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Overview of Thailand's IHQ/ITC regime

Thailand's Cabinet issued two decrees on 1 May 2015 (Royal Decrees No. 586 and 587) that enact into law a new international headquarters (IHQ) and international trading center (ITC) regime (for prior coverage, see *World Tax Advisor*, 9 January 2015). The IHQ and ITC regime relaxes some of the conditions that previously were imposed on regional operating headquarters (ROH) and that prevented the ROH regime from operating as intended; the new regime also expands the tax and nontax incentives granted to qualifying companies by the Thai Revenue Department.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150109_6.html

In addition, the Board of Investment (BOI) has launched a promotional scheme for IHQs and ITCs that includes both tax and nontax incentives.

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The IHQ/ITC regime is designed to enhance Thailand's competitiveness by attracting multinationals to set up their activities in the country and to take advantage of the formation of the ASEAN Economic Community, to help Thailand position itself as an economic hub for Asia.

Definitions of IHQ/ITC

An IHQ is a Thai-incorporated company that provides any of the following services to its branches or affiliated Thai or foreign enterprises:

- Managerial services or technical services;
- Support services such as general management, procurement of raw materials and parts, research and development of products, technical support, marketing or sales promotion, human resource management or training, financial advisory, etc.; or
- Financial management services, including services by corporate treasury centers, borrowing or lending in Thai baht from financial institutions or associated enterprises in Thailand, etc.

An ITC is a Thai-incorporated company that purchases and sells goods, raw materials and parts or provides international trading-related services to juristic persons incorporated under foreign law. International trading-related services include the following:

- Procurement of goods;
- Warehousing and inventory services before delivery of goods;
- Packaging services;
- Transportation of goods;
- Insurance on goods;
- Advisory, technical and training services on goods; and
- Any other services designated by the Director General of the Revenue Department.

Requirements to qualify for IHQ/ITC status

The following requirements must be met for a company to benefit from the IHQ/ITC regime:

- The company must be incorporated under Thai law and have paid-up capital of at least THB 10 million at the end of accounting period;
- The company must have annual operating expenses of at least THB 15 million that are paid to Thai recipients;
- The company must provide qualifying management, technical and support services or treasury center services to an overseas associated enterprise, which can be related through direct or indirect control (it no longer is necessary to have at least three affiliated enterprises, as required under the ROH regime), or to Thai affiliates; and
- The company must submit an application and obtain IHQ status from the Director-General of the Revenue Department. The application must be in a prescribed format and comply with any procedures and conditions set by the Director-General. (ROH status will automatically terminate if an ROH entity that benefited under the previous regime applies to become an IHQ and is granted IHQ status.)

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If a company fails to meet the requirements for IHQ/ITC status in any accounting period, the incentives will be suspended for that period.

Tax incentives for IHQs

A qualifying IHQ will be entitled to the following tax incentives:

- A 15-year corporate income tax exemption on the following:
  - Income from the provision of management, technical, support or treasury center services to foreign affiliated enterprises;
  - Income from the purchase and sale of goods overseas, provided the goods are not imported into Thailand, and from trade-related services with overseas companies (e.g. procurement of goods, warehousing, transportation of goods, insurance on goods, etc.);
  - Dividends or royalties received from foreign affiliated enterprises; and
  - Capital gains derived from the sale of shares of foreign affiliated enterprises.
- A 15-year reduced 10% corporate income tax rate (rather than the normal 20% rate) on the following:
  - Income derived from the provision of qualifying services (i.e. management, technical, support and treasury services) to affiliated Thai companies; and
  - Royalty income received from affiliated Thai companies.
- A withholding tax exemption on the following:
  - Dividends distributed by the IHQ to a juristic person incorporated under foreign law and not carrying on a business in Thailand, provided the dividends are paid out of exempt profits; and
  - Interest paid by the IHQ on loans obtained from a juristic person incorporated under foreign law and not carrying on a business in Thailand, where the loan is obtained for the purpose of relending to affiliated enterprises in the context of providing treasury center service activities.
- A 15-year reduced personal income tax rate of 15% on the income of expatriate employees who work at the IHQ and earn employment income. The reduced rate is available from the date the IHQ is approved for the tax benefits under the IHQ regime until the individual's last day of employment at the IHQ, or until the IHQ's tax benefits under the regime expire.
- An exemption from the specific business tax on interest income derived by the IHQ from loans granted to affiliated enterprises in the context of providing treasury center services.

The 15-year incentives will be available from the day after the date the Director-General grants approval of the IHQ status or the next accounting period, whichever is selected by the applicant at the time of the application.

Tax incentives for ITCs

A qualifying ITC will be entitled to the following tax incentives:

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- A 15-year corporate income tax exemption on income from the purchase and sale of goods overseas, provided the goods are not imported into Thailand, and from trade-related services with overseas companies (e.g. procurement of goods, warehousing, transportation of goods, insurance on goods, etc.).
- A withholding tax exemption on dividends distributed by the IHQ to a juristic person incorporated under foreign law and not carrying on a business in Thailand, provided the dividends are paid out of corporate income tax-exempt profits that are generated from the provision of services to foreign affiliates.
- A 15-year reduced personal income tax rate of 15% on the income of expatriate employees who work at the IHQ and earn employment income. The reduced rate is available from the date the IHQ is approved for the tax benefits under the IHQ regime until the individual's last day of employment at the IHQ, or until the IHQ's tax benefits under the regime expire.

The 15-year incentives will be available from the day after the date the Director-General grants approval of ITC status or the next accounting period, whichever is selected by the applicant at the time of the application.

BOI promotional scheme

In addition to the above tax incentives offered by the Revenue Department to qualifying companies, the BOI offers tax and nontax incentives under a promotional scheme for IHQs and ITCs, including the following:

- An exemption from import duty on machinery used in R&D and training activities (applicable for IHQs) and on raw materials and essential parts used in manufacturing for export (applicable for ITCs);
- Permission to bring in skilled foreign nationals (and their spouse and dependents) to work on promoted activities;
- Permission to own land;
- Permission for foreigners to enter Thailand for the purpose of studying investment opportunities;
- Permission for the IHQ/ITC to be majority or wholly owned by foreigners; and
- Permission to remit foreign currency abroad.

To benefit from the BOI incentives, the Thai company must supervise at least one branch or affiliated enterprise outside Thailand and have paid-up capital of at least THB 10 million. A company receiving benefits under the BOI promotional scheme may submit an application to the Thai Revenue Department to obtain approval to be an IHQ or ITC and thereby receive additional tax benefits.

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China:
Income tax incentives rolled out nationwide

China's Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued guidance on 23 October 2015 (Circular 116) that extends four income tax incentives nationwide to stimulate technological innovation. These incentives initially were piloted in the Beijing Zhongguancun National Independent Innovation Demonstration Zone (NIIDZ), and then expanded to all other NIIDZs, the He-Wu-Beng Independent Innovation Comprehensive Pilot Zone (in Anhui province) and Mianyang Science and Technology City (in Sichuan province) (collectively, "pilot areas") from 1 January 2015 (for prior coverage, see the *World Tax Advisor*, 24 July 2015). According to Circular 116, the expanded enterprise income tax (EIT) incentives apply as from 1 October 2015 and the individual income tax (IIT) incentives will apply as from 1 January 2016.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150724_4.html

EIT incentives

Deduction granted to corporate partners of venture capital partnerships investing in unlisted small and medium-sized High-New Technology Enterprises (SMHNTEs): The EIT law grants a deduction to venture capital companies that invest in unlisted SMHNTEs, provided the investment has been held for at least two years (i.e. 24 months). Qualifying venture capital companies may deduct 70% of the investment amount from their taxable income. An SMHNTE is a high-new technology enterprise that meets the following requirements:

- Annual sales not exceeding RMB 200 million;
- Total assets of no more than RMB 200 million; and
- No more than 500 employees.

Circular 116 expands the incentive to corporate partners in venture capital limited partnerships that are registered under the Chinese partnership law and that invest in unlisted SMHNTEs. Since a partnership is not a taxable entity, Circular 116 allows the deduction to "pass-through" to a corporate partner; that partner may deduct the qualifying amount from its share of the taxable income of the partnership. The qualifying amount of the deduction is calculated by multiplying 70% of the amount of the qualifying investment by the partnership in the SMHNTE by the share of investment in the partnership attributable to that partner.

This incentive generally is believed to be designed to benefit resident enterprises that invest in SMHNTEs through Chinese venture capital limited partnerships. In view of the limited guidance currently available in relation to the tax treatment of nonresident enterprise partners of Chinese limited partnerships, it is unclear whether the incentive will be available to nonresident enterprise partners of such partnerships.

Expanded scope of "technology transfer": Under the EIT law, the first RMB 5 million of income derived in a tax year by a Chinese resident company from the transfer of technology is tax-exempt, with the remainder subject to a 50% reduction in the EIT rate. For resident enterprises registered outside the piloted areas, a technology transfer means a transfer of

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ownership of qualifying technology, or a worldwide exclusive license of the right to use qualifying technology, for a period of five years or more.

Circular 116 revises the interpretation of the term “technology transfer” to include a transfer of a “non-exclusive” license of the right to use qualifying technology for more than five years. It should be noted, however, that based on guidance issued by the MOF/SAT in 2010, this incentive is not available in respect of a technology transfer between two parties that are related through a direct or indirect 100% shareholding relationship.

IIT incentives

Deferred payment of IIT on capitalization of undistributed profits or reserves: The conversion by an enterprise of its undistributed profits or reserves to capital generally is considered a dividend distribution by that enterprise to its shareholders, which results in individual shareholders being subject to IIT at a rate of 20% in respect of the amount of the dividend distribution. Where such a capitalization of undistributed profits or reserves is made by an SMHNTE, Circular 116 allows the IIT to be paid by installments over a five-year period if the individual shareholder is unable to settle his/her tax liabilities immediately. Although the option is not subject to preapproval, the taxpayer must report the relevant information to the tax authorities.

The deferred payment option is not available if the SMHNTE is listed on a Chinese stock exchange or quoted on the National Equities Exchange and Quotations.

Deferred payment of IIT on stock awards: According to the IIT law and relevant regulations, stock awards granted to employees generally are subject to IIT as “wages and salaries.” For stock awards granted by High-New Technology Enterprises (HNTEs) to their qualifying technical employees, Circular 116 allows the IIT to be paid by installments over a five-year period if the employee is unable to settle his/her tax liability immediately. The deferred IIT payment option is not available to a stock award plan designed to cover all employees.

Although the deferred payment option is not subject to preapproval, the taxpayer must report the relevant information to the tax authorities.

Circular 116 allows the IIT on the stock award to be calculated by reference to a preferential policy available for employee stock options offered by listed companies, where the taxable income is divided by the “number of stipulated months” (i.e. the number of months in the vesting period, capped at 12) to determine the applicable tax bracket. It appears that Circular 116 should be applied to stock awards with a vesting period; it is unclear whether and how Circular 116 could be applied to a stock award plan without a vesting period.

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Colombia: Guidance issued on attribution of profits to permanent establishments

Colombia's tax authorities have published a ruling dated 3 September 2015 that addresses some issues regarding the application of the rules for the attribution of profits to a permanent establishment (PE) in Colombia.

The ruling explains that, in accordance with guidance issued in 2013, PEs and branches of foreign companies in Colombia must carry out an analysis to support the profits attributed to the PE or branch. The analysis must be carried out in accordance with the arm's length principle, and must describe the PE or branch's functions, assets and staff, as well as the risks assumed by the foreign head office through the PE or branch. An analysis must be prepared and submitted to the tax administration for each fiscal year, regardless of whether the PE or branch carries out activities or transactions with related parties during the fiscal year. PEs or branches that are required to file a transfer pricing study with the tax administration may submit the profit attribution analysis with the transfer pricing study.

The PE or branch must retain the analysis for five years (counted starting from 1 January of the year following the year in which the analysis was carried out). The tax authorities may request a copy of the analysis for purposes of verifying the accuracy of the information.

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Cyprus: Tax treaty with Switzerland enters into force

Following the completion of the relevant ratification procedures and the exchange of notifications between the two countries, the 2014 Cyprus-Switzerland tax treaty, which is based on the OECD model treaty, entered into force on 15 October 2015.

The treaty provisions relating to withholding taxes will be effective on 1 January 2016. The applicable withholding tax rates on dividends, interest, royalties and capital gains under the treaty are as follows:

- **Dividends:** No withholding tax will be levied if the beneficial owner of the dividends is (1) a company (other than a partnership) whose capital is wholly or partly divided into shares and that holds directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least one year; (2) a pension fund or similar institution recognized as such for tax purposes; or (3) the government, a political subdivision, a local authority or the central bank. A 15% withholding tax rate will apply in all other cases.
- **Interest and royalties:** Interest and royalties will be taxable only in the state of residence of the recipient.

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- **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. Capital gains arising from the disposal of shares in a company that derive more than 50% of their value, directly or indirectly, from immovable property may be taxed in the contracting state in which the property is situated, unless (1) the shares are quoted on a stock exchange, (2) the property is used in the company's business or (3) the disposal is a result of a corporate reorganization. In such a case, gains will be taxable only in the state of residence of the transferor. Gains from the disposal of other property, including shares other than those referred to above, will be taxable only in the state of residence of the transferor.

The treaty provisions with respect to other taxes also will enter into effect on 1 January 2016, except where a tax year may be different from the calendar year. In such cases, the relevant treaty provisions will be effective for tax years beginning on or after 1 January 2016 (the Swiss tax year follows the accounting year).

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European Union:
Savings tax directive repealed

The EU savings tax directive, which has allowed EU tax administrations access to information on private savings income since 2005, was repealed on 10 November 2015. The savings directive required EU member states to pass on information about interest payments made in one member state to residents of other member states, to minimize possible tax evasion.

A significant overlap had developed with other legislation in this field, and the repeal of the savings directive eliminates the overlap. In December 2014, the European Council adopted a directive amending provisions on the mandatory automatic exchange of information between tax administrations by extending the scope of that exchange to include dividends, interest and other types of income, following the common reporting standard supported by over 80 countries. This directive, which is broader in scope than the savings directive, will enter into force as from 1 January 2016 (except for Austria, which has been granted a derogation allowing it to apply the amended directive one year later than other member states).

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Indonesia:
Temporary tax incentive announced for fixed assets revaluation

Indonesia's Ministry of Finance issued a regulation on 15 October 2015 that provides a temporary tax incentive to taxpayers that apply for a revaluation of their fixed assets. The incentive, which applies from 20 October until 31 December 2016, allows taxpayers to revalue their assets and avoid paying a flat 10% tax on the amount by which the assets have increased in value; instead, taxpayers that apply for a revaluation will be subject to a reduced tax rate on the difference between the post-revaluation asset value and the tax book value before the revaluation, with the rate depending on when the application is submitted and income tax settled:

Date of application submission and settlement of income tax	Final income tax rate
20 October 2015 – 31 December 2015	3%
1 January 2016 – 30 June 2016	4%
1 July 2016 – 31 December 2016	6%
As from 1 January 2017	10%

The tax incentive is available to corporate taxpayers, individual taxpayers that maintain bookkeeping and permanent establishments of nonresidents, including taxpayers that keep their books in US dollars and taxpayers that have performed an asset revaluation within the last five years. Fixed assets that are revalued generally may not be transferred or sold within a certain period of time after the revaluation; otherwise, additional tax will have to be paid.

Any increase in the value of fixed assets following a revaluation may be converted into share capital. An amount up to the difference between the market value of the revalued asset and the net tax book value, or the market value of the revalued asset and the net accounting book value, whichever is lower, will be exempt from tax.

Since the special tax treatment is available for a limited time, and because the lowest tax rate will be available only until the end of 2015, companies should begin immediately to determine whether to take advantage of the tax benefits of an asset revaluation.

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Mexico:
CbC reporting and OECD standard for exchange of information introduced

The Mexican government published several amendments to the tax rules on 18 November 2015, including the implementation of the OECD base erosion and profit shifting (BEPS) initiative on country-by-country (CbC) reporting and the OECD standard for the automatic exchange of information (for prior coverage, see Mexico tax alert, 10 September 2015).

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URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-mexico-10-september-2015.pdf

The Income Tax Law is amended to incorporate action 13 of the BEPS initiative on CbC reporting, as well as the transfer pricing (master file/local file) documentation requirement. Mexican companies will have to submit the required documents for the relevant fiscal year by the end of the following fiscal year (i.e. by 31 December 2017 for 2016). Failure to comply with the documentation requirements will result in a prohibition on contracting with the Mexican government or any state-owned company, and a fine from MXN 140,540 to MXN 200,090.

The Federal Tax Code is amended to implement the OECD standard for the automatic exchange of information, under which, starting in 2017, financial institutions will have to provide information on accounts existing as from 31 December 2015.

In addition to the above rules, the published amendments also provide that distributions of dividends to nonresidents made out of the net tax profit account for investments in renewable sources of energy (CUFIER) will be subject to the additional 10% withholding tax on dividends. (The withholding on such distributions was not addressed in the initial version of the legislation.) Additionally, to promote investment in power generation, debt incurred on infrastructure projects in the power industry would be excluded from the application of Mexico's thin capitalization rules; this exclusion will apply retroactively from 1 January 2014.

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Papua New Guinea: Tax treaty negotiation suspended

Papua New Guinea's (PNG's) 2016 government budget, released on 3 November 2015, indicates that the government will suspend the negotiation of new bilateral tax treaties and may renegotiate existing treaties in light of the OECD project to combat base erosion and profit shifting (BEPS).

PNG currently has 10 tax treaties in effect: Australia, Canada, China, Fiji, Indonesia, Korea (ROK), Malaysia, New Zealand, Singapore and the UK.

The 2016 budget addresses the OECD's concerns that some existing tax treaties may allow for unintended consequences and that current treaty provisions may have weaknesses that create opportunities for BEPS. In light of these concerns, the PNG government has suspended the negotiation of any new tax treaties until the global response to BEPS issues is capable of being fully evaluated. The budget notes that PNG may need to renegotiate existing tax treaties following the outcome of the BEPS project.

The 2016 budget also indicates that the PNG government intends to sign the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The convention

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facilitates collaboration among the tax administrations of signatory countries to address offshore tax evasion, as well as the exchange of information provided for under tax treaties. The government announced that it has commenced steps designed to allow PNG to become a signatory to the convention.

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South Africa:
Mutual agreement procedure clarified

The South Africa Revenue Service (SARS) recently posted on its website an explanation of the mutual agreement procedure (MAP). The MAP is a procedure found in tax treaties that allows the competent authorities of the contracting states to consult, with a view to resolving issues arising under the relevant treaty, typically where a taxpayer resident in one of the contracting states considers that the application of the treaty has resulted in taxation not in accordance with the treaty.

The SARS has clarified the types of MAP requests, and the procedure to be followed to invoke the MAP. According to the SARS, a MAP request may involve transfer pricing or an interpretation of the relevant tax treaty. For example, a transfer pricing MAP request may include issues involving transfer pricing adjustments and the attribution of profits to a permanent establishment. An interpretation MAP may be requested on issues such as the following:

- Dual residence of individuals, and persons other than individuals;
- Withholding tax levied beyond what is permitted by the applicable treaty; and
- Any situation in which a person considers that the taxation is not in accordance with the applicable treaty.

The SARS explanation also sets out the steps a taxpayer must take to invoke the MAP. It is important to note that the SARS, as the competent authority, requires certain minimum information to be included in any MAP request.

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Switzerland:
Court publishes reasoning for decisions on beneficial ownership

Switzerland's Federal Supreme Court issued two decisions on 5 May 2015 that involve the concept of beneficial ownership of income under tax treaties in the context of total return swaps and futures contracts (for prior coverage, see *World Tax Advisor*, 22 May 2015). On 28 October 2015, the court published its reasoning for the decisions. In both cases, the court denied refunds of Swiss withholding tax under the Denmark-Switzerland tax treaty because the conclusion of the derivative transactions had caused the loss of beneficial ownership (BO) of dividends received from Swiss shares acquired for hedging purposes.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150522_1.html

Reasons for the court's conclusions

In the first case, which involved total return swaps, the Federal Supreme Court confirmed that the BO concept is implicit in all tax treaties, i.e. a recipient of dividend income must be the beneficial owner to claim treaty benefits, even if the relevant treaty does not contain a specific reference to BO.

The court observed that, for a dividend recipient to be the beneficial owner of the dividends, it must have certain rights and authority with respect to the use and disposition of the dividends. A further indication of BO status is that the recipient of the dividends bears the risk that no dividends will be distributed. In its reasoning, the court cited the following examples where the decision power of the dividend recipient is so limited that a finding of BO is not possible: (1) the realization of the dividend income depends on the obligation to forward the income to a third party (i.e. the dividend income would not have been realized without the obligation to forward the income); and (2) the obligation to forward the dividend income depends on the realization of such income (i.e. there would be no obligation to forward income to a third party where no dividend income is realized).

The court concluded that the Danish bank in the case had relinquished its BO of the dividend payment when it entered into the swap transaction because the bank fully hedged its total return swap position simultaneously and without exception; by entering into the swap transaction, the bank was able to finance the acquisition of the underlying Swiss equities and realize the dividend income, and the bank did not assume any significant risks because the assumed credit risk was compensated for by the margin it received.

The court held that there was a clear interdependence between the purchase of the underlying equities and the derivative, and therefore denied the withholding tax refunds due to a lack of BO. The court further ruled that Swiss withholding taxes that already had been refunded in connection with the total return swap arrangement could constitute unjustified enrichment and eventually would have to be recaptured (provided the three-year statute of limitations had not expired). However, this question was referred to the Federal Tax Administration for clarification.

In the futures contract case, the Federal Supreme Court referred to its definition of BO in the total return swap bank case, and again concluded that the Danish bank lacked BO because the bank refused to disclose the identity of the counterparties behind the brokers or to disclose

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the financing costs (indicating that the transactions were prearranged); the bank held the underlying equities only for a very short period of time and then resold them to the original seller (demonstrating that the dividends received were forwarded to third parties); and the bank retained only a small amount of the income (indicating that the bank did not assume any significant risks).

Impact of the decisions on the financial market

The Federal Supreme Court denied the withholding tax refunds in both cases based on a lack of BO of the dividends, not on the basis of Switzerland's anti-avoidance rules. Therefore, the question whether the transactions effectively led to tax savings or were motivated by nontax reasons remained largely unexamined.

Although the decisions will not lead to a denial of BO status in all transactions involving derivative instruments and, in fact, the court specifically stated in the total return swap case that each case must be decided on its own merits, the Federal Tax Administration likely will rely on the cases to deny Swiss withholding tax refunds on Swiss dividend and interest payments in cases with similar fact patterns.

Furthermore, where BO status is denied to the recipient of dividends, it is unclear from the court's decisions whether the swap counterparty would have BO status and whether that person would be entitled to reclaim withholding taxes based on the applicable tax treaty.

As a consequence, entering into such transactions in the future may be less profitable for the counterparty due to the additional withholding tax burden.

Potentially affected entities should carefully review previous refunds of Swiss withholding tax in connection with derivative instruments in light of the Federal Supreme Court decisions, and discuss in advance possible entitlement to refunds with the Federal Tax Administration. Financial institutions should review their business models on total return swaps and similar arrangements to ensure that the Swiss withholding tax requirements are met and make any needed revisions, and also should consider potential conflicts with other Swiss rules that may limit their trading ability.

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United States: Update on pending protocol to amend existing tax treaty with Japan

On 29 October 2015, the US Senate Committee on Foreign Relations held a hearing on eight pending tax agreements, including the proposed protocol with Japan signed on 24 January 2013 ("Proposed Protocol") to amend the existing income tax treaty and protocol with Japan dating from 2003 (for prior coverage, see United States tax alert, 28 January 2013 and *World Tax Advisor*, 22 February 2013). On the same day, the US Treasury Department released its technical explanation of the Proposed Protocol and the related exchange of notes.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-us-280113.pdf
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130222_1.html

On 10 November 2015, the Committee voted to report the proposed tax agreements favorably to the full Senate, which will have to give its consent before the Proposed Protocol can be ratified by President Obama. However, the question of *when* the Senate will give its consent remains uncertain. News of the committee hearing and vote to report favorably should not be interpreted as an indication that Senator Rand Paul, a member of the committee, has decided to allow the full Senate to act by expedited procedure on the resolution of ratification. Such expedited procedures, which require the unanimous consent of all senators, are ordinarily the path by which the Senate gives its consent to the ratification of tax treaties. In the prior Congress, Senator Paul withheld his consent, stating on the Senate floor that he opposed treaty provisions authorizing the exchange of tax information between treaty countries without evidence of tax fraud. Such provisions appear in the Proposed Protocol, as well as in tax treaties and protocols that were awaiting Senate consent in the prior Congress (and still are waiting as of 10 November).

The Proposed Protocol was approved by the National Diet of Japan in 2013. Thus, the Proposed Protocol would enter into force after it is ratified by the US president and once the instruments of ratification have been exchanged between the contracting states.

When it enters into effect, the Proposed Protocol would lower the threshold for the withholding tax exemption for dividends by reducing the ownership requirement from "more than 50%" to "at least 50%" of the voting stock of the company paying the dividends. It also would shorten the required holding period from 12 months to six months. In his testimony before the Senate Committee, the Chief of Staff of the Joint Committee on Taxation, Thomas Barthold, noted that both the ownership standard and the holding period threshold depart from recent US tax treaties that provide zero-rate withholding contingent upon an 80% ownership and a 12-month holding period.

The Proposed Protocol also would generally exempt interest from source-country taxation, in line with the 2006 US model treaty (and thus subject to exceptions for contingent interest payments and excess inclusions with respect to residual interests in REMICs). Notably, the Proposed Protocol was the first tax agreement signed by Japan to have such a provision, although a similar amendment to the Japan-UK income treaty has since entered into effect.

Other notable features of the Proposed Protocol include a revision to the definition of real property in article 13 of the existing treaty, which would expand US taxing jurisdiction over dispositions of US real property interests, the introduction of "baseball-style" mandatory

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binding arbitration procedures and a mutual assistance in collection provision that Barthold explained is unusual in a US tax agreement.

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In brief

Indonesia: The government has issued a regulation that revises a 2013 regulation on the requirements for Indonesian public companies to obtain a reduced corporate income tax rate. Under the previous rules, a company listed on the Indonesian stock exchange could obtain a reduced rate (up to 5% lower than the general 25% rate) provided at least 40% of the total number of the company's paid up shares were listed for trading on the Indonesian stock exchange *and* the shares were placed in the custody of a depository and settlement institution. The new regulation, which applies as from 4 August 2015, eliminates the custody requirement. The regulation aims to encourage companies in Indonesia to go public and to foster the role of the capital market as the source of financing.

South Africa: The National Treasury released the draft Carbon Tax Bill (which had been delayed numerous times) on 2 November 2015. The carbon tax would apply as from 1 January 2017, and the mandatory reporting requirements on which the tax would be based would begin in the second part of 2016. Comments on the draft bill are due by 15 December 2015. Additionally, the Davis Tax Committee released its first interim report on the proposed carbon tax on 13 November 2015. Although the committee is supportive of a carbon tax, it has raised a number of concerns to be addressed before implementation, e.g. the committee suggests that the carbon tax be implemented initially with a 100% tax-free threshold, to allow for proper planning and to allow the South Africa Revenue Service to fine-tune its systems to accommodate the tax. The deadline for public comment on the committee's first interim report is 31 January 2016.

Trinidad & Tobago: The 2016 budget, presented by the Minister of Finance (MOF) on 5 October 2015, includes a proposal to increase the standard rate of VAT from 12.5% to 15% as from 1 January 2016 and to increase the rates of the business and green fund levies from 0.2% to 0.6%, and from 0.1% to 0.3%, respectively. A new tax administrative body, the Trinidad and Tobago Revenue Authority, would be formed by the end of fiscal year 2016 to improve tax revenue collection and compliance. The MOF also announced that transfer pricing legislation would be implemented by the end of fiscal year 2016.

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BEPS corner

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

France: The government has taken steps toward implementing a country-by-country reporting requirement and is expected to implement the recommendations of the OECD's final report on action 13 of the BEPS project. See Global Transfer Pricing Alert 2015-018, 12 November 2015.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-018-12-november-2015.pdf

G20: The G20 leaders meeting in Turkey have endorsed the BEPS project actions. The final package of measures proposed by the OECD was presented to the group. The G20 leaders "called on the OECD to monitor progress and to develop, by early next year, an inclusive framework including the participation of developing economies on equal footing." The aim is to use public monitoring to ensure that countries comply with the BEPS recommendations.

Mexico: The tax rules have been amended to implement the OECD BEPS initiative on country-by-country reporting and the OECD standard for the automatic exchange of information. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151127_7.html

Papua New Guinea: The government will suspend the negotiation of new bilateral tax treaties and may renegotiate existing treaties in light of the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151127_8.html

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Tax treaty round up

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

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

Argentina-Switzerland: The 2014 treaty enters into force on 27 November 2015 and applies as from 1 January 2015 for withholding tax purposes. The treaty provides for a 10% rate 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 is 15%. The rate on interest is 12%, with an exemption for interest paid in connection with the credit sale of industrial machinery or equipment, or regarding a development loan granted at a preferential rate by a bank to an unrelated party for a minimum three-year period. Royalty payments for the use of, or the right to use, news are taxable at 3% and a 5% rate applies to royalties for the use of, or the right to use, a copyright of literary, dramatic, musical, or other artistic work (excluding film and television royalties). A 10% rate applies to royalties for the use of, or the right to use, industrial,

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commercial or scientific equipment; a patent, trademark, design, plan, secret formula or computer software; or industrial or scientific information, including payments for the rendering of technical assistance; otherwise, the rate is 15%.

Australia-Germany: When in effect, the treaty and protocol signed on 12 November 2015 to replace the 1972 treaty provide for a 0% withholding tax rate where dividends are paid to a company (other than a partnership) that holds at least 80% of the voting power of the payer company for a 12-month period ending on the date the dividend is declared and: (i) the recipient's principal class of shares is listed on a recognized stock exchange and (ii) the recipient is owned directly or indirectly by one or more companies whose principal class of shares is listed on a recognized stock exchange and is regularly traded on a stock exchange and that would be entitled to treaty benefits if they held the shares in the payer company directly; or, if the company does not meet these requirements, the competent authority determines that the establishment, acquisition or maintenance of the recipient and the conduct of its operations did not have as one of its principal purposes the obtaining of treaty benefits. A 5% rate will apply where dividends are paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company throughout a six-month period including the date of payment of the dividend; otherwise, the rate will be 15%. A 0% rate will apply to interest derived by unrelated financial institutions (other than as part of an arrangement involving back-to-back loans or the equivalent); otherwise, the rate will be 10%. A 5% rate will apply to royalties.

Croatia-Turkmenistan: The 2014 treaty entered into force on 6 April 2015 and will apply as from 1 January 2016. When in effect, the treaty will provide for a 10% withholding tax on dividends, interest and royalties.

Cyprus-Switzerland: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151127_4.html

Czech Republic-Pakistan: The 2014 treaty entered into force on 30 October 2015 and will apply as from 1 January 2016 in the Czech Republic and as from 1 July 2016 in Pakistan. When in effect, the treaty will provide 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 payer company; otherwise, the rate will be 15%. A 10% withholding tax rate will apply to interest and royalties.

Egypt-Kuwait: When in effect, the treaty signed on 16 December 2014 to replace the 2004 treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. The withholding tax rate on interest and royalties will remain unchanged at 10%.

Germany-Netherlands: The 2012 treaty to replace the 1959 treaty will enter into force on 1 December 2015 and will apply as from 1 January 2016. When in effect, the treaty will provide for a 5% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; a 10% rate will apply if the recipient is a Dutch-resident pension fund; otherwise, the rate will be 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

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Hong Kong-Romania: When in effect, the treaty signed on 18 November 2015 provides for a 3% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 15% of the capital of the payer company; otherwise, the rate will be 5%. An exemption will apply to dividends derived by the government and certain government-related entities. A 0% rate will apply to interest if, and as long as, Hong Kong levies no withholding tax on interest under its domestic legislation; otherwise, the rate will be 3%. The rate on royalties will be 3%.

Hong Kong-South Africa: The 2014 treaty entered into force on 20 October 2015 and will apply as from 1 January 2016 for South Africa and as from 1 April 2016 for Hong Kong. When in effect, the treaty provides for a 5% withholding tax on dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest will be 10% and the rate on royalties will be 5%.

Italy-Barbados: When in effect, the treaty signed on 24 August 2015 provides for a 5% withholding tax rate where dividends are paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 5%.

Malta-Mauritius: The 2014 treaty entered into force on 23 April 2015 and will apply as from 1 January 2016. When in effect, the treaty provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

Papua New Guinea: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151127_8.html

Philippines-Qatar: The 2008 treaty entered into force on 19 May 2015 and will apply as from 1 January 2016. When in effect, the treaty provides for a 10% withholding tax rate where dividends are paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest will be 10% and that on royalties, 15%.

Poland-Sri Lanka: When in effect, the treaty signed on 6 October 2015 to replace the 1980 treaty provides for a 10% withholding tax rate on dividends, interest and royalties.

Russia-Singapore: When in effect, the protocol to the existing treaty signed on 17 November 2015 will provide for a 5% withholding tax rate on dividends paid to a company that holds directly at least 15% of the capital of the payer company; the rate in all other cases will be 10% (including the case where dividends are paid by a real estate investment fund). Interest will be taxable only in the state of residence of the recipient, and the withholding tax rate on royalties will be 5%.

South Africa-Zimbabwe: When in effect, the treaty signed on 4 August 2015 provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest will be 5%; however, an exemption will apply to interest arising from a debt instrument listed on a recognized stock exchange. The rate on royalties will be 10%.

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United States: Intergovernmental agreements to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) were signed between the US and Azerbaijan (on 9 September 2015), San Marino (on 28 October 2015) and Angola (on 9 November 2015).

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France

Amended finance bill for 2015 addresses EU issues

The amended finance bill for 2015, released by the French government on 13 November 2015, includes several measures to bring France's participation exemption for inbound dividends and its withholding tax exemption for outbound dividends distributed to EU companies in line with EU rules (i.e. recent decisions of the Court of Justice of the European Union, decisions of the European Commission and the amendments to the EU parent-subsidiary directive).
Issue date: 19 November 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-19-november-2015.pdf

France takes steps toward implementation of country-by-country reporting

On 12 November 2015, the French National Assembly approved an amendment to the draft finance bill for 2016 implementing the country-by-country reporting requirement in France. The measure must be approved by the full assembly before it can enter into force. That vote is expected in December 2015.
Issue date: 12 November 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-018-12-november-2015.pdf

United Kingdom

Autumn statement 2015 announced

The UK Chancellor of the Exchequer delivered his autumn statement on 25 November 2015. The statement includes a confirmation of reductions in the corporation tax rate, legislation that will implement rules designed to address hybrid mismatches in line with the BEPS recommendations and plans to make the UK tax authorities one of the most digitally advanced tax administrations in the world.
Issue date: 25 November 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-25-november-2015.pdf

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United States

Treasury releases new anti-inversion guidance under section 7874

On 19 November 2015, the US Treasury issued Notice 2015-79, which announces its intent to issue regulations which would tighten the anti-inversion rules of Internal Revenue Code section 7874 and reduce the tax benefits of inversion transactions.

Issue date: 20 November 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-20-november-2015.pdf

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