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Turkey's approach to BEPS

Although no specific changes have been made to its domestic tax legislation in relation to the OECD's base erosion and profit shifting (BEPS) initiative, Turkey generally supports the BEPS project, and existing legislation contains anti-avoidance measures that address BEPS and harmful tax competition concerns. These include specific measures addressing the tax deductibility of interest, transfer pricing rules and a general anti-avoidance rule (GAAR) that relies on the "substance-over-form" principle.

Rules governing deductibility of interest

General rules for tax deductibility of interest: An expense generally qualifies as a deductible expense for Turkish corporation tax purposes if it is directly related to the carrying on of business, the generation of revenue and, thus, the earning of business profits. In principle, interest paid on a loan is deductible if the funds borrowed are used to finance

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business operations. However, if income derived from a specific business operation is tax-exempt, interest incurred on a loan obtained to finance the business activity is nondeductible, since the general rule is that, where income is nontaxable, any expense (including financing costs) directly related to the income is nondeductible.

The following tests must be met to deduct interest expense:

- **Business purpose test:** The loan must be effectively connected with the operation of the business; in other words, the funds borrowed must be used to finance the borrower's business.
- **Subject-to-tax test:** The business operation financed should aim to generate taxable income, rather than tax-exempt income. If interest is incurred related to a tax-exempt activity, it cannot be deducted from the income derived from nonexempt activities.

Where the lender and the borrower are related parties, and hence the loan qualifies as an intercompany loan, Turkey's thin capitalization and transfer pricing rules also must be taken into account in determining the deductibility of interest.

General limit on deduction of financing costs: A provision intended to apply as from 1 January 2013 introduced a limitation on the deduction of financing costs arising from loans (regardless of whether the loans are from a related party). Under this rule, up to 10% of the financing costs (e.g. interest, commissions, foreign exchange losses, etc.) related to loans that exceed shareholders' equity are nondeductible (except where the borrower is a bank or similar financing company, financial institution, leasing company or factoring company). The rule has not become effective, however, because the Council of Ministers has not issued the relevant decree determining the percentage of the limitation. The rule also has given rise to some questions regarding its application (e.g. regarding the definition of "shareholders' equity," whether financing gains may offset financing expenses and how the limitation rules will interact with the thin capitalization rules).

Thin capitalization rules: The thin capitalization rules apply where a Turkish taxpayer obtains one or more loans, directly or indirectly, from a shareholder or a party that is related to the shareholder and the total amount of such loans exceeds three times the shareholders' equity shown in the opening balance sheet (six times the shareholders' equity for loans from related banks or financial institutions) at any time within an accounting period. Related parties for these purposes are defined as the following:

- Companies in which a shareholder holds, directly or indirectly, at least 10% of the share capital, voting rights or dividends; or
- Individuals and companies that hold at least 10% of the share capital, voting rights or profits in one of the corporate shareholders or companies that is considered a related party under the criteria in the bullet immediately above.

Where the thin capitalization rules apply, financing costs and charges (e.g. interest, foreign exchange losses and similar charges) incurred on the portion of a related party loan that exceeds the applicable debt-to-equity ratio (3:1) will be nondeductible for corporate tax purposes, and thus subject to the 20% corporate income tax. In addition, the excess financing expense amount (excluding the excess foreign exchange loss, if any) will be deemed to

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constitute a hidden profit distribution or a remittance of profits (in the case of nonresidents operating in Turkey through a permanent establishment) on the last day of the accounting period in which the conditions for application of the thin capitalization rules are satisfied. Such deemed distributions are subject to a 15% dividend withholding tax under Turkey's domestic tax rules, although the rate may be reduced to 10% or 5% under one of Turkey's tax treaties.

Transfer pricing rules: Turkey's transfer pricing rules, which are based on the OECD guidelines, require that transactions between related parties (both residents and nonresidents) be on arm's length terms. Otherwise, the relevant profits will be deemed to be hidden profit distributions (in whole or in part), and subject to both corporate income tax and dividend withholding tax, depending on the tax status of the recipient of the disguised profit. The term "associated person" or "related party" has a broader meaning under the transfer pricing rules than the concept "person related to the shareholder" does under the thin capitalization rules.

Related parties include the following:

- Shareholders of companies;
- Individuals or corporations that are related to the shareholders or to the company itself;
- Individuals or corporations that directly or indirectly control, or are under the control of, the company or its shareholders, through management, supervision or capital;
- Shareholders' spouses and relatives of the shareholders or his/her spouse, including up to "third-degree" relatives through blood or marriage; and
- Individuals or corporations that are resident in countries or regions to be listed by the Council of Ministers as those engaged in "harmful tax competition" (tax havens) (however, the list has not yet been announced).

Other rules addressing BEPS concerns

Withholding tax on payments made to companies located in tax havens: A 30% withholding tax applies automatically on payments made to entities located in jurisdictions that engage in harmful tax competition or that do not participate in the exchange of information (tax havens). However, the withholding tax cannot be applied in practice because the Council of Ministers has not issued the decree providing a list of relevant jurisdictions. Entities located in countries and regions that are engaged in harmful tax competition also are treated as related parties for the purpose of applying the transfer pricing rules.

Controlled foreign company (CFC) rules: Under Turkey's CFC rules, the earnings derived by Turkish companies from foreign participations in which they hold at least 50% of the shares or voting power are subject to Turkish corporate tax (regardless of whether such earnings are distributed), provided the following conditions are satisfied:

- At least 25% of the gross revenue of the foreign participation is composed of passive income items (e.g. dividends, interest, rental income, license fees);
- The effective tax burden on the foreign participation is less than 10%; and
- The annual gross sales value of the foreign participation is more than TRY 100,000.

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In such cases, the profits of the CFC are included in the profits of the Turkish company in proportion to the Turkish company's share in the capital of the CFC, regardless of whether the profits are distributed, and are taxed currently at the 20% corporation tax rate.

Turkish tax authorities' approach to BEPS

As a member of the OECD and the G20, and the current G20 president, Turkey generally supports the BEPS initiatives. Although the Turkish Revenue Authority (TRA) has not yet taken any specific action that would result in legislative changes within the framework of the BEPS action plan, it continues to apply the existing anti-avoidance rules summarized above, which serve as protective measures. In terms of priorities relating to the BEPS initiatives, given the increasingly high volume of transactions carried out through the internet, TRA officials appear to be particularly interested in the definition of "digital presence" and the development of the new rules for taxation of e-commerce within the BEPS framework.

Tax audits in Turkey have a strong focus on cross-border related party transactions. The TRA generally follows a risk assessment approach of its own during audits. There is increased scrutiny of all intragroup transactions in terms of tax deductibility and the arm's length nature of intragroup services (especially management service fees).

The TRA appears to be waiting for the results of the OECD efforts on the BEPS project before deciding how to proceed, so changes might be expected in 2016 and thereafter, following the release of the OECD's final conclusions scheduled to be completed in the coming months.

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Challenges remain for foreign jurisdictions and financial institutions implementing US FATCA

The first day of July 2015 marked the one-year anniversary for foreign financial institutions (FFIs) of having to comply with the US Foreign Account Tax Compliance Act (FATCA), the law targeting tax noncompliance by US taxpayers with foreign accounts. While FATCA has been an effective tool for compliance with the US Internal Revenue Service (IRS) financial reporting requirements, challenges associated with FATCA adoption and compliance still exist.

A key challenge for foreign jurisdictions and FFIs is meeting FATCA implementation deadlines. A number of countries with FATCA intergovernmental agreements (IGAs) faced reporting deadlines in May and June 2015. FFIs not under a FATCA IGA, or otherwise exempted, were given an automatic extension this year and needed to provide the IRS with information on accounts held by US taxpayers by 28 June 2015.

The reporting deadlines represent a new phase in FATCA's rollout. Since FATCA's enactment in 2010, FFIs have worked to document accounts, develop onboarding procedures, build withholding capabilities, establish a compliance program and prepare for reporting. Now it is

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time for the data to actually begin flowing to the IRS, and it is likely that many institutions still are not prepared to deliver that information. FATCA reporting requirements will continue to increase beyond 2015, as the remediation of preexisting accounts is completed. Accurate reporting hinges on a detailed understanding of the institution's customers, a very real challenge for many financial institutions. Client information often resides on multiple information technology systems, with the name and address in one place and information on various accounts scattered elsewhere. The difficult balance that FFIs try to achieve with FATCA compliance is to provide authorities with the information they require, while protecting client privacy. Information accuracy is paramount in meeting both requirements. For example, an FFI that mistakenly identifies an account holder as a US taxpayer or that provides the IRS with incorrect financial data could face both business and compliance consequences.

Some foreign governments are themselves behind in FATCA implementation. Many countries have entered into "Model 1" IGAs requiring that the country itself issue detailed FATCA regulations and guidance and that FFIs convey FATCA-related information to their own revenue agencies. Those agencies, in turn, are required to begin transmitting that information to the IRS starting 30 September 2015. Each country is in a position to interpret the FATCA rules within its own jurisdiction and can add its own specific requirements on top of the FATCA provisions.

Another challenge for both governments and FFIs is compliance with the common reporting standard (CRS) for the exchange of financial account information between global jurisdictions, established by the OECD. The CRS will require financial institutions around the world to assume a fundamental – and critical – role in providing tax authorities with more access to client financial account data. Implementation of that standard, while varying from country to country, will increase the focus on account opening and client identification procedures globally, and the amount of reporting will grow exponentially.

Together, the FATCA and OECD CRS provisions represent significant new requirements for global data collection and information reporting. Those requirements will compel financial institutions to establish processes that both protect their clients' interests and meet government mandates.

Comments

Beyond financial reporting requirements, the substantial data collection required by FATCA and the OECD CRS may offer important benefits for forward-looking FFIs. The information can provide FFIs a better understanding of who their clients are, the products they use and new products in which they might be interested.

Some organizations may see the requirements as a catalyst for system consolidation. FFIs, particularly those that have grown through acquisitions, might have numerous systems housing client information, an environment possibly ready for technology streamlining. Other FFIs may want to work with a service provider to fulfill their FATCA and CRS requirements; this might help an FFI avoid having to build internal infrastructure, while allowing it to access leading implementation practices.

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FATCA reporting is here to stay. Along with imposing new, real demands on businesses and individuals, FATCA serves as a harbinger of similar dictates by other governments. Financial institutions that leverage FATCA compliance efforts to address the continuing expansion of reporting requirements around the globe and that use the data gathered for reporting to increase knowledge of their customers may be able to both meet regulatory requirements and strengthen their market position.

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Chile:
Fully integrated regime not to apply to foreign investors

Chile's Minister of Finance announced on 10 August 2015 that it intends to present a bill that would make technical simplifications to certain measures in the 2014 tax reform. In particular, changes would be made to the fully integrated tax regime and a clarification would be made to the general anti-avoidance rule (GAAR).

The tax reform that entered into effect on 1 October 2014 included the introduction of a new "dual" tax system that will allow shareholders to elect to be taxed under one of the following regimes beginning in 2017 (for prior coverage, see *World Tax Advisor*, 26 September 2014 and Chile Tax Alert, 23 August 2014):
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140926_5.html
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-chile-230814.pdf

- **Fully integrated regime:** Under the fully integrated regime, shareholders will be taxed on an accrual basis at the time the income is earned by the corporation and regardless of whether the income is distributed to shareholders. The income will be subject to the First Category Income Tax (FCIT) at a rate of 25% imposed at the level of the operating entity, plus global complementary tax at progressive rates for resident individuals or an additional 35% withholding income tax (AWIT) for nonresident shareholders (with a full credit granted for the tax imposed at the corporate level), resulting in an overall income tax charge of 35% for nonresidents.
- **Partially integrated regime:** Under the partially integrated regime, shareholders will be taxed on a cash basis at the time profits are distributed, but at an FCIT rate of 25.5% for 2017 (and 27% as from 2018). The FCIT may be credited against the 35% AWIT, but 35% of the credit will have to be paid to the Chilean Treasury, so, in practice, only 65% of the FCIT actually is creditable, resulting in a combined tax rate of 44.45% Thus, taxpayers will pay for the ability to defer taxation until profits are distributed, with a higher overall income tax rate than under the fully integrated regime. Investors from countries that have concluded a tax treaty with Chile will be entitled to a full FCIT credit, resulting in a combined rate of 35%.

The introduction of these regimes has generated widespread criticism and concerns about the technical and practical challenges of operating a dual system of taxation, especially in the case

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of chains or groups of companies. The bill would limit the application of the fully integrated tax regime) to individuals and companies whose shareholders are domiciled or resident in Chile. If the bill is enacted as proposed, the fully integrated regime no longer would be available to foreign investors. As a result, investors from countries that have not concluded a tax treaty with Chile would be subject to a combined tax rate of 44.45%.

The bill also would clarify the application of the new GAAR that will allow the Chilean tax authorities to disallow tax benefits obtained from abusive or aggressive tax planning structures. These rules become effective on 30 September 2015 and will apply to actions, agreements, structures or transactions executed or concluded as from that date. The tax authorities issued guidance in June 2015 stating that it would apply the GAAR to agreements, structures or transactions initiated before the GAAR effective date if the legal or tax effects of such activities are pending on 30 September. The bill clarifies that the GAAR would not apply to situations where the essential elements of a contract or transaction were established before the effective date and no changes are made after 30 September 2015.

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Colombia:
Deadlines approaching for filing returns to report assets abroad

Colombian taxpayers holding assets abroad will be required to submit annual returns reporting such assets by various dates in October 2015. The reporting obligation, introduced at the end of 2014, requires corporate and other entities and individuals in Colombia to provide the following information to the tax authorities:

- Identity of the taxpayer;
- Details of assets (including a description of the nature and type of the assets, the jurisdiction in which they are located and their value) that are owned as of 1 January of the reporting year (e.g. the value as of 1 January 2015 is reportable in October 2015) and whose equity value individually exceeds 3,580 tax value units (UVT) (for 2015, the equivalent value is COP 101,239,000, or approximately USD 33,745); and
- Total foreign assets owned as of 1 January of the reporting year that do not individually meet the above threshold. Such assets must be declared on an aggregate basis by reporting the total equity value for each jurisdiction in which assets are located.

The deadline for submitting the form will depend on the last digit of the taxpayer’s tax identification number. Penalties apply for failure to timely submit the report.

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Greece:
Withholding tax on payments to preferential tax regimes abolished

Law 4336/2015, published in Greece's official gazette on 14 August 2015, abolishes the provisions that required companies to withhold a 26% tax on transactions with companies located in a country with a "preferential tax regime" (a regime with a corporate tax rate under 13%) or in a "noncooperative state." Failure to withhold the tax resulted in the nondeductibility of the expense; a refund of tax withheld was available only if a company was able to demonstrate that the transaction was genuine.

The 26% withholding tax was imposed, in particular, on transactions with companies located in Bulgaria, Cyprus and Ireland, all of which have corporate tax rates under 13%. Bulgaria filed a complaint with the European Commission claiming that the withholding tax violated the Treaty on the Functioning of the European Union (for prior coverage, see *World Tax Advisor*, 24 July 2015). The Commission issued a reasoned opinion on 3 August agreeing with Bulgaria. Greece now has amended its Income Tax Law to abolish the 26% tax retroactively from 31 March 2015, the date the measures became effective.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_bc.html

The explanatory report to the new law clarifies that the regime in force before the introduction of the withholding tax now applies. Accordingly, payments made to residents of preferential tax regimes and noncooperative states will be presumed to be nondeductible, unless the taxpayer proves the payments are made in the course of actual and ordinary transactions and they are not intended for tax avoidance or evasion purposes.

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Japan:
Exit tax regime effective, with transition period for foreign nationals

Japan's new exit tax regime, introduced in the 2015 tax reform, became effective on 1 July 2015. As from this date, when covered persons (Japanese resident individuals, including foreign nationals) exit Japan and certain conditions are fulfilled, income tax will be imposed on the unrealized gains on their covered financial assets, as if these assets were disposed of on the departure date. Under transition rules, the earliest the exit tax may be imposed on foreign nationals is 1 July 2020.

Covered persons

A Japanese tax resident, regardless of his/her nationality, will be subject to the exit tax if the individual fulfills the following conditions:

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- He/she holds covered assets (defined below) of JPY 100 million or more at the time of exiting Japan; and
- He/she has stayed in Japan for more than five out of the previous 10 years at the time of exiting Japan.

For a foreign national resident in Japan, certain periods may be excluded from the residence period when determining whether the “five years out of 10 years” condition is satisfied, depending on the type of visa the individual holds.

- Periods during which a foreign national holds a visa covered in “table 1” of Japan’s Immigration Control and Refugee Recognition Act (including, but not limited to, visas for journalists, investors/business managers, engineers, specialists in humanities/international services, etc.) may be excluded from the residence period, regardless of the relevant dates; and
- Periods during which a foreign national holds a visa covered in “table 2” (including, but not limited to, visas for permanent residents (defined differently for visa purposes than for income tax purposes), spouses or children of Japanese nationals, etc.) may be excluded from the residence period if the period begins before 1 July 2015.

Due to these exclusions, the earliest the exit tax could be imposed on foreign nationals would be 1 July 2020 (for table 2 foreign nationals).

Covered assets

Covered assets are determined on a worldwide basis (not limited to those assets located in Japan), and the JPY 100 million threshold is the aggregate threshold for all of the covered assets held. Covered assets include the following:

- Securities (as defined in the income tax law; additional guidance is expected from the tax authorities on the interpretation of the term for exit tax purposes);
- National and municipal bonds;
- Corporate bonds;
- “Tokumei-kumiai” contracts (i.e. silent partnerships); and
- Unsettled credit transactions and unsettled derivative transactions.

Cash and cash deposits, and nonfinancial assets such as real estate, are not covered assets for exit tax purposes.

Taxation and other considerations

Tax rate: At the time of departure from Japan, a covered person will be subject to the exit tax on the net unrealized gains on covered assets, at the same rate that applies to realized gains for individual tax residents (currently 15.315%, including the restoration surtax). Local inhabitants tax will not be imposed.

Timing for filing a tax return and paying tax: The timing for filing a tax return reporting the exit tax and paying the tax will depend on whether the individual appointed a tax representative prior to departure from Japan, and whether any collateral is pledged for payment of the tax:

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- If a taxpayer appoints a tax representative before departing Japan, he/she is deemed to have transferred the assets at the time of departure, and the tax return is due by 15 March of the year following the year of departure.
    - If the individual has pledged collateral, the payment of the exit tax may be deferred (as described below); or
    - If the individual has no pledged collateral, the exit tax is due on or before the tax return filing date.
- If a taxpayer does not appoint a tax representative, or does not do so before departing Japan, the taxpayer is deemed to have transferred the assets three months before departure. The individual must file the tax return and pay the tax due prior to departure.

If the exit tax payment may be deferred, the deferral period is five years, which may be extended to 10 years upon application by the taxpayer. The potential benefit of the deferral is that it may permit a covered person to adjust the final exit tax due for events occurring within the deferral period, such as where the value of covered assets declines or where covered assets are sold and foreign tax is imposed on the gain. It should be noted that an interest charge will be applied on the deferred tax payment.

The administrative process for providing collateral is being clarified, but the earliest the collateral could be due is the first tax return deadline for taxpayers who have appointed a tax representative, i.e. 15 March 2016.

Return to Japan: If a covered person exits Japan and later returns to Japan within five years from the departure, still holding the covered assets, he/she may request a correction to cancel the exit tax within four months from the return date to Japan. In this case, interest will not be levied, even if the tax has been deferred.

Inheritance and gift tax: Although this article focuses on the exit tax imposed when a covered person leaves Japan, exit tax also may be imposed when covered assets are gifted or bequeathed to a non-Japanese resident. In these cases, gift and inheritance tax also may be levied, regardless of the transferor's residence period in Japan.

Comments

The introduction of the new exit tax has generated considerable attention in the foreign community, but it appears that the majority of foreign nationals temporarily working in Japan likely will not be exposed to the regime.

As the exit tax will not be imposed upon foreign nationals until 1 July 2020 at the earliest, foreign nationals and their employers have a transitional period to consider the potential effects:

- Foreign nationals should use the transitional period to consult with their tax and immigration advisors and consider any options available to mitigate the potential impact of the introduction of the tax;
- Although many secondments to Japan initially last for a period of less than five years, employers with foreign national secondees (or those considering seconding a foreign national employee to Japan temporarily) may wish to review the visa options with their

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immigration advisor, given that the visa type now is linked to exposure to the exit tax; and
- Employers should review their tax equalization policies and secondment agreements to deal with any potential exposure to exit tax that may arise.

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Luxembourg: Draft bill on amended PSD and expanded consolidation/exit tax regimes presented

The Luxembourg government presented a draft bill to parliament on 5 August 2015 that would transpose the amended EU parent-subsidiary directive (PSD) into domestic law. The draft law also contains some beneficial measures for taxpayers, including an expansion of the scope of the tax consolidation and exit tax regimes. The proposed tax measures demonstrate the government's commitment to encouraging further investment in the country.

The parliament is expected to review and adopt the draft law within the next few months.

Implementation of the amended PSD

The general goal of the PSD is to prevent the double taxation of profit distributions between EU subsidiaries and their EU parent companies; this is achieved by granting a withholding tax and an income tax exemption for distribution of profits by qualifying subsidiaries to their parent companies. However, the application of the directive may have led to situations where dividends were not taxed in either jurisdiction. To tackle such abuse, the European Council adopted two amendments to the PSD in 2014 and 2015, which must be transposed by all member states into their national tax laws by 31 December 2015:

1. **Anti-hybrid loan mismatch provision:** To prevent double nontaxation, a cross-border group of EU parent and subsidiary companies using hybrid loan arrangements will be denied a tax exemption for payments received in the member state in which the parent company is resident if the payments are deductible in the member state in which the subsidiary is resident. The member state of the parent company must refrain from taxing profits distributed by its EU subsidiary, to the extent that such profits are not deductible in the member state of the subsidiary; and
2. **General anti-abuse rule (GAAR):** To prevent misuse of the PSD and to ensure more consistency in its application in different member states, the tax authorities would be allowed to ignore artificial arrangements used for tax purposes. The application of the GAAR should be proportionate and should serve the specific purpose of tackling an arrangement, or a series of arrangements, that are not put into place for valid commercial reasons that reflect economic reality.

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In practice, dividends received by a qualifying Luxembourg parent entity from a qualifying subsidiary located in another member state will not be exempt under the participation exemption where the payment is deductible in the member state of the payer. The benefits of the participation exemption also will not apply where the transaction is deemed to be an abuse of law under the general anti-abuse rule, i.e. if dividend distribution is the result of an arrangement (or series of arrangements) that does not have a genuine commercial purpose.

In cases where a qualifying Luxembourg entity distributes dividends to a qualifying entity located in another member state, the withholding tax exemption under the participation exemption will be denied if the transaction is deemed to be an abuse of law under the general anti-abuse rule.

The measures are proposed to apply to income allocated after 31 December 2015.

Fiscal unity

The draft law would expand the current fiscal unity, or tax consolidation, regime to allow "horizontal tax consolidation" and to bring more situations within the scope of the "vertical tax consolidation" rules. Specifically, the draft law would align Luxembourg law with a 2014 decision of the Court of Justice of the European Union, in which the court held that a fiscal unity regime was incompatible with the EU freedom of establishment principle where two sister companies located in the same member state and held by an EU parent company were prevented from forming a horizontal tax consolidation.

Under the proposed rules, sister companies with the same direct or indirect EU parent company would be permitted to form a tax consolidation without the parent company having to be part of the consolidation. In such a case, the results of the consolidated companies would be regrouped and reported by a selected company in the consolidation, not at the level of the nonconsolidated direct or indirect parent (e.g. where a nonconsolidated parent company holds two subsidiary companies (LuxCo 1 and LuxCo 2) that each hold one company (LuxCo 3 and LuxCo 4), the results of the group would be reported at the level of LuxCo 1 or LuxCo 2).

The following requirements would have to be met to qualify for horizontal consolidation:

- The nonconsolidating parent company would have to be one of the following:
  - A fully taxable Luxembourg resident company;
  - A company resident in an European Economic Area (EEA) member state and subject to a tax equivalent to the Luxembourg corporate income tax;
  - A Luxembourg permanent establishment (PE) of a nonresident company subject to a tax equivalent to the Luxembourg corporate income tax; or
  - An EEA PE of a nonresident company, if both are subject to a tax equivalent to the Luxembourg corporate income tax.
- The nonconsolidating parent company would have to hold, directly or indirectly, at least 95% of the share capital of the consolidating companies for a minimum period of five years.
- A written request to consolidate would have to be submitted to the tax authorities, and the nonconsolidating parent company would have to be included in the request to ensure that it satisfies the five-year holding period condition.

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The draft law also would expand the scope of vertical tax consolidation, which already is permitted. According to article 164bis of the Income Tax Law, the results of a consolidated group of companies are combined at the level of the Luxembourg resident parent company or Luxembourg PE of a nonresident parent company. The draft law would allow a Luxembourg PE of an EEA resident company that is subject to a tax equivalent to the Luxembourg corporate income tax to be part of the tax consolidation.

The participation and holding period conditions to benefit from the tax consolidation regime would remain unchanged. It should be noted that a company cannot be part of more than one tax consolidated group.

Each member of a tax consolidated group would be accountable for the tax liabilities, late payment interest, charges and penalties of the consolidating parent or consolidating subsidiary company.

If approved, this measure would apply as from tax year 2015.

Exit taxation

Luxembourg introduced a regime in 2014 that allows a Luxembourg company that moves its statutory seat and place of central administration to another EEA member state to defer the payment of tax on any unrealized gains on assets until the time the gains actually are realized. The ownership of the transferred assets must be documented annually to ensure deferred taxation. No late interest payment is charged, and no financial guarantee is required.

To benefit from the deferral of the exit tax, the company must submit a request to the tax authorities, and the corporate taxpayer must remain resident in an EEA member state following the migration out of Luxembourg and continue to own the transferred assets. This regime also is applicable to a taxpayer resident in an EEA member state that transfers a Luxembourg enterprise or PE to another EEA member state (provided the above conditions are fulfilled).

The draft law would expand the scope of the exit tax deferral to migrations to countries outside the EEA. The same conditions to benefit from deferral would have to be fulfilled, and the country to which the Luxembourg company migrates would have to be a country that has concluded an international agreement (bilateral or multilateral) with Luxembourg that includes an exchange of information upon request provision. This clause would have to substantially conform to article 26(1) of the OECD model treaty, meaning that Luxembourg tax treaties that differ slightly from the OECD model (i.e. such as the treaties with China, India and the US) still could be included in the scope of the amended regime.

The draft law also provides that the deferral rules would continue to apply where a Luxembourg company transfers its statutory seat to one eligible country, and subsequently transfers its seat to another eligible country. The deferral rules also would apply to mergers and demergers – deferral would be possible, provided all conditions continue to be fulfilled and the company commits to pay the tax due when required in the future.

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This change is proposed to apply as from tax year 2016.

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Mexico:
SAT issues guidance on Hydrocarbons Revenue Law

Mexico’s Tax Administration Service (SAT) issued rules on 14 July 2015 that provide additional guidance on certain aspects of the petroleum tax regime introduced in 2014. The new Hydrocarbons Revenue Law (HRL) that became effective on 1 January 2015 sets out the rights and responsibilities of the Mexican government and private companies with respect to contracts for the exploration and extraction of hydrocarbons and establishes a framework for government/private company participation in such activities, as well as a tax regime for income arising from such activities.

The rules issued by the SAT clarify a number of areas in the HRL, including the following:

Timing for depreciation of investments: The HRL does not specify when a contactor or assignee may start depreciating an investment. The amended rules state that contractors and assignees may choose to begin depreciating an investment in the year in which the investment is made, the year in which the property is used for the first time or the year following the year that the investment is made or first used. Any amount of depreciation that could have been deducted in an earlier year, but was not deducted by the taxpayer, is lost.

Tax losses incurred on combined activities: A taxpayer conducting activities in deep waters (regions of sea water with a draught greater than 500 meters) and in other regions (e.g. shallow waters or onshore) must compute tax losses incurred on deep water activities separately from tax losses incurred from activities in zones other than deep waters. Losses corresponding to deep water activities may be carried forward for 15 years, as opposed to losses from other regions, which may be carried forward for only 10 years.

Creation of a permanent establishment (PE) in Mexico: The HRL provides that a PE will be deemed to exist where a foreign entity carries out activities relating to the exploration and extraction of hydrocarbons for a period exceeding 30 days on the same project within a 12-month period. The HRL, however, does not define the term “same project.” The SAT guidance clarifies that the activities carried out by a foreign related party will be considered to be part of the same project if the activities are covered by the same contract for the exploration and extraction of hydrocarbons.

Electronic invoices issued to consortium participants: Electronic tax invoices issued by a consortium operator to the participants in a consortium (to support the costs, expenses and investments derived from the contract for the exploration and extraction of hydrocarbons) must comply with certain formal requirements. The invoice must contain an addendum that documents, on an individual basis, the corresponding VAT expenses allocated to each

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participant (and contract number the expenses are linked to), lists out the total costs, expenses or investments covered in the invoice and references whether the expenses incurred by the operator are considered a cost, expense or investment.

Thin capitalization rules: The exception to the thin capitalization rules for income tax purposes that previously allowed investment in strategic areas to avoid being subject to the 3:1 debt-to-equity ratio applies only to assignees and contractors referred to in the HRL and not to taxpayers involved in the exploration and extraction of hydrocarbons that do not hold the contracts.

Comments

The amended rules address various concerns related to the HRL, and may provide more legal certainty to participants that will be awarded contracts for the exploration and/or production of hydrocarbons. However, additional guidelines and rules likely will be published in the future to address other matters relating to the application and enforcement of the HRL

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Peru:
Temporary tax exemption to apply to certain share sales

Peru's parliament approved a bill on 3 September 2015 that contains a measure designed to increase liquidity and promote the development of the domestic securities market by providing a three-year tax exemption for gains derived from the sale of certain shares (and other securities representing shares) through a centralized exchange in Peru (e.g. the Lima stock exchange or any equivalent exchange that may be established in the future).

The bill was introduced because Peru's capital gains tax on the sale of shares through the domestic stock exchange has been identified as one of the primary factors hindering the development of the domestic capital market, because other countries in the region exempt such transactions from capital gains tax. Additionally, as a result of the Latin American Integrated Market (MILA, a market integration project launched by Chile, Colombia and Peru), minimum standards must be achieved by the member countries.

Peru's capital gains tax rules have undergone a number of changes in recent years. Capital gains derived by domestic or foreign investors (in the latter case, from the direct (and, in some cases, the indirect) sale of shares of a Peruvian corporation) currently are considered taxable income. Until 31 December 2009, gains derived by individuals and legal entities were exempt

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from Peruvian income tax (in the latter case, if the transaction was carried out on the Lima stock exchange), regardless of the residence status of the transferor. As from 1 January 2010, capital gains derived from the sale of shares through the Lima stock exchange are taxed based on a rules that vary depending on the nature and residence status of the taxpayer. Current rates on such transactions range from 5% to 28% (previously, up to 30% in the case of domestic corporate investors).

The bill aims to improve the liquidity and development of the Peruvian securities market, in line with other markets in the Pacific Alliance trade bloc (e.g. Chile, Colombia and Mexico), and the Latin America region in general, by introducing a tax exemption for gains from the sale of certain shares on a Peruvian stock exchange. If approved, the exemption would be effective for the three-year period from 1 January 2016 through 31 December 2018.

Current rules

Capital gains from the sale of shares through a Peruvian stock exchange currently are subject to specific rules, depending on the residence status of the transferor.

Sales made by resident taxpayers: Peruvian-resident taxpayers are subject to income tax on their worldwide income; therefore, any capital gains derived from the sale of shares negotiated through a Peruvian stock exchange fall within the tax net. Capital gains derived by a legal entity are treated as ordinary income and, therefore, are subject to the normal corporate income tax rate (currently 28%). Capital gains derived by an individual from the sale of shares are subject to a tax rate of 6.25%.

The Central Securities Depository (CAVALI) (or other clearing and settlement institutions, as established in the future) is required to act as a withholding agent on securities transactions settled on the Peruvian stock exchange, except where the transferor is a resident legal entity (those entities report and pay taxes directly, e.g. through monthly advance payments of corporate income tax). Where the transferor is a resident individual, a 5% withholding tax applies to the difference between the gross proceeds from the sale and the tax basis of the shares recorded in the ICVL's records.

A specific procedure applies to determine the amount of tax due, based on the capital losses reported in a given month. Tax withheld by the ICVL must be paid to the tax authorities by the (monthly) deadlines set out in the Peruvian Tax Code. These withholdings will be treated as advance payments of tax, with the individual taxpayer able to use the tax withheld as credits against his/her final tax liabilities for the fiscal year.

Sales made by nonresident taxpayers: Nonresident taxpayers are taxed only on Peruvian-source income. Capital gains from the direct or indirect sale of shares issued by a Peruvian legal entity are subject to a 5% withholding tax if the gains are from sales "within the country," i.e. where the shares are recorded in the Public Securities Registry and the transfer is effected through a centralized exchange in Peru.

The CAVALI is treated as a withholding agent on the sale of Peruvian shares on the Peruvian stock market. A 5% final withholding tax applies to the difference between the gross proceeds of the sale and the tax basis of the shares recorded with the ICVL.

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Under the capital gains tax rules, a domestic legal entity whose shares or participating interests are sold is jointly and severally liable with a nonresident transferor for the payment of any capital gains tax that may arise from a direct or an indirect transfer if the parties were economically related during the 12-month period preceding the sale. Joint and several tax liability continues to apply when an ICVL is acting as a withholding agent. (Where the transferor is a resident, these rules do not apply, since the tax authorities can direct an assessment for any unpaid capital gains tax to the resident transferor.)

Proposed exemption

According to the bill, capital gains derived by a resident or a nonresident from the sale of shares (and other securities representing shares that would be identified by future regulations) through a centralized exchange in Peru would be exempt from income tax if the following conditions are fulfilled:

- During the 12-month period preceding the sale, the taxpayer, or a party related to the taxpayer, does not transfer ownership of 10% or more of the total shares (or securities representing these shares) issued by the company whose shares are sold (the tax authorities would issue regulations that would determine which transactions would be taken into account in calculating whether the ownership threshold has been met); and
- The shares meet a liquidity threshold (to be established by future regulations). The parties in charge of operating a Peruvian stock exchange would be required to publicize (e.g. through their websites) the list of shares that comply with the liquidity threshold.

Compliance obligations for claiming the exemption: The bill seeks to clarify the withholding obligation of an ICVL, by providing that the ICVL (or other equivalent party incorporated in Peru) must withhold the capital gains tax at the time of the cash settlement, unless the taxpayer or an authorized third party has reported that the sale is exempt from tax (the reporting process and applicable deadlines would be established by future regulations). The bill also seeks to clarify that the joint and several tax liability of the ICVL for any unpaid taxes would be limited to the amount that should have been withheld based on the applicable capital gains tax provisions. Finally, under the proposed measure, a domestic legal entity whose shares are transferred would remain jointly and severally liable with a nonresident transferor for any unpaid tax, even when an ICVL is acting as a withholding agent.

Comments

As noted above, the goal is to make the Lima stock exchange more attractive to investors, align the tax rules governing sales on the stock exchange with the standards in other MILA countries and enhance the competitiveness of the domestic market with other exchanges in the region. Affected parties should start assessing the tax costs associated with current or future investments in a Peruvian stock exchange, as well as identifying the formal obligations that would apply to claim the exemption from Peru's capital gains tax.

The bill (possibly with minor amendments) will be submitted to the executive for publication in the official gazette in the near future.

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Poland:
Overview of controlled foreign company regime

Poland introduced its first controlled foreign company (CFC) regime on 1 January 2015. Under the regime, a Polish tax resident that is a corporate income tax or a personal income tax taxpayer will be subject to the 19% Polish tax on the income earned by its CFCs, even if the income is not distributed by the foreign company. The rules also apply to foreign permanent establishments of Polish residents.

The CFC rules should be applied by a Polish taxpayer with respect to a particular CFC from the beginning of the CFC's first tax year beginning after 31 December 2014. Where the CFC's tax year is longer than 12 months or where it not possible to determine the CFC's tax year, the Polish taxpayer should start applying the rules from the beginning of the Polish taxpayer's first tax year beginning after 31 December 2014.

A foreign company for purposes of the CFC rules includes legal persons (e.g. limited liability companies, joint stock companies) and nontax-transparent partnerships (i.e. the rules apply to a partnership that has its registered office or place of management in another country, where the partnership is treated as legal person under the tax law provisions of that country and is subject to taxation on its worldwide income).

The CFC rules will apply if any of the following conditions are fulfilled:

- The foreign company has its registered office or place of management in a jurisdiction included on the black list issued by the Polish Minister of Finance.
- The foreign company has its registered office or place of management in a jurisdiction that has not concluded an agreement with Poland or the EU that allows an exchange of tax information; or
- The foreign company has its registered office or place of management in any other jurisdiction and all of the following conditions are satisfied:
    - The Polish taxpayer holds, directly or indirectly, at least 25% of the share capital, voting rights or rights to participate in the profits of the foreign company for an uninterrupted period of at least 30 days;
    - At least 50% of the foreign company's revenue in a tax year is derived from passive income, such as dividends (and other income from a share in the profits of a legal person), interest (and other benefits from loans, sureties and guarantees), revenue from the sale or exercise of financial instruments, revenue from the sale of shares and royalties; and
    - At least one of the types of passive income is subject to tax in the country of its registered office or place of management at a rate that is at least 25% lower than the Polish corporate income tax rate of 19% (i.e. equal to or less than 14.25%),

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or is exempt from corporate income tax (unless the income is exempt under the EU parent-subsidiary directive).

Certain documentation and reporting obligations may apply to a Polish taxpayer, including the following:

- A requirement to maintain a register of its affiliated foreign companies fulfilling one of the following conditions (which may include certain companies that do not qualify as a CFC):
  - The registered office or place of management is in a jurisdiction included on Poland's black list;
  - The registered office or place of management is in a jurisdiction that has not concluded an agreement with Poland or the EU that allows an exchange of tax information; or
  - The registered office or place of management is in any other jurisdiction and the Polish taxpayer holds, directly or indirectly, at least 25% of the share capital, voting rights or rights to participate in the profits of the foreign company for an uninterrupted period of at least 30 days, even if the criteria described above relating to passive income are not fulfilled;
- A requirement to maintain separate tax records for each CFC (as well as separate records of fixed assets and intangible assets), in accordance with the Polish tax rules; and
- A requirement to file a separate tax return for each CFC within nine months of the end of the tax year in which the income is earned by the CFC (or, in certain cases, within nine months of the end of the Polish taxpayer's tax year), reporting the amount of income derived from the CFC, and to pay the tax due on such income.

The Polish taxpayer must present the register and tax records within seven days of a request from the tax authorities. Failure to comply with the deadline could result in the tax authorities assessing the income by using the "estimation approach."

The CFC regime does not apply in the following cases:

- The CFC's income in the tax year does not exceed EUR 250,000 (or the equivalent in another currency);
- The CFC is subject to tax on all of its income in an EU or European Economic Area (EEA) country in which it carries out genuine business activities; or
- The CFC is subject to tax on all of its income in a country outside the EU or EEA; it conducts genuine business activities in that country (the CFC rules specify certain criteria that should be taken into account in determining whether the CFC conducts genuine business activities) and its income does not exceed 10% of all revenue resulting from genuine business activities conducted in that country; and there is a legal basis for the exchange of information between Poland and the CFC's country of residence.

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In brief

Australia: The federal treasurer has confirmed that the government will extend the goods and services tax (GST) to low-value imported goods, following unanimous agreement to the measure by the Australian states and territories. The change is proposed to apply from 1 July 2017, which aligns with the proposed timing of GST on digital products and services sold to Australian consumers by offshore suppliers. The proposed low-value goods measure would involve: (1) reducing the low value threshold for GST liability to nil (currently AUD 1,000); (2) overseas vendors registering for GST if they have Australian turnover in excess of AUD 75,000; and (3) registered vendors periodically remitting GST collected from Australian customers to the tax authorities, rather than collection at the Australian border. The timing of the release of the proposed legislative amendments has not been announced.

China: The country's VAT reform was expected to be completed by the end of 2015, but the expected regulations have not yet been formally released, and it appears that the conclusion of the VAT reform may take more time than expected. Until the Ministry of Finance or the State Administration of Taxation publishes official guidance, taxpayers should continue to complete their preparations for the reform.

Costa Rica: A new draft bill presented to the congress on 12 August 2015 proposes substantial changes to Costa Rica's income tax rules, as well as the introduction of a value added tax to replace the existing sales tax. The draft is similar to the proposals made by the government in March (for prior coverage see *World Tax Advisor*, 27 March 2015).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150327_3.html

European Union: Poland's Constitutional Tribunal has referred a question to the Court of Justice of the European Union (CJEU) on the legality of the EU principal VAT directive. In particular, the tribunal questioned whether the differences in VAT rates on similar goods (paper and electronic books) violates the principle of fiscal neutrality. Under EU law, reduced VAT rates may apply to paper books, while electronic books are treated as electronic services that are subject to standard VAT rates (for prior coverage, see *World Tax Advisor*, 27 March 2015). A decision on the legality of the provisions regarding e-books could have a broad impact on the taxation of other electronic publications. However, regardless of the CJEU's approach, its ruling may be followed by a revision of the directive by the European Commission, since work in this area has been ongoing for some time.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150327_ib.html

India: The committee formed to consider the applicability of the minimum alternate tax (MAT) to foreign institutional investors (FIIs) and foreign portfolio investors (FPIs) for the period prior to 1 April 2015 has recommended that guidance be issued to clarify that the MAT does not apply to FIIs and FPIs during this period, and the Indian government has announced that it will accept the recommendation (for prior coverage, see *World Tax Advisor*, 12 June 2015). The

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government is expected to amend the Income-tax Act to clarify that the MAT does not apply to FIIs or FPIs without a place of business or permanent establishment in India for the period prior to 1 April 2015. In the interim, the Central Board of Direct Taxes is expected to convey the government's decision to the relevant field personnel.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150612_6.html

Indonesia: The Ministry of Finance issued a regulation on 27 July 2015 that expands the types of services that are subject to the 2% withholding tax under article 23 of the Income Tax Law. More than 30 new services are added to the list of "other services" that fall within the scope of article 23, including the following: legal services, architectural services, landscape services, website developer services, vehicle (air, sea and land) maintenance services, freight forwarding services, logistic services, document management services, loading and unloading services, parking management services, soil testing services, harvesting services, money delivery services, certification services, transport services through pipelines and certain shipping and expedition services. It was not entirely clear under the previous rules whether the newly added services were deemed to be other services, which resulted in inconsistent tax treatment. The regulation, which applies to payments made to Indonesian resident service providers, is effective as from 26 August 2015.

New Zealand: New Zealand has joined the growing list of countries that either have introduced, or are proposing to introduce, mechanisms to collect VAT/GST on cross-border e-commerce. The first phase of the proposed rules would apply only to nonresident businesses making supplies to private consumers in New Zealand (rather than supplies to businesses), and is aligned with the OECD draft guidelines on the GST treatment of cross-border services and intangibles and work on base erosion and profit shifting (BEPS). Like many other countries (e.g. EU member states, Norway, South Africa and Switzerland), New Zealand proposes to focus on cross-border supplies of electronically delivered services, such as music downloads, although the consultation document published by the New Zealand tax authorities on 18 August 2015 considers the possibility of bringing all services supplied to New Zealand residents within the scope of GST and selectively zero-rating services that are physically consumed outside New Zealand. The consultation document also raises the possibility that, as has been suggested for the EU, consideration should be given to imposing GST on low-value imports that currently enter New Zealand GST-free (this proposal potentially would be in line with the recently announced Australian approach to low-value imported goods). Comments on the consultation document must be submitted by 25 September 2015.

OECD: The OECD has published the sixth edition of its comparative information series on tax administration in 56 advanced and emerging economies; Costa Rica, Croatia, Morocco and Thailand are covered for the first time. Key points include the following:

- 40% of revenue bodies reported that they currently are managing the addition of new business activities, amalgamation with other government service providers and consolidation of work and their office networks, at a time when 60% saw reductions in staffing. The OECD comments that there are significant staffing reductions in Australia, the UK and the US.
- While 95% of all revenue bodies offer the opportunity to file returns electronically, and over two-thirds achieve usage over 75%, the OECD says more could be done to move

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other aspects of the process (including assessment, amendment and payment) into a more integrated digital service.
- Over 85% of revenue bodies have adopted the structured "cooperative compliance model" recommended by the OECD for managing their largest taxpayers. One-third use similar arrangements to manage the tax affairs of high net-worth Individuals.
- The tax gap measurement is on the increase; 43% of revenue bodies undertake or are researching estimates of the aggregate tax gap for some or all of the major taxes they administer.
- Two-thirds of OECD member countries report that their tax laws permit voluntary disclosures, but only 40% have a policy to encourage taxpayers to use these.
- A relatively large number of revenue bodies successfully are using systems to process bulk VAT invoice data for compliance risk management and fraud detection.

Thailand: The cabinet has approved a draft royal decree that grants a five-year triple deduction for qualifying research and development (R&D) and innovation expenses. However, the deduction is subject to the following caps: (1) income or sales revenue up to THB 50 million is eligible for a deduction of up to 60% of such income; (2) the portion of income or sales revenue that exceeds THB 50 million but that is no more than THB 200 million is eligible for a deduction of up to 9% of such income; and (3) the portion of income or sales revenue that exceeds THB 200 million is eligible for a deduction of up to 6% of such income. The triple deduction is available for qualifying R&D and innovation expenses incurred during the period from 1 January 2015 to 31 December 2019.

United Kingdom: The UK tax authorities have announced that the changes to the film tax credit announced in the March 2015 budget and now contained in Finance Act 2015 have received state aid approval by the EU. The rate of the film tax credit is increased to 25% for all qualifying core expenditure and for all eligible film productions. The distinction between limited budget films and all other films is removed. Previously, the rate was 25% for the first GBP 20 million of qualifying expenditure and 20% for spending above this threshold. The announcement indicates that the changes will be backdated to apply from April 2015.

BEPS corner

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

Greece: The 26% withholding tax on payments to preferential tax regimes has been abolished, and the regime in force before the introduction of the withholding tax now applies. See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150911_5.html

New Zealand: The government has released a consultation document that contains proposals that are aligned with the OECD draft guidelines on the GST treatment of cross-border services and intangibles and work on BEPS. See the "In brief" item in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150911_ib.html

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Turkey: The country generally supports the BEPS project, and existing legislation contains anti-avoidance measures that address BEPS and harmful tax competition concerns. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150911_1.html

United States: The US Tax Court's 27 July 2015 decision in *Altera Corp. v. Commissioner* could affect the ongoing discussions at the OECD about the BEPS program, because some of the rules proposed as part of the BEPS project have been criticized by multinational enterprises as lacking empirical support (similar to the taxpayer's successful argument in *Altera*). See the US global transfer pricing alert, 19 August 2015.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-012-19-august-2015.pdf

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European Union
CJEU rules different treatment of French and EU dividends under French tax consolidation rules violates EU law
The Court of Justice of the European Union (CJEU) issued its decision in the *Groupe Steria* case on 2 September 2015, concluding that the French tax consolidation rules violate the freedom of establishment principle in the Treaty on the Functioning of the European Union because a domestic group of French companies can obtain certain tax benefits that are not available to dividends received from subsidiaries that are residents of other EU member states. The CJEU decision follows the opinion issued by Advocate General Kokott in June.
Issue date: 3 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-europeanunion-3-september-2015.pdf

United States
Temporary subpart F regulations change the rules under section 956 and the active rents and royalties exception; proposed section 956 regulations also released
On 1 September 2015, temporary subpart F regulations were released that: changed the "active rents and royalties exception" regulations on subpart F income; changed the section 956 "anti-abuse" rule in Treas. Reg. § 1.956-1T(b)(4); and added section 956 regulations that apply to a debt obligation held by a controlled foreign corporation (CFC) where the obligor is a foreign partnership, and the partnership has a US partner. Each of these provisions applies to current, as well as future, taxable years of CFCs now in existence. Proposed section 956 regulations also released on 1 September cover other topics.
Issue date: 4 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-4-september-2015.pdf

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IRS releases new competent authority revenue procedure

The Internal Revenue Service on 12 August 2015 released Revenue Procedure 2015-40, which provides guidance on the process for requesting and obtaining competent authority assistance under the mutual agreement procedure article of US tax treaties.
Issue date: 31 August 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-014-31-august-2015.pdf

IRS releases advance pricing agreement revenue procedure

The Internal Revenue Service on 12 August 2015 released Revenue Procedure 2015-41, which provides guidance on the process of requesting and obtaining an advance pricing agreement.
Issue date: 31 August 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-013-31-august-2015.pdf

US Tax Court's *Altera* decision raises broader questions

The US Tax Court on 27 July 2015 held, in a unanimous 15-0 decision in *Altera Corp. v. Commissioner*, that a rule promulgated under the 1995 cost sharing regulations requiring participants in a qualified cost sharing arrangement (QCSA) to share stock-based compensation (SBC) costs related to the intangible development area of the QCSA did not satisfy the reasoned decision-making standard, and is thus invalid. This decision raises serious issues about whether taxpayers should continue to include SBC costs as part of the total costs included for purposes of certain US treasury regulations.
Issue date: 19 August 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-012-19-august-2015.pdf

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