In this issue:

CRS rules apply in China as from 1 July 2017 1
Austria: New tax treaty with the UK under negotiation 4
Barbados: Budget includes hike in National Social Responsibility Levy, new foreign exchange tax 6
Bermuda: CRS regulations, guidance notes issued and portal open 7
Colombia: Tax authorities clarify VAT treatment of digital supplies made by nonresidents 8
India: High Court rules payments under secondment agreement do not attract withholding tax 9
India: Foreign Investment Promotion Board abolished 10
In brief 11
BEPS corner 12
Tax treaty round up 13
Global Tax Alerts 14

CRS rules apply in China as from 1 July 2017

Long-awaited rules implementing the OECD common reporting standard (CRS) in China will apply as from 1 July 2017. The final rules, issued by the State Administration of Taxation (SAT), Ministry of Finance and financial regulatory bodies on 19 May 2017, address financial institution (FI) reporting, reportable financial accounts and due diligence procedures.

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

Background

The OECD published the Standard for Automatic Exchange of Financial Information in Tax Matters (AEOI) in 2014, in response to the growing concern that taxpayers were concealing reportable income in offshore assets and accounts to evade tax in their home jurisdiction(s). The AEOI was modeled on the inter-governmental agreement framework under the US Foreign Account Tax Compliance Act. In September 2014, China committed to the implementation of the AEOI and, in December 2015, China signed the Multilateral Competent Authority Agreement (MCAA), which was developed to provide a standardized and efficient mechanism to facilitate the AEOI – the MCAA avoids the need for multiple bilateral agreements to be concluded. On 14 October 2016, the SAT published a draft version of the CRS rules for public consultation.

The final rules implementing CRS in China generally are similar to the draft rules with respect to the procedures for assessment and identification of FIs and financial accounts, etc. The final rules require FIs to undertake due diligence procedures to identify specified financial accounts held by nonresidents and to report specific information on the accounts to the SAT. The SAT then will exchange the information with the tax authorities of jurisdictions in which the account holders are resident. The final rules make some changes to the draft rules, for example, by requiring the total aggregate balance in the financial account to be in USD, defining the conversion rule for currencies other than USD, adjusting some of the key dates, setting out the requirements for registration on the SAT website and specifying measures for noncompliance.

Reporting entity: Financial institution

FIs include depository institutions, custodial institutions, investment entities, specified insurance companies and their affiliates. FIs in Mainland China include:

- Commercial banks, rural credit unions, other financial institutions taking public deposits and policy banks;
- Security, futures and trust companies;
- Securities investment fund management companies and private equity fund management companies/partnerships;
- Insurance companies that issue cash value insurance and/or annuity contracts and insurance asset management companies; and
- Other qualifying institutions, such as entities engaged in investment, reinvestment, the trading of financial assets, etc. (including securities investment funds, private equity funds, etc.).

Due diligence: Financial accounts

Beginning on 1 July 2017, affected FIs must undertake due diligence procedures and identify reportable information for both pre-existing and new financial accounts belonging to entities and individuals. Accounts that are opened on or before 30 June 2017 will be treated as pre-existing accounts. Accounts that are opened on or after 1 July 2017 generally will be treated as new accounts; however, if the account holder has other accounts with the same FI on 30 June 2017 and these accounts meet certain criteria, they could be treated as pre-existing accounts.

The definition of financial accounts generally follows the OECD definition and includes three categories of accounts:

- Depository accounts;
- Custodial accounts (*e.g.* securities brokerage accounts, wealth management accounts, fund accounts, trust programs, collective asset management programs, etc.); and
- Other accounts (*e.g.* cash value insurance contracts, partnership interests in private equity funds, etc.).

Due diligence procedures and timelines

The CRS rules set out different due diligence procedures and timelines for different categories of financial accounts:

Type of account			Description	Due diligence procedure	Timeline
Individuals	New	-	Opened on or after 1 July 2017	Obtain self-certification from account holder and make reasonable review of certification	Beginning on 1 July 2017

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

Type of account			Description	Due diligence procedure	Timeline
	Pre-existing	Low-value accounts	Aggregate account balance on 30 June 2017 does not exceed USD 1 million	Perform electronic search of information maintained by FI	By 31 December 2018
		High-value accounts	Aggregate account balance on 30 June 2017 exceeds USD 1 million	Perform electronic and paper record search of information maintained by FI and request that customer managers identify their residence status	By 31 December 2017
Entities	New	-	Opened on or after 1 July 2017	Obtain self-certification from account holder and make reasonable review of certification	Beginning on 1 July 2017
	Pre-existing	*De minimis*	Aggregate account balance on 30 June 2017 does not exceed USD 250,000	No action required (subject to change in circumstances and ongoing monitoring)	None
		Non-*de minimis*	Aggregate account balance on 30 June 2017 exceeds USD 250,000	Perform search of information maintained by FI and obtain self-certification from account holder in certain cases	By 31 December 2018

Reporting requirements

FIs must register on the SAT website by 31 December 2017 and report the relevant account information of nonresidents by 31 May of each year. The SAT will be issuing further detailed guidance on the reporting requirements.

Comments

FIs have very little time to implement China's CRS procedures, especially with respect to gathering self-certifications and making the required checks. Affected institutions should take immediate steps to perform compliance obligations, to mitigate any risk of noncompliance. The following actions are recommended:

- Conduct a comprehensive review of the existing account management system and identify any underlying potential risk. The review should focus on existing products and services and should identify financial accounts that are subject to the due diligence requirement, and the impact on the existing account management process, business systems and policy.
- Establish a due diligence policy and procedure for new accounts and revise existing account-opening procedures (including relevant forms and documents), due diligence procedures when an account is opened (such as know-your-customer procedures) and other procedures to enable the company to identify tax residence status and collect relevant information.
- Collect necessary CRS data, carry out the required due diligence procedures and update or document information for pre-existing clients.
- Develop adequate operating guidance and modify existing systems to enable the FI to comply with the requirements for reporting financial account information in a timely manner.

In the longer term, FIs should continue to improve their compliance procedures and mechanisms, update their IT systems and train personnel to enable compliance with the CRS rules.

— Natalie Yu (Beijing)
Partner
Deloitte China
natyu@deloitte.com.cn

Lynn Zhang (Beijing)
Manager
Deloitte China
lynnzhang@deloitte.com.cn

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

Xi Lu (Beijing)
Manager
Deloitte China
xibjlu@deloitte.com.cn

Austria:
New tax treaty with the UK under negotiation

An updated draft of a revised tax treaty between Austria and the UK, which is currently under negotiation to replace the existing treaty that has applied since 1969, was released in April 2017. The Austrian business community has welcomed the provisions of the draft, not only because the treaty will have a significant impact on trade between Austria and the UK in a post-Brexit world, but also because this may be the first tax treaty to implement the BEPS minimum standard on treaty shopping (under BEPS action 6) into the Austrian tax treaty network.

Although Austria and the UK both signed the multilateral instrument (MLI) to implement the tax treaty-related measures to prevent BEPS on 7 June 2017, the current treaty negotiations are expected to proceed to allow the two countries to customize the terms of their treaty.

In many respects, the draft treaty is in line with the most recent version of the OECD model convention, as well as Austria's current tax treaty policies. However, there are several provisions worth highlighting from an Austrian perspective, which reflect either the implementation of the BEPS minimum standard on treaties or the UK's tax treaty policies. The draft treaty is subject to change until it is finalized and signed by both contracting states.

BEPS-related measures

Preamble: The intention of the tax treaty would be to eliminate double taxation without creating opportunities for nontaxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining relief provided under the treaty for the indirect benefit of residents of third countries).

Residence (article 4): The place of effective management would remain the decisive factor for the determination of the state of residence under the treaty in the case of dual resident companies. In situations where there are issues regarding this determination, the competent authorities would endeavor to determine the state in which the person's place of effective management is exercised by mutual agreement and, in doing so, would take into account all relevant factors.

Permanent establishments (article 5): For typical preparatory or auxiliary activities to avoid triggering a permanent establishment (PE) in the other contracting state, the overall activity of the fixed place of business resulting from the combination of such activities would have to be of a preparatory or auxiliary character. In the past, the Austrian tax authorities have tended to presume an Austrian PE is created by preparatory or auxiliary activities that are listed in article 5(4) of the OECD model treaty if they are part of the core business of the company.

Limitation of relief (article 22): Treaty benefits would not be granted if it is reasonable to conclude that obtaining such benefits was one of the principal purposes of an arrangement or transaction that directly or indirectly resulted in obtaining the benefits, unless it is established that granting the benefits under the circumstances would be in accordance with the object and purpose of the relevant provisions of the treaty. This wording appears very similar to the principal purpose test (PPT) in the MLI. Based on the initial comments made by high-ranking officials of the Austrian tax authorities, it seems that they do not expect a material change in the application of anti-avoidance rules, given the similarity of the PPT to the existing Austrian domestic anti-avoidance rule.

Mutual agreement procedure (article 24): Mandatory binding arbitration would apply in cases where a mutual agreement procedure leaves issues unresolved.

Measures reflecting UK tax treaty policy

Residence (article 4): Pension schemes and organizations that are established and operated exclusively for religious, charitable, scientific, cultural and/or educational purposes, and that are a resident of a contracting state

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

according to its laws, would qualify as residents for the purposes of the treaty, even if all or part of the income or gains of such an organization are exempt under domestic law.

Business profits (article 7): The attribution of profits to a PE generally would be based on the principles of article 7 as outlined in the version of the OECD model prior to 2010 (*i.e.* before the authorized OECD approach (AOA) was implemented for attributing profits to a PE using a separate-entity approach). However, according to the draft protocol, the guiding principles of the AOA still would be considered.

Dividends (article 10): The source state generally would be permitted to tax dividends at a maximum rate of 10%, or 15% where the dividends are paid by certain investment vehicles. However, dividends paid to a pension scheme, or in the case of a qualified shareholding (a direct or an indirect participation of at least 10%), would be exempt from taxation in the source state. (Under the existing treaty, a 5% rate applies to dividends paid to a company that controls, directly or indirectly, at least 25% of the voting power of the payer company; otherwise, the rate is 15%.) In essence, the new terms indicate that the contracting states wish to ensure that, following Brexit, qualifying cross-border dividends would remain eligible for an exemption from dividend withholding tax, since the exemption under the EU parent-subsidiary directive no longer would be available.

Capital gains (article 13): Capital gains from the sale of shares (other than shares that are regularly and substantially traded on a stock exchange), or comparable interests, deriving more than 50% of their value directly or indirectly from immovable property situated in the other contracting state could be taxed in that other state.

Elimination of double taxation (article 21): Austria would apply the credit method (rather than the exemption method) to eliminate double taxation in its capacity as a residence state, and the UK would continue to apply the credit method. This would be unlike the vast majority of other Austrian tax treaties.

Limitation of relief (article 22): A "remittance clause" (which is included in article 3(2) of the existing treaty) would be included in the new treaty. Where income or gains are relieved from tax in a contracting state under the treaty and, under the law in the other contracting state, a person is subject to tax on only the amount of income or gains that is remitted or received in that other state (rather than on the full amount of the income or gains), the relief to be allowed under the treaty would apply only to the amount of the income or gains taxed in the other state.

Comments

The Austrian business community is eagerly awaiting the final wording of the revised tax treaty between Austria and the UK, which will be available only after the consultation process and the negotiations between the two countries are completed. It currently is unknown when the new treaty will be finalized and signed or when it will enter into force.

It remains to be seen whether the implementation of the BEPS minimum standard on treaties reflected in the draft treaty will serve as a blueprint for Austria's future tax treaty policy in a post-BEPS world. However, even at this stage, the Austrian business community is welcoming Austria's first steps toward incorporating BEPS principles in its tax treaty network, as they indicate that the government is committed to maintaining stable and beneficial provisions of the treaty network.

Based on the draft, it seems that Austria will implement BEPS-related provisions in its tax treaties with care, and only at a minimum level. In addition, the country's willingness to adopt binding arbitration demonstrates its commitment to enhancing legal security and shortening the time needed to accomplish administrative procedures for Austrian companies, as well as international investors. Finally, the measures outlined above indicate that, in many aspects important to business, Austrian administrative practice likely will not change materially, despite the anticipated changes in the wording of the treaty.

— Patrick Weninger (Vienna)
Partner
Deloitte Austria
pweninger@deloitte.at

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

Barbados:
Budget includes hike in National Social Responsibility Levy, new foreign exchange tax

The Barbados Minister of Finance presented the 2017/2018 budget on 30 May 2017 against a backdrop of minimal-to-zero economic growth, a significant fiscal deficit and high debt repayment obligations, and pressure to address rising social service costs and infrastructure. The Barbados government also is facing a backlog of VAT refunds owed to taxpayers.

In response to these challenges, the budget contains proposals to increase certain taxes, reinstate an amnesty to encourage the payment of overdue value added tax (VAT) and land tax and introduce a national tax registration initiative. The proposals are intended to take effect from 1 July 2017, once amendments to the income tax act are enacted (expected by 30 June 2017). If enacted as proposed, the measures would affect both businesses and the general population.

Tax increases

The budget proposes the following tax increases, with a view to generating additional tax revenue:

- The National Social Responsibility Levy (NSRL) would be increased from 2% to 10%. Implemented on 1 September 2016 to generate funds to address rising social costs in Barbados, the NSRL is a levy on the customs value of all goods imported into the island (except goods used for manufacturing, agriculture and in the tourism sector) and on all locally produced goods.
- A 2% "commission" would be introduced to apply to all sales and exchanges of foreign currency by authorized dealers (*i.e.* commercial banks and other approved financial institutions). It is unclear, however, if this charge would apply to international business companies.
- The excise tax on gasoline and diesel fuel would be increased by BBD 0.25/liter and BBD 0.24/liter, respectively, which would increase the retail prices of gasoline and diesel fuel and, therefore, increase the underlying costs of production of most goods and services in Barbados.

Tax amnesty

The amnesty for VAT and land tax, which ended on 15 February 2017, would be reinstated for the six-month period from 1 June through 30 November 2017. Under the amnesty, all interest and penalties on overdue VAT and land tax paid within the amnesty window would be waived. The budget does not specifically propose to provide an amnesty for overdue income tax and corporation tax payments made within this window, and the government is expected to clarify whether interest and penalties also would be waived on these payments.

National registration initiative

The minister announced that a task force comprising expert advisors would be engaged to provide recommendations on broadening the tax base through the establishment of a national tax administration registration initiative. The aim of the initiative would be to ensure that all persons operating businesses (including the self-employed, sole traders, professionals and artisans) are registered with the Barbados Revenue Authority (BRA) and brought within the tax net.

Comments

Several of the proposed measures are controversial and are likely to have a negative effect on the general population. For example, the increase in the NSRL rate likely would be borne entirely by customers, since it is unlikely, given current economic conditions, that the increase would be absorbed by businesses. The increased cost of foreign exchange purchases due to the 2% commission (which would affect credit card transactions, wire transfers, over-the-counter sales of foreign currency, etc.) could have the unintended result that individuals with foreign currency might decide not to convert the funds, and could lead to the emergence of an alternative market for foreign currency.

The tax amnesty is one of the few measures that would benefit both taxpayers and the government. Taxpayers would have additional time to become tax compliant by paying outstanding VAT and land tax obligations without attracting

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

penalties and interest on taxes owed. As noted above, it is unclear whether the penalties and interest on income tax and corporation tax also would be waived.

The initiative to improve tax administration is welcome, as the economic conditions demand that the tax base be broadened, rather than relying solely on increasing tax rates. Further, enhanced human and technical resources should help the BRA to manage the new global tax environment more effectively.

The minister has recognized the negative impact that the backlog of VAT refunds has on various businesses and has pledged to rectify the situation. However, no timeline has been announced for refunds, so this will continue to be a concern for most businesses, especially those claiming refunds on zero-rated supplies and overpayments.

— Betty Brathwaite (Barbados)
Partner
Deloitte Barbados
bbrathwaite@deloitte.com

Ikins Clarke (Barbados)
Partner
Deloitte Barbados
idclarke@deloitte.com

Bermuda:
CRS regulations, guidance notes issued and portal open

In April 2017, Bermuda's Ministry of Finance published the highly anticipated Common Reporting Standard (CRS) Regulations and Guidance Notes, which clarify the CRS obligations of Bermuda reporting financial institutions (FIs), in advance of the first enrollment and reporting deadlines on 14 July and 30 August, respectively. Intended to supplement the comprehensive guidance and commentaries already released by the OECD, the Bermuda CRS regulations and the guidance notes provide additional clarification and practical assistance with the implementation of the CRS for Bermuda FIs.

Additionally, the CRS reporting portal (Bermuda Tax Information Reporting Portal) began accepting CRS enrollments and filings from Bermuda FIs on 16 June 2017.

The Ministry of Finance signed the OECD's multilateral competent authority agreement on 29 October 2014 to become a member of the "early adopters group" for the CRS, meaning that the group will begin exchanging CRS information with partner jurisdictions in September 2017.

Key items from Bermuda's regulations and guidance notes are as follows:

- **Notification:** FIs must notify the Ministry of Finance of their status as a Bermuda reporting FI by 14 July 2017 (notification is completed online). This is an extended deadline for the first year of reporting; the deadline for new enrollments in future years will be 30 April. The enrollment form will collect key information regarding the reporting FI, as well as contact information and supporting documentation for the reporting entity's primary user or principal point of contact for CRS purposes.
- **Reporting:** CRS reports for the 2016 reporting year are due via the Bermuda Tax Information Reporting Portal, on or before 30 August 2017. This also is an extended deadline for the first year of reporting; the deadline for the submission of reports in future years will be 31 May.
- **Reportable jurisdictions:** The ministry has published a list of 37 reportable jurisdictions for the 2016 reporting year. A new list of reportable jurisdictions will be published annually by 31 January, which should be used to confirm the scope of reporting for the prior reporting period.
- **Wider approach:** The regulations and guidance notes indicate that Bermuda has opted to apply the OECD's "wider approach" for CRS due diligence, which instructs Bermuda reporting FIs to identify the tax residence of all account holders or relevant controlling persons, irrespective of whether they are in reportable jurisdictions. This is intended to reduce the future burden on FIs, so that as more jurisdictions are added to the reportable jurisdictions list, FIs can rely on the due diligence procedures already completed.
- **Nil returns:** The regulations and guidance notes confirm that the filing of nil returns is not mandatory, but FIs with no reportable accounts can file a nil return if they wish. Bermuda reporting FIs with no reportable accounts still will need to complete the notification/enrollment via the CRS portal.
- **Use of third-party service providers:** The guidance notes specify that the ministry has accepted the optional provision allowing reporting FIs to use service providers to fulfill reporting and due diligence

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

obligations, but highlight that the ultimate responsibility for fulfilling the obligations, and for any penalties that arise from the failure to do so, remain with the Bermuda FI.

- **Threshold for pre-existing entity accounts:** The guidance notes provide that Bermuda FIs are allowed to apply the optional threshold exemption of USD 250,000 for pre-existing entity accounts, meaning that entity accounts opened before 1 January 2016 do not need to be reviewed, identified or reported under CRS until their value exceeds USD 250,000 at 31 December of the reporting calendar year. This is the only such threshold applicable under CRS.
- **Non-participating jurisdiction investment entities:** The guidance notes clarify that Bermuda FIs are required to treat "managed" investment entities that are resident in a non-participating jurisdiction as passive non-financial entities and, therefore, to report on the controlling persons of such entities that are reportable persons. This is likely to affect US entity account holders, since the US has not signed onto the CRS and, therefore, is considered a non-participating jurisdiction.
- **Penalties:** The CRS regulations introduce offenses and penalties associated with the application of the CRS in Bermuda, including for contravention of the regulations, providing materially inaccurate self-certifications, tampering with information and hindering the Ministry of Finance in its functions. Fines or penalties may be up to USD 10,000.

— James Dockeray (Hamilton)
Partner
Deloitte Bermuda
james.dockeray@deloitte.com

Andy DeGregorio (Hamilton)
Senior Manager
Deloitte Bermuda
andy.degregorio@deloitte.com

Colombia:
Tax authorities clarify VAT treatment of digital supplies made by nonresidents

On 21 March 2017, the Tax and Customs Administration clarified that supplies of digital services by nonresident companies to recipients located in Colombia are subject to Colombian VAT as from 1 January 2017 (for prior coverage, see *World Tax Advisor*, 27 January 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170127_1.html

In the case of business-to-business digital supplies (*i.e.* when the service is provided to a business customer in Colombia that itself is a VAT taxpayer), the business customer must account for and remit VAT under the reverse-charge mechanism. In contrast, business-to-consumer supplies (*i.e.* when the service is provided to a private individual in Colombia), in theory, are subject to VAT, but the mechanism for VAT accounting with respect to such supplies is that credit and debit card issuers and other payment processors must withhold the VAT due before payment is made to the nonresident supplier. The latter rule, which will not apply until 1 January 2018, also will apply to supplies made to individuals in Colombia in cases where the nonresident service provider fails to fulfill its VAT filing and payment obligations.

The Tax and Customs Administration is expected to issue a list of nonresident service providers whose services could be subject to VAT under these rules. The Colombian government has not yet issued any rules or guidance as to how credit/debit card issuers and other payment processors are to determine when VAT is due or how nonresident service providers are to fulfill their filing and payment obligations, including any registration requirements.

— Diego Franco (Bogota)
Partner
Deloitte Colombia
dfranco@deloitte.com

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

India:
High Court rules payments under secondment agreement do not attract withholding tax

The Bombay High Court issued a decision on 3 May 2017, concluding that payments made under a secondment agreement were reimbursements of expenses, not technical service fees and, therefore, were not subject to Indian withholding tax under the India-UK tax treaty. The court upheld an earlier decision of the Mumbai Income Tax Appellate Tribunal (ITAT).

Facts of the case

In 2008, a UK retailer (UK Co) set up an Indian joint venture company (JV Co) with a large Indian retailer, with a view to expanding the presence of the UK company in India. JV Co thereafter concluded an agreement with UK Co, under which several UK Co employees were seconded to India to help set up the Indian business. The employees were to carry out certain management functions; assist with property selection, retail operations, merchandising and product selection; and set up a merchandising team. The employees remained on the payroll of UK Co, but the salaries were taxable in India. Under the terms of the secondment agreement, JV Co reimbursed UK Co for a portion of the expenses relating to the seconded employees. JV Co did not withhold Indian tax from these payments.

The Indian tax authorities took the position that the nature of the activities of UK Co's employees in India were technical services and, therefore, the payments made by JV Co under the secondment agreement constituted fees for technical services (FTS), subject to withholding tax under article 13(4) of the India-UK tax treaty. The tax authorities held JV Co in default for failing to withhold tax. JV Co appealed to the Commissioner of Income Tax (Appeals), who reversed the order in favor of JV Co. The Indian tax authorities then appealed to the Mumbai ITAT, which agreed with the commissioner, and further appealed to the Bombay High Court.

High Court decision

In its decision, the High Court summarized the findings set out by the Mumbai ITAT and affirmed the ITAT's conclusion that JV Co was not required to withhold tax from the payments it made to UK Co under the secondment agreement. In reaching its decision, the ITAT had held that:

- The payments made by JV Co were not in the nature of FTS, which would have been subject to Indian withholding tax under the India-UK tax treaty. The ITAT referred to several previous High Court and ITAT decisions that interpreted the definition of FTS under a treaty to require that technical knowledge, experience, know-how and/or process skills that enable the person acquiring the services to apply the technical knowledge, etc. be "made available." The ITAT determined that the assistance provided by the seconded employees to JV Co did not include making available the technical knowledge or skills and, therefore, the payments made by JV Co could not be considered FTS under the treaty.
- The payments made by JV Co were reimbursements of UK Co's expenses relating to the secondment of its employees (*i.e.* the payments did not include a profit element) and, thus, the payments could not be regarded as income (subject to withholding) in the hands of UK Co. The ITAT noted that the relevant agreements between JV Co and UK Co supported this position.
- The entire salary received by the seconded employees had been subject to individual income tax in India at the highest average tax rate, thus refuting the finding of the Indian tax authorities that JV Co should be held in default for failure to withhold tax due.

Comments

The tax treatment of the cross-border secondment of employees has been an area of controversy, with the Indian tax authorities frequently taking the position that, by sending employees to India, a foreign company is providing FTS to the Indian entity and/or that the employees create a taxable presence of the foreign company in India, *i.e.* a permanent establishment (PE). (The PE argument was not addressed in the case because this issue was not raised by the Indian tax authorities.) The High Court decision should help bolster the position that the reimbursement of costs of seconded employees should not attract Indian withholding tax, and the decision is likely to be welcomed by taxpayers. However, taxpayers should maintain the appropriate agreements and any other relevant documentation to support the position that payments for seconded employees are reimbursements of costs, and are not FTS.

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

— Pritin Kumar (Mumbai)
Partner
Deloitte Haskins & Sells
pkumar@deloitte.com

Vishal Palwe (Mumbai)
Senior Manager
Deloitte Haskins & Sells
vpalwe@deloitte.com

India:
Foreign Investment Promotion Board abolished

On 24 May 2017, the Indian government approved a proposal announced as part of the budget 2017 to phase out the Foreign Investment Promotion Board (FIPB) and, on 5 June, a document was issued detailing the roadmap for eliminating the FIPB (for prior coverage of the budget, see *World Tax Advisor*, 10 February 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_1.html

The FIPB, formed in the 1990s in the wake of economic liberalization to encourage and expedite foreign direct investment (FDI) into India, was an inter-ministerial body set up to provide a single-window clearance for FDI proposals. Over the past few years, the government has liberalized FDI policy such that foreign investment in most sectors now falls under the "automatic route" (*i.e.* government approval is not required). With the changing economic landscape, the FIPB appeared to have outlived its useful life.

Following the issuance of the 5 June 2017 document, FDI applications relating to the following sectors/activities that require government approval will be processed by the relevant ministries/departments, in consultation with the Department of Industrial Policy and Promotion (DIPP) (the department responsible for the formulation of FDI policy, promotion and facilitation):

- Mining;
- Defense;
- Broadcasting;
- Print media;
- Civil aviation;
- Satellites;
- Telecommunications;
- Private security agencies;
- Trading (single and multi-brand and food products retail trading);
- Financial services not regulated by a regulator, where there is more than one regulator or where there is doubt about which regulator has jurisdiction;
- Banking (public and private);
- Pharmaceuticals; and
- Cases relating to FDI in small arms.

A standard operating procedure will be developed for the ministries/departments to ensure consistent treatment and a uniform approach across all sectors. All applications pending with the FIPB will be transferred to the relevant ministry/department.

The DIPP will handle the following proposals:

- FDI proposals by nonresident Indians and export-oriented units that require government approval;
- Proposals to issue equity shares under the FDI policy under the government approval route for the import of capital goods, machinery and equipment (except second-hand machinery); and
- Proposals relating to the issuance of equity shares for pre-operating/pre-incorporation expenses.

Comments

The dismantling of the FIPB is a welcome step in improving the ease of doing business in India and making the country more investor friendly. However, the success of the initiative will depend on how efficiently each of the administrative ministries/departments processes FDI proposals.

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

— Pritin Kumar (Mumbai)
Partner
Deloitte Haskins & Sells
pkumar@deloitte.com

Vishal Palwe (Mumbai)
Senior Manager
Deloitte Haskins & Sells
vpalwe@deloitte.com

In brief

European Union: On 21 June 2017, the European Commission proposed new transparency rules for intermediaries, such as tax advisors, accountants, banks and lawyers, who design and promote tax planning schemes for their clients. The "mandatory disclosure scheme" proposal, which forms part of the commission's efforts to tackle tax abuse and ensure fairer taxation in the EU, will take the form of an amendment to the EU administrative cooperation directive. Intermediaries will be required to report to the tax authorities of the member state in which they are resident any cross-border tax planning arrangement they design or promote that contains specific features within five days of offering the arrangement to a client. That EU member state then will share the information with all other member states on a quarterly basis. The mandatory disclosure scheme proposal is in line with recommendations under the BEPS project, specifically action 12. The proposal is subject to internal approval by the commission, and then will be submitted to the European parliament for consultation and to the European council for adoption. It is envisaged that the reporting requirements would enter into force on 1 January 2019.

Greece: A law published in the government gazette on 19 May 2017 will reduce the corporate income tax rate from 29% to 26% as from 1 January 2019 for most legal entities (except credit institutions, for which the rate will remain 29%), but only if Greece meets the medium-term budget targets under the country's financial adjustment program. The law also introduces new rules into the tax procedures code with respect to the selection of cases that will be subject to a tax audit – in determining whether an audit should be initiated, the tax authorities will conduct a risk analysis and look at data from both internal and external sources.

Hungary: Effective 1 July 2017, the advertisement tax rate will increase from 5.3% to 7.5% for taxpayers with advertising revenue exceeding HUF 100 million; an exemption will apply for revenue under this amount (in line with EU rules). Based on a resolution of the European Commission issued on 4 November 2016 (for prior coverage, see *World Tax Advisor*, 25 November 2016), advertisement tax paid from 2014 until 30 June 2017 will be treated as an overpayment and will be refunded to taxpayers (the details on this have not yet been published).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161125_4.html

India: The GST Council confirmed on 18 June 2017 that the goods and services tax (GST) will be implemented as from 1 July 2017 (for prior coverage, see *World Tax Advisor*, 9 June 2017) and relaxed the rules governing the submission of GST returns for the first two months to mitigate the effects of the new rules on small traders. GST for July and August 2017 will be payable on a simplified return; thereafter, detailed returns will be required. The council also approved the creation of an anti-profiteering body, which will be set up in July 2017 and will function for a two-year period.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170609_ib.html

Italy: The law decree published on 24 April 2017 was converted into law by the Italian senate on 15 June 2017, with some modifications (for prior coverage, see *World Tax Advisor*, 12 May 2017). The final law decree does not adopt the amendment that would have calculated the notional interest deduction (NID) based on equity and retained earnings of the prior five years. The NID rate is set at 1.6% for 2017 and 1.5% thereafter (instead of 2.3% for 2017 and 2.7% for 2018 as provided in the April version of the law). The law decree also includes a new provision that allows foreign multinationals to settle, with reduced penalties, tax liabilities of previously undisclosed Italian permanent establishments. Finally, it includes the amendments to Italy's patent box regime (that bring it in line with BEPS action 5), transfer pricing rules and carried interests with no substantial changes.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_7.html

Malaysia: The Inland Revenue Board (IRB) has issued its Tax Audit Framework 2017, which is effective from 1 May 2017 and supersedes the framework issued in 2015. The main features of the new framework are as follows: (i) the number of years of assessment (YAs) to be covered under a tax audit is increased from one to three, and the audit can be further extended to cover up to five YAs for cases not involving fraud, willful default or negligence; (ii) the IRB can extend a tax audit to a related company or business that has the same director(s) as the taxpayer under audit,

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

without notifying the taxpayer or the related company; and (iii) a taxpayer can make a voluntary disclosure (with concessionary penalties imposed) after the tax return is filed but before the case is selected for audit; however, once an audit has commenced, voluntary disclosure is not allowed.

Netherlands: The State Secretary of Finance published a decree on 1 June 2017 to allow taxable persons to apply a VAT reverse-charge mechanism to business-to-business supplies of telecommunications services in the Netherlands between taxable persons carrying out such services. Under the reverse charge, liability for the payment of VAT shifts from the supplier to the purchaser. The decree, which applies as from 2 June 2017, was issued in anticipation of a change in Dutch legislation that would introduce a mandatory reverse charge on certain domestic supplies of telecommunications services in response to VAT "carousel fraud."

Singapore: The Inland Revenue Authority has opened a consultation with affected businesses on a proposal to introduce a goods and services tax (GST) reverse charge on certain imported business-to-business services transactions and, separately, a GST registration requirement for foreign vendors that supply digital services and "low-value goods" to consumers in Singapore. The two proposals were included in the Finance Minister's 20 February 2017 budget speech (for prior coverage, see *World Tax Advisor*, 24 February 2017). The consultation on the GST treatment of cross-border digital transactions aims to ensure a level playing field between local GST-registered businesses and nonregistered foreign businesses under BEPS action 1 ("Addressing the Tax Challenges of the Digital Economy").
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170224_2.html

Thailand: An amendment to the tax code that applies as from 2 April 2017 makes certain tax fraud/evasion activities punishable offenses under Thailand's Anti-Money Laundering Law. Specifically, tax fraud/evasion activities that involve an artificial business transaction designed to prevent the tracing of assets and that result in underpaid tax of THB 10 million or more in a tax year or involve a fraudulent tax refund claim of THB 2 million or more in a tax year fall within the scope of the new rules. In such cases, the Thai tax authorities will forward the relevant information to the Anti-Money Laundering Office for further action.

BEPS corner

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

Austria-United Kingdom: A new tax treaty is being negotiated that would incorporate the BEPS minimum standard on treaty shopping. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170623_2.html

European Union: The European Commission has proposed new mandatory disclosure rules for intermediaries who design and promote tax planning schemes for their clients, which are in line with the recommendations under action 12 of the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170623_ib.html#EU

Italy: Amendments to Italy's patent box regime to bring it in line with BEPS action 5 were converted into law by the Italian senate on 15 June 2017. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170623_ib.html#Italy

New Zealand: Inland Revenue will begin implementing the automatic exchange of information (AEOI) on 1 July 2017. As from that date, New Zealand's financial institutions will be required to identify accounts held or controlled by foreign tax residents and collect relevant information. The AEOI rules require financial institutions to pass on more information from foreign tax residents with pre-existing and new accounts to Inland Revenue by 30 June each year. Inland Revenue will pass this information on to relevant foreign tax authorities. The initial list of 58 jurisdictions with which Inland Revenue can share information will be announced shortly, and will be expanded over time.

OECD: The OECD is gathering input for stage 1 of the mutual agreement procedure peer review and monitoring process under action 14 of the BEPS project ("Making Dispute Resolution Mechanisms More Effective") for the following countries: Czech Republic, Denmark, Finland, Korea, Norway, Poland, Singapore and Spain (for prior coverage, see *World Tax Advisor*, 11 November 2016). Under stage 1, implementation of the action 14 minimum standard is

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

evaluated for inclusive framework members. Taxpayers may submit input for the stage 1 reviews for these countries by completing a questionnaire (which can be found on the OECD's website) and returning it by 7 July 2017.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161111_bc.html

OECD: In a ceremony held on 7 June 2017, the *Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) was signed by 68 countries and jurisdictions, with eight additional countries expressing their intent to sign the MLI (see OECD alert, 9 June 2017). In addition, Panama has formally expressed its intent to sign the MLI.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-9-june-2017.pdf

OECD: On 7 June 2017, Botswana became the 99th member of the inclusive framework on BEPS. Under the inclusive framework, all jurisdictions that commit to the BEPS project will participate as BEPS associates of the OECD's Committee on Fiscal Affairs. Joining the BEPS inclusive framework means that Botswana must implement the four minimum standards: countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution.

Singapore: The Inland Revenue Authority has opened a consultation on a proposal to introduce a GST registration requirement for foreign vendors that supply digital services to consumers in Singapore, in line with the recommendations under BEPS action 1. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170623_ib.html#Singapore

---

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-United Kingdom: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170623_2.html

Estonia-Kyrgyzstan: When in effect, the treaty signed on 10 April 2017 provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 10%. A 10% rate will apply to interest, and a 5% rate will apply to royalties.

India: The Ahmedabad Income-tax Appellate Tribunal (ITAT) issued a decision on 1 June 2017, concluding that payments made by an Indian taxpayer to a German company for the sharing of standard operating procedures (SOPs) were subject to Indian withholding tax under article 12 of the India-Germany tax treaty. The ITAT found that the sharing of the SOPs amounted to the sharing of information concerning "industrial, commercial or scientific experience," which falls within the definition of a royalty under the treaty.

India-United Kingdom: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170623_6.html

Ireland-Kazakhstan: When in effect, the treaty signed on 26 April 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 15%. A 10% rate will apply to interest and royalties.

OECD: The *Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) was signed on 7 June 2017 by 68 countries and jurisdictions, with eight additional countries expressing their intent to sign the MLI (see OECD alert, 9 June 2017). Panama subsequently formally expressed its intent to sign the MLI.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-9-june-2017.pdf

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.

Pakistan: On 7 June 2017, the OECD announced that Pakistan has signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA), with the first information exchanges scheduled to take place in September 2018.

Sweden-Armenia: The 2016 treaty entered into force on 1 June 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 company (other than a partnership) (i) that holds at least 25% of the capital or voting power of the payer company; (ii) that has held the participation for at least two years before making a claim for the application of the 0% rate; and (iii) in whose hands the dividends are exempt from tax. A 5% rate will apply to dividends paid to a company (other than a partnership) that holds at least 10% of the capital or voting power of the payer company; otherwise, the rate will be 15%. A 5% rate will apply to interest and royalties.

Switzerland-Kosovo: When in effect, the treaty signed on 26 May 2017 provides for a 0% withholding tax rate on dividends paid to a pension fund or similar institution; a 5% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company for a 365-day period that includes the day the dividends are paid (for the purpose of computing that period, any changes in ownership that directly result from a corporate reorganization, such as a merger or division, of the company that holds the shares or the payer company are not taken into account); otherwise, the rate will be 15%. A 0% rate will apply to interest paid in respect of the following: (i) the credit sale of any equipment, goods or services; (ii) bank loans; and (iii) intercompany loans, or loans to a pension fund or similar institution; otherwise, the rate will be 5%. The treaty does not specify a maximum rate on royalties, so the domestic rate will apply.

Taiwan: Changes to the Tax Collection Act that that allow the government to conclude tax information exchange agreements with other jurisdictions became effective on 14 June 2017 (for prior coverage, see tax@hand, 28 February 2017). The amendments were made in the context of the OECD common reporting standard initiative.
URL: https://www.taxathand.com/article/6544/Taiwan/2017/Measures-to-facilitate-EOI-approved

United States: An intergovernmental agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act, dated 1 June 2017, has been signed with Montenegro.

Global Tax Alerts

OECD
BEPS Action 15: 68 jurisdictions sign MLI to modify bilateral tax treaties
On 7 June 2017, representatives covering 68 jurisdictions gathered at the OECD's headquarters in Paris for the signing of the *Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting* (MLI). Nine other jurisdictions have expressed their intent to sign the MLI.
Issue date: 9 June 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-9-june-2017.pdf

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

© 2017. For information,
contact Deloitte Touche Tohmatsu Limited.