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Practical tax considerations for service providers operating in the JPDA

According to the Timor Sea Treaty between Timor-Leste and Australia, income arising from petroleum activities in the Joint Petroleum Development Area (JPDA) is taxable in both jurisdictions on a 90/10 basis. Taxpayers operating in the JPDA therefore must comply with the tax rules in both Timor-Leste and Australia.

This article discusses some practical tax considerations for service providers operating in the JPDA and Timor-Leste.

Taxation in Timor-Leste

Certain taxpayers are liable for taxation under more than one tax regime in Timor-Leste, usually when their activities fall within both the petroleum and the nonpetroleum sectors. Additionally, taxpayers operating solely in the petroleum sector may be subject to different petroleum tax regimes, depending on the petroleum project(s) their activities relate to and where those activities are conducted.

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The application of multiple tax regimes in Timor-Leste requires taxpayers to track revenue and expenditure streams (including wages) attributable to distinct tax regimes, to ensure that they apply the correct income tax, withholding tax and wage income tax rates and that they appropriately comply with the various tax filing requirements. This requires the implementation of appropriate accounting, invoicing and record-keeping systems. The Timor-Leste revenue authorities generally expect taxpayers to maintain detailed records to substantiate the apportionment of revenue and expenses, and the income tax deductions claimed; otherwise, taxpayers may face close scrutiny during tax audits and potentially adverse assessments.

To illustrate the application of the multiple tax regimes in Timor-Leste, consider the example of a taxpayer that carries on engineering services in Timor-Leste's exclusive areas and in different fields in the JPDA, namely, the Bayu Undan field and the Kitan field. Assume for purposes of this example that the taxpayer is either a resident of Timor-Leste or a nonresident with a permanent establishment (PE) in Timor-Leste or the JPDA.

Revenue: The taxpayer will be subject to withholding tax at source in respect of certain revenues it derives. In some cases, the withholding tax represents a final tax, but this is not always the case. Different Timor-Leste rates of withholding tax apply to gross income derived by the taxpayer from different revenue streams. For example, the withholding tax rates applicable to income from engineering services derived by a resident of Timor-Leste (or a nonresident with a PE in Timor-Leste or the JPDA) range from 1.6% to 6%, depending on the area in which the services are performed and whether the taxpayer is subject to the petroleum or the nonpetroleum tax regime. In the case of revenue derived from the JPDA, the relevant withholding tax rate is applied to 90% of such revenue.

Expenses (other than wages and certain other employment-related payments): A taxpayer must remit withholding tax to the Timor-Leste revenue authorities on payments it makes for certain services it procures as part of its operations. Such payments attract withholding tax at varying rates, depending on the revenue streams they relate to, the nature of the services and the residence and PE status of the recipient of the payments. For example, the withholding tax rates applicable to payments for labor hire/recruitment services to residents of Timor-Leste (or nonresidents with a PE in Timor-Leste or the JPDA) range from 0% to 6%, depending on the area in which the services are performed and whether the taxpayer is subject to the petroleum or the nonpetroleum tax regime. In the case of revenue derived from the JPDA, the relevant withholding tax rate is applied to 90% of such revenue.

Salaries, wages and certain other employment-related payments: Payments of salaries and wages (including noncash benefits and employer contributions toward superannuation) are subject to wage income tax. The taxpayer, as the employer, is required to remit wage income tax to the Timor-Leste revenue authorities. The rate of wage income tax is dependent on the residency status of the employee and the area in which the employment is exercised. The rates of wage income tax range from 0% to 30% for resident employees and 10% to 20% for nonresident employees, depending on the amount of the salaries and wages, the area in which the services are performed and whether the taxpayer is subject to the petroleum or the nonpetroleum tax regime. In cases where employment is exercised in the JPDA, the relevant wage income tax rates are applied to 90% of the employee's salaries and wages.

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Taxation in Australia

From an Australian tax perspective, a taxpayer other than an individual will need to report 10% of its income and expenses attributable to the JPDA in an income tax return for Australia. The tax regime in Australia is complex, and the rules change frequently. For nonresidents operating in the JPDA, in addition to considering the provisions of the Timor Sea Treaty, the Australian tax position may be affected by an applicable tax treaty between Australia and the taxpayer's home country.

Taxpayers also will need to ensure compliance with their employer obligations under Australia's tax legislation, including compliance with "Pay-As-You-Go" withholding (PAYG) and the fringe benefits tax (FBT) rules. The calculation of PAYG on salaries and wages derived from the JPDA depends on the residence status of the employee, with separate rules applicable to Australian resident employees, Timor-Leste resident employees and employees who are not residents of either Australia or Timor-Leste.

Comments

The interaction between Timor-Leste and Australian taxation can, in some cases, increase the costs of conducting operations in the JPDA if the taxation considerations are not appropriately factored into the pricing of contracts and into the economics of project models. Taxpayers operating (or considering operating) in the JPDA should familiarize themselves with the applicable rules and consult their tax advisors as needed for assistance with any planning or compliance issues in Timor-Leste or Australia.

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Belgium:
New tax treaty signed with Russia

Belgium and Russia signed a new tax treaty on 19 May 2015 to replace the existing treaty dating from 1995 and that has applied since 2001. The new treaty makes a number of changes to the existing treaty.

Currently, a 10% withholding tax applies to dividends in all cases. Under the new treaty, different rates will apply depending on the extent of the participation and the status of the shareholder (i.e. a company or an individual). Dividends paid to pension funds will be exempt, provided the dividends are not derived from the carrying on of a business by the pension fund or through an associated enterprise. A 5% withholding tax will apply where the beneficial owner is a company that holds, for an uninterrupted period of at least 12 months, at least 10% of the capital of the distributing company and this participation amounts to at least EUR 80,000 (or the equivalent in rubles). The rate in all other cases will be 15%.

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It should be noted that, under Belgian domestic tax law, an exemption from withholding tax is granted where dividends are paid to a company resident in a tax treaty partner country that holds at least 10% of the capital of the distributing subsidiary and the applicable treaty contains an exchange of information provision (this represents Belgium's extension of the EU parent-subsidiary directive to qualifying companies in non-EU treaty partner countries).

Under Belgian domestic law (and affirmed by the new treaty), dividends received by a Belgian-resident company from a Russian company and that qualify for Belgium's dividends received deduction are entitled to a 95% exemption from Belgian corporate income tax. The new treaty provides that dividends that are not so exempt nonetheless will be deemed exempt if the Russian company is effectively engaged in the active conduct of a trade or business in Russia.

The new treaty provides for a withholding tax exemption for interest paid on a loan granted by a company in one treaty partner state to a company in the other state. The default rate of 10% will remain unchanged.

The 0% rate on royalties will remain unchanged.

The treaty contains a limitation on benefits provision, under which treaty benefits will be denied if the main purpose, or one of the main purposes, of a resident or a connected person was to obtain treaty benefits.

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Bolivia:
Ruling issued on transfer pricing documentation requirements

Bolivia's tax authorities issued a ruling on 30 April 2015 that sets out the requirements for corporate taxpayers to prepare and file a transfer pricing study and/or complete an information reporting form for transactions with related parties. The rules are effective as from the first day following the end of the corporate fiscal year, which depends on the nature of the taxpayer's economic activities. This has the effect that the first due dates for submission will be: for mining companies, 1 January 2016; for commercial companies, banks and insurance companies, 1 April 2016; and for industrial and oil companies, 1 July 2016.

A transfer pricing study must be prepared in Spanish, in a hard copy and in a digital format, stated in Bolivian currency and signed by the taxpayer's legal representative or the holder of the tax identification number, as applicable. The hard copy must be filed with the Bolivian tax authorities' district offices or large taxpayer offices in the relevant jurisdiction, along with the financial statements for the fiscal year. The electronic version of the transfer pricing study must be submitted through the tax authorities' website.

The transfer pricing study must include at least the following information:

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- An index;
- An executive summary that lists the taxpayer's related parties, the nature of the relationships, the transactions carried out and the transfer pricing method selected;
- A functional analysis, with background information on the related parties; a description of the organizational and corporate structure of the group; the business activities conducted by the taxpayer and the markets in which it operates; commercial strategies; and a description of transactions, contracts, etc.;
- An economic analysis that includes a description of the related party transactions; a description of the valuation methods used and how and why they were selected; a selection of comparables and the sources of the comparables; and a definition of a range; and
- Conclusions.

The following transfer pricing methods may be used:

- Comparable uncontrolled price method;
- Resale price method;
- Cost-plus method;
- Profit split method;
- Transactional net margin method; and
- Transparent market price method.

A related party information return (E-Form 601) may need to be filed along with the transfer pricing study or on its own, as follows:

- E-Form 601 and the transfer pricing study must be filed for transactions equal to or exceeding BOB 15 million;
- E-Form 601 must be filed for transactions equal to or exceeding BOB 7.5 million, but less than BOB 15 million; and
- For related party transactions under BOB 7.5 million, no filing is required but the taxpayer must maintain documentation to demonstrate that the transactions are on arms' length terms or that any necessary adjustments have been made.

Penalties apply for failure to comply with any of the filing obligations.

Comments

The transfer pricing documentation requirements will allow the tax authorities to perform automated analyses to identify potential discrepancies in the filings (e.g. errors, significant variations from past years, differences with peers). This will give the tax authorities a large database on transfer pricing flows and the methods applied by international groups, as well as a tool to better prioritize audits.

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European Union:
Action plan released, along with list of tax havens

The European Commission unveiled a corporate tax action plan on 17 June 2015 that sets out a series of initiatives as the next steps in the effort to tackle tax avoidance, secure sustainable revenue and generally improve the corporate tax environment for businesses throughout the EU. The plan also states that the EU needs to consider how best to integrate the result of the OECD base erosion and profit shifting (BEPS) project, taking into account EU factors such as the freedom of establishment and the Eurozone, as well as the goal of maintaining a focus on preventing profits generated in the EU from not being taxed anywhere in the EU. Accompanying the action plan is a list of the "top 30" tax havens around the world.

The action plan includes five key areas for action:

1. **Re-launching the CCCTB (common consolidated corporate tax base) initiative:** The European Commission will issue a new legislative proposal in 2016 that would make the CCCTB mandatory for EU multinational enterprises (the previous recommendation would have allowed EU multinationals to opt out of the regime), and all EU member states would be required to apply the same rules for calculating taxable profits of multinationals; a step-by-step approach would be taken for the introduction of the CCCTB. The first step would be for a common corporate tax base, i.e. postponing consolidation, which, according to the commission, has been the most difficult element in negotiations thus far. This should allow member states to progress more quickly on agreeing on a common taxable base; consolidation would be introduced as a second step. (Progress on the CCCTB halted in 2011, generally because of the complexities of harmonizing the corporate tax regimes of the member states.)
2. **Ensuring fair taxation where profits are generated:** Measures will be introduced to ensure that there is a connection between taxation and the place where activities are carried out, including changes to the definition of "permanent establishment," amendments to the EU interest and royalties and parent-subsidiary directives, improvements to transfer pricing regimes of member states and the implementation of the OECD's "modified nexus approach" to patent box regimes.
3. **Creating a better business environment:** Measures will be introduced to eliminate obstacles for businesses operating in the EU, including measures allowing group entities to offset profits and losses they make/incur in different EU member states until full CCCTB consolidation is introduced and proposals to improve existing mechanisms to resolve double taxation disputes in the EU.
4. **Increasing transparency:** High priority is given to improving tax transparency in the EU to ensure fairer taxation and prevent abuse. (The European Commission released a tax transparency package in March 2015 as a first step (for previous coverage, see *World Tax Advisor*, 27 March 2015).) A tax transparency public consultation is being launched to assess whether companies should publicly disclose certain tax information, such as

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disclosure through country-by-country reporting. The commission also has issued a list of the top 30 noncooperative tax jurisdictions, compiled from the black lists of at least 10 EU member states. These jurisdictions are as follows: Andorra, Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Cook Islands, Grenada, Guernsey, Hong Kong, Liberia, Liechtenstein, Maldives, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Niue, Panama, Seychelles, St Kitts and Nevis, St. Vincent and the Grenadines, Turks and Caicos, US Virgin Islands and Vanuatu. (The listing of noncooperative jurisdictions does not have any immediate additional consequences beyond those already applying in the member states concerned.)
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150327_4.html

5. **Improving EU coordination:** The action plan states that cooperation between member states is essential to successfully address tax avoidance issues. The commission will launch a discussion within the "Platform on Tax Good Governance" to determine a strategic approach to controlling and auditing companies carrying out cross-border business, and will develop a proposal to reform the Code of Conduct on Business Taxation to enable it to react more efficiently to harmful tax competition and provide guidance on how to implement nonlegislative EU measures against corporate tax avoidance.

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European Union:
French tax consolidation regime contrary to EU law, according to AG Kokott

Advocate General (AG) Kokott of the Court of Justice of the European Union (CJEU) issued her opinion on 11 June 2015 in the *Groupe Steria* case, concluding that the French tax consolidation rules infringe EU law because a domestic group of French companies can obtain certain tax benefits that are not available to companies that are residents of other EU member states. According to AG Kokott, this is an impermissible restriction of the freedom of establishment principle in the Treaty on the Functioning of the European Union (TFEU). The administrative court of appeal of Versailles had referred the case to the CJEU in 2014.

Under French tax law, when a French parent company receives dividends from a subsidiary, the dividends are 95% tax exempt under the domestic participation exemption (provided certain requirements are met). The remaining 5% is deemed to represent nondeductible costs and is taxed at the standard corporate income tax rate. The 95% participation exemption applies regardless of whether dividends are received from a French subsidiary or a subsidiary in another EU member state. However, under a special rule in article 223 B, paragraph 2 of the French tax code, the 5% deemed expenses may be deducted from profits if a French parent company and its French subsidiaries are members of a tax consolidated group, with the result that a full exemption can be obtained. However, a company that is not resident in France may

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not join a French tax consolidated group, so a cross-border arrangement cannot benefit from the 100% exemption.

Although the French government filed an appeal with the French higher administrative court against the administrative court of appeal of Versailles's decision to request a preliminary ruling from the CJEU, AG Kokott did not wait for the outcome of the domestic court proceedings. She concluded that the French tax consolidation regime violates EU law because of the less favorable treatment of a French parent company with subsidiaries in other EU member states, as compared to the treatment of a French parent with only French subsidiaries.

The CJEU now must consider the case; although AG Kokott's opinion is not binding on the court, it often follows the AG opinion. If the CJEU agrees with AG Kokott, the case may have an impact on regimes in other EU member states, including the Netherlands, and affected French parent companies may be entitled to obtain a refund of corporate income tax paid on the taxable 5% of dividends received from subsidiaries resident in other member states (provided certain conditions are satisfied). Affected groups should consider filing protective claims to preserve their rights to restitution for fiscal years 2012, 2013 and 2014 (no later than 31 December 2015 for corporate income tax paid in 2013) to avoid being barred by the statute of limitations and limited only to taxes assessed or paid within the two years before their claims.

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Mexico:
Deadline for information returns extended/rules clarified

Mexico's tax authorities (SAT) published draft rules on 16 June 2015 that will extend and clarify provisions regarding information returns due on 30 June 2015. The new rules, including maquila-specific measures and measures that apply to certain other taxpayers, are awaiting publication in the official gazette.

Companies that qualify as maquiladoras are required to submit an annual information return in all cases. In addition, maquiladoras specifically must disclose the following: (1) if they carry out maquila operations under a "shelter" regime; (2) if they elected to apply the transfer pricing safe harbor; and (3) if they take the additional deduction for nonpayroll expenses (for previous coverage, see *World Tax Advisor*, 10 January 2014); a regulation issued in March 2015 indicated maquiladoras could comply with the disclosure requirement when they file their information returns on 30 June 2015. Because the SAT has not yet finalized the form to submit the information, the draft rules will extend the filing deadline to 31 December 2015.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140110_1.html

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The 2014 tax reform introduced an information return filing requirement (separate from the maquila information return), under which the following taxpayers must submit an annual return to the SAT by 30 June (this deadline has not been extended):

- Taxpayers that had taxable revenue in the previous year that exceeded MXN 644,599,005 or that are a publicly traded company;
- Taxpayers that elected to file a consolidated tax return;
- Taxpayer that are a Mexican permanent establishment of a foreign company; and
- Taxpayers that engaged in one or more transactions with a nonresident (whether or not a related party).

The draft rules provide that a taxpayer that engaged in one or more transactions with a nonresident will be able to elect not to file an information return if the total value of the taxpayer's combined transactions with nonresidents did not exceed MXN 30 million in the fiscal year and the taxpayer is not required to submit a return under any of the other criteria. Taxpayers that cannot opt out of filing the information return because the value of their transactions exceeds the MXN 30 million threshold, but that are not otherwise required to file a return, have to provide information only on the following (rather than completing the full return):

- Derivative financial transactions with nonresidents;
- Permanent investments in nonresident subsidiaries and associated or affiliated entities;
- Partners or shareholders that hold shares or participations;
- Transactions with related or unrelated parties; and
- Information on related party transactions (including the transfer pricing method used).

Entities that elect to file the traditional statutory report issued by an independent Mexican CPA will not be required to file the information return.

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South Africa:
MOU concluded with Mauritius on dual residence

The South African Revenue Service (SARS) and the Mauritius Revenue Authority signed a memorandum of understanding (MOU) on 22 May 2015 to settle the question of dual residence, as arising under article 4(3) of the tax treaty between the two countries. The MOU provides additional considerations for determining the state in which a person (other than an individual) is deemed to be resident for purposes of the treaty.

The "place of effective management" (POEM) traditionally has been used as tiebreaker test to determine residence under the South Africa-Mauritius treaty. Using POEM created some issues because South Africa uses a test that is geared more toward the "day-to-day running of operations," as contained in Interpretation Note 6 issued by the SARS. If Mauritius were to

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follow the definition of “effective management” under the OECD commentary, the two countries could reach different conclusions on residence status, and both could take the position that they have the right to tax an entity as a resident of their own country. Compounding this issue is the fact that the new treaty signed in 2013 (which entered into force on 28 May 2015 and will apply as from 1 January 2016) contains a provision allowing the competent authorities to mutually agree on the state in which a person is resident. This has caused uncertainty because taxpayers have been unclear as to what this “agreement” would be based on. The MOU now lists relevant factors that will be taken into consideration when the competent authorities agree on a person’s residency.

The MOU, which is effective as from 17 May 2013 (and carries over to the new treaty), states that where a person is resident in both South Africa and Mauritius, the competent authorities will determine residence based on the following factors:

- Place of effective management;
- Place in which the person is incorporated or otherwise constituted; and
- Any other relevant factors, including:
    - Where the meetings of the board of directors take place;
    - Where the activities of the CEO and senior executives are carried out;
    - Where the day-to-day senior management is carried out;
    - The location of the headquarters;
    - Which country’s laws govern the legal status of the person;
    - Where the accounting records are kept;
    - Other factors as per the 2014 OECD commentary; and
    - Any other factor agreed upon by the competent authorities.

If the competent authorities are not be able to reach an agreement on residence based on the factors above, no relief will be provided under the treaty unless the authorities agree otherwise.

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Ukraine:
Currency control restrictions re-extended

The National Bank of Ukraine (NBU) issued two decrees on 3 June 2015 (Decrees No. 354 and 355) that further extend controls on business currency transactions, but ease certain other restrictions (for previous coverage, see the *World Tax Advisor*, 27 March 2015). The new measures, which apply as from 4 June 2015, extend the controls until 3 September 2015.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150327_10.html

Restrictions that are extended with no significant changes include the following:

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- Deadline for settling import and export transactions (90 calendar days);
- Foreign currency earnings subject to mandatory exchange (75% (with limited exceptions));
- Tightened currency control;
- Ban on early repayment of loans or credits in foreign currency under agreements/contracts with nonresidents;
- Restrictions on the sale of foreign currency cash or precious metals to an individual on one business day through one banking institution (the equivalent of UAH 3,000);
- Restrictions on foreign currency remittances abroad by Ukrainian individuals (the equivalent of UAH 15,000 per business day for transfers without supporting documentation and the equivalent of UAH 150,000 per month for remittances with supporting documentation);
- Prohibition on cash withdrawals within Ukraine by electronic payment instruments issued by residents or nonresidents in a currency other than UAH;
- Restrictions on cash withdrawals in foreign currency or precious metals from current and deposit accounts (the equivalent of UAH 15,000 (at the official NBU exchange rate) per day, per client);
- Prohibition on the following foreign currency transactions:
  - Payment of funds to foreign investors abroad following the over-the-counter sale of securities of Ukrainian issuers;
  - Payment of funds to foreign investors abroad following the sale of equity rights, other than rights in the form of shares of joint stock companies;
  - Payment of dividends to foreign investors (except for refunds of dividends on exchange-traded securities); and
  - Foreign currency transactions performed under individual licenses from the NBU (some exceptions apply);
- Suspension of the issuance of bearer savings (deposit) certificates by banks, although registered savings (deposit) certificates denominated in both UAH and a foreign currency with a maturity of no less than six months may be issued;
- Limit on foreign currency withdrawals from banking deposits (except those covered by savings (deposit) certificates with a maturity of no less than six months);
- Requirement for crediting of funds (in UAH) to a bank's internal account, which must remain there for four business days before they can be used to purchase foreign currency;
- Provision of additional documentation by banks, such as a certificate issued by the State Fiscal Service confirming that a customer is not in arrears with respect to tax payments or a certificate issued by the National Committee for Securities and the Stock Market confirming there are no grounds for including the securities issuer on the list of fictitious issuers;
- Prohibition on banks from transferring funds in UAH from a foreign investor's bank account to purchase Ukrainian government bonds (with some exceptions); and
- Prohibition on granting loans in UAH if the loans are secured by pledges of funds in foreign currency.

The following restrictions are eased:

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- The cash withdrawal limit from ATMs is increased from UAH 150,000 to UAH 300,000 per day, per customer;
- The prohibition on banks from buying foreign currency upon requests of resident customers is lifted where such customers have less than USD 25,000 in their bank accounts (previously, this prohibition did not apply if the total amount of foreign currency funds in the customer's accounts was less than USD 10,000); and
- The threshold that triggers a mandatory price examination by the State Information and Analytical Center for International Commodity Markets Monitoring for foreign currency payments under services agreements is increased from EUR 25,000 to EUR 50,000 (or the equivalent in other currency).

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In brief

Australia: The government has released exposure draft legislation that would apply Australia's goods and services tax (GST) to a broad range of intangibles supplied from outside Australia, including supplies of digital products, services, rights and intellectual property as from 1 July 2017 (for prior coverage, see Australia Tax Alert, 14 May 2015). Under the legislation, affected supplies would not be limited to those made to "private" consumers; supplies to small business entities that are not GST-registered and to GST-registered businesses making acquisitions other than for the purpose of their enterprise also would be covered. In certain circumstances, supplies made through an "electronic distribution service" (EDS, which would be broadly defined to include websites, internet portals, gateways, electronic stores and marketplaces) would result in the EDS operator having the GST liability, instead of the supplier. The government has invited public input on the proposed legislative changes, and comments will be accepted until 7 July 2015.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-14-may-2015.pdf

Colombia: The tax authorities issued an opinion on 5 June 2015 that sets out the legal framework to apply a decree issued in 2014 that implements legislation relating to the gradual introduction of International Financial Reporting Standards (IFRS) in Colombia. The opinion provides that the calculation of the tax basis should not change during the four years following the entry into force of IFRS, and also clarifies certain issues. Under the transition rules, references contained in the tax rules to the former accounting procedures will remain in force for tax purposes during the four years following the entry into force of IFRS, so that the government can measure the tax effects of the new rules during this period and propose the adoption of appropriate regulations. Full IFRS generally will apply in Colombia as from 1 January 2016 for small and medium-sized entities, and as from 1 January 2015 for other companies.

Denmark: The government has announced that the tax authorities will be granted broader powers for the VAT inspection of foreign e-commerce companies under the rules for distance

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sales to Danish private consumers. The tax minister concluded that Danish companies are exposed to unfair competition on the internet because foreign internet companies do not always properly account for Danish VAT. Accordingly, the government has proposed measures that would enable the tax authorities to request information for VAT inspection purposes regarding Danish private customers' use of credit cards in foreign web shops. The initiative is expected to become effective from 2016.

European Union: The European Commission has ordered Estonia and Poland to deliver within one month information requested by the Commission on their tax rulings practices. Thus far, both countries have refused to respond in full to previous information requests. If either country fails to timely deliver the missing information, the Commission may refer the country to the Court of Justice of the European Union. The previous information requests to Estonia and Poland were sent as part of the Commission extending its state aid enquiry into national tax ruling practices to cover all EU member states in December 2014. The Commission recently asked 15 member states to provide a substantial number of individual tax rulings. Several member states already have supplied this information.

European Union: In February 2015, the European Commission opened an in-depth investigation into a Belgian tax provision that allows group companies to substantially reduce their corporation tax liability in Belgium on the basis of "excess profits" tax rulings. The rulings allow multinational entities in Belgium to reduce their corporate tax liability by excess profits that allegedly result from the advantage of being part of a multinational group. For the deductions to apply, a company must have prior confirmation by the Belgian tax administration through a tax ruling. This scheme appears to benefit multinational groups only. The Belgian authorities maintain that the provision only implements the general OECD arm's length principle, but the Commission has doubts that this interpretation of the OECD principle is valid and considers the provision may not comply with EU state aid rules. The Commission now has released a nonconfidential version of its letter to the Belgian authorities that states that 47 companies have been granted excess profits rulings, and that up to 87% of Belgian profits have been excluded from tax. The letter sets out in some detail how rules work and why the Commission considers that the excess profits rulings scheme breaches the relevant conditions.

France: The tax authorities have published a list of "abusive practices" and "tax schemes" discovered during tax audits (e.g. the failure to apply VAT to internet sales of goods in appropriate cases). Taxpayers that have carried out one of the listed practices or schemes should correct the situation by filing amended returns, and the tax authorities will determine the tax consequences on a case-by-case basis.

Gibraltar: The Chief Minister delivered a budget address to parliament on 22 June 2015 that introduces measures to support local business and tax resident individuals. Although implementing legislation has yet to be enacted, the measures generally are expected to apply as from 1 July 2015. Corporate tax measures include a 100% capital allowance on eligible capital expenditure for new business in the first year of trade; a 150% deduction for training costs; and an increase in the audit threshold from GIP 1 million to GIP 1.25 million. The government also will consider the introduction of capital allowances for intangible assets and a research and development regime. Certain personal income tax rates are expected to decrease: under the allowance-based system, the marginal rate on taxable income exceeding

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GIP 16,000 would decrease from 40% to 39%, and under the gross income-based system, the tax rate on income over GIP 700,000 would decrease from 10% to 5%. Additionally, a six-month tax amnesty is expected to be introduced to allow noncompliant taxpayers to pay a 5% tax on undeclared funds remitted to Gibraltar.

Hungary: The tax authorities have released guidance on the implementation of the 2014 Court of Justice of the European Union (CJEU) decision in the *Skandia* case, in which the CJEU held 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 (for prior coverage, see *World Tax Advisor*, 26 September 2014). The guidance confirms that supplies of services between a domestic head office/branch and its foreign branch/head office are taxable supplies for VAT purposes, regardless of whether the branch/head office is located in an EU member state or a non-EU country. The tax authorities also have confirmed that this treatment is consistent with existing domestic legislation; therefore, the guidance is effective from 1 January 2008, when the current Hungarian VAT Act entered into force.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140926_2.html

Indonesia: The Ministry of Finance has issued a regulation providing that taxpayers may obtain a reduction or waiver of administrative penalties for the late filing of tax returns or the late settlement of tax underpayments (including underpayments due to a taxpayer's amendment of a tax return) under certain circumstances where the failure to comply with the tax rules was due to the taxpayer's negligence or a mistake that was not made by the taxpayer. Relief generally is available for monthly tax returns for December 2014 and earlier and annual tax returns for fiscal year 2014 and earlier. The relief must be requested during 2015 through an application to the Indonesia Tax Office.

Kazakhstan: The president has proposed the introduction of a sales tax to replace the VAT, which would fundamentally change the mechanism for tax collection. The tax authorities have been requested to study the issue in detail, but have not yet provided comments.

Peru: The government issued regulations on 18 April 2015 that amend the deemed dividend rules to confirm to the 2014 tax reform, which made changes as from 1 January 2015 to the rules governing certain "credit" granted by Peruvian corporate taxpayers to resident individual shareholders and (corporate and individual) nonresident shareholders (for prior coverage, see *World Tax Advisor*, 23 January 2015). The regulations do not address the tax treatment of outstanding credits that were granted for years ended on or before 31 December 2014, or the tax treatment of distributions of amounts previously taxed under the deemed dividend rules.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150123_6.html

Switzerland: On 14 June 2015, voters rejected the initiative to introduce a uniform federal inheritance and gift tax that would have replaced all of the currently applicable cantonal-level regimes. Under the current regimes that will remain in effect, the applicable tax rates vary depending on the canton and the relationship between the transferor and the transferee, and most cantons provide exemptions for transfers to direct descendants (children and grandchildren). The proposed federal regime would have taxed transfers to direct descendants at a fixed rate of 20%.

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Tax treaty round up

At the end of each month, World Tax Advisor provides an update on recent tax treaty developments, with a focus on items that directly affect the withholding tax rates of the key jurisdictions covered by the Deloitte International Tax Source (DITS). Additional coverage may include stated negotiating priorities and other important tax treaty trends.
URL: http://www.dits.deloitte.com?id=us:em:na:wta:eng:tax

Unless otherwise noted, the developments discussed below are not yet in force.

Belgium-Russia: See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150626_2.html

Chile-China: When in effect, the treaty signed on 25 May 2015 provides for a 10% withholding tax rate on dividends. A 4% rate will apply on interest derived from loans granted by banks, insurance companies and other financial institutions; otherwise, the rate will be 10%. A 2% withholding tax rate will apply to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate will be 10%.

Colombia-Czech Republic: The 2012 treaty entered into force on 6 May 2015 and will apply as from 1 January 2016. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%, or 25% for dividends paid by a Colombian company from profits that have not been taxed at the corporate level. A 0% rate will apply to interest paid in connection with the credit sale of merchandise or equipment and on a loan or credit granted by a bank for at least three years; otherwise, the rate will be 10%. The rate on royalties will be 10%.

Cyprus-Georgia: When in effect, the treaty signed on 13 May 2015 provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

Ireland: The first deadline for domestic financial institutions to provide information to the Irish tax authorities to comply with reporting obligations under the US Foreign Account Tax Compliance Act (FATCA) has been extended from 30 June 2015 to 31 July 2015. This extension will apply to 2015 filings only.

Latvia: A new procedure for applying for tax treaty benefits became effective on 1 May 2015. A nonresident recipient of Latvian-source income now must submit a residence certificate to the Latvian payer before the relevant corporate or individual income tax return filing date (previously, the certificate had to be presented at the time of payment.

Latvia-Qatar: The 2014 treaty entered into force on 1 June 2015 and will apply as from 1 January 2016. When in effect, the treaty provides for an exemption from withholding tax for dividends and interest paid to a company (other than a partnership); otherwise, the rate will be 5%. A 5% rate will apply to royalties.

Mauritius-South Africa: The 2013 treaty to replace the 1996 treaty entered into force on 28 May 2015 and will apply as from 1 January 2016. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company that holds at least 10% of the capital of

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the payer company; otherwise, the rate will be 10%. A 10% withholding tax rate will apply to interest (with an exemption for interest paid in respect of a debt instrument listed on a recognized stock exchange) and a 5% withholding tax rate will apply to royalties.

Norway-Romania: When in effect, the treaty signed on 19 April 2015 to replace the 1980 treaty 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 5% withholding tax rate will apply to interest and royalties.

Portugal-Bahrain: When in effect, the treaty signed on 26 May 2015 provides for a 10% withholding tax rate on dividends paid to a company that owns directly at least 25% of the voting stock of the payer company; otherwise, the rate will be 15%. A 10% withholding tax rate will apply to interest and a 5% withholding tax rate will apply to royalties.

Portugal-Oman: When in effect, the treaty signed on 28 April 2015 provides for a 5% withholding tax rate on dividends paid to the government of either contracting state or the central bank and, in the case of Oman, a 5% rate will apply where dividends are paid to the State General Reserve Fund, the Omani Investment Fund or any other statutory body or institution wholly owned by the government. A 10% withholding tax rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. A 10% withholding rate will apply to interest and an 8% withholding tax rate will apply to royalties.

Spain-Nigeria: The 2009 treaty entered into force on 5 June 2015 and applies as from that date. A 7.5% withholding tax rate applies where dividends are paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate is 10%. The rate on interest is 7.5%. A 7.5% rate applies to royalties paid to a company; otherwise, the rate is 3.75%.

Switzerland-Oman: When in effect, the treaty signed on 22 May 2015 provides for a 0% withholding tax rate on dividends paid to the other contracting state, a political subdivision, central bank, or a pension scheme or pension fund of the other contracting state. In the case of the Sultanate of Oman, a 0% withholding rate will apply where dividends are paid to the State General Reserve Fund, the Omani Investment Fund and any other statutory body or institution wholly owned by the government. A 5% rate will apply to dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. A 0% withholding tax rate will apply to interest paid on a loan granted by a bank, to a pension scheme or pension fund or on intercompany loans; otherwise, the rate will be 5%. An 8% withholding tax rate will apply to royalties.

United Kingdom-Kosovo: When in effect, the treaty signed on 26 February 2015 provides that dividends generally are exempt from withholding tax; however, a 15% rate will apply to dividends 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 immovable property is exempt from tax. Interest and royalties will be subject to a 0% withholding tax rate.

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United States: Intergovernmental agreements to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) were signed between the US and Colombia (on 20 May 2015), Iceland (on 26 May 2015), Romania (on 28 May 2015), the Holy See (Vatican City State) (on 10 June 2015), Korea (ROK) (on 10 June 2015) and the United Arab Emirates (on 17 June 2015).

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Iceland
Legislation proposed to ease capital controls, introduce "stability tax"
Iceland's government presented two bills into parliament on 10 June 2015 that aim to provide the foundation for a comprehensive strategy to liberalize the controls that currently restrict the flow of capital out of the country. As part of this strategy, the government plans to introduce a one-time "stability tax" on the assets of failed banks. Parliament is expected to approve both bills in the near future.
Issue date: 12 June 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-iceland-12-june-2015.pdf

OECD
BEPS Action 13: Country-by-country reporting implementation package
On 8 June 2015, the OECD, as part of the G20/OECD work on the action plan to address base erosion and profit shifting (BEPS), released Action 13: Country-by Country Reporting Implementation Package. This follows the two reports previously issued by the OECD: (i) the agreement of a three-tier global standard for transfer pricing documentation, including a common template for county-by-country (CbC) information to be reported to the tax authorities; and (ii) implementation guidance in relation to the CbC report, including the timing of introduction, application to "large" businesses and filing mechanisms. The implementation package outlines model legislation that governments can use to adopt the new rules, as well as competent authority agreements to implement the sharing mechanisms for the CbC report.
Issue date: 12 June 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-12-june-2015.pdf

Puerto Rico
Tax reform enacted
The governor of Puerto Rico enacted a law on 29 May 2015 that makes significant changes to the 2011 Internal Revenue Code. The amendments include certain income tax measures, an increase in the sales and use tax (SUT) rate and the introduction of a VAT regime, along with transitional measures that apply to the SUT.

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Issue date: 12 June 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-puertorico-12-june-2015.pdf

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