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International Tax

World Tax Advisor

24 April 2015

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Improving the Nigerian tax treaty network may facilitate foreign direct investment

Taxation is a significant consideration for foreign investors that seek to do business in Nigeria, in addition to other factors such as security, rule of law, access to appropriate infrastructure (e.g. electric power), etc. Strategically leveraging Nigeria's status as the 26th largest economy in the world, and the biggest in Africa, through beneficial economic partnerships in the form of tax treaties within Africa and on a global level may help to increase foreign direct investment in the country.

Investors continue to search for new markets offering the best margins for return on investment, which leads multinationals to continue to invest in various economies outside their home countries/markets. One inevitable risk for multinational companies with cross-border investments and/or operations is double taxation due to differences between residence-based and source-based taxation – two principles that drive the taxation of corporate players in international markets/economies. Double taxation typically arises where both the country in which a taxpayer is resident and the country in which income is sourced claim taxing rights.

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Developed and developing countries worldwide use tax treaties as a means to reduce tax impediments to cross-border trade and investment and to mitigate the risk of double taxation. Tax treaties typically also allocate taxing rights between the treaty partners, reduce withholding tax on cross-border investments, exempt certain short-term activities in the source state from income tax, provide a basis for information sharing and dispute resolution and prevent tax evasion. The OECD model tax treaty provides the basis for the negotiation and conclusion of most modern tax treaties, including Nigeria's tax treaties.

Nigeria has 13 comprehensive tax treaties in force:

- Belgium;
- Canada;
- China;
- Czech Republic;
- France;
- Korea (ROK);
- Netherlands;
- Pakistan;
- Philippines;
- Romania;
- Slovakia;
- South Africa; and
- United Kingdom.

Nigeria also has an air and shipping agreement with Italy.

Nigeria has signed tax treaties with Kenya, Kuwait, Mauritius, Poland, Spain and Sweden that are not yet in force; several other treaties are in the negotiation stage. Of the signed treaties, only the Maurtius treaty has not yet been ratified.

In line with the role of taxation as a tool for wealth and employment creation, the national tax policy of Nigeria considers international and regional treaties to be one way of attracting foreign direct investment. To this end, Nigeria must leverage its status as the largest economy in Africa and take advantage of the benefits offered by tax treaties.

It is noteworthy that Nigeria's tax treaty network of 13 countries is substantially smaller than the treaty networks of other developed and developing countries; for instance, the UK currently has tax treaties with more than 120 countries, Canada has tax treaties with more than 90 countries and Malaysia has tax treaties with more than 65 countries.

Statistics have shown that there is a positive correlation between tax treaties and the level of inbound foreign direct investment to Nigeria.

Accordingly, to accelerate Nigeria's growth toward becoming one of the top 20 economies in the world, it is clear that the country must expand its current treaty network. While the government, through the Federal Inland Revenue Service (FIRS), is developing a new model tax treaty that would make it easier to conclude new treaties, the following points are worthy of consideration:

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Delays in ratification

Nigeria's treaties do not automatically have the force of law. The 1999 constitution expressly provides that, before a treaty between Nigeria and another jurisdiction may have the force of law, it must be enacted into law by the National Assembly.

Until recently, Nigeria had two tax treaties – with Mauritius and Korea (ROK) – that were long overdue for ratification (the treaty with Mauritius was signed in 2012 and the Korea treaty in 2006). The treaty with Korea recently was ratified, while the treaty with Mauritius still awaits ratification. A delay in the ratification of any treaty may create room for uncertainty among the treaty's stakeholders. It would not be out of place to consider that the delays in the ratification of the tax treaties with Korea and Mauritius may have affected the flow of certain foreign direct investment into Nigeria.

In an era when the government is trying to encourage foreign investment, an uncertain business environment clearly is undesirable. To this end, it is in all parties' interests that Nigeria accelerate the process of ratifying signed treaties, as time generally is of the essence in bringing in foreign investment.

Mutual benefits under current treaties

Countries enter into tax treaties on the basis that these arrangements ultimately would be beneficial to the economies of both treaty partners. However, this is not always the case, as some countries seem to benefit more than their treaty partners from tax treaty arrangements. In this light, the Nigerian government should consider reviewing the current tax treaty network to determine if the country actually is benefitting from these treaties; where it is determined that Nigeria is not benefitting, renegotiating and amending key provisions of the relevant tax treaty seems appropriate.

More robust and useful economic partnerships via tax treaty arrangements should improve Nigeria's competitiveness in attracting foreign direct investment and help to harness its full potential and prospects as the largest economy in Africa and the 26th largest in the world.

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Hong Kong and China sign new protocol to double taxation arrangement

On 1 April 2015, Hong Kong (HK) and Mainland China (PRC) signed a new protocol to amend the 2006 double taxation arrangement (HK-PRC DTA), as amended by three previous protocols (the second and third protocols were signed in 2008 and 2010, respectively). The new protocol covers (1) the tax treatment of capital gains on listed shares; (2) the taxation of aircraft and ship leasing companies; and (3) the introduction of a "main purpose" test to obtain tax treaty benefits and the introduction of an expanded exchange of information (EoI)

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provision. The protocol will come into force after the completion of the ratification procedures and the exchange of notifications by both sides.

Capital gains on listed shares

The new protocol expands the exemption from tax on capital gains on the disposal of shares to include the purchase and sale of shares in listed companies, provided that such shares are purchased and sold on the same exchange (the exemption will not apply to shares that are acquired by private placement). As a result, qualifying gains derived by a HK resident or HK investment fund will be taxable only in HK. An HK resident investment fund is one that meets the following requirements:

- The fund is established under HK law, and is recognized and regulated by the Securities and Futures Commission of Hong Kong (SFC);
- The fund manager is an HK-incorporated company that manages the fund according to the SFC regulations; and
- More than 85% of the fund's capital is raised on the HK market (e.g. the fund is publicly traded on the HK stock exchange, capital is raised through financial institutions in HK, the fund is sold directly to or placed with investors in HK, etc.).

Under the existing HK-PRC DTA, gains from the alienation of shares (except for shares of land-rich entities, i.e. companies whose assets are at least 50% comprised of immovable property situated in the PRC) will not be taxed in the PRC if the HK resident seller owns, directly or indirectly, less than 25% of the PRC entity at any time during the 12-month period before the alienation. Additionally, following the launch of the Shanghai-HK Stock Connect initiative on 17 November 2014, capital gains on the trading of listed qualifying shares are temporarily exempt from PRC tax (including gains on the shares of land-rich entities), as are qualified foreign institutional investors (QFIIs) and renminbi qualified foreign institutional investors (RQFIIs).

Since the above exemptions already cover most cases, the new protocol can extend the exemption only to certain cases. The protocol primarily should benefit HK tax residents and HK investment funds deriving gains from the trading in shares of PRC companies listed on the Shenzhen or HK stock exchange, even if the PRC companies are land-rich and/or the shareholding is not less than 25%.

For example, under existing rules, a HK company that owns not less than 25% of the shares in a PRC entity that is listed on the Shenzhen stock exchange will be subject to PRC tax on capital gains derived from the disposal of the PRC shares. Under the new protocol, the gains will be exempt from PRC tax. However, since very few investors likely would hold 25% or more of a listed company, this additional benefit is not significant.

Another example is the trading of shares in land-rich PRC entities listed on the Shenzhen or HK stock exchange. Under the existing HK-PRC DTA, a HK company deriving gains from the trading of shares of land-rich PRC entities is not entitled to an exemption from PRC tax, regardless of whether the shareholding is less than 25%. The exemption in the new protocol does not exclude land-rich companies, so HK investors will benefit if the shares traded are those of land-rich PRC entities listed on the Shenzhen or HK stock exchange. Shares listed on

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the Shanghai stock exchange already are covered under the Shanghai-HK Stock Connect exemption, so this additional benefit is not hugely significant.

The protocol is expected to provide a real benefit to a HK company or HK investment fund that trades “H” shares (i.e. shares of companies incorporated in the PRC that are listed on the HK stock exchange) because gains derived from the alienation of such shares will be exempt from PRC tax.

Aircraft leasing and ship chartering

The new protocol lowers the withholding tax rate for rental income derived by aircraft leasing and ship chartering businesses from 7% to 5%; this rate will be the most beneficial rate on such income under any of the PRC’s tax treaties. The lower rate will benefit HK aircraft leasing and ship chartering businesses deriving lease rental income from the PRC, will facilitate HK’s aircraft leasing and ship chartering businesses with the PRC and is in line with the positioning of HK as the international maritime services hub for China, as mentioned in the 2015 Policy Address.

Anti-avoidance and EoI

In line with recent global trends (in particular, the OECD’s base erosion and profit shifting (BEPS) initiative), the new protocol includes an anti-avoidance provision under which treaty benefits for dividends, interest, royalties and capital gains will be denied if the main purpose for entering into the arrangement is to take advantage of these benefits.

The protocol also extends the coverage of the EoI arrangement to other PRC taxes, such as the VAT, Consumption Tax, Business Tax, Land Appreciation Tax and Real Estate Tax.

These two provisions will strengthen the anti-treaty abuse provisions and fulfill HK’s international obligation to meet global standards for enhancing tax transparency.

Comments

The provisions of the new protocol to the HK-PRC DTA are welcome. Although the expanded capital gains exemption will offer benefits only in limited cases, it should promote the HK asset management business. The protocol also clarifies the conditions under which an investment fund would be qualified for HK tax resident status. While this reduces uncertainty for the tax position of investment funds, it also appears that more conditions, in addition to those of the general definition of HK tax residence for a company, are required for an investment fund to enjoy the PRC tax exemption for capital gains on listed shares.

In addition, the lowering of the withholding tax rate for lease rentals of aircraft and ships will encourage HK’s aircraft financing business with the PRC. Nevertheless, taxpayers should be aware of the strengthened anti-avoidance measures and the expansion of the scope of the EoI provision.

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Belgium:
VAT to apply to certain supplies between head offices and branches

On 9 April 2015, the Belgian VAT authorities released guidance on how the 2014 decision of the Court of Justice of the European Union (CJEU) in the *Skandia* case will affect the Belgian VAT rules (for prior coverage of the *Skandia* case, see *World Tax Advisor*, 26 September 2014). The CJEU held in *Skandia* that supplies of services from an overseas head office to a branch that is part of a VAT group in an EU member state should be subject to VAT.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140926_2.html

The new guidance, which aims to align Belgian rules with the CJEU decision, requires businesses to apply VAT on such transactions as from 1 July 2015.

Background and guidance

In 2004, the CJEU held in the *FCE Bank* case that transactions between a head office and its branch are not supplies for VAT purposes and, thus, such transactions fall outside the scope of VAT. In *Skandia*, however, the CJEU stated that this principle does not apply where either the head office or the branch is part of a VAT group with other legal entities established in an EU member state. In that situation, any supplies of services made by an overseas head office to the branch are considered to be made to the VAT group as a whole (rather than to the branch) and, therefore, are subject to VAT. As a result, the VAT group (the recipient) must account for VAT on the supplies under the reverse charge mechanism. This decision has significant implications for financial services companies that provide cross-border intracompany services where either the “supplier” or the “recipient” of the services is a member of a VAT group.

In the new guidance, the Belgian VAT authorities have aligned their position with the principles articulated in *Skandia*. Cross-border transactions between a head office and its branch carried out for consideration will be subject to VAT if one or both establishments are, in their country of residence, part of an EU VAT group that includes other legal entities. As noted above, the VAT authorities expect businesses to apply these rules by 1 July 2015.

The existing provision in the Belgian VAT code that imposes VAT on services provided by a foreign branch/head office to a Belgian branch/head office that is part of a VAT group, which has been applied only in limited circumstances involving abusive practices, no longer is relevant and will be abolished. Further changes to the Belgian VAT code are not anticipated; no changes are required to the VAT treatment of cross-border transfers of goods between a branch and its head office, which already are considered taxable supplies in all cases.

Belgium is one of the first EU member states to issue formal guidance on the consequences of the *Skandia* decision. The UK published advice regarding the application of the case to its national VAT legislation, on 10 February 2015; the UK position differs from that of Belgium and

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allows branches that are part of a UK VAT group to receive services from their overseas head office without applying VAT. This difference primarily is due to differences in the definition of a "VAT group" in the UK.

Varying definitions of VAT groups apply across the EU member states as a result of the minimal regulation by EU VAT legislation; the VAT Committee of the European Commission has included this topic on its agenda, with a view to achieving a common approach and interpretation of the term. Hence, the early publication by the Belgian VAT authorities of their interpretation of the *Skandia* decision, without awaiting further consultation between the EU member states, may be inopportune.

Practical consequences for businesses

Businesses established in Belgium with a head office or branch abroad and that have implemented VAT grouping arrangements should carefully review all service flows, from both an inbound and an outbound perspective. For example, if a Belgian establishment that is a member of a Belgian VAT group receives services from a foreign branch or head office (whether EU or non-EU), these services will be subject to VAT that is payable by the VAT group through the reverse charge mechanism. The Belgian VAT authorities have specified that this treatment will apply even if the services are not recharged to other members of the VAT group.

A taxpayer receiving services from an overseas branch or head office will need to determine whether the services are subject to VAT or exempt, and the taxable basis of services subject to VAT. An invoice will have to be issued or drafted internally, and all relevant transactions will have to be reported in the VAT return for the VAT group. The same obligations will apply if the foreign establishment rendering the services is part of a VAT group in another EU member state, even if no Belgian VAT group has been set up.

The Belgian tax authorities also consider the provision of services by a Belgian branch or head office that is part of a Belgian VAT group to a branch or head office abroad to be a taxable service, which, under the general "B2B" rule, should be taxed in the country of the recipient. The Belgian establishment may be required to issue an invoice that includes the term "reverse charge" and to report the transaction on its VAT return and the European Sales Listing, even if the receiving country may not (yet) consider the transaction taxable.

The taxable nature of transactions between a branch and its head office means that these transactions also affect the deductibility of VAT (pro rata calculation) for "mixed" taxpayers. The Belgian guidance emphasizes that, since establishments in a VAT group are treated separately, VAT related to costs incurred by a head office for the benefit of branches abroad will be deductible only if the costs are recharged to those branches.

The new guidelines will have a significant impact on the administrative burden for companies operating through a branch structure (e.g. VAT reporting obligations, the need to adapt invoice references, etc.). In addition, VAT charged to a VAT group by a foreign establishment will be a cost to the extent the group does not have the right to fully deduct the VAT. The additional VAT cost will be relevant, in particular, for the financial sector.

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Given the deadline of 1 July 2015 to begin applying VAT under the new guidelines, institutions with branch offices should immediately begin to assess the financial and organizational impact of these rules on their business. Since transactions between a head office and its branch typically are settled at year-end, the financial impact may involve transactions taking place during the entire year, unless action is taken (e.g. to change the timing of the settlement). The VAT burden that arises as a consequence of the new guidelines may lead companies to review the efficiency of their structures.

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British Virgin Islands: BVI updates FATCA reporting guidance

On 24 March 2015, the International Tax Authority (ITA) of the British Virgin Islands (BVI) published its highly anticipated updated Guidance Notes on FATCA (the US Foreign Account Tax Compliance Act), entitled "Guidance Notes on the International Tax Compliance Requirements of the Legislation Implementing the Intergovernmental Agreements between the British Virgin Islands and the United States of America and the United Kingdom to Improve International Tax Compliance, Version 2.0." The updated Guidance Notes supersedes the draft guidance notes originally published by the ITA in July 2014. This article summarizes the relevant BVI legislation, highlights of the various changes and the deadlines and manner for submission of information.

The BVI signed intergovernmental agreements (IGAs) with the UK and the US on 28 November 2013 and 30 June 2014, respectively, that introduce a new reporting regime requiring BVI financial institutions to identify all relevant reportable accounts and report to the BVI government on UK or US persons with offshore accounts. The BVI government then will transmit that information to the UK or US government on an annual basis. These agreements aim to reduce the possibility of tax evasion by individuals who invest in offshore accounts and offshore vehicles.

The BVI legislation related to the implementation of the US and UK agreements is the Mutual Legal Assistance (Tax Matters) Act, 2003 (as amended) and the Mutual Legal Assistance (Tax Matters) (No. 4) Order, together referred to as the "BVI Regulations." As part of the legislation, an additional order is scheduled to be issued by the BVI Ministry of Finance in 2015 to provide for specific penalties for breach of the requirements and formalize a change in reporting deadlines.

The BVI Guidance Notes, issued to provide practical assistance in relation to the US and UK agreements, reflect a number of changes from the draft issued in 2014. The Guidance Notes change the deadline for submission of information and provide detail on the enrollment and filing of the reportable information with the ITA, and additional definitions and guidance related to the UK agreement. While the Guidance Notes are not part of the BVI Regulations and do

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not have the force of law, they constitute important practical references for successful implementation of information exchanges.

Under BVI legislation, a BVI financial institution is categorized as a reporting BVI financial institution or a nonreporting BVI financial institution, two mutually exclusive classifications. Nonreporting BVI financial institutions are those that meet the exemptions in Annex II of the US agreement, otherwise known as the “deemed compliant,” “owner documented” or “exempt beneficial owner” exemptions. The first step to FATCA compliance is an entity classification exercise pursuant to the various definitions set forth in the BVI Regulations.

Under the updated Guidance Notes, the deadline for reporting BVI financial institutions to submit the required information on reportable accounts for 2014 has been extended to 30 June 2015. Reporting for subsequent years will be required by 31 May of each year. Submissions to the BVI ITA will be carried out through a web-based application, the BVI Financial Account Reporting System (BVIFARS). This system will allow reporting financial institutions to submit their filings by manually entering information into BVIFARS in a single filing or by uploading an XML file (i.e. following the US FATCA XML schema established by the US Internal Revenue Service (IRS)).

Access to the BVIFARS portal is available to the public. Reporting BVI financial institutions that have registered with the IRS and obtained a global intermediary identification number (GIIN), including sponsoring entities, will be required to enroll with BVIFARS before accessing the submission system. Enrollment is a one-time process, with each application requiring approval by the ITA. Each financial institution or sponsoring entity will be allowed a primary user and up to four secondary users for the system. The ITA will not verify the information submitted by financial institutions, but it will monitor compliance with the local legal requirements and will enforce the BVI Regulations in the event of noncompliance. A penalty may be imposed for noncompliance with the BVI Regulations.

Looking ahead to a world where tax information is more freely exchanged between governments, the OECD common reporting standard (CRS) was developed on the same principles of transparency and global exchange of information as FATCA. The BVI already has committed to the implementation of CRS as an early adopter, following a timetable for exchanging information starting in 2017. These newly released BVI Guidance Notes, the BVI Regulations and BVIFARS all were developed with these new international standards in mind.

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China:
Land appreciation tax and deed tax relief extended to promote M&A transactions

China’s Ministry of Finance and the State Administration of Taxation issued two circulars (Circulars 5 and 37) on 31 March 2015 that extend various forms of tax relief relating to land

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appreciation tax (LAT) and deed tax, to promote mergers and acquisitions (M&As). The circulars extend most previous LAT and deed tax exemptions granted to real estate transfers in specified M&A transactions, and also introduce certain new forms of relief for specified transactions (notably, an LAT exemption for “splits”). The relief is retroactively effective from 1 January 2015 and will expire on 31 December 2017.

LAT generally is imposed on a transferor of real property at progressive rates ranging from 30% to 60% of the transferor’s gain from the sale. Deed tax generally is imposed on a transferee of real property at a rate of 3% to 5% of the purchase price of the property.

The LAT and deed tax relief provided by the circulars is summarized below. Some transactions are eligible for LAT relief but not deed tax relief, or vice versa. However, LAT relief will not be granted if the relevant entities are engaged in the real estate development business.

<table>
<tr><th>Types of restructuring or transaction</th><th>Circular 5
(LAT on transferors)</th><th>Circular 37
(Deed tax on transferees)</th></tr>
<tr><td>Company “transformation” (i.e. a nonincorporated entity converts to an incorporated entity or a limited liability company converts to a joint stock company (or vice versa), where the post-restructuring entity assumes all legal rights and obligations of the pre-restructuring entity)</td><td colspan="2" rowspan="3">Exempt, provided that original investors of the pre-restructuring entity(ies) remain as shareholders of the post-restructuring entity(ies)*</td></tr>
<tr><td>Merger</td></tr>
<tr><td>Split (i.e. division of an entity into two or more entities)</td></tr>
<tr><td>Disposal of real property for capital contribution purposes</td><td>Exempt</td><td>No relief**</td></tr>
<tr><td>Intragroup assignment of real property (i.e. assignment between a parent company and its 100% subsidiaries, or between such subsidiaries; or between an individual and his/her sole proprietorship or his/her 100%-owned companies)</td><td>No relief**</td><td>Exempt</td></tr>
</table>

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Types of restructuring or transaction	Circular 5 (LAT on transferors)	Circular 37 (Deed tax on transferees)
Disposal of real property in bankruptcy proceeding	No relief**	Exempt for a creditor receiving the real property; exempt (or tax reduced by 50%) for a noncreditor receiving the real property, provided the noncreditor takes over all (or more than 30%, for the 50% tax reduction) of the employees for an employment period of no less than three years
*For the deed tax exemption to be granted in a company transformation, the original investors must hold more than 75% of the shares of the post-restructuring entity. In a merger or a split, the original investors' relative shareholdings in the post-restructuring entity may change and may decrease below 75%. **No relief is provided in the relevant circular. Therefore, the general LAT or deed tax rules should apply, unless other regulations or circulars provide otherwise.		

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Czech Republic:
Transfer pricing appendix included in corporate tax return

The Czech Republic tax authorities are requiring certain corporate taxpayers to complete an appendix to the 2014 income tax return, in which the company must list and summarize all related party transactions that took place during the tax year.

The new appendix must be completed in the following cases:

- The taxpayer has engaged in transactions with nonresident related parties; or
- The taxpayer reports a loss or benefits from investment incentives *and* has engaged in transactions with related parties (whether resident or nonresident).

A separate appendix must be completed for each related party, and there is no minimum threshold, so even insignificant transactions must be reported. The number of completed appendices will equal the number of companies with which intragroup transactions were conducted in the relevant year, except for transactions with Czech related parties where the taxpayer did not report a loss or did not benefit from investment incentives. For example, if a Czech company that did not report a loss or benefit from investment incentives purchases

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goods from three related parties in the Czech Republic and sells the goods to a related party in Germany, the Czech company must complete one appendix regarding its German related party. However, if the Czech company reported a loss, it will be required to attach four completed appendices to its corporate tax return – one for each entity. The Czech related parties will not have to complete appendices if they did not report losses themselves or were not benefiting from investment incentives.

The Czech tax authorities will use the reporting of related party transactions in the appendix as part of a risk analysis to identify taxpayers and transactions to subject to a tax audit. Since the number of transfer pricing audits is expected to increase as a result of the new disclosure requirements, companies should consider how the tax authorities might react to the information provided in the appendix and how the information could be supported.

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France: Temporary "additional depreciation" mechanism approved

As part of its review of the Growth and Economic Activity Bill (also called the "Macron bill"), the French Senate (the second chamber of the French Parliament) has passed an amendment to the tax code that would establish an "additional depreciation" mechanism (a "super deduction"), as previously announced by the Council of Ministers on 8 April 2015. This measure now must be approved by the National Assembly (the first chamber of the French Parliament), and is expected to be enacted in July 2015.

Under the new measure, companies subject to corporate income tax would be entitled to an additional deduction from their taxable income, equal to 40% of the original cost (excluding financial expenses) of eligible assets that are used for the company's business and are acquired or manufactured by the company between 15 April 2015 and 14 April 2016. The extra deduction would be spread, on a straight-line basis, over the normal useful life of the assets.

This mechanism could result in tax savings of approximately 13% to 15.2% of the investment cost (depending on the size of the company).

Eligible assets would include those that fulfill two conditions: they must be eligible for depreciation under the declining-balance method (pursuant to article 39 of the French tax code), and they must fall within one of the five categories specifically listed in the bill:

- Equipment and tools used for industrial manufacturing or processing operations;
- Facilities used for water purification and air quality improvement;
- Handling equipment (e.g. industrial equipment used to transport or move goods);
- Equipment used for the production of steam, heat or energy (except for facilities for the production of electrical energy subject to regulated tariffs); and
- Materials and tools used for scientific or technical research activity.

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This notional deduction also would be available to a company that rents an eligible property under a finance lease or a lease with an option to purchase, provided the leasing contract is concluded between 15 April 2015 and 14 April 2016.

This article has been prepared by professionals in Taj, French tax and legal firm, member of Deloitte Touche Tohmatsu Limited.

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Switzerland: Agreement with EU on automatic exchange of information in tax matters announced

On 19 March 2015, Switzerland and the EU initialed an agreement concerning the introduction of the global standard for the automatic exchange of information in tax matters (i.e. OECD common reporting standards, or CRS). According to a press release issued by the Swiss State Secretariat for International Financial Matters, the parties intend to sign a final agreement within the coming weeks, at which time the agreement will be submitted to the Swiss parliament for legislative approval.

In the preliminary stages of the OECD CRS, Switzerland has been active in the development of the necessary basis for the successful implementation of the regime. It was the first country to publish a draft law for the domestic implementation of the OECD CRS and, in addition to the announcement regarding the agreement with the EU, Switzerland and Australia signed a joint declaration on 2 March 2015 stating their intention to start exchanging information from 2018. Through its active leadership, Switzerland can help shape the OECD CRS landscape in a manner suited to its interests, so that the implementation of the new tax reporting regime does not undermine its global financial competitiveness.

The EU agreement will be reciprocal. It should enter into force on 1 January 2017 and will replace the taxation of savings agreement with the EU for all 28 EU member states.

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In brief

Australia: The government has announced it intends to amend the goods and services tax (GST) legislation to tax intangible services supplied by foreign entities to Australian customers. Potential amendments likely will target business-to-consumer transactions relating to the

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supply of digitized services, including content downloads, gambling services and rights to use intellectual property in Australia, and foreign entities may be required to register for GST in Australia and account for 10% GST on supplies made to Australian consumers. The government's proposal has been prompted in part by the recent entry of several entertainment streaming services into the Australian market, and the competitive advantage gained by offshore suppliers as a result of having no liability to pay GST under the current legislation. A formal announcement is likely to be made in the 2015-16 budget on 12 May 2015.

Costa Rica: OECD member countries have invited Costa Rica to open formal membership discussions with the OECD. The next step in the process is to establish the roadmap that Costa Rica must follow during the accession negotiations, but, in the meantime, Costa Rica has been invited to participate in the ministerial-level meetings of the OECD Council to be held in June 2015.

Germany: The Court of Justice of the European Union (CJEU) has gone straight to judgment in a case involving German provisions, under which the tax on capital gains realized on the sale of certain capital assets ("replaced assets") is deferred by "transferring" those capital gains to newly acquired or newly produced capital assets ("replacement assets") until the sale of the replacement assets. However, this deferral is on the condition that the replacement assets form part of the assets of a permanent establishment of the taxable person located within Germany. Such a deferral is not possible where such assets form part of the assets of a permanent establishment of the taxable person located in another EU/EEA member state. The CJEU has held that the rules infringe the freedom of establishment.

Greece: The Finance Ministry issued guidance on 8 April 2015 on the tax withholding obligations relating to remuneration received by Greek and foreign officers and crew members working on commercial vessels. The circular provides that the employer, i.e. the Greek or foreign flag ship-owning company or the Greek management office, is responsible for operating PAYE withholding on both Greek and non-Greek individuals working on vessels engaged in domestic transport under the Greek or a foreign flag, or vessels engaged in international transport operating under the Greek flag. The individuals must obtain a Greek tax registration number and file a personal income tax return at year-end. However, income derived by foreign officers/crew from working on vessels engaged in international transport under a foreign flag is deemed to be foreign-source income and, therefore, is not subject to PAYE tax withholding.

India: The Central Board of Direct Taxes has announced that 10 income computation and disclosure standards (ICDS) are effective from 1 April 2015 and will apply as from assessment year 2016-17. The ICDS apply to all taxpayers following the accrual system of accounting, for purposes of computing business/professional income and "income from other sources." The ICDS are aligned with existing provisions of India's Income-tax Act, 1961, and provide clarification on certain topics through specific instructions for computing taxable income. Topics covered include accounting policies, inventory valuation, construction contracts, revenue recognition, foreign exchange transactions and borrowing costs.

Indonesia: The Directorate General of Taxes has issued guidance that revises the rules relating to the submission of electronic tax returns. The following taxpayers now are required to submit electronic returns: (1) taxpayers that are required to electronically submit annual

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income tax returns and monthly “article 21” (withholding tax on salaries) tax returns or VAT returns; (2) taxpayers that previously submitted electronic tax returns; and (3) taxpayers registered in specific tax offices (e.g. tax offices within the scope of the Large Taxpayer Regional Tax Office).

Italy: The government published a Legislative Decree on 18 April 2015 that implements the new EU VAT place of supply rules for “B2C” supplies of telecommunications, broadcasting and electronically supplied services, as well as the mini one-stop shop (MOSS) regime into Italian law. The decree will enter into force on 3 May 2015 and the new measures will apply retroactively to supplies carried out as from 1 January 2015.

Korea: The revised ministerial decree on the corporate income tax and international tax coordination laws, promulgated on 13 March 2015, reduced the useful life of a patent for tax purposes from 10 years to seven years, with a view to helping companies recover acquisition costs of patent rights earlier.

Taiwan: The government has passed an amendment that postpones the implementation of new capital gains tax rules on gains derived from the sale of securities by a resident individual. The rules now will apply as from 1 January 2018, rather than 1 January 2015. Under the new capital gains tax regime, a resident individual seller of shares will pay a 0.1% tax on the amount that exceeds NTD 1 billion in one year; this amount will be calculated separately from the individual’s gross consolidated income. Alternatively, the individual taxpayer can elect to be taxed on actual income on the sale of the shares, at a rate of 15%.

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.

Belgium: The amending protocol to the multilateral Convention on Mutual Administrative Assistance in Tax Matters entered into force in Belgium on 1 April 2015 and generally will apply as from 1 January 2016.

British Virgin Islands: See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150424_4.html

Bulgaria-UK: When in effect, the treaty signed on 26 March 2015 provides that a 0% withholding tax rate will apply to dividends paid to a company (other than dividends paid by an investment vehicle) or a pension scheme; otherwise, the rate will be 5%. A 15% rate will apply where dividends are paid out of income (including gains) derived directly or indirectly from certain immovable property by an investment vehicle that distributes most of this income

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annually and whose income from such property is exempt from tax. A 0% rate will apply to interest paid in connection with credit sales of equipment, merchandise or services; on loans granted by a financial institution; to a pension scheme; or between companies, if one company directly holds at least 10% of the capital of the other company for at least one year before the payment of the interest or if both companies are held by a third company that directly holds at least 10% of the capital of both companies for at least one year before the payment of the interest; otherwise, the rate will be 5%. The rate on royalties will be 5%.

Cayman Islands: An automatic exchange of information portal to facilitate the reporting required under the US Foreign Account Tax Compliance Act (FATCA) has opened and is accessible through the tax authorities' website. Cayman financial institutions are required to register with the tax authorities and complete a notification form by 30 April 2015, and to submit FATCA returns for any reportable accounts by 31 May 2015.

China-Hong Kong: See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150424_2.html

Colombia-India: The 2011 treaty entered into force on 7 July 2014 and applies as from 1 January 2015 for Colombia and as from 1 April 2015 for India. The treaty provides for a 5% withholding tax rate on dividends and a 10% withholding tax rate on interest and royalties.

Cyprus: The multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, entered into force in Cyprus on 1 April 2015 and generally will apply as from 1 January 2016.

Cyprus-South Africa: When in effect, the protocol signed on 1 April 2015 to amend the 1997 treaty provides for a 5% withholding tax rate on dividends paid to a company that holds at least 10% of the capital of the payer company; otherwise, the rate will be 10%. No changes are made to the interest and royalties articles.

Ecuador-Qatar: When in effect, the treaty signed on 22 October 2014 provides that a 5% withholding tax rate will apply to dividends paid to a company that owns directly at least 10% of the voting stock of the payer company; otherwise, the rate will be 10%. A 10% rate will apply to interest and royalties.

India-Bhutan: The 2013 treaty entered into force on 17 July 2014 and applies as from 1 April 2015 for India and as from 1 January 2015 for Bhutan. The treaty provides for a 10% withholding tax rate on dividends, interest and royalties (and technical or professional service fees).

India-Fiji: The 2014 treaty entered into force on 15 May 2014 and applies as from 1 April 2015 for India and as from 1 January 2015 for Fiji. The treaty provides for a 5% withholding tax rate on dividends and a 10% rate on interest and royalties.

India-Malta: The 2013 tax treaty and protocol to replace the 1994 treaty entered into force on 7 February 2014 and apply as from 1 April 2015 for India and as from 1 January 2015 for Malta. The treaty provides for a 10% withholding tax rate on dividends, interest and royalties (and technical service fees).

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India-Poland: The 2013 protocol to the 1989 treaty entered into force on 1 June 2014 and applies as from 1 April 2015 for India and as from 1 January 2015 for Poland. The protocol provides for a 10% withholding tax rate on dividends and interest and a 15% rate on royalties (and technical service fees).

Korea: The National Tax Service (NTS) will exchange financial information covered under the US FATCA with the US Internal Revenue Service (IRS) from September 2015. The NTS will report Korean financial account information for US taxpayers to the IRS and, in exchange, will receive US financial account information for Korean taxpayers. The NTS is implementing systems to receive information from financial institutions in Korea to be sent to the IRS, and information obtained through the exchange of financial information with the IRS should be helpful in tracing offshore tax evasion.

Korea-Nigeria: The 2006 treaty entered into force on 21 March 2015 and applies as from 1 January 2015. The treaty provides for a 7.5% withholding tax rate where dividends are paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate is 10%. A 7.5% withholding tax rate applies to interest and royalties.

Luxembourg-Uruguay: When in effect, the treaty signed on 10 March 2015 provides that a 5% withholding tax rate will apply to dividends paid to a company that holds at least 10% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest will be 10%. A 5% rate will apply to royalties paid for the use of industrial, commercial or scientific equipment, and a 10% rate will apply to royalties paid for copyrights of literary, artistic or scientific works.

Nigeria: See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150424_1.html

South Africa-Qatar: When in effect, the treaty signed on 6 March 2015 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. A 0% rate will apply to interest arising in respect of any debt instrument listed on a recognized stock exchange; otherwise, the rate will be 10%. The rate on royalties will be 5%.

Spain-Nigeria: The 2009 treaty will enter into force on 5 June 2015 and will apply as from that date. When in effect, the treaty provides for a 7.5% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest will be 7.5%. A 7.5% rate will apply to royalties paid to a company; otherwise, the rate will be 3.75%.

Sweden-UK: When in effect, the treaty signed on 26 March 2015 to replace the 1983 treaty provides that a 0% withholding tax rate will apply to dividends paid to a company that holds, directly or indirectly, at least 10% of the voting power of the payer company; otherwise, the rate will be 5%. A 15% rate will apply where dividends are paid out of income (including gains) derived directly or indirectly from certain immovable property by an investment vehicle that distributes most of this income annually and whose income from such property is exempt from tax. Interest and royalties will be taxable only in the state of residence of the recipient.

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United States: An intergovernmental agreement to improve international tax compliance and to implement FATCA was signed with Uzbekistan on 3 April 2015.

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United States

2014 US APA report shows program holding steady

The US Internal Revenue Service, on 30 March 2015, released Announcement 2015-11, the advance pricing agreement annual report, which shows that the advance pricing and mutual agreement program generally was able to hold onto efficiencies from the prior year.
Issue date: 10 April 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-006-10-april-2015.pdf

OECD/G20 BEPS project releases discussion draft on Action 3: Strengthening CFC Rules

On 3 April 2015, the OECD released a discussion draft on Action 3 (strengthening CFC rules) of the base erosion and profit shifting project that includes recommendations on the design elements that a country should include when enacting a CFC regime.
Issue date: 14 April 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-14-april-2015.pdf

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