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In this issue:

Australian government introduces bill to combat multinational tax avoidance

The Australian Treasurer introduced a bill to combat multinational tax avoidance into parliament on 16 September 2015. The proposals generally would apply to “significant global entities” (broadly, groups with annual global income of AUD 1 billion or more). The bill reflects some differences from the original exposure draft legislation, including changes that would broaden the scope of the proposed multinational anti-avoidance law (the MAAL, which is similar to the UK diverted profits tax) (for prior coverage, see Australia Tax Alert, 14 May 2015). It also includes measures to implement the OECD country-by-country (CbC) reporting obligations in Australia and to substantially increase penalties in relation to cross-border transactions involving tax avoidance (for prior coverage, see *World Tax Advisor*, 21 August 2015). The bill is expected to be enacted during 2015.

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-14-may-2015.pdf

URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150821_2.html

MAAL

The MAAL would amend Australia's general anti-avoidance provisions (in Part IVA of the Income Tax Assessment Act 1936) to prevent multinational entities from using certain tax avoidance schemes to artificially avoid attributing business profits to a permanent establishment (PE) in Australia. It would apply from 1 January 2016 (irrespective of when a scheme was entered into) and would apply to tax benefits derived after that date.

When first announced, the MAAL was expected to affect around 30 multinational companies; however, the scope has been expanded and the government expects that around 1,000 multinationals operating in Australia may need to consider the new rules. The MAAL would apply where:

- A foreign entity ("the principal") derives income from making a supply (defined broadly, but excluding certain financing arrangements) to an Australian customer that is not a member of the foreign entity's global group (supplies made by foreign entities to a wholly owned Australian subsidiary should not be caught);
- An entity in Australia ("the Australian service provider") that is associated with, or commercially dependent on, the principal undertakes activities in Australia that are directly connected with the supply;
- Some or all of the income derived by the principal is not attributable to an Australian PE of the principal; and
- Consideration of a number of prescribed factors would lead to a conclusion that a principal purpose of the scheme was to obtain an Australian tax benefit (as generally defined in Part IVA), or to obtain such a tax benefit and to reduce or defer foreign tax liabilities. This purpose threshold would be substantially lower than the "sole or dominant" purpose test used in the general provisions of Part IVA.

Certain proposed requirements for the MAAL to apply have been eliminated in the bill. The conditions in the draft MAAL that would have required (subject to some exceptions) that the principal or a group member be connected with a no-tax or low-tax country have been removed, as has an additional purpose test that would have required a scheme to be "designed to avoid" a PE. These changes expand the scope of the MAAL.

In assessing the purpose of a scheme, the Commissioner of Taxation must consider the usual factors referred to in Part IVA, as well as the following:

- The extent to which activities that contribute to concluding the contract for the supply are able to be, and are in fact, performed by the principal, the Australian service provider or other entities. This is intended to ensure that schemes that have been split in such a way so as to fall short of PE status are more likely to be caught; the more substance that exists in the principal, the less likely it would be concluded that there was a principal purpose to reduce tax; and
- The operation of foreign tax law in relation to the scheme, i.e. the amount of foreign tax paid on the relevant Australian-related income would be considered in the context of purpose – the higher such foreign tax, the less likely it would be concluded that there was a principal purpose to reduce tax.

It is important to note that Part IVA generally takes precedence over Australia's tax treaties. This should prevent a treaty-based argument that the principal does not have a PE in Australia under the relevant treaty.

Consequences of application of MAAL: In cases where the MAAL would apply, the Commissioner would determine the relevant tax benefit based on a deemed scenario, and would issue an assessment to give effect to that determination. The explanatory materials to the bill address this matter at only a high level, and leave much uncertainty about the consequences of the MAAL.

Under a typical scenario, the Commissioner would deem a "notional" PE to exist in Australia, which would include all of the activities of the Australian service provider and the functions, assets and risks of the principal that are associated with formally concluding the contracts. The explanatory materials state, in only general terms, that the next step would be to work out the profits attributable to that notional PE.

In cases where the principal makes payments of interest or royalties, the explanatory materials propose that such payments either would be:

- Subject to Australian withholding tax, to the extent the payments are incurred with respect to the notional PE; or
- Treated as nondeductible in computing the profits attributable to that notional PE (on the basis that withholding tax has not been paid).

Structures that involve the payment by the principal of such upstream interest or royalties would require particular attention in computing the potential impacts of the MAAL. In addition to the potential income tax liability (profits attributable to a notional PE) and withholding tax liability (upstream interest or royalties), a base penalty could be imposed equal to 100% of the tax liability. Thus, where the MAAL applies, the consequences potentially would be significant; the rules could bring payments made offshore for the use of intangibles and intellectual property within the scope of Australian tax.

Further guidance will be required to calculate the potential Australian tax payable. The Australian Taxation Office (ATO) is expected to issue guidance materials before the end of 2015.

Next steps: The Australian government and the ATO intend for the MAAL to lead to behavioral change. Companies potentially could restructure their operations to fall outside of the MAAL. The possible alternatives would depend on the relevant facts, but could involve the principal engaging a service provider in Australia that is not an associate or commercially dependent, or a multinational converting its Australian sales to a buy/sell arrangement through an Australian subsidiary.

Where restructures are contemplated, but not completed by 1 January 2016, the explanatory materials to the bill state that the ATO may adopt a flexible approach to administering the law, which would depend on the relevant facts and circumstances of each case.

CbC reporting obligations

In the May 2015 budget, the Treasurer committed Australia to action on several key OECD base erosion and profit shifting (BEPS) initiatives, including the standards under action 13 on CbC reporting and transfer pricing (master file/local file) documentation for income years starting on or after 1 January 2016.

The bill would require members of a group with annual global income of AUD 1 billion or more with a relevant Australian connection to file a CbC report, a transfer pricing master file and a transfer pricing local file with the ATO before the end of the following income year (e.g. filing would be due by 31 December 2017 in respect of the year commencing 1 January 2016, or by 30 June 2018 in respect of the year commencing 1 July 2016). The "Australian connection" test would impose the filing obligation on Australian residents, resident trusts and partnerships with at least one Australian resident partner, as well as on nonresident entities operating through a PE in Australia.

The explanatory materials to the bill state that the provisions would apply at the tax consolidated group level, and the filing obligation would apply to the head company on behalf of the group.

The Commissioner would be able to exempt a particular entity from the rules or to determine by legislative instrument that the provisions do not apply to a "specified class of entity." More comprehensive guidance is expected to be provided by the ATO in respect of exemptions.

The bill proposes that taxpayers would be required to file statements with the ATO in the "approved form," and the explanatory materials confirm that the ATO is working to provide guidance on the relevant content. It appears likely that the approved form essentially would replicate the OECD reporting template for CbC reporting, the master file and the local file.

The existing administrative penalties in Australia's tax laws that are not linked to tax payable could be imposed for failure to file the required statements.

Companies preparing for CbC reporting and the related rules are expected to face a number of challenges, including a significant increase in the documentation and reporting burden for groups operating in Australia; potential differences between the Australian documentation requirements and the OECD requirements that could make it challenging to ensure consistency of information across all documents; and differences in other jurisdictions' timing for adopting CbC reporting that could require an Australian subsidiary to provide documentation where, for example, its parent's home jurisdiction has not yet legislated for CbC reporting.

Taxpayers should begin preparation for the new CbC and transfer pricing documentation requirements. The increased flow of information with the tax authorities is likely to drive considerable audit activity across many jurisdictions. Some suggested actions in the short-term include the following:

- Ensuring that the parent company's plan for data gathering takes into account the Australian implementation date for CbC and transfer pricing documentation;
- Ensuring that appropriate systems are in place to capture and report relevant data before the start of the first affected year;
- Anticipating potential audit enquiries that could be triggered by data contained in the CbC and transfer pricing documentation; and
- Reviewing existing transfer pricing policies, structures and documentation, and considering approaches to deal with any inconsistencies.

Increased penalties

The bill includes measures that would impose stronger penalties to combat tax avoidance and profit shifting activities by multinational groups with annual global income of AUD 1 billion or more. The amendments would not apply to taxpayers that have adopted a "reasonably arguable position."

The table below shows the new penalties that would apply, expressed as a percentage of the tax shortfall identified:

Base penalty	Aggravating factors	Disclosure during examination	Disclosure before examination
Tax avoidance schemes			
100%	120%	80%	20%
Tax avoidance schemes: If position is reasonably arguable			
25%	30%	20%	5%
Profit-shifting schemes			
50%	60%	40%	10%
Profit-shifting schemes: If position is reasonably arguable			
10%	12%	8%	2%

The new penalties would apply to tax benefits obtained in relation to an income year commencing on or after 1 July 2015, regardless of when the scheme was entered into.

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China SAT issues new rules for claiming treaty benefits

On 27 August 2015, the State Administration of Taxation (SAT) issued new procedural guidance (Bulletin 60) on claiming tax benefits under China's double taxation agreements

(DTAs) and international transportation agreements (ITAs). Bulletin 60 aims to substantially simplify the process for obtaining treaty benefits and will apply as from 1 November 2015.

Background

Bulletin 60 will replace Circular 124, the guidance that currently governs tax treaty claims (except for international transportation income), as well as certain provisions in Bulletin 37, which specifically deals with the claiming of treaty benefits for international transportation income.

According to Circular 124 (issued in 2009), to obtain a tax benefit under a DTA, it is necessary to obtain approval or carry out registration with the relevant PRC tax authority, depending on the type of income received:

- To obtain benefits under the dividends, interest, royalties and capital gains articles of a DTA, approval from the relevant tax authorities is required; and
- To obtain benefits under all other provisions of a DTA (e.g. those relating to income derived from a permanent establishment, business profits, independent personal services, income from employment, etc.), it is necessary to register with the relevant tax authorities.

Bulletin 37 (issued in 2014) contains rules for nonresident enterprises engaged in international transportation activities and requires that nonresidents claiming benefits under a DTA or an ITA register with the relevant tax authorities with respect to their international transportation income.

The Chinese government has been taking proactive steps to liberalize China's regulatory regime to simplify processes, improve efficiency and stimulate the economy. In May 2015, the State Council abolished the approval requirement in Circular 124, and Bulletin 60 is the SAT's response to the elimination of the approval requirement, by formally shifting from an approval/registration system to a self-assessment system to obtain treaty benefits.

Highlights of Bulletin 60

Expanded scope of application: Bulletin 60 consolidates the procedural rules in Circular 124 and Bulletin 37 for claiming tax benefits and will apply to treaty benefit claims for all types of income, including international transportation income.

Determination by taxpayers and withholding agents: Bulletin 60 relaxes the procedures for nonresident enterprises and individuals to obtain benefits under DTAs and ITAs, by removing the approval/registration requirements under Circular 124 and Bulletin 37. Specifically, Bulletin 60 will allow treaty benefits to be enjoyed based on assessments made by the nonresident taxpayer or the withholding agent:

- A nonresident that considers itself qualified for beneficial tax treatment under a treaty (a DTA or an ITA) will be able to enjoy such treatment at the time it files its tax return; or
- Where there is a statutory or designated withholding agent, a nonresident that considers itself qualified for treaty benefits will be required to inform the withholding agent and

provide the agent with the forms and documents mandated in the bulletin. The withholding agent will be allowed to apply the reduced rates or exemptions under the treaty if it determines that the information provided by the nonresident meets the relevant treaty requirements; otherwise, the withholding agent will be required to withhold tax according to the treatment under PRC domestic law.

Notably, Bulletin 60 does not make any changes to the substantive requirements (such as beneficial ownership, purpose test, etc.) that must be met to qualify for treaty benefits. Thus, determinations made by taxpayers and withholding agents will be subject to subsequent review by the tax authorities and potentially could be challenged.

Required forms and documents: Article 7 of Bulletin 60 will require a nonresident or a withholding agent to submit the following forms and documents at the time the tax return for the relevant income is filed by the nonresident or the withholding agent:

1. Information reporting form on tax residence (with separate forms for enterprises and individuals);
2. Information reporting form on the treaty benefits to be enjoyed (with four separate forms for enterprises and individuals, depending on the type of income received);
3. Tax residence certificate, or, in the case of international transportation income, copies of passports of individuals and legal-person certificates of enterprises;
4. Documents evidencing ownership of the income received, such as contracts, board resolutions, shareholder meeting minutes or payment slips; and
5. Documents specifically required by other tax regulations (e.g. where a nonresident claims beneficial ownership based on an agency arrangement, the nonresident must provide documents proving the agency relationship).

This list of forms and documents is intended to be an exhaustive list. Although a nonresident will be allowed to provide additional documents to further substantiate its claim to treaty benefits, the SAT's official interpretation of Bulletin 60 explicitly states that not providing additional documents should not affect the nonresident's the right to enjoy treaty benefits at the time of the filing of the tax return. This is another significant improvement, as compared with Circular 124 and Bulletin 37, both of which specifically allow the tax authorities to require more documents than what is listed in the guidance. In practice, some tax authorities have required a substantial amount of supplementary documentation, imposing a heavy compliance burden on nonresidents.

Increased responsibilities of withholding agents: The responsibilities of withholding agents under Bulletin 60 may substantially increase, as compared with those under Circular 124 and Bulletin 37. The two information reporting forms include many questions and could contain a substantial amount of information on a nonresident. To determine whether a nonresident recipient of income is eligible for treaty benefits based on the information provided will require a certain level of tax and legal knowledge and practical experience.

Given the increased burden on a withholding agent, a question arises as to whether the agent may be subject to a penalty if the Chinese tax authorities subsequently decide the withholding agent's determination was incorrect. Bulletin 60 does not contain any specific provisions on the consequences to a withholding agent in this situation, so other generally applicable laws and regulations should be referenced. Article 69 of the PRC Tax Collection and Administration Law provides that a withholding agent could be subject to a penalty of up to three times the amount of the taxes that should have been withheld. If a withholding agent demonstrates that it has exercised reasonable care in making the relevant determination, it is unclear whether this can be used as a defense against the imposition of a penalty. If reasonable care is a defense, the standard for what is considered “reasonable care” may create friction between the tax authorities and the withholding agent. In practice, the withholding agent may adopt a conservative approach to protect itself from a potential challenge by the tax authorities, particularly when dealing with a third-party nonresident, and this could create friction between the withholding agent and the nonresident.

Subsequent administration by tax authorities: Subsequent administration (i.e. the tax authorities’ role after treaty benefits have been obtained) is expected to play a more crucial role under Bulletin 60 than under the previous guidance, since the requirements to obtain approval and to register before enjoying treaty benefits have been eliminated.

The PRC tax authorities may conduct their own review of the submitted information and request additional information from the nonresident or the withholding agent. If the tax authorities determine that a nonresident improperly obtained benefits under a DTA/ITA, they will require the nonresident to make a payment for the taxes underpaid in a given period. If the nonresident fails to pay, the tax authorities will be allowed to claim underpaid taxes from the nonresident’s other China-source income, pursuant to China’s Enterprise Income Tax Law, or to use other measures in accordance with the Tax Collection and Administration Law.

Bulletin 60 does not affect the timing of when a tax payment obligation arises, which is governed by other generally applicable tax laws and regulations. Thus, the Chinese tax authorities should be allowed to collect interest, in addition to underpaid taxes, if they subsequently determine that a nonresident taxpayer has improperly enjoyed treaty benefits.

The extent of subsequent administration by the Chinese tax authorities is yet to be determined, but administrative challenges are likely to arise. Some nonresidents may decide to take more aggressive positions than they otherwise would have in the pre-Bulletin 60 era, particularly in situations in which China’s administrative measures are limited. For instance, when a nonresident enterprise transfers its interest in a non-land-rich company in China, the withholding agent allows the nonresident to enjoy the capital gains exemption provided in the relevant treaty based on the residence and ownership requirements in the treaty. If the Chinese tax authorities later determine that the capital gains exemption should not have been granted on the basis of the general anti-avoidance rule, it would be difficult for the authorities to hold the withholding agent responsible. At the same, it may be difficult to collect the taxes from the nonresident seller, which may no longer have any business operations in China and may have even dissolved. Further, Bulletin 60 may have implications, not only on direct transfers of Chinese companies, but also on indirect transfers of such companies. Bulletin 7, which addresses indirect transfers of equity interests in Chinese enterprises, provides for an exception to Chinese taxation based on the capital gains provision in tax treaties.

Withdrawal of simplified proof for Hong Kong tax residence: Bulletin 53, issued in 2013, allows Hong Kong residents to prove their Hong Kong residence without presenting a tax residence certificate; instead, a Hong Kong company can use its Hong Kong certificate of incorporation or its Hong Kong business registration certificate, and a Hong Kong individual can use his or her Hong Kong identity card, along with some other supporting documents. Bulletin 60 retracts this simplified arrangement for Hong Kong residents by abolishing Bulletin 53.

Comments

Bulletin 60 eliminates the preapproval and preregistration requirements for obtaining treaty benefits, in favor of a subsequent monitoring approach by the tax authorities. Thus, procedurally, it should be easier for nonresidents to obtain benefits under a DTA or an ITA. However, Bulletin 60 does not change the substantive standards on whether a nonresident qualifies for treaty benefits, or when a tax payment obligation arises. Thus, Bulletin 60 may present new challenges for nonresident taxpayers and withholding agents, i.e. they will need to consider the potential risk of a treaty claim subsequently being challenged by the Chinese tax authorities, as well as the potential consequences of such a challenge (e.g. interest and penalties).

Despite the simplified procedure in Bulletin 60, a payer of China-source income must take an additional step under other guidance (Bulletin 40) before making an outbound payment of what is considered “trade in services” for foreign exchange purposes, such as dividends, interest, royalties and transfer proceeds, if the payment exceeds USD 50,000: the payer must register the remittance with the relevant Chinese tax authorities. A registration form stamped by the tax authority must be presented to the bank before a remittance can be made. Although the registration is meant as a procedural step under Bulletin 40 and there is no need for the tax authorities to carry out a substantive review of treaty eligibility as part of the registration (a review is to be conducted post-registration), in practice, some authorities have refused to stamp the registration form when they disagree with the position taken by the nonresident, while other authorities have required a lengthy list of documents (in addition to what is required under Bulletin 40). Thus, nonresident and Chinese payers (the latter of which often are the statutory or designated withholding agents) will continue to face potential challenges under Bulletin 40 until the registration requirement in Bulletin 40 is simplified as part of China’s further liberalization of its regulatory regime.

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Brazil:
MOF unveils austerity package with tax measures

Brazil’s Minister of Finance proposed a package of austerity measures on 14 September 2015 that would aim to shrink the budget deficit of BRL 30.5 billion. The package, which is expected to be presented to the national congress in the near future, includes several tax proposals:

- The contribution on financial transactions (CPMF), which was charged at a rate of 0.38% in the period 1997-2007, would be reintroduced at a rate of 0.2% for four years.
- The withholding tax rate on interest on net equity would be increased from 15% to 18%, and a 5% cap would be imposed on the Brazilian federal long-term interest rate (the TJLP).
- The 15% tax rate on capital gains derived from the sale of immovable property would be replaced with progressive rates ranging from 15% to 30%, depending on the sales price.
- The percentage of the tax refund under the REINTEGRA regime would be reduced from 1% to 0.1% in 2016, gradually rising to 3% by 2019 (under the REINTEGRA regime, exporters of manufactured goods are entitled to a tax refund calculated as a percentage of the export's gross income, if certain requirements are met).
- The presumed credits for the contribution for the employee profit participation program (PIS) and the contribution for the financing of social security (COFINS) that currently are granted to the ethanol and chemical industries would be reduced by 50%, and repealed in 2017.

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Chile: Guidance issued on loss carryforwards upon change in ownership

Chile's tax authorities issued guidance on 14 July 2015 that addresses when a change in ownership will affect the ability of a corporate taxpayer to carry forward tax losses. According to the authorities, the acquisition of at least 50% of the shares of a company by a new shareholder will be deemed to constitute a change in ownership.

The guidance confirms that an indirect change of ownership (e.g. where losses are incurred in a third-tier company and a change of shareholders takes place in the first-tier company) that is not accompanied by a change in the direct ownership will constitute a change in ownership for purposes of the loss carryforward limitation (i.e. inability to use the losses in the future). However, a change in ownership will not automatically result in the forfeiture of loss carryforwards. To lose the benefit, there must be a change in ownership, as well as one of the following:

- A major change in the business line or an expansion of the business to another activity within the 12-month period preceding or following the change in ownership, unless the principal line of business is maintained;
- The entity with the losses lacks sufficient capital goods or other assets within its business line to develop its activities, or the value of the loss-making entity's assets is not proportionate to the purchase price paid by the new owners; or
- The entity derives its income solely from participations in other companies or from reinvestments by its shareholders of withdrawals made from other entities.

The loss carryforward limitation does not apply to changes of ownership between related entities.

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Cyprus:
Tax treaty signed with Iran

On 4 August 2015, Cyprus signed a tax treaty (and accompanying protocol) with Iran that is expected to strengthen and develop economic and trade relations between the two countries and create new investment opportunities. The main provisions of the treaty, which is based on the OECD model treaty, are summarized below:

- **Permanent establishment:** A building site, construction, an assembly or installation project or supervisory activities in connection therewith will constitute a permanent establishment only if it lasts for more than 12 months.
- **Dividends:** The withholding tax rate on dividends will be 5% where the beneficial owner is a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends; otherwise, the rate will be 10%. Neither Cyprus nor Iran currently impose withholding tax on dividends. According to the protocol, the treaty rates would come into effect on the date one or both contracting states impose taxation on dividends received by nonresidents.
- **Interest:** The withholding tax rate on interest may not exceed 5% of the gross amount, provided the recipient is the beneficial owner of the interest. Cyprus currently does not levy withholding tax on interest.
- **Royalties:** The treaty provides for a 6% withholding tax rate on the gross amount of royalties, provided the recipient is the beneficial owner of the royalties.
- **Capital gains:** Gains derived by a resident of a contracting state from the disposal of immovable property situated in the other contracting state may be taxed in that other state. Gains derived by a resident of a contracting state from the disposal of shares in a company that derive more than 50% of their value directly from immovable property situated in the other contracting state may be taxed in that other state.

The treaty will enter into force once both countries exchange notifications that their formal ratification procedures have been completed. The provisions of the treaty with respect to taxes, will come into effect on or after 1 January following the date the treaty enters into force.

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European Union:
Draft report on corporate tax transparency published

The European Parliament's Committee on Economic and Monetary Affairs (ECON) published a draft report on 4 September 2015, in which it makes recommendations to the European Commission on "bringing transparency, coordination and convergence" to corporate tax policies in the EU. The ECON recommendations include the following:

- The presentation of a legislative proposal to adopt the OECD's base erosion and profit shifting (BEPS) action 13 country-by-country reporting requirements throughout the EU; the ECON also urges the Commission to consider full public country-by-country reporting for large multinationals;
- The introduction of a new, voluntary "fair taxpayer" label for companies that engage in good tax practices;
- The introduction of a mechanism under which EU member states would be obliged to notify other member states (via the Code of Conduct Group) if they intend to adopt new tax reliefs or incentives;
- The extension of automatic tax ruling information exchange to all tax rulings, and for certain ruling information to be made public;
- A requirement that the Commission make a best estimate of the EU "tax gap";
- The introduction of additional protection for tax "whistleblowers";
- The introduction of the common (but not consolidated) corporate tax base;
- The mandatory harmonization of controlled foreign company, transfer pricing and permanent establishment rules throughout the EU, to be achieved via legislation; and
- The negotiation of EU (as opposed to bilateral) tax treaties.

The European Commission is not obliged to act on the recommendations, and it is unclear when the ECON report will be finalized.

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India:
High Court confirms sufficiency of Mauritius tax residence certificate to support treaty benefits claim

India's Punjab and Haryana High Court issued a decision on 26 August 2015, in the case of *Serco BPO Private Limited*, that a tax residence certificate issued by the Mauritius authorities is sufficient evidence of tax residence status to support a claim for treaty benefits under the India-Mauritius tax treaty. As a High Court ruling, the decision will apply to other Indian states unless there is a contrary ruling in a particular state.

Article 13(4) of the India-Mauritius treaty provides that capital gains derived by an entity are taxable only in the state in which the recipient is resident. Thus, gains derived by a Mauritius company from the sale of shares in an Indian company are not taxable in India under the treaty. Such gains are not taxable in Mauritius either, because Mauritius does not tax capital gains under its domestic law. Many investors in India have relied on the treaty provision in conjunction with the Mauritius exemption from capital gains tax, and these claims sometimes have given rise to controversies and debate amidst various pronouncements by the Indian authorities.

In the case before the Punjab and Haryana High Court, the assessee, an Indian company, purchased shares of another Indian company from two Mauritius companies. The assessee requested a ruling from the Authority for Advance Rulings (AAR) on the taxability of the capital gains derived by the Mauritius companies on the sale of shares to the assessee, and the assessee's related obligation to withhold tax at source when paying the sales proceeds to the Mauritius companies. The AAR determined that there was a prima facie case that the transaction/arrangement was designed to avoid income tax, and rejected the assesse's request and declined to rule on the issues. The assessee filed an appeal with the High Court.

The High Court reversed the AAR ruling. After analyzing the facts of the case (including the date of the investments made by the Mauritius companies, the period of their holdings in India, the number of employees deployed in India, etc.), the court determined that the Mauritius entities' investments into the Indian company were not made for the sole purpose of taking advantage of the India-Mauritius tax treaty and, therefore, the AAR's finding that there was a prima facie case of tax avoidance was incorrect. Accordingly, the court proceeded to consider the applicability of the tax treaty in the case.

Relying on guidance issued by the Central Board of Direct Taxes (CBDT) – specifically, Circular No. 789 issued in 2000 – and the Supreme Court decision in the case of *UOI v. Azadi Bachao Andolan*, the High Court held that a tax residence certificate issued by the Mauritius authorities is sufficient proof of Mauritius residence and beneficial ownership for purposes of applying the India-Mauritius tax treaty.

The High Court noted that Circular No. 789 specifically states that a certificate of residence issued by the Mauritius authorities to a Mauritius company is sufficient for the company to prove beneficial ownership. (That circular instructs the Indian tax authorities to accept certificates of residence and reiterates that companies incorporated in Mauritius are "liable to tax" under the laws of Mauritius and, therefore, are deemed to be residents of Mauritius for purposes of claiming treaty benefits. Thus, such companies would not be taxable in India on capital gains arising in India on the sale of shares under the treaty.) The court stated that the circular was based on the Indian government's trust of the Mauritian authorities, so the validity of the circular cannot be questioned by the Indian tax authorities or the AAR. The court held that it is incumbent upon the Indian authorities to accept a certificate of residence issued by the Mauritius authorities. A refusal to do so would be contrary to the tax treaty, and would constitute an erosion of the faith and trust between the contracting states.

On the issue of treaty shopping, the High Court relied on the Supreme Court decision in *Azadi Bachao Andolan*. The court noted that the decision to conclude a treaty, and the negotiating of the terms and conditions, are sovereign functions involving important aspects of policy; such decisions must be left to the policy makers who are best equipped to handle them and who have been entrusted with the responsibility of negotiating the treaty to the country's greatest advantage.

On these facts, the High Court held that, because benefits under the treaty were available, no capital gains tax was payable by the Mauritius companies in India and the assessee was not required to withhold tax on the sales proceeds.

Comments

The High Court confirmed the principles set forth by the Supreme Court that the benefits of article 13(4) of the India-Mauritius tax treaty are available to companies that hold a tax residence certificate issued by the Mauritius authorities. The decision should be welcomed by foreign investors, particularly in light of the ongoing controversies and litigation relating to the availability of benefits under the India-Mauritius tax treaty.

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Indonesia:
Updated guidance issued on exchange of information between governments

As part of its efforts to prevent tax avoidance, tax evasion and tax treaty abuse, Indonesia's Ministry of Finance has revised the exchange of information regulation (PMK-125). The significant changes under PMK-125, which is effective as from 7 July 2015, include the following:

- Expansion of the coverage of international agreements under which the Indonesian Directorate General of Taxation (DGT) may carry out an exchange of information (EOI) to include the Convention on Mutual Administrative Assistance in Tax Matters, multilateral or bilateral competent authority agreements and intergovernmental agreements. Circumstances that may trigger an EOI request or a spontaneous EOI are expanded to include an objection, an appeal, a mutual agreement procedure or an advance pricing agreement;
- Clarification that, in addition to the conditions provided in the previous regulation, the EOI cannot be performed if the relevant tax authority has made no effort to seek the information inside its own country; and
- Clarification that, in performing the automatic EOI, the DGT units that carry out an automatic EOI will furnish certain detailed information to the Director of Tax Regulations II (financial information and withholding tax information on income that was paid to a recipient in a treaty partner jurisdiction).

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Russia:
Arbitration court decision may create risks for cross-border licensing arrangements

The Moscow District Arbitration Court issued a controversial decision on 11 June 2015, in which it ruled that expenses associated with the payment of royalties by a Russian company to a foreign affiliate under a sublicensing agreement were nondeductible for profits tax purposes. The arbitration court affirmed the ruling of two lower courts and the position of the Russian tax authorities.

This article overviews the decision and makes some comments on the potential impact of the case for multinational companies charging royalties to Russian subsidiaries.

Background

Oriflame Cosmetics SA (Luxembourg), which owns the “Oriflame” trademark and brand, as well as business-related know-how, granted a license to an affiliated company in the Netherlands (Oriflame Kosmetiek BV) to use the intellectual property (IP). Oriflame Netherlands then concluded a sublicensing agreement with another affiliated company, Oriflame Russia (the taxpayer). Oriflame Russia paid royalties to Oriflame Netherlands for the rights to use the brand and know-how. Oriflame Netherlands transferred most of the royalties to the Luxembourg parent company. Oriflame Russia deducted the royalties paid under the sublicense agreement in calculating its Russian profits tax liability.

The Russian tax authorities challenged the deduction of the royalties during a tax audit of Oriflame Russia, taking the position that the sublicense agreement was used as a tax-free profit repatriation tool that allowed the taxpayer to reduce its tax burden by deducting the royalties and allowed the Netherlands and Luxembourg affiliates to avoid paying tax in their countries. The tax authorities “pierced the corporate veil” and reclassified Oriflame Russia (a limited liability company) as a representative office of Oriflame Luxembourg based on the following facts:

- Oriflame Russia’s website was a part of the global website of Oriflame Luxembourg and was registered by the latter;
- Advertising materials and catalogues featured the name of Oriflame Luxembourg rather than the taxpayer’s name;
- The taxpayer’s customers received a special brochure (“Oriflame Success Plan”) that described the advantages of working and building a career with a multinational company, but did not contain any references to Oriflame Russia;
- Oriflame Russia’s top management personnel also were employees of Oriflame Luxembourg;

- Oriflame Russia had limited decision-making powers and had to have most of its decisions approved by Oriflame Luxembourg; and
- Oriflame Russia had been operating at a loss for a considerable period of time (despite increasing sales in Russia), yet was able to make significant royalty payments.

The court of first instance, as well as the appeals courts, ruled in favor of the Russian tax authorities, and these decisions were affirmed by the Moscow District Arbitration Court.

The courts concluded that, in substance, Oriflame Russia was acting as a representative office of Oriflame Luxembourg and created a perception among its customers that they were interacting and dealing with a foreign company and not a subsidiary of the foreign company. The fact that Oriflame Russia does not pay corporate tax on its business activities and reported losses for several consecutive years, while the Dutch and Luxembourg entities claimed a tax exemption for a majority of the royalties received in the Netherlands and Luxembourg, respectively, also was relevant to the ultimate conclusion that the main objective of the sub-licensing structure was to achieve a tax-free profit repatriation from Russia. Therefore, the courts disallowed the deduction of the royalty payments.

Comments

This is the first case in which Russian courts have affirmed the disallowance of a tax deduction for royalties on the grounds that the taxpayer was reclassified from a separate legal entity into a representative office of a foreign company, and the decision potentially could create risks for foreign companies operating in Russia through subsidiaries. Licensing arrangements likely will continue to be subject to enhanced scrutiny by the Russian authorities, considering the government's recent initiative to combat tax evasion; new rules adopted at the end of 2014 include the introduction of the "beneficial ownership" concept and give the Russian tax authorities a stronger basis for challenging issues relating to the beneficial ownership of Russian-source income (for prior coverage, see *World Tax Advisor*, 12 December 2014). Under the beneficial ownership rules, reduced rates or exemptions under Russia's tax treaties will be denied if a foreign company recipient of income:
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/141212_1.pdf

- Has limited authority to dispose of the income;
- Carries out intermediary functions in respect of the income and does not bear the economic risks corresponding to its functions; and
- Directly or indirectly transfers the income (in whole or in part) to another entity that would not have a right to the treaty benefits if it received the income directly from the Russian payer.

Foreign companies that have licensing arrangements with Russian subsidiaries should review the arrangements to ensure that the royalty rates are on arm's length terms and the total amount of royalties paid corresponds to the scale of the Russian business (this could be confirmed by a transfer pricing study prepared in accordance with the Russian rules).

A properly drafted licensing agreement should be in place that clearly specifies the IP rights transferred and the benefits received by a Russian subsidiary that is licensing the IP rights, and the Russian subsidiary should be able to demonstrate the economic and business substance of such IP rights. Moreover, if the Russian business is operating at a loss, the loss should not be driven by the payment of the royalty; there should be an explanation for the losses (such as business expansion, investments and specific market conditions affecting the business). Finally, the local subsidiary should obtain a beneficial ownership statement from the (sub-) licensor to prove that the latter is a beneficial owner of the royalties and is entitled to benefit from reduced tax rates under a relevant tax treaty. This is especially important in cases where the treaty benefits are claimed by a non-IP owner.

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Taiwan:
Double taxation agreement signed with Mainland China

On 25 August 2015, Taiwan and Mainland China signed a tax treaty that aims to avoid double taxation. Lighter tax burdens, as well as the mitigation of tax risks, are expected for individuals and enterprises on both sides of the Taiwan Strait. The Cross-Strait Double Taxation Agreement (CSDTA) will take effect once it is passed by the Legislative Yuan, the legislative body of Taiwan, and the relevant ratification procedures are completed by the Mainland China government.

The following highlights the main features of the CSDTA.

Scope

Persons covered under the CSDTA include resident individuals and enterprises (as defined under the domestic laws of the contracting states), as well as enterprises with indirect investments in either contracting state (such as Taiwanese companies that make indirect investments into China via entities in a third jurisdiction that have their place of effective management in Taiwan).

In Taiwan, the treaty will apply to individual income tax, profit-seeking enterprise income tax and the alternative minimum tax; in China, it will apply to the individual income tax and enterprise income tax.

Reduced tax rates and exemptions

Business profits: Profits derived by an enterprise in either contracting party from carrying on a business in the other contracting party will be exempt from tax in the other contracting party, unless the enterprise has a permanent establishment (PE) in that other contracting party. For example, Taiwan companies that operate logistics centers and provide product storage and delivery services in China for less than 183 days within any 12-month period or that engage in construction projects for less than 12 months will not be considered to have a PE in China and, therefore, will not be subject to tax in Mainland China under the CSDTA.

International transportation income: International transport enterprises that earn profits from either contracting party will be exempt from taxes on such profits.

Dividends: A maximum 5% withholding tax will apply on dividends where the beneficial owner is a company that holds directly at least 25% of the company paying the dividends for 12 consecutive months before the dividends are paid; the rate in all other cases will be 10%.

Interest: The maximum withholding tax rate on interest will be 7%, with exemptions provided in specific cases, e.g. interest paid by the government of either contracting party or wholly state-owned banks.

Royalties: A maximum 7% withholding tax rate will apply to royalties.

Capital gains: Capital gains derived by a resident of one contracting party from the disposal of shares of a company of the other contracting party will be taxable only in the party in which the transferor is resident, except in the following situations, when the gains may be taxed by the other party:

- If more than 50% of the value of the shares is derived directly or indirectly from immovable property situated in the other party; or
- If the gains are exempt from tax in the party in which the transferor is resident and the transferor holds directly or indirectly at least 25% of the capital of the company whose shares are disposed of at any time during the 12-month period preceding the disposal.

Corresponding adjustments for related party transactions: Where a contracting party makes a transfer pricing adjustment and taxes the relevant profits, and the other contracting party agrees that such adjustment is consistent with the arm's length principle, that other state will make an appropriate adjustment to the amount of tax charged on the profits. The competent authorities of the contracting parties will consult each other, if necessary.

Income from employment: Remuneration derived by an individual resident in one contracting party in respect of employment exercised in the other contracting party will be taxable only in the contracting party where the individual is resident if the following requirements are met:

- The individual is present in the other contracting party for a period or periods that do not exceed, in the aggregate, more than 183 days in any 12-month period commencing or ending in the relevant taxable period;
- The remuneration is paid by, or on behalf of, an employer that is not a resident of the other contracting party; and
- The remuneration is not borne by a PE or a fixed base of the employer in the other contracting party.

Prevention of tax evasion

The CSDTA contains a restricted exchange of information provision, to the effect that an exchange of information between the contracting parties will not be retroactive and the information will be used only for tax purposes, and not in criminal cases. Information exchanges will take place only for specific cases of tax evasion, rather than for general cases or automatically.

Comments

Once ratified by the Legislative Yuan, the CSDTA will play a significant role in Taiwanese companies' economic activities across the Strait, as more local firms choose to invest in China while exploring the global market. Although the treaty is not yet in force, potentially affected companies should review the provisions to identify potential challenges and opportunities when planning investment strategies. Where possible, companies may adjust their current business plans to improve tax risk management and their competitiveness in the global market.

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In brief

Australia: On 23 September 2015, the Australian Taxation Office (ATO) undertook the first automatic sharing of bank information with the US Internal Revenue Service (IRS) in accordance with the US Foreign Account Tax Compliance Act (FATCA). The ATO confirmed that details of over 30,000 financial accounts worth over AUD 5 billion are being provided to the US on US citizens and tax residents with Australian bank accounts. In return, the ATO will receive similar data from the IRS relating to Australians with financial accounts in the US, allowing for the detection of undeclared offshore income and tax evasion.

Colombia: On 15 September 2015, the Ministry of Finance published the second report from the Commission for Tax Equality and Competitiveness (Commission), which was formed to assess the existing tax system and to propose appropriate changes (for coverage of the Commission's first report, see *World Tax Advisor*, 24 July 2015). The second report includes an analysis of the commission's proposals to make changes and improvements to the Colombian tax authorities (DIAN), such as separating the department within the DIAN responsible for dispute resolution from the collection and audit departments, creating special tax courts to ensure partiality and relive some of the burdens on the judiciary and increasing the DIAN's budget to facilitate the collection of additional revenue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_5.html

Cyprus: The Ministry of Finance (MOF) published a decree on 28 August 2015 that implements the reciprocal intergovernmental agreement (IGA) signed between Cyprus and the US regarding the US Foreign Account Tax Compliance Act (FATCA) in 2014. The deadline for financial institutions to provide the relevant information to the Cypriot MOF was 31 August 2015; that information will be consolidated and communicated to the US Internal Revenue Service by 30 September 2015. The decree also provides that financial institutions that fall within the scope of FATCA must retain all relevant documents used for preparing the information submitted to the Cyprus MOF for six years, and the MOF may request the documents during this period to verify that the information submitted is accurate and complete.

Finland: The government has proposed new tax amnesty rules, under which an individual would receive tax amnesty related to previously unreported foreign investment income. The draft bill, which currently is open for public comment, contains an amnesty period that would run from 1 January 2016 through 31 December 2016. The potential consequences for failing to report foreign income currently vary from penalties and interest on the underpaid tax amount to criminal prosecution. Under the proposed legislation, if an individual voluntarily reports his/her income to the Finnish tax authorities during the amnesty period, there would be no criminal prosecution, although the unreported tax still would be subject to interest and penalties. In addition, the individual would need to report his/her foreign investment income for the years 2004-2015 (six years longer than the current statute of limitations for reporting income).

Indonesia: The Directorate General of Taxation (DGT) and the Director General of Treasury have issued a joint regulation on the procedure for paying income tax (other than oil and gas income tax) in US dollar (USD) currency. The regulation provides for the state treasury “giro” (demand deposit) account that previously accepted USD payments of income tax to be closed on 31 July 2015; any payments made to the account on or after this date will not be considered a tax payment. Taxpayers who are licensed by the DGT to maintain their books in USD currency must carry out the payment to the state treasury through a qualifying foreign currency receiving bank.

Israel: The standard VAT rate will reduce from 18% to 17% as from 1 October 2015.

OECD: The OECD will publish the 2015 base erosion and profit sharing (BEPS) initiative deliverables on 5 October 2015. There will be one overall paper and 13 detailed papers covering the 15 action items.

Peru: On 12 September 2015, the government approved new legislation that provides a three-year tax exemption for capital gains derived from the sale of certain shares (and other securities representing shares) through the Lima stock exchange or an equivalent exchange that may be established in the future (for prior coverage, see *World Tax Advisor*, 11 September 2015). The exemption will apply as from 1 January 2016 and will require that certain conditions be fulfilled (e.g. a liquidity threshold and a limit on the maximum number of shares that can be sold during a 12-month period). Companies listing their shares for the first time on the Lima stock exchange will have 360 calendar days from the listing date to comply with the necessary liquidity threshold. In the interim, these companies may benefit from the exemption, provided they do not exceed the maximum number of sales allowed.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150911_9.html

Romania: The government has approved a reduction in the standard VAT rate from 24% to 20%, with effect as from 1 January 2016. A further reduction (to 19%) is planned to take effect as from 1 January 2017.

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

United States: The Internal Revenue Service issued a notice on 18 September 2015 announcing its intention to amend regulations under chapter 4 of the Internal Revenue Code, i.e. the provisions dealing with the Foreign Account Tax Compliance Act (FATCA), to extend the period of time that certain transitional rules will apply.

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.

China-Taiwan: See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150925_10.html

Cyprus-Iran: See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150925_5.html

India-Mauritius: See article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150925_7.html

Ireland-Ukraine: The 2013 treaty entered into force on 17 August 2015 and will apply as from 1 January 2016. When in effect, the treaty provides for a 5% withholding tax where dividends are paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. A 5% withholding tax rate will apply to interest paid in connection with a sale of industrial, commercial or scientific equipment on credit, or on a loan granted by a bank; otherwise, the rate will be 10%. A 5% rate will apply to royalties paid in respect of a copyright of scientific work, a patent, trademark, secret formula or process or for information concerning industrial, commercial or scientific experience; otherwise, the rate will be 10%.

Malaysia-Slovakia: When in effect, the treaty signed on 25 May 2015 provides for a 0% 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 for an uninterrupted period of at least 12 months; otherwise, the rate will be 5%. The rate on interest and royalties will be 10%.

Nigeria: The multilateral convention on mutual assistance in tax matters (and amended protocol) entered into force in Nigeria on 1 September 2015 and will apply as from 1 January 2016.

Norway-Serbia: When in effect, the treaty signed on 17 June 2015 to replace the 1983 treaty between Norway and the former Yugoslavia 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%. The rate on interest will be 10%.

A 5% rate will apply to royalties for the use of, or the right to use, a copyright of literary, artistic or scientific work, including cinematograph films or films or tapes used for radio or television broadcasting. A 10% rate will apply to royalties for the use of, or the right to use, a patent, trademark, design or model, plan, secret formula or process; for the use of, or the right to use, industrial, commercial or scientific equipment; or for information concerning industrial, commercial or scientific experience.

Spain-Oman: The 2014 treaty and protocol entered into force on 19 September 2015 and generally apply as from that date. The treaty provides for a 0% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the distributing company; otherwise, the rate is 10%. The rate on interest is 5% and that on royalties, 8%.

Spain-Uzbekistan: The 2013 treaty and protocol entered into force on 19 September 2015 and generally apply as from that date. The treaty provides for a 5% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the distributing company; otherwise, the rate is 10%. The rate on interest and royalties is 5%.

Sweden-Nigeria: The 2004 treaty entered into force on 31 December 2014 and applies as from 1 January 2015. The treaty provides for a 7.5% 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 is 10%. The rate on interest and royalties is 7.5%.

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 St. Vincent and the Grenadines (on 18 August 2015) and St. Kitts and Nevis (on 31 August 2015).

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China
SAT issues draft guidance on transfer pricing rules and BEPS initiatives

China's State Administration of Taxation released a discussion draft of "Special Tax Adjustment Implementation Measures" on 17 September 2015 that would comprehensively revise Circular 2, the existing guidance in this area. Circular 2, issued in 2009, is China's main transfer pricing guidance that contains detailed rules in areas such as transfer pricing adjustments, cost sharing arrangements, controlled foreign companies, thin capitalization and the general anti-avoidance rule. The discussion draft incorporates a number of recommendations of the OECD in the context of the BEPS initiative, but does so taking into

account China's unique economic environment and factors relevant to the revamping of Circular 2 and includes new chapters addressing intangible assets, intragroup services transactions and the monitoring of profit levels.
Issue date: 21 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-china-21-september-2015.pdf

European Union
CJEU rules on Dutch dividend withholding tax cases
The Court of Justice of the European Union (CJEU) issued its decision on 17 September 2015 in three joined cases involving the Dutch dividend withholding tax provisions. According to the CJEU, withholding tax imposed on a nonresident generally may not exceed the individual income tax burden imposed on a resident taxpayer. Where this is not achieved even after a tax credit has been granted by the residence state under the provisions of a "qualifying" tax treaty, it is the responsibility of the source state to ensure that the impact of the withholding tax is "neutralized."
Issue date: 18 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-europeanunion-18-september-2015.pdf

Italy
Major changes made to international tax rules
Italy's government issued a decree on 14 September 2015 that makes a number of changes to tax rules relevant to foreign investors and Italian companies with cross-border operations. These include changes to the measures governing tax rulings, tax havens, the migration of a company's residence, permanent establishments and the tax consolidation regime. The new rules are aimed at making the Italian tax system more attractive and competitive by harmonizing domestic rules on cross-border transactions with recent decisions of the Court of Justice of the European Union and international best practices (such as recommendations of the OECD), as well as eliminating distortions and reducing administrative burdens on companies. The decree will enter in force on 7 October 2015.
Issue date: 23 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-italy-23-september-2015.pdf

Mexico
Measures proposed to implement CbC reporting and OECD standard for information exchange
On 8 September 2015, the Mexican government presented several bills to congress that include measures to implement the OECD base erosion and profit shifting (BEPS) initiative on country-by-country reporting and the transfer pricing master file/local file documentation, as well as the OECD standard for the automatic exchange of information.
Issue date: 10 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-mexico-10-september-2015.pdf

Netherlands
Draft bill published on implementation of amended EU parent-subsidiary directive
On 15 September 2015, the Dutch government published legislative proposals for the implementation of the amended EU parent-subsidiary directive (PSD) that are expected to take

effect as from 1 January 2016. The PSD amendments require EU member states to implement an anti-hybrid rule and a general anti-abuse rule by 31 December 2015.
Issue date: 16 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-netherlands-16-september-2015.pdf

United States

Regulations under section 367(a) relating to outbound "F" reorganizations finalized

On 18 September 2015, the US Internal Revenue Service and Treasury published final regulations under sections 367(a) and 368(a)(1)(F) of the Internal Revenue Code. The regulations issued under section 368(a)(1)(F) expand the list of requirements for a transaction to qualify as a "mere change," and thus receive the tax-free status afforded to "F" reorganizations. Specifically relevant to international tax, the temporary section 367(a) regulations under Treas. Reg. §1.367(a)-1T(e) and (f), providing guidance on outbound F reorganizations (i.e. where the transferring corporation is domestic and the acquiring corporation is foreign), were finalized without substantive changes.
Issue date: 22 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-22-september-2015.pdf

IRS issues temporary regulations on coordination between sections 482 and 367

On 14 September 2015, the US Treasury released temporary regulations that clarify the coordination of the application of the arm's length standard and the best method rule under section 482 of the Internal Revenue Code with other provisions of the code.
Issue date: 17 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-015-17-september-2015.pdf

Proposed section 367(a)/(d) regulations eliminate tax-free transfers of foreign goodwill and going concern value

On 14 September 2015, the US IRS and Treasury issued proposed regulations under section 367(a) and (d) of the Internal Revenue Code that would eliminate the ability of taxpayers to transfer foreign goodwill or going concern value outbound on a tax-free basis. Once finalized, the proposed regulations will apply with retroactive effect to transfers occurring on or after 14 September 2015.
Issue date: 15 September 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-15-september-2015.pdf

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