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India budget 2015 presented

The 2015-16 budget, presented by the finance minister on 28 February 2015, contains some measures that aim to make it easier to conduct business in the country. The measures include a corporate tax rate reduction, clarification on the indirect transfer of shares and a deferral of the general anti-avoidance rule (GAAR). Highlights of the budget proposals that would affect companies are as follows:

Tax rates

Several tax rate changes are proposed:

- The corporate income tax rate would be reduced from 30% (excluding the surcharge and cess) to 25% over a four-year period, although this would be accompanied by base-broadening measures that would include the rationalization and elimination of certain tax exemptions and incentives. The modifications would apply as from financial year

2016-17. The tax rate for foreign companies would remain unchanged at 40% (excluding the surcharge and cess).

- The minimum alternate tax (MAT) provisions would not apply to capital gains derived by foreign institutional investors, except for short-term capital gains that are not subject to securities transaction tax.
- The surcharge on the dividend distribution tax would increase from 10% to 12%, with the result that the effective rate of the dividend distribution tax would increase marginally from 19.995% to 20.361% on the amount of the actual dividend paid.
- Interest paid by an Indian permanent establishment (PE) of a foreign bank to its head office or other branches would be considered income deemed to accrue in India and, therefore, would be taxable in India.
- The domestic withholding tax rate on royalties and fees for technical services paid to a nonresident company would be reduced from 25% to 10% (plus the applicable surcharge and cess), with effect from 1 April 2016. This rate change would be particularly beneficial for recipients in certain countries where the tax treaties with India provide for a 15% withholding tax rate (the Indian domestic rate would apply because it would be lower). In such a situation, the nonresident recipient would not be required to produce a tax residence certificate, but it would have to register for tax purposes in India and obtain a permanent account number to qualify for the 10% rate.
- The 5% concessional tax rate applicable to foreign institutional investors and qualified financial institutions on interest income from rupee-denominated bonds of Indian companies and government securities, which is due to expire on 31 May 2015, would be extended to 30 June 2017.
- A concessional capital gains tax regime would apply to the sponsor of a real estate investment trust (REIT)/infrastructure investment trust where units were acquired in exchange for a shareholding in the special purpose vehicle; a 15% tax would apply on short-term capital gains (where the units are held for less than 12 months), and long-term gains would be exempt, provided securities transaction tax is paid. Rental income earned by a REIT would be granted pass-through status, and withholding tax would be levied at the time income is distributed to unit holders (rather than while it is in the hands of the REIT, as under current rules).

Definition of residence

The definition of the term “residence” of a company would be amended to introduce the “place of effective management” (POEM) concept, i.e. a company would be resident in India if it is an Indian company or if its POEM is situated in India. POEM would be defined as a place where key management and commercial decisions necessary for the conduct of the business of an entity as a whole are made, in substance. The POEM concept would replace the current control and management test.

Indirect transfers of shares

The tax treatment of the indirect transfer of shares or interests in a foreign company has been subject to intense controversy and litigation in India for several years. In 2012, the Indian Supreme Court ruled in the *Vodafone* case that a transfer by a nonresident to another nonresident of shares of a foreign company that held an Indian company did not constitute a transfer of capital assets situated in India and, therefore, the transaction was not taxable in India.

The Income Tax Act (ITA) subsequently was amended to provide that gains arising from transfers of shares or interests in a foreign company are taxable (retroactively to 1961) in India if the foreign company's shares, directly or indirectly, derive their value "substantially" from assets located in India. The ITA, however, does not define the term "substantially." The budget 2015-16 contains wording that would clarify the term: the indirect transfer provisions would be triggered only if the value of the assets located in India exceeds INR 100 million and represents at least 50% of value of all of the assets owned by the foreign company. However, the budget does not address the retroactive nature of the indirect transfer provisions.

Certain exemptions to the indirect transfer provisions are proposed:

- A nonresident taxpayer that holds a minority stake in a foreign company or entity would be exempt from the taxation of gains arising from indirect share transfers; a minority stake, broadly, would mean a participation of less than 5% of the capital or voting power, coupled with a lack of rights of management or control; and
- An indirect transfer pursuant to an overseas merger or demerger of a foreign company would be exempt, provided certain conditions are satisfied.

Reporting obligations related to indirect share transfers would be imposed on the Indian company, with penalties for noncompliance.

General anti-avoidance rule

The GAAR, which was to be implemented as from 1 April 2015, would be deferred by two years and would be effective as from 1 April 2017. Significantly, the GAAR would apply only prospectively, to investments made after that date. Two reasons have been cited for the deferral of the GAAR: (1) concerns have been expressed regarding certain aspects of the rule; and (2) India is an active participant in the OECD's base erosion and profit shifting (BEPS) project and, therefore, the GAAR provisions would be implemented as part of a comprehensive regime to address the OECD's recommendations on BEPS and aggressive tax avoidance.

Companies with existing or proposed investments in India may wish to review their positions, including holding company structures and cash repatriation strategies, in light of the BEPS action plan and the proposed GAAR.

Other measures

- There has been considerable debate on the taxability of offshore funds where the fund managers are based in India, i.e. the presence of fund managers in the country may create a PE or "business connection," thus exposing the fund to additional tax liability. To facilitate the relocation of fund managers of offshore funds to India, the budget proposes rules that would prevent PE/business connection status if certain requirements are met and that would provide that an offshore fund would not be treated as tax resident in India merely because fund management activities are carried on in India.

- The threshold for the application of the domestic transfer pricing rules would be increased from an aggregate value of INR 50 million to INR 200 million in the previous year, with a view to reducing the compliance burden on small businesses. The proposed amendment would be applicable as from 1 April 2015.
- The wealth tax would be abolished as from 1 April 2015.
- The effective rate of the service tax would be increased from 12.36% to 16%.
- The budget confirms the commitment to introduce a single nationwide Goods and Services Tax (GST) as from 1 April 2016. The introduction of GST is expected to transform the Indian economy and create a common marketplace that should facilitate doing business in the country.

The parliament is expected to consider the budget proposals over the next two months.

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China:
Tax authorities stepping up enforcement of individual income tax compliance

The tax authorities across China are stepping up their efforts to enhance the collection and administration of individual income tax (IIT) and, as part of this initiative, are carrying out more frequent and more extensive investigations of both individuals and companies. This trend is expected to continue in 2015, with an increased focus on both foreigners working in China and Chinese individuals receiving foreign-source income.

Foreigners working in China

IIT compliance by foreigners working in China has featured prominently on the radar of the tax authorities in recent years. Below is a brief summary of some of the initiatives taken by the authorities in Beijing, Guangzhou and Shanghai and Jiangsu.

Beijing: In late 2013, the Beijing Local Tax Bureau set up an International Tax Administration Division (ITA Division) to enhance the collection of IIT and the administration of cross-border secondees. Soon thereafter, the following took place:

- Certain foreign investment enterprises (FIEs) with relatively large populations of foreign employees in five districts (Chaoyang, Dongcheng, Xicheng, Haidian and Shunyi) were asked to carry out "self-inspections" of the IIT compliance of their foreign employees.

Although the inspections have been completed, it is possible that tax audits may be initiated based on the results of the self-inspections.

- The Beijing Local Tax Bureau entered into arrangements with several municipal departments (such as the Beijing Industrial and Commercial Bureau, Beijing Municipal Human Resources and Social Security Bureau, Beijing Public Security Bureau) to share and exchange information to improve IIT compliance by foreign individuals working in Beijing. Foreigners found to have underpaid tax may not be allowed to depart from China.

In addition to the above, the number of IIT audits is on the rise, and it is likely that the self-inspection initiative will be expanded to include FIEs that were not included in the first round of self-inspections.

Guangzhou: An “internal working order” issued by the Guangzhou tax authorities in 2013 required the tax bureaus at all levels to begin conducting tax audits or to ask companies to carry out self-inspections. Companies with foreign employees (including employees from Hong Kong, Macao and Taiwan), particularly senior executives, may be targeted for audit/self-inspection if their employees have the following characteristics:

- Constant nil filing;
- Low-income reporting; and
- Receipt of salary income paid from overseas companies.

The Guangzhou Municipal Local Taxation Bureau established the Large Business Division in 2014 to administer and collect taxes from Guangzhou-based company headquarters and businesses and their subsidiaries, as well as other companies that have more than RMB 30 million in local tax obligations (including tax withholding obligations).

Several district-level tax authorities, including the Large Business Division, have issued official notices to companies with regard to on-site tax audits or the production of documentation, and rounds of city-wide audits and self-inspections. Taxpayers or withholding agents have been asked to provide inspection results and relevant documentation to the tax bureau within short periods of time, with an inspection covering the prior three to five years, depending on the location.

Shanghai and Jiangsu: The Shanghai and Jiangsu tax authorities conduct frequent tax audits and self-inspections on the compliance status of foreign employees of certain FIEs. Additionally, these tax authorities have begun to strictly enforce registration and reporting requirements relating to equity plans, as well as the rules relating to the employers’ annual tax clearance and the tax de-registration process for foreign individuals, etc.

Chinese individuals receiving foreign-source income

Under current IIT rules, Chinese individuals generally are subject to Chinese IIT on their worldwide income, although, until recently, the worldwide taxation requirement was not strictly enforced. This is beginning to change. The OECD base erosion and profit shifting (BEPS) initiative signifies strengthened international cooperation on the tax administration of cross-border transactions/mobility, and China has expressed strong support for the project. Hence, individuals engaging in cross-border transactions or receiving foreign-source income could be subject to stricter scrutiny. In many locations, the local tax authorities already have taken or are starting to take steps to improve the administration of Chinese individuals receiving foreign-source income. This trend is in line with the anticipated China IIT reform that is heading toward a comprehensive IIT reporting system.

Beijing: Although the Beijing Local Tax Bureau has not yet announced any concrete plans to tackle the administration of Chinese individuals with overseas income, this appears to be included on the 2015 project plan for the ITA Division. Additionally, recent tax audits have included the compliance status of Chinese outbound assignees, and some companies have been challenged by the tax authorities for failing to comply with their IIT withholding obligations on outbound assignees' overseas income paid or borne by the Chinese companies during the overseas secondment period.

Guangzhou: Following the issuance of guidance relating to the IIT collection enforcement for Chinese outbound assignments, 150 large companies recently were asked by the Guangzhou tax authorities to attend a training that focused on the Chinese tax implications of Chinese outbound assignees, and the corresponding withholding tax obligations for companies. More action can be expected in the future.

Shanghai and Jiangsu: Similar to Beijing, the reporting status of outbound assignees has been included in the self-review documentation for some tax bureaus, and companies may be challenged if they lack proper internal controls. In addition, some local tax bureaus have adopted a strict position on the employer's responsibility in IIT filing for outbound assignees, particularly with respect to their overseas income during the international assignment.

Comments

In view of the above, companies and individuals should consider the following actions:

- Conducting an internal review of the tax compliance status of foreigners working in China to ensure compliance and enhance internal controls on risk management;
- Ensuring that any existing arrangements are in line with the prevailing tax regulations and local practice, and are properly documented and reported to the tax bureau, where required;
- Reviewing the current tax compliance status of Chinese outbound assignees to ensure that the relevant IIT withholding tax and/or reporting obligations have been fulfilled from both a company and an individual perspective; and
- Obtaining professional advice as needed.

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Greece:
Guidance issued on taxation of Greek-source income derived by nonresidents

Greece's Ministry of Finance issued three circulars on 26 January 2015 that provide clarifications regarding the tax treatment of Greek-source dividends, interest and royalties derived by nonresidents as from 1 January 2014.

- POL 1032 clarifies that a nonresident legal entity will not be subject to Greek tax on gains derived from the transfer of shares, units, derivatives, warrants or other securities of a Greek company unless the entity has a Greek permanent establishment (PE) and the gains are attributable to that PE. The circular also clarifies that nonresident legal entities are not subject to Greek capital gains tax on the transfer of Greek government bonds or corporate bonds. Finally, the circular clarifies the tax treatment of capital gains derived by nonresident individuals from the transfer of Greek securities, including circumstances in which the gains may be exempt from Greek tax.
- POL 1042 sets out certain supporting documentation that a nonresident investor (including an EU/EEA/EFTA UCITS) must submit to claim a tax exemption or reduced withholding tax rate on Greek-source dividends, interest (including interest from Greek government bonds and treasury bills) or royalties on the basis of a tax treaty or Greek domestic legislation. The circular also clarifies that interest derived by a nonresident from Greek corporate bonds is subject to a 15% Greek withholding tax, unless a lower rate applies under an applicable tax treaty. However, interest from Greek government bonds and state treasury bills derived by a nonresident legal entity without a Greek PE is not subject to Greek withholding tax, nor is interest income received by a foreign bank (except for interest derived from Greek corporate bonds).
- POL 1039 clarifies the requirements for the application of the exemption from withholding tax under the EU parent-subsidiary and interest and royalties directives. Specifically, a qualifying EU entity deriving Greek-source income in the form of dividends, interest or royalties can request a refund of tax withheld in cases where the Greek legal entity levied Greek withholding tax instead of depositing a guarantee for the tax due during the period before the EU recipient had held the required percentage of the Greek legal entity (10% in the case of dividends, and 25% in the case of interest and royalties) for at least two years, as required to obtain a withholding tax exemption under Greece's implementation of the EU parent-subsidiary or interest and royalties directive. An EU recipient entity also may file a refund claim in cases where the Greek legal entity, for any reason, levied Greek withholding tax even though the conditions for the application of the relevant EU directive were satisfied.

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Hong Kong:
Budget released for 2015/16

The Hong Kong Financial Secretary delivered the 2015/16 budget on 25 February 2015, which includes wide-ranging measures to support certain sectors, diversify economic development and reinforce long-term economic growth. More “sweeteners” and similar tax measures are offered to businesses and individuals than in the last few years’ budgets, including an extension of the 75% tax rebate on profits tax (up to HKD 20,000) and the introduction of a 75% rebate on salaries tax and tax under personal assessment (up to HKD 20,000) for final 2014/15 tax payable. However, fewer housing measures than expected are included in the budget; although the government proposes contributing HKD 27.5 billion to the Housing Reserve, no immediate measures are introduced to ease the public’s financial burden regarding housing.

Budget measures likely to be of interest to multinational companies include the following:

- Measures are included that could increase the competitiveness of Hong Kong’s asset management businesses. A bill will be presented to the legislative Council that would extend the profits tax exemption for offshore funds to private equity funds, and the government plans to formulate legislative proposals on the legal framework for open-ended fund companies.
- Incentives aimed at attracting multinational and Mainland China enterprises to manage their global or regional treasury activities from Hong Kong would be provided, including a relaxation of the tax deduction criteria for interest expense for corporate treasury centers and a 50% reduction in the profits tax for specified treasury activities.
- The tax deduction currently allowed for capital expenditure for the purchase of patents, know-how, copyrights, designs and trademarks would be expanded to include other types of intellectual property rights.
- Short-term measures, including waivers of license fees and other fees, would be provided to support sectors (e.g. tourism, catering and transportation) affected by the recent political unrest in Hong Kong.
- Measures would be provided to support small and medium-sized enterprises, start-up companies, social enterprises and cultural and creative industries (e.g. fashion, film).
- A bill will be introduced in 2016 to establish an automatic exchange of information regime that would require financial institutions to regularly report specified financial account information to the Inland Revenue Department, which would exchange the information with other tax jurisdictions beginning in 2018.

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Italy:
Changes proposed to anti-abuse rules

The Italian government released a draft decree on 24 December 2014 that would modify the anti-abuse rules and revise criminal tax penalties. Specifically, the draft decree would repeal the current domestic anti-abuse provision, which is relevant only for income tax purposes and applies only to specific listed transactions, and would introduce a general anti-abuse rule (GAAR) that would apply for both direct and indirect tax purposes and would not be limited to specific listed transactions.

The new concept of "abusive conduct" provided by the draft decree (and in line with the European Commission recommendation on aggressive tax planning) would cover both direct taxes (e.g. corporate income tax, withholding taxes) and indirect taxes (e.g. VAT, registration tax), and would be relevant only where no other specific anti-evasion or anti-fraud rules apply.

Abusive conduct would be considered to be present only where an arrangement is carried out:

- Without economic substance;
- For the purpose of obtaining an undue tax advantage; and
- Such undue tax advantage is the main purpose of the arrangement.

The draft decree clarifies that conduct would not be deemed to be abusive if it is driven by genuine nontax reasons (e.g. structural, administrative or financial needs) that are not marginal considerations. The draft decree also provides that taxpayers would be free to choose the most tax-efficient option available, for instance, the use of a merger (a neutral reorganization for tax purposes) instead of a liquidation (which is not tax-neutral) to wind up a company.

The tax authorities would be able to challenge perceived abusive conduct only:

- After having provided the taxpayer the opportunity to prove the existence of a business purpose for the structure/transaction (the taxpayer would have 60 days to respond after receiving an official request); and
- Through a specific tax assessment procedure, under which the authorities would be required to explain why they consider the arrangement abusive.

Taxpayers would be able to request two specific types of advance rulings from the tax authorities aimed at (i) determining that an arrangement does not involve abusive conduct; or (ii) determining that specific anti-abuse provisions (such as the limitation on net operating loss carryforwards in the case of mergers/demergers) do not apply.

Finally, the draft decree clarifies that only administrative penalties would be imposed in cases involving abusive conduct; criminal tax penalties would be explicitly excluded.

The draft decree is expected to be approved once the competent parliamentary commission issues its technical opinion (the end of May is the current deadline). The provisions will enter into force on the first day of the month following the official approval of the draft decree, but they also will apply retroactively to arrangements already in place that have not yet been challenged by the tax authorities (and for which the statute of limitations has not expired).

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Mexico:
Deadline to submit electronic accounting records extended

Mexico's tax authorities (SAT) issued rules on 27 February 2015 that extend the period for companies to electronically submit detailed accounting records and journal entries to the SAT internet portal (for previous coverage, see *World Tax Advisor*, 12 December 2014). The new rules (which were published in the official gazette on 3 March 2015) include the following provisions:
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/141212_7.html

- The due date for institutions that are part of the financial system (i.e. financial and banking institutions) and taxpayers with taxable income equal to or exceeding MXN 4 million in 2013 to submit a chart of accounts and a monthly trial balance in electronic format for the January 2015 period has been extended from 3 March 2015 to 3 April 2015. The extended filing deadlines for the February and March 2015 reporting periods are 3 April 2015 and 3 May 2015, respectively.
- Other taxpayers (e.g. taxpayers with taxable income of less than MXN 4 million in 2013 and taxpayers engaged in agricultural, forestry, farming or fishing activities) must submit their electronic accounting records starting in 2016, according to the due dates previously announced (generally, by the third day of the second month after the month for which the information is submitted).
- The quarterly filing deadlines for entities that issue securities on the Mexican stock exchange or on foreign recognized exchanges have not changed; the first reporting deadline for taxpayers required to begin submitting electronic accounting records in 2015 will be 3 May 2015.
- Journal entries requested during the course of an audit, or to validate a tax refund or offset, will be required for information generated in periods starting from 1 July 2015 or from 1 January 2016, depending on the year in which the taxpayer is required to begin submitting electronic accounting records (extended from periods starting from January 2015 or 2016).

Comments

Implementation of the electronic accounting records requirement continues to be a challenge for many Mexican companies, so this extension should be welcome. It should be noted that Mexico's Supreme Court issued a decision on 26 November 2014 that temporarily suspended the electronic accounting records requirement for taxpayers that have challenged the requirement on constitutional grounds. Taxpayers that have not yet challenged the obligation still may do so once they have complied with the first reporting deadline.

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Netherlands:
Procedure to obtain dividend withholding tax exemption revised

New regulations published by the Netherlands government on 3 February 2015 set out the procedure for obtaining an exemption or a refund of withholding tax for intercompany dividends under Dutch tax treaties. The regulations became effective on 4 February, replacing regulations dating from 2010, and will apply to dividends paid or made payable on or after 1 March 2015.

The main changes in the new regulations are as follows:

- If a Dutch company distributes intercompany dividends to a foreign entity that is eligible for an exemption from dividend withholding tax, the Dutch distributing company can file a request for an exemption with the "*Belastingdienst kantoor* Arnhem, Team *Dividendbelasting*" (Tax office Arnhem, Dividend Tax Team), rather than with the local tax inspectorate (as previously was required). However, the local competent inspector will continue to issue the decision on the request.
- If the tax authorities approve a withholding tax exemption on intercompany dividends, the decision will be valid for each entity covered for a maximum of four years. Companies distributing dividends, therefore, periodically will have to confirm that their approvals remain valid. The four-year period applies to both new and existing approvals (for existing approvals, the four-year period starts to run on 4 February 2015, so these approvals will begin to expire in 2019).

To comply with the regulations, taxpayers will have to file an exemption request at least once every four years; however, if the relevant facts and circumstances change, taxpayers should file a new request regardless of whether the four-year period has expired, to avoid uncertainty.

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Singapore:
Highlights of 2015 budget

The principal focus of Singapore's 2015 budget, announced by the Deputy Prime Minister and Minister for Finance on 23 February 2015, is to build for the future and strengthen the social fabric. Changes to the corporate tax system generally are relatively minor, with extensions announced for major tax incentives for the insurance, maritime and real estate investment trust (REIT) industries. Personal income tax rates also would be increased and made more progressive.

Measures affecting businesses

Some of the key provisions that would affect businesses include the following (further details on some of the measures are expected to be released in May 2015):

- The corporate income tax rate would remain unchanged at 17%, as would the partial tax exemption for a company's first SGD 300,000 of normal chargeable income. The special three-year corporate income tax rebate (30% of tax payable, up to a maximum of SGD 30,000 per year of assessment (YA)) that originally was available for YA 2013 to YA 2015 would be extended for an additional two years (YA 2016 and YA 2017), but the maximum rebate would be reduced to SGD 20,000 per YA.
- The Productivity and Innovation Credit (PIC) scheme would continue to grant a total of a 400% tax deduction or an allowance for the first SGD 400,000 of qualifying expenses incurred from YA 2011 to YA 2018 for qualifying activities. In addition, the combined qualifying expenditure caps for YA 2016 to YA 2018 would continue to be SGD 1.2 million under the PIC scheme and SGD 1.8 million under the PIC+ scheme.
- The PIC bonus, which allows qualifying businesses that invest a minimum of SGD 5,000 per YA (YA 2013 to YA 2015) in qualifying activities to receive a dollar-for-dollar matching cash bonus, would lapse after YA 2015.
- The mergers and acquisitions (M&A) scheme would be extended for five years, until 31 March 2020. In addition, for qualifying M&A transactions carried out from 1 April 2015, the following changes are proposed:
    - The M&A allowance rate would be 25% (up from 5%) of up to SGD 20 million (reduced from SGD 100 million) of the acquisition value of all qualifying M&A per YA;
    - Stamp duty relief would be available on the transfer of unlisted ordinary shares of up to SGD 20 million (reduced from SGD 100 million) of the value of qualifying M&A deals, capped at SGD 40,000 of stamp duty relief per financial year;
    - Shareholding eligibility criteria would be relaxed;
    - The existing 75% shareholding eligibility tier would be removed; and
    - The 12-month look-back period would be removed.
- The Double Tax Deduction (DTD) for Internationalization scheme would be expanded to include manpower costs incurred from 1 July 2015 to 31 March 2020 for Singaporeans to work in new overseas entities. The amount of such qualifying manpower expenses to be allowed a DTD under the scheme would be capped at SGD 1 million per approved entity per YA, subject to certain conditions.
- A new International Growth Scheme (IGS) would allow qualifying Singapore companies to enjoy a 10% concessionary tax rate, for a period not exceeding five years, on their

incremental income from qualifying activities from 1 April 2015 to 31 March 2020. Incremental income would mean income in excess of the company's average income for the last three years from relevant qualifying activities, such as headquarter functions and specific business lines.

- The enhanced tax deduction for qualifying charitable giving donations by corporations and individuals would be increased to 300% (up from 250%) from 1 January 2015 through 31 December 2015. In addition, the enhanced tax deduction of 250% would be extended for qualifying donations made from 1 January 2016 through 31 December 2018.
- The tax concession on royalties and other payments derived by an individual who is the inventor, author, proprietor, designer or creator of approved intellectual property or approved innovation (or by any company in which the individual beneficially owns all of the issued shares) as consideration for the assignment of, or the rights in, the approved intellectual property or approved innovation would be withdrawn from YA 2017.
- Several additional tax incentive schemes would be extended (or modified), including the following:
    - The Approved Headquarters Incentive, which grants approved companies a tax exemption or a 10% concessionary tax rate on income derived from the provision of qualifying headquarter services or treasury activities, would be withdrawn as from 1 October 2015. However, the existing Development and Expansion Incentive still would be available to companies planning to locate their regional headquarters in Singapore, if the qualifying conditions are met.
    - The Investment Allowance – Energy Efficiency (IA-EE) scheme, which grants companies an allowance for investment in energy efficient or green data center projects and was set to lapse on 31 March 2015, would be extended until 31 March 2021.
    - The 10% concessionary tax rate on qualifying income for insurers carrying on offshore insurance businesses would be extended for five years until 31 March 2020, and renamed as the "Insurance Business Development Incentive."
    - To further develop Singapore's status as an international maritime center, the Maritime Sector Incentive (MSI) scheme would be enhanced:
        - The automatic withholding tax exemption, subject to certain conditions, would apply to qualifying payments for finance leases; hire-purchase arrangements; and loans used to finance equity injections into wholly owned special purpose vehicles (SPVs) or intercompany loans to wholly owned SPVs for the SPVs' purchase/construction of vessels, containers and intermodal equipment. The exemption also would apply to qualifying payments made on qualifying foreign loans entered into on or before 31 May 2021 to finance the purchase or construction of the above assets.
        - In addition to the tax exemption on qualifying income derived from operating certain foreign ships, qualifying profits remitted from approved foreign branches by MSI entities also would be entitled to a tax exemption.
        - The definition of qualifying ship management activities under this incentive would be updated to keep pace with industry changes.
    - To continue to promote the listing of REITs in Singapore and strengthen Singapore's position as a REIT hub in Asia, the package of income tax concessions for REITs, including the following, would be extended until 31 March

2020; however, the stamp duty concessions for REITs would lapse after 31 March 2015:
    - Nonresident, nonindividual investors in listed REITs are subject to a concessionary tax rate of 10% on distributions, by the trustee, of taxable income subject to tax transparency treatment; and
    - Trustees of listed REITs or their wholly owned Singapore resident subsidiaries are, subject to various conditions, exempt from Singapore income tax on qualifying foreign-source income (i.e. dividend income, interest income, distributions by a nonresident trustee of a trust and foreign branch profits).
  - The 10% concessionary tax rate on income earned by a leasing company from offshore leasing of any machinery or plant would cease on 1 January 2016, and any income earned by a leasing company thereafter would be subject to tax at the prevailing corporate tax rate.
  - The Angel Investors Tax Deduction (AITD) scheme, which applies to qualifying investments made in qualifying start-ups and was scheduled to lapse after 31 March 2015, would be enhanced and extended. Effective 1 April 2015, the AITD would be extended for another five years until 31 March 2020, and enhanced to include new qualifying investments made from 24 February 2015 to 31 March 2020 that are co-funded by the government under the SPRING Start-up Enterprise Development Scheme (SEEDS) or Business Angel Scheme (BAS).
  - The Pioneer Service Incentive for venture capital fund management companies managing “Section 13H” venture capital funds, which allows a tax exemption on certain income (management fees and performance bonuses), would be withdrawn. In its place, a new 5% concessionary tax rate would apply beginning 1 April 2015 to approved venture capital fund management companies.
- The minimum loan amount that a Singapore resident company must make under the Approved Foreign Loan (AFL) provisions to qualify for a withholding tax exemption or a concessionary tax rate on interest payments made to a nonresident person would be increased to SGD 20 million (from SGD 200,000) from 24 February 2015.
- The tax deduction for collective impairment provisions made by banks, merchant banks and finance companies would be extended until YA 2019 or YA 2020, depending on the financial year end of the bank or finance company.
- The Section 13X Enhanced-Tier Fund scheme would be enhanced to accommodate master-feeder fund structures that hold their investments through SPVs. This means that the master and feeder funds and SPVs within a master-feeder fund structure could apply for the scheme and meet the required economic conditions on a collective basis.

Measures affecting individuals

The top marginal personal income tax rate would be increased from 20% to 22% for income exceeding SGD 320,000, with effect from YA 2017. In addition, a more progressive personal income tax rate structure for resident individual taxpayers would be applied from YA 2017, with increases in the marginal personal income tax rates for income exceeding SGD 160,000.

Certain measures affecting businesses also may be relevant for individuals, including the modifications to the enhanced tax deduction for qualified charitable giving donations and the withdrawal of the concession on royalties and other payments from approved intellectual property or innovation.

Comments

Several tax changes included in the 2015 budget are designed to enable Singapore companies to more easily innovate and expand into overseas markets.

The revisions to the M&A scheme should be welcome news for many Singapore companies, especially those looking to restructure, acquire, merge or consolidate to be more competitive, as well as scalable for the future regional economic integration in the ASEAN Economic Community. Singapore continues to offer its resident companies incentives to expand into international markets, and the new IGS is an example of this.

The budget proposals likely will be enacted toward the end of 2015, after parliamentary readings.

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South Africa:
2015 budget delivered

The Minister of Finance delivered the 2015 budget speech to parliament on 25 February 2015, including measures that would affect company tax, international tax, personal income tax and indirect taxes. Highlights of the tax proposals mentioned in the speech and set out in the detailed budget review document include the following:

- Certain changes to the controlled foreign company (CFC) rules, including the reinstatement of specific diversionary rules to prevent CFCs from shifting income offshore through sales of goods to a related resident;
- Modification of the source rules for the withholding tax on interest (which applies as from 1 March 2015), and clarification of the definition of interest for withholding tax purposes;
- Certain changes to the withholding tax on service fees, which is to be introduced as from 1 January 2016;
- Clarification regarding the timing of the withholding tax that applies to sales of immovable property by nonresidents;
- Relaxation of the anti-avoidance provision relating to an issue of shares by a resident company as consideration to acquire shares in a foreign company;
- Certain changes to create an environment to facilitate Islamic finance;
- Elimination of the foreign tax credit for service fees sourced in South Africa;
- Measures to make the turnover tax regime for micro businesses more attractive and provide more relief for small business corporations;

- Modifications to treat hedge funds similarly to other collective investment schemes;
- A 1% rate increase to all individual income tax brackets (except for the lowest marginal rate, which will remain at 18%);
- Further refinements to the carbon tax (the publication of the draft Carbon Tax Bill later in 2015 will allow for a further period of consultation);
- Measures to simplify foreign exchange control;
- A temporary increase in the electricity levy;
- Changes to the transfer duty rates and brackets; and
- Increases to the excise duty on alcoholic beverages and tobacco products.

The Minister also acknowledged the Davis Tax Committee's recommendations on base erosion and profit shifting (BEPS), including proposals to improve transfer pricing documentation and reporting, which generally align with the broader OECD recommendations and likely will influence legislative changes in 2016.

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Switzerland:
Lower safe harbor intercompany interest rates for 2015 announced

The Swiss Federal Tax Administration (FTA) issued a circular on 13 February 2015 that contains new safe harbor interest rates for intragroup loans. These rates are used by the FTA to determine the arm's length nature of interest on intragroup loans receivable or payable. The circular prescribes the minimum interest rates for loans granted by a Swiss company to its shareholders or related parties, as well as the maximum interest rates for loans granted by the shareholders or related parties to a Swiss company in Swiss francs or a foreign currency. The safe harbor interest rates for 2015, which apply retroactively as from 1 January 2015, generally are significantly lower than in previous years.

Safe harbor rates for Swiss franc (CHF) loans

The new minimum interest rates on CHF-denominated loans granted by a Swiss resident company to a shareholder or related party generally are as follows:

- Equity-financed loans: 0.25% (1.5% in 2014);
- Debt-financed loans up to CHF 10 million: Actual interest incurred, plus 0.5% (minimum 1.5% in 2014); and
- Debt-financed loans exceeding CHF 10 million: Actual interest incurred, plus 0.25% (minimum 1.5% in 2014).

The new maximum interest rate on a CHF-denominated loan granted by a shareholder or related party to a Swiss trading or production company is 1% (3.75% in 2014), although loans of up to CHF 1 million received by a Swiss trading or production company may bear interest of up to 3%.

Different interest rates apply to real estate loans and loans relating to holding and financing companies.

Safe harbor rates for foreign currency loans

The circular also contains updated safe harbor rates for loans denominated in a foreign currency. The safe harbor rates for loans denominated in US dollars and Euros are, for example, as follows:

- EUR-denominated loans: 1% (2% in 2014); and
- USD-denominated loans: 2.25% (unchanged from 2014).

The safe harbor rates for loans denominated in a currency other than CHF generally are the same for both loans granted and loans received.

If the safe harbor rate for a foreign currency-denominated loan is lower than the CHF safe harbor rate for the same year, the CHF safe harbor rate is considered the maximum allowable rate on loans payable by a Swiss entity.

The circular also requires taxpayers that borrow in foreign currency at higher interest rates to justify to the FTA why they did not borrow in Swiss francs.

In principle, a taxpayer can apply an interest rate that deviates from the published safe harbor rate, but in the event of a tax audit, the taxpayer would have to demonstrate that the interest rate applied meets the arm's length standard, and the burden of proof is set quite high. Interest expense that exceeds an arm's length amount or interest income that is less than arm's length interest may be recharacterized as a deemed dividend subject to Swiss dividend withholding tax at a rate of 35% (grossed up to 53.8% if not borne by the recipient) and included in taxable income. Thus, applying the safe harbor interest rates should provide certainty to taxpayers and should not lead to any adverse Swiss tax consequences.

Relief from Swiss withholding tax may be possible under domestic law in the case of intercompany loans between Swiss entities, or under an applicable tax treaty or the savings agreement between Switzerland and the EU in cross-border situations.

Comments

Affected taxpayers may wish to consider one or more of the following options:

- Adjust the interest rate to the safe harbor rate, although this could create transfer pricing issues in the country of the lender.
- Convert a EUR or CHF-denominated loan into a USD loan, where the safe harbor rate remains at 2.25%, although this could give rise to forex issues and exposure. In addition, as noted above, the circular requires taxpayers that borrow in a foreign currency at higher interest rates to justify why they did not borrow in Swiss francs.

- De-leverage the Swiss entity by repaying debt or by contributing more equity into the Swiss entity (which would require planning to avoid the 1% capital issuance tax on equity contributions). A de-leveraging also may be necessary for thinly capitalized entities to avoid a recharacterization of interest paid as a deemed dividend.
- Prepare a transfer pricing benchmarking analysis to support the interest rate applied as being at arm's length. In addition, taxpayers may request a ruling from the Swiss tax authorities to confirm that the interest rate applied will be considered as at arm's length.

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In brief

European Union: Advocate General (AG) Jääskinen has given his opinion in the case of *Verder Labtec*, which concerns German tax rules establishing a tax liability to be paid in annual installments on hidden (undisclosed) reserves. These rules apply when assets are transferred from a German permanent establishment belonging to a German undertaking to a permanent establishment abroad. In the case, a German limited partnership transferred business property consisting of various intellectual property rights from its permanent establishment in Germany to its permanent establishment in the Netherlands. According to the competent tax authority, this created a tax liability under German law. The tax did not, however, become payable immediately; it was payable in annual installments over a 10-year period. AG Jääskinen has suggested that the Court of Justice of the European Union rule on the freedom of establishment principle under the Treaty on the Functioning of the European Union does not preclude such a tax.

European Union: The European Commission has opened a public consultation on the EU prospectus directive, which provides an exemption from the requirement for a company to publish a prospectus for securities offered to its employees or employees of its affiliates if certain conditions are satisfied. The exemption is available only to EU companies (listed or unlisted) or non-EU companies whose securities are listed on an EU-regulated market or equivalent third-country market (no equivalent third-country markets have been designated yet). The consultation is intended to address topics including whether the scope of the exemption should be extended to non-EU private companies, and whether the thresholds for application of the directive should change or be harmonized within EU member states (currently, member states are free to set different rules (e.g. impose disclosure requirements) domestically for offers that do not meet the thresholds for the directive). Comments are due by 13 May 2015.

BEPS corner

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

Denmark: A draft bill would introduce certain anti-avoidance measures into Danish law, including a tax treaty anti-abuse provision that would implement the OECD recommendations under the BEPS initiative on preventing the granting of treaty benefits in inappropriate circumstances. See *World Tax Advisor*, 27 February 2015.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150227_4.html

India: The 2015 budget proposes deferring implementation of the general anti-avoidance rule (GAAR) until 1 April 2017 and implementing the GAAR provisions as part of a comprehensive regime to address the OECD's recommendations on BEPS. See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150313_1.html

Italy: Italy has introduced a patent box regime intended to be in line with the "nexus approach" described in the OECD report on BEPS Action 5, Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance. See *World Tax Advisor*, 27 February 2015.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150227_1.html

OECD: The OECD Secretary-General presented a two-part report to the G20 finance ministers and central bank governors at the recent Istanbul summit. Part I was a report by the Secretary-General regarding: (i) the OECD/G20 BEPS project; (ii) tax transparency through information exchange; and (iii) tax and development. Part II was a progress report from the Global Forum on Transparency and Exchange of Information for Tax Purposes.

South Africa: See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150313_9.html

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