisition is reported to the tax authorities within 75 days of the acquisition and the one-year holding requirement is met.

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In brief

Brazil: The government is adopting a new approach to eliminate distortions resulting from unilateral VAT (ICMS) benefits granted by the states. A law enacted on 7 August 2017 provides that an "ICMS Agreement" will be introduced that will formalize the acceptance of ICMS benefits among all states where the benefits granted had not received the requisite approval. The states will be required to publish in their official gazettes a list of all ICMS benefits granted, and then will be permitted to maintain the benefits or extend their deadlines for limited periods of time.

France: On 7 July 2017, the Administrative Supreme Court asked the Constitutional Court to rule on the constitutionality of the 3% surtax on profit distributions. The request follows a 17 May 2017 decision of the Court of Justice of the European Union (CJEU), in which the CJEU held that subjecting redistributions of dividends previously received from EU subsidiaries to the surtax violates the EU parent-subsidiary directive (for prior coverage, see EU tax alert, 18 May 2017). Separately, the French Minister of Economy and Finance announced that the surtax may be abolished within the framework of the next finance act (to be adopted in December 2017).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-18-may-2017.pdf

Hong Kong: The Financial Services Development Council (FSDC), an advisory body to the Hong Kong SAR government, released a report on 26 July 2017 that recommends the government extend the profits tax exemption for offshore PE funds to certain portfolio companies and make other changes to the exemption regime to boost the development of the industry in Hong Kong. The FSDC proposes the exemption be expanded to cover investments in Hong Kong private companies and non-Hong Kong private companies with substantial operations in Hong Kong, with the exception of those holding substantial Hong Kong residential property.

Indonesia: Regulations issued by the Ministry of Finance that apply as from 13 June 2017 allow the Directorate General of Taxation (DGT) to obtain information from financial institutions with a view to enabling Indonesia to fulfill its obligations under (bilateral or multilateral) international agreements relating to the automatic exchange of financial account information (AEOI). The regulations address the reporting requirements for financial institutions, which may vary depending on whether the financial information must be provided to allow Indonesia to comply with its responsibilities under an agreement relating to the AEOI, or whether the information must be reported to the DGT only for purposes of the implementation of the provisions of domestic tax law.

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Korea: On 2 August 2017, the Ministry of Strategy and Finance released tax reform proposals for 2018 that generally are designed to increase tax revenue to support the country's expansionary fiscal policies, revise corporate tax incentives to encourage job creation and redistribute income among individuals. The proposals include increases in the income tax rates for the top tax brackets for both corporations and individuals.

Malaysia: The Inland Revenue Board (IRB) announced on 15 June 2017 that it is intensifying its efforts to collect unpaid taxes from expatriates, including collaboration with the Malaysian Immigration Department to prevent expatriates who fail to pay taxes from entering or leaving the country. The IRB currently is in talks with 75 countries where double taxation agreements have been signed to track these underpayments and to recover the taxes due from the expatriates. The IRB also has been taking actions, such as imposing fines or prosecuting employers or sponsors that fail to deduct tax due for their foreign employees before the employees return to their home countries.

The IRB also has issued a clarification stating that, as from 1 January 2018, it plans to impose a penalty equal to 100% of the tax payable on undeclared or under declared income in the case of certain tax offenses (the maximum penalty currently imposed is 35%). The offenses to be covered include the following: repeated undeclared or incorrectly declared income in a tax return; failure to provide full cooperation, or requested information or documents, during an audit or investigation; engaging in an organized tax evasion scheme; and failure to comply with the tax law, where the taxpayer previously was audited or investigated for such a failure.

OECD: The OECD announced on 1 August 2017 that the Platform for Collaboration on Tax (a joint initiative of the OECD, International Monetary Fund, UN and World Bank Group) is seeking public feedback on a draft report and toolkit designed to help developing countries tackle the complexities of taxing "offshore indirect transfers" of assets. These transactions typically involve the sale of an entity located in one country that owns an immovable asset located in another country by a nonresident of the country where the asset is located. Multinational entities may carry out such transactions to avoid being subject to tax on capital gains in the jurisdiction in which the immovable property is located. Comments are requested by 25 September 2017.

Puerto Rico: The Treasury Department has issued guidance to clarify rules enacted on 19 July 2017 relating to depositing state sales tax. The new rules generally require "large" taxpayers and merchants whose average monthly sales tax deposits exceeded USD 2,000 to make two monthly state sales tax deposits, on the 15th and the last day of the month the sales tax is charged (previously, the state sales tax was due on the 20th of the following month). Taxpayers must calculate the deposits according to prescribed rules and safe harbors (*i.e.* the lesser of (i) 80% of the sales tax determined for such month, or (ii) 70% of the total sales tax remitted during the same month in the prior year) or be subject to a 10% penalty. The first deposit under the new rules is due by 15 August 2017 (for large taxpayers) and by 15 September 2017 (for merchants meeting the USD 2,000 threshold).

South Africa: The government published two draft amendment bills on 19 July 2017, which together with the draft "rates bill" published in February, give effect to the budget's tax proposals announced on 22 February 2017 (for prior coverage, see *World Tax Advisor*, 10 March 2017). The draft bills include measures that would address the circumvention of anti-avoidance rules dealing with share buybacks, dividend stripping and contributed tax capital; extend the controlled foreign company rules to interposed foreign trusts and foreign foundations; and allow a deduction for royalties related to "tainted IP" where the income tax payable by the foreign royalty recipient is at least 75% of the tax it would have paid as a South African resident. Comments on the draft bills received by 18 August 2017 will be considered before the bills are formally introduced in parliament, which is expected before the end of the year.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170310_1.html

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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.

BRICS: On 27 July 2017, the BRICS countries (Brazil, Russia, India, China and South Africa) announced the signing of a memorandum of cooperation on tax matters, which reaffirms the countries' support of the G20/OECD BEPS project and includes a commitment to implement the common reporting standard and begin exchanging information no later

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than September 2018. The announcement also encourages jurisdictions that have not yet done so to join the inclusive framework on BEPS and to sign and ratify the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

France: The list of countries with which France will exchange CbC reporting information has been published in the official journal. See Global Transfer Pricing Alert 2017-032, 3 August 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-032-3-august-2017.pdf

Hong Kong: The government has released a report that summarizes the outcome of its consultation on measures it plans to introduce as part of its commitment to the OECD BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170818_5.html

Luxembourg: The parliament has published a draft law that would introduce a BEPS-compliant IP regime to replace the IP box regime that was abolished in 2016. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170818_1.html

Malaysia: The Inland Revenue Board has released the first set of measures to align the domestic transfer pricing guidelines with BEPS actions 8-10 and action 13 recommendations. See Global Transfer Pricing Alert 2017-034, 11 August 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-034-11-august-2017.pdf

New Zealand: On 3 August 2017, the government announced final proposals relating to three discussion documents on BEPS issues previously released for consultation. One discussion document, addressing hybrid mismatch arrangements, was released in September 2016 (for prior coverage, see *World Tax Advisor*, 23 September 2016). The two other discussion documents, on strengthening interest limitation rules and on transfer pricing and permanent establishment avoidance, were released in March 2017 (for prior coverage, see *World Tax Advisor*, 10 March 2017). The final proposals make some refinements to the original drafts. The government is expected to introduce the BEPS measures into legislation by the end of 2017, for enactment in time for the legislation to take effect for taxable years beginning on or after 1 July 2018.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160923_5.html
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170310_6.html

OECD: On 27 July 2017, the OECD released a report on neutralizing the effects of branch mismatch arrangements, in relation to action 2 of the OECD/G20 BEPS project. The report addresses several mismatch arrangements that may result in three types of mismatches in tax outcomes: deduction/no inclusion outcomes, double deduction outcomes and indirect deduction/no inclusion outcomes. It includes recommendations for domestic law changes to decrease the frequency of such outcomes, along with targeted rules to adjust the tax consequences in the jurisdiction of the branch or the head office to neutralize the mismatch without affecting other tax, commercial or regulatory outcomes.

Separately, on 18 July 2017, the OECD announced that the inclusive framework on BEPS has released additional guidance on CbC reporting. See Global Transfer Pricing Alert 2017-030, 20 July 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-030-20-july-2017.pdf

Taiwan: The Ministry of Finance has announced a draft amendment to the transfer pricing guidelines that would adopt the guidance under BEPS action 13. See Global Transfer Pricing Alert 2017-035, 11 August 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-035-11-august-2017.pdf

United Kingdom: The first CbC reporting notifications required to be made to the UK tax authorities (HMRC) are due by 1 September 2017 (see Global Transfer Pricing Alert 2017-033, 3 August 2017) and, on 10 August 2017, HMRC updated its *International Exchange of Information Manual* to include additional guidance on CbC report filing and notification obligations. The guidance sets out that, where there are multiple entities within a group that otherwise would need to provide separate notifications, HMRC will accept a notification submitted by one of the entities provided it is clear that the notification is sent on behalf of all the relevant entities. The updated manual also confirms that the BEPS action 13 final report and subsequent OECD/G20 guidance should be used in interpreting the UK regulations implementing CbC reporting.

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URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-033-3-august-2017.pdf

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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.

Argentina-Mexico: The 2015 treaty enters into force on 23 August 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 10% withholding tax rate on dividends paid to a company that holds at least 25% of the capital of the payer company; otherwise, the rate will be 15%. The reduced rates under the treaty will not apply to the withholding tax that applies under Argentine domestic law where dividends exceed the payer company's accumulated taxable income, after certain adjustments. A 12% rate will apply to interest. A 10% rate will apply to royalties paid for copyrights of literary, dramatic, musical, artistic or scientific works (including news); patents, designs and models, plans, secret formulas or processes; computer programs (subject to certain conditions); industrial, commercial or scientific equipment; or for information concerning industrial, commercial or scientific experience, as well as for the rendering of technical assistance services; otherwise, the rate will be 15%.

Belgium-Switzerland: The 2014 protocol to the 1978 treaty entered into force on 19 July 2017 and will apply as from 1 January 2018. When in effect, the protocol provides for a 0% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company for an uninterrupted period of at least 12 months, or on dividends paid to a qualifying pension fund; otherwise, the rate will be 15%. A 0% rate will apply to interest paid on a loan or credit granted by an enterprise to another enterprise, and to interest paid to a qualifying pension fund; otherwise, the rate will be 10%. The withholding tax rate on royalties will not be affected by the protocol.

Belgium-Uruguay: The 2013 treaty entered into force on 4 August 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 0% withholding tax rate on dividends paid to a pension fund satisfying certain requirements; a 5% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. A 0% rate will apply to interest paid to a pension fund satisfying certain requirements; otherwise, the rate will be 10%. The rate on royalties will be 10%.

China-Romania: The 2016 treaty to replace the 1991 treaty entered into force on 17 June 2017 and will apply as from 1 January 2018. When in effect, the new treaty provides for a 3% withholding tax rate on dividends. A 0% rate will apply to interest paid in connection with a sale of equipment, merchandise or services on credit, or paid on a loan granted by a financial institution; otherwise, the rate will be 3%. The rate on royalties will be 3%.

Croatia-Kosovo: When in effect, the treaty signed on 6 March 2017 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest and royalties will be 5%.

Egypt-Saudi Arabia: The 2016 treaty entered into force on 1 July 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest will be 10%. A 0% rate will apply to royalties paid to the government; otherwise, the rate will be 10%.

Indonesia: Two new regulations address the certificate of domicile for resident taxpayers seeking to obtain benefits under a tax treaty and the procedures for nonresidents to apply for benefits under Indonesia's tax treaties. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170818_2.html

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Japan-Slovenia: The 2016 treaty enters into force on 23 August 2017 and will apply as from 1 January 2018 for withholding tax purposes. When in effect, the treaty provides for a 10% withholding tax rate on dividends where the dividends are tax-deductible for the payer company or where the payer company is subject to a reduced rate of tax on income if it distributes its profits; otherwise, the rate will be 5%. A 5% rate will apply to interest and royalties.

Saudi Arabia-Jordan: When in effect, the treaty signed on 19 October 2016 provides for a 5% withholding tax rate on dividends and interest, and a 7% rate on royalties.

Singapore-Nigeria: When in effect, the treaty signed on 2 August 2017 provides for a 7.5% withholding tax rate on dividends, interest and royalties.

United States: An intergovernmental agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act, dated 28 July 2017, has been signed with Turkmenistan.

Global tax alerts

France
France publishes list of partner countries for automatic exchange of CbC information
The list of countries with which France will exchange CbC reporting information automatically and bilaterally was published in the official journal on 8 July 2017.
Issue date: 3 August 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-032-3-august-2017.pdf

Malaysia
Malaysia introduces master file requirement, other BEPS recommendations
The tax authorities have released the first set of measures to align the domestic transfer pricing guidelines with BEPS actions 8-10 and action 13 recommendations.
Issue date: 11 August 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-034-11-august-2017.pdf

OECD
OECD releases additional implementation guidance on CbC reporting
On 18 July 2017, the OECD released additional guidance on the implementation of the CbC reporting requirement in the BEPS action 13 final report.
Issue date: 20 July 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-030-20-july-2017.pdf

Taiwan
Taiwan to amend transfer pricing rules to adopt action 13 concepts
On 27 July 2017, the Ministry of Finance released draft amendments to the transfer pricing guidelines that would adopt the OECD's BEPS action 13 guidance into domestic legislation.
Issue date: 11 August 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-035-11-august-2017.pdf

United Kingdom
UK CbC notification deadline approaches
The first CbC reporting notifications required to be made to the UK tax authorities are due by 1 September 2017.
Issue date: 3 August 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-033-3-august-2017.pdf

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United States

Notice 2017-42: Extended effective date for Section 871(m) withholding on dividends

The US Department of the Treasury and the IRS issued guidance on 4 August 2017 that provides additional time for taxpayers and withholding agents to implement certain aspects of the final and temporary regulations under IRC section 871(m).
Issue date: 9 August 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-9-august-2017.pdf

IRS's determination to cancel APAs was abuse of discretion

On 26 July 2017, the US Tax Court held that the determination by the US Internal Revenue Service to cancel Eaton Corporation's and its US subsidiaries' APAs was an abuse of discretion.
Issue date: 3 August 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-031-3-august-2017.pdf

Notice 2017-36 delays application of Section 385 documentation regulations

On 27 July 2017, the US Department of the Treasury and the IRS issued guidance that states their intent to delay the application of the documentation rules in the section 385 regulations for 12 months.
Issue date: 2 August 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-2-august-2017.pdf

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