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World Tax Advisor

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8 January 2016

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French finance laws adopted

The French parliament adopted the amended finance bill for 2015 and the finance bill for 2016 on 17 December 2015, which were upheld by the country’s constitutional court on 29 December 2015. This article looks at the major measures in both laws that affect companies.

Corporate tax

Decrease in effective corporate income tax rate: Companies subject to corporate income tax whose annual turnover exceeds EUR 250 million are subject to a surtax on the corporate income tax, equal to 10.7% of the company’s corporate tax liability. Introduced in 2011, the surtax was intended to apply only until fiscal years ended on or before 30 December 2015, but the date was extended to 30 December 2016 by the amended finance law for 2014. The Minister of Finance now has confirmed that the surtax will be eliminated at the end of 2016. As a result, the maximum effective corporate income tax rate applicable to large companies will decrease to 34.43% from the current 38% (not taking into account the 3% surtax on dividends distributed) for fiscal years ended after 30 December 2016 (fiscal year 2016 for companies having a calendar financial year).

Special social contribution: Companies currently are liable to a special social solidarity contribution equal to 0.16% of their turnover. This contribution is being phased out and will be replaced with a rebate, the amount of which will increase annually; the rebate will be increased to EUR 19 million for 2016 (EUR 3,250,000 for 2015).

Tax treatment of dividends in a tax consolidated group: The amended finance bill for 2015 modifies the tax treatment of dividends received by members of a French tax-consolidated group to bring French law in line with jurisprudence of the Court of Justice of the European Union (CJEU) for financial years open as from 1 January 2016. The CJEU ruled on 2 September 2015 in the *Steria* case that the French tax consolidation rules violate the freedom of establishment principle in the Treaty on the Functioning of the European Union because a domestic tax group of French companies can obtain certain tax benefits for dividends that are not available to tax-integrated parent companies with subsidiaries established in other EU member states (for prior coverage, see France tax alert, 2 December 2015). The amended finance bill for 2015 provides as follows:
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-2-december-2015.pdf

- The full exemption provided for under the existing tax consolidated group regime rules is abolished. Dividends received within a tax group will be entitled to the standard participation exemption under the normal rules, i.e. a fixed percentage of deemed expenses still will be taxable.
- The percentage of deemed taxable expenses is reduced from 5% to 1% if certain conditions are fulfilled. The 1% deemed expenses will be available when companies that are members of a tax consolidated group receive dividends from (1) French companies within the same tax consolidated group (i.e. intragroup dividends); or (2) EU companies or companies incorporated in the European Economic Area (EEA) that have concluded a tax treaty with France, provided the payer company would satisfy the conditions for being a member of the French tax group if it were established in France. To qualify for the 1% deemed expenses, the distributing company must meet the following requirements:
    - Be subject to a corporate income tax in its country of residence that is equivalent to the French corporate income tax;
    - Be at least 95% directly or indirectly owned by the French head of the tax consolidated group, for the entire fiscal year concerned;
    - Have a 12-month fiscal year; and
    - Open and close its fiscal year at the same time as the members of the French tax consolidated group.

Participation exemption and withholding tax on dividends

Several changes are made to the domestic participation exemption and withholding tax on dividends in the context of both domestic and cross-border distributions:

- The general anti-abuse clause (GAAR) in the amended EU parent-subsidiary directive (PSD) is implemented into French domestic tax law. The GAAR requires EU member states to refrain from granting the benefits of the PSD if one of the main purposes of an arrangement is to obtain a tax advantage that would defeat the object or purpose of the PSD, and the arrangement is not genuine. In such cases, the GAAR will operate to deny the withholding tax exemption on dividends paid by French companies to certain EU entities and to disallow the benefits of the domestic participation exemption on dividends paid to French parent companies. The GAAR applies to fiscal years opening on or after 1 January 2016.

- The domestic withholding tax exemption for dividends paid to EU companies is extended to companies located in the EEA.
- The participation exemption and the exemption on dividends paid to EU parent companies will apply to the bare ownership of shares.
- The withholding tax exemption for dividends paid to EU parent companies, as outlined in the CJEU's 2006 decision in the *Denkavit* case, is codified in the French tax code. The court held in that case that France's rules imposing withholding tax on outbound dividends, while almost totally exempting domestic distributions from withholding tax, were incompatible with EU law. Since the *Denkavit* decision, the French tax authorities have adopted the practice of granting the exemption on dividends paid to an EU parent company that meets the requirements for a French parent to benefit from the exemption, provided the recipient of the dividends is unable to offset the corresponding tax credit in its state of residence against the local tax due on the dividends.
- A new withholding tax exemption has been introduced in the tax code for dividends paid to certain nonresident EU or non-EU companies (other than collective investment funds), to bring French law in line with EU rules. The exemption applies to distributions made as from 1 January 2016 where the recipient of the dividends is (1) located in the EU, or in a non-EU country that has signed an administrative assistance agreement with France; (2) in a tax loss position; and (3) is under a liquidation procedure on the date of the distribution. It should be noted that the exemption may be useful only in cases where the participation exemption for outbound dividends to EU companies (described above) does not apply. Thus, it mainly will be relevant for distributions to EU companies holding less than 5% of the distributing entity, or distributions to non-EU companies located in a country that has signed an administrative assistance agreement with France.
- Provisions regarding certain distributions that do not qualify for the domestic participation exemption, which were eliminated at the end of 2014 following a decision of the French constitutional court, are reinstated (for prior coverage, see *World Tax Advisor*, dated 23 January 2015). The French tax code previously excluded from the participation exemption dividends derived from profits of a subsidiary that related to certain activities that were not subject to the French corporate tax or an equivalent foreign tax (which meant that dividends paid by a real estate investment company were excluded from the participation exemption). The constitutional court struck this exclusion down. The reinstatement of these provisions under the amended finance law applies to fiscal years ending as from 31 December 2015, so there is no time period during which the exclusions will not apply.
  URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150123_1.html
- A safe harbor clause is introduced to allow the participation exemption to apply to dividends received from companies located in noncooperative states and territories (NCST), provided the French recipient company can demonstrate that the distributing entity carries on real activities and that the location of the entity does not aim at, or result in, the entity benefiting from a favorable tax regime in the NCST. The list of NCST was updated on 21 December 2015, with retroactive effect from 1 January 2015, and the British Virgin Islands and Montserrat have been removed from the list.

Country-by-country reporting

The amended finance law for 2015 implements a country-by-country (CbC) reporting requirement in France, based on the recommendations of the OECD's final report on action 13 of the base erosion and profit shifting (BEPS) project, with the government's full support. It should be noted that two amendments calling for public publication of the CbC reports were rejected.

The precise data to be included in the French CbC report will be defined by an administrative decree, but is expected to include economic, accounting and tax information on groups within the scope of the measure, and information on the activities of group entities and their location, in line with the final report on BEPS action 13.

According to the amended finance law, companies within the scope of the CbC reporting requirement include French companies fulfilling all of the following four conditions:

- Companies with consolidated accounts;
- Companies that control, directly or indirectly, subsidiaries located abroad, or that have branches located abroad;
- Companies with annual consolidated group revenue equal to, or in excess of, EUR 750 million; and
- Companies not owned by another French entity already within the scope of the measure, or by a foreign entity within the scope of a similar provision under its local legislation.

A French subsidiary of a foreign group also will be subject to French CbC reporting when it is held or controlled, directly or indirectly, by a foreign company not established in an "effectively transparent country," that would be subject to the French reporting requirement if it were established in France, provided that:

- The French company is designated by the group to fulfill the CbC reporting requirement for the group, and has informed the French tax authorities of this; or
- The French company cannot prove that any other entity of the group located in France or in a listed country or territory has been designated to fulfill the reporting obligation for the group.

The government will publish a list of countries and territories that are regarded by France as "effectively transparent countries," i.e. countries that have a similar CbC reporting requirement and have concluded with France an agreement on the automatic exchange of CbC reports and related obligations. The government also will specify the reporting format, which will be based on international standards.

The annual CbC report will have to be filed with the French tax authorities within 12 months after a group's fiscal year end. The report will be exchanged automatically between affected tax administrations in accordance with applicable tax treaties and/or EU regulations under a condition of reciprocity, but will remain confidential.

Failure to comply with the CbC measures will trigger penalties that will not exceed EUR 100,000.

The CbC provisions will be applicable to fiscal years open as from 1 January 2016.

Other measures

Temporary "additional depreciation" mechanism: The Growth and Economic Activity Law (also called the "Macron law"), enacted in July 2015, provided for an "exceptional additional depreciation" mechanism (i.e. a "super deduction"), which is extended by the amended finance bill for 2015.

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

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

Eligible assets must be eligible for depreciation under the declining-balance method and must fall within one of the five categories specifically listed in the law:

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

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

The amended finance bill for 2015 extends the mechanism to apply to:

- Optic fiber installations and equipment acquired between 1 January 2016 and 31 December 2016;
- Natural gas or bio-methane functioning heavy trucks acquired between 1 January 2016 and 31 December 2017; and
- Ski lift installations acquired between 15 April 2015 and 31 December 2016.

Special amortization: Subscriptions made by companies in the capital of innovative small and medium-sized enterprises (SMEs) benefit from a special amortization allowance over five years. In response to negotiations with the European Commission, the amended finance law for 2015 restricts the scope of the incentive to innovative SMEs in existence for less than 10 years. The effective date for this measure will be set by a special decree.

Special depreciation allowance: Industrial robotics manufactured or purchased by certain companies between 1 October 2013 and 31 December 2015 may be amortized over 24 months, starting from the placed-in-service date. The special depreciation is extended for an additional year by the finance law for 2016, until 31 December 2016. This benefit remains subject to compliance with the de minimis provisions under EU law.

Film tax credit: Film producers may benefit from a tax credit for certain expenses incurred on films produced in the French territory. To further enhance the attractiveness and competitiveness of the film industry in France, the tax credit may be granted regardless of whether the film is presented in French:

- The rate is increased up to 30% in certain circumstances (in particular, for films in French); and
- The global ceiling for all tax credits applicable to one cinematographic work is increased from EUR 4 million to EUR 30 million.

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Italy’s stability law for 2016 includes CbC reporting requirement

The Stability Law for 2016, published in Italy’s official gazette on 30 December 2015, makes a number of significant changes to Italy’s tax rules, including the introduction of country-by-country (CbC) reporting rules, plans to lower the corporate tax rate and the withholding tax on certain dividends, and repeal of the controlled foreign company (CFC) blacklist (with new criteria to identify black-list entities). Unless otherwise noted, the changes described below are effective as from 1 January 2016.

CbC reporting rules: A CbC reporting obligation based on action 13 of the OECD base erosion and profit shifting (BEPS) initiative will require multinational entities to submit an annual report showing the amount of their revenue, gross profit, taxes paid and accrued and other indicators of actual economic activity. Detailed procedural rules (including the filing deadline for the report) will be issued by the Ministry of Economy and Finance by the end of March 2016.

The new reporting requirements will apply to:

- Groups with an Italian parent that have annual turnover exceeding EUR 750 million and that are required to submit group consolidated financial statements (i.e. companies that exceed two of the following thresholds for two consecutive years: i) total assets of EUR 20 million; ii) turnover of EUR 40 million; or iii) 250 employees); and

- Italian subsidiaries controlled by a foreign company resident in a country where CbC reporting has not been implemented, or in a country that does not carry out an actual exchange of information with Italy on CbC reporting.

Penalties ranging from EUR 10,000 to EUR 50,000 will apply for failure to submit the report, or for submitting an incomplete report.

Reduction of corporate tax and dividend withholding tax rates: The stability law provides for a reduction of the corporate income tax rate from 27.5% to 24% as from 1 January 2017. However, the tax rate for banks and other financial entities will remain 27.5%.

The current 1.375% withholding tax applicable to dividends paid to EU/European Economic Area (EEA) companies resident in “white-list” jurisdictions will be reduced to 1.20% as from fiscal year (FY) 2017.

Extra depreciation for certain tangible assets: An extra 40% depreciation deduction (i.e. total tax depreciation of up to 140% of cost) will be available for tangible assets whose depreciation rate for tax purposes exceeds 6.5%. The measure is applicable to new assets that are purchased (or leased, through a financial lease agreement) during the period 15 October 2015 to 31 December 2016 (real estate assets, pipelines, rolling stock and airplanes, however, are excluded from the measure).

Book and tax step-up for assets owned by Italian companies: A new window is opened for Italian companies to “step up” the business assets in their 2015 financial statements for book and tax purposes. The step-up election is available for tangible and intangible assets (except for immovable property held by real estate companies), as well for qualifying shareholdings, provided such assets were included in the 2014 financial statements.

Companies may choose the categories of assets to be stepped up through the payment of a substitute tax (16% for amortizable/depreciable assets and 12% for nonamortizable/nondepreciable assets). The substitute tax payment results in a higher tax basis allowing:

- Depreciation/amortization at a 27.9% rate starting from the third year following the year of the step-up (i.e. from 1 January 2018 for calendar-year companies); and
- Lower taxable gains in the case of a disposal of the assets starting from the fourth year following the year of the step-up (i.e. from 1 January 2019 for calendar-year companies).

The equity reserve created as a consequence of the step-up may be freely distributed, provided a 10% substitute tax is paid.

Italian companies reporting under International Financial Reporting Standards (IFRS) are not eligible to make the election for the step-up.

Step-up of tax basis of Italian participations for nonresident companies: The stability law opens a new window for nonresident entities to elect to step up the tax basis of participations in unlisted Italian companies held as of 1 January 2016, through the payment of a substitute tax. Unlike in the past (when the rate was 4% for nonqualified participations and 8% for qualified participations), the substitute tax now is 8% for both qualified and nonqualified participations.

The substitute tax is calculated on the value of the participation as of 1 January 2016, which must be certified by a sworn appraisal to be completed by 30 June 2016. The substitute tax may be paid in full by 30 June 2016 or paid in three annual installments starting from the same date (in this case, 3% annual interest is due on the second and third installments).

This provision may be of interest to foreign entities that potentially could realize a capital gain on the disposal of such participations that would be subject to tax in Italy (e.g. if no exemption under a tax treaty would apply).

Reduced amortization period for stepped-up intangible assets: The stability law reduces the amortization period for certain intangible assets stepped-up for tax purposes for taxpayers that pay a 16% substitute tax after a tax-neutral corporate reorganization (e.g. a merger, demerger or contribution of an active trade or business). For corporate reorganizations implemented as from 1 January 2016 for which the election is made, goodwill and trademarks are amortizable over five years (reduced from 10 years) for tax purposes.

Repeal of limitations on deductibility of "black-list costs": Under recently amended rules (under Legislative Decree No. 147/2015), costs incurred for the purchase of goods and services from suppliers (group companies, as well as third parties) resident in Italy's black-listed jurisdictions have been tax deductible up to the fair market value (FMV) of the purchased goods/services. The deduction of any excess amount has been allowed only if the taxpayer can demonstrate that the specific transaction was entered for a real business reason and actually carried out.

The stability law repeals these limitations: the tax deductibility of costs incurred from suppliers resident in black-listed jurisdictions follows the ordinary deduction rules, regardless of the amount (under the Italian transfer pricing rules, the FMV is relevant only for intercompany transactions with nonresident entities).

Repeal of CFC black list: Under Italy's CFC rules, the income of a CFC is attributed to the Italian parent under a flow-through taxation principle if the subsidiary is located i) in a black-list country or ii) in a white-list country, if the effective tax rate applicable to the income of the white-list entity is lower than 50% of the applicable Italian corporate tax rate and more than 50% of the foreign entity's gross revenue is "passive income."

The stability law repeals the black list relevant for the application of the CFC regime and introduces new criteria to identify black-list entities. Foreign subsidiaries will be considered black-list entities for CFC purposes if they are resident in a jurisdiction with a nominal corporate income tax rate lower than 50% of the Italian rate. However, this rule does not apply to entities resident in EU or EEA countries that have concluded an exchange of information agreement with Italy.

Tax-simplified transfers of real estate and registered movable property to shareholders: A new window is opened for Italian companies and partnerships to benefit from a tax-simplified method of transferring certain assets (real estate and registered movable property) to their shareholders/partners, in the case of an attribution or disposal or by transformation into a simple partnership by 30 September 2016.

The beneficial tax regime applies to “dormant” as well as “nondormant companies”: an 8% substitute tax (10.5% in the case of dormant companies) is applied to the difference between the cost recognized for tax purposes and the FMV of the assets.

Any deferred tax reserve eliminated as a result of the relevant transactions is subject to a 13% substitute tax.

Registration tax, if due on the specific transaction, is applied at 50% of the normal rates, while mortgage and cadastral taxes are applied on a lump-sum basis.

Extension of statute of limitations: The statute of limitations is extended for both corporate income tax and VAT purposes. Under the new rules, a company may be subject to a tax assessment up to the end of the fifth year (increased from the fourth year) following the year of filing of the relevant tax return. The statute of limitations is extended to seven years (increased from five years) in the case of failure to file a tax return. The extension of the statute of limitations (to double the ordinary term) in the case of criminal tax violations is repealed. The new rules will apply to the tax assessments issued with reference to FY 2016 and subsequent years.

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Austria:
Special tax regime available for resident athletes

Qualifying athletes who are tax resident in Austria may benefit from a special tax regime that results in a lower effective tax rate on their total income deriving from activity as an athlete.

The tax regime for athletes, which is based on a decree issued by the Ministry of Finance, has been in place for more than a decade. Even though the Austrian tax environment has undergone substantial changes in recent years, no changes have affected the tax regime for athletes, thus evidencing the government’s commitment to supporting the initiative. The relevant rules of the special tax regime are summarized below.

The regime is applicable to an athlete who meets the following requirements:

- Is subject to unlimited tax liability in Austria (established if the athlete’s place of residence or habitual abode is located in Austria);
- Participates in sports competitions and tournaments that mainly are carried out abroad during a calendar year;

- Establishes that Austria is his/her state of residence under tax treaties by demonstrating that the athlete's center of vital interests is in Austria;
- Is professionally "active" (either full or part-time); and
- The material focus of the athlete's actual activity is the performance of the sport activity.

Professional athletes typically can satisfy all of the conditions for the application of the special tax regime.

The primary advantage of the regime is that only one-third of the total business income deriving from the activity as a sports athlete is taxed in Austria at progressive individual income tax rates. The effective tax rate for the total income generally is 16%-18%, compared to regular progressive tax rates of up to 50% that apply to individuals.

The term "income of an athlete" is broadly defined under the decree – in addition to the actual income from performing a sport, it includes advertising income (e.g. compensation for the use of rights, images, etc.) in relation to the sports activity as an athlete, which usually constitutes a major part of the total business income of professional athletes. In practice, this provision may be especially beneficial because, under Austria's tax treaties, in most cases, this type of income must be taxed exclusively in the state of residence of the athlete (Austria) and not in the state where the sport activity is performed.

Some of the world's top athletes have relocated their tax residence to Austria, likely for this reason. For professional athletes, it may be relatively easy to relocate their tax residence, since their typical way of life (traveling, engaging in competitions and training abroad) makes it difficult to label the home country as clearly the country of tax residence under an applicable tax treaty.

Particularly in the context of the OECD's base erosion and profit shifting (BEPS) project, at a time when tax regulations are being tightened and countries are taking steps to combat the use of tax havens, shifting an athlete's center of vital interests to a new residence state may be subject to heightened scrutiny. As both an OECD member and an EU member state, as well as a proponent of the swift implementation of the BEPS initiatives, Austria is unlikely to be perceived as a tax haven. The relocation of an athlete's residence to Austria thus may be more acceptable than a relocation to a jurisdiction typically considered a low-tax country.

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Belgium: Country blacklists updated

On 27 November 2015, Belgium’s Council of Ministers reached an agreement on updates to two “blacklists” that apply for certain corporate tax purposes: the first blacklist relates to qualification for the 95% dividends received deduction (DRD), while the second relates to certain payments to countries considered corporate tax havens. The updated blacklists are applicable as from 1 January 2016.

Dividends received deduction

Under the DRD, 95% of dividends received by a Belgian company from a domestic or foreign company is exempt from tax if certain conditions are fulfilled, while the remaining 5% is subject to tax at the normal rate. One requirement to qualify for the DRD is that the company distributing the dividends must be subject to corporate income tax or a similar foreign tax. This requirement may be considered not to be fulfilled in certain cases, including where dividends are paid by a company resident in a country that imposes corporate taxation at a nominal or effective tax rate below 15%.

The first updated blacklist concerns the list of countries from which dividends paid generally do not qualify for the 95% DRD in the hands of the Belgian shareholder because these countries have a nominal or effective corporate tax rate below 15%. However, it should be noted that the taxpayer may provide evidence demonstrating that the company distributing the dividends is subject to a tax rate of at least 15%.

The list (last updated in 2005) has been significantly modified; more than 30 countries have been removed (including Cuba, Panama and the Seychelles) and 19 countries have been added (including Kuwait, Qatar and the United Arab Emirates). The updated blacklist contains 31 countries (Abu Dhabi, Ajman, Andorra, Bosnia and Herzegovina, Dubai, East Timor, Gibraltar, Guernsey, Isle of Man, Jersey, Kosovo, Kuwait, Kyrgyzstan, Liechtenstein, Macau, Macedonia, Maldives, Marshall Islands, Micronesia, Moldova, Monaco, Montenegro, Oman, Paraguay, Qatar, Ras al-Khaimah, Serbia, Sharjah, Turkmenistan, Umm al Quwain and Uzbekistan).

Corporate tax havens

The second blacklist relates to countries that are considered “tax havens” for purposes of the reporting obligation that applies to payments of EUR 100,000 or more per taxable period made to persons located in listed countries. A tax haven is defined as a country without corporate tax or with a statutory corporate tax rate of less than 10%. Payments made to tax havens, in principle, will be tax deductible only if they have been duly reported and have been incurred in the context of “real and genuine” transactions with persons and not artificial arrangements. It should be noted that the list of tax havens is all-inclusive; the taxpayer may not provide any evidence to avoid the application of the blacklist.

The list, dating back to 2010, has been slightly updated; three countries have been removed (Andorra, Maldives and Moldova) and five countries have been added. The new list contains 30 countries (Abu Dhabi, Ajman, Anguilla, Bahamas, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Dubai, Fujairah, Guernsey, Isle of Man, Jersey, Marshall Islands, Micronesia, Monaco, Montenegro, Nauru, Palau, Pitcairn Islands, Ras al-Khaimah, St. Barts, Sharjah, Somalia, Turkmenistan, Turks and Caicos Islands, Umm al Quwain, Uzbekistan, Vanuatu and Wallis and Futuna).

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Chile:
New measures proposed to amend 2014 tax reform

On 9 December 2015, Chile's government presented a bill to the congress that would modify some of the rules introduced by the 2014 tax reform (for prior coverage, see Chile tax alert, 23 August 2014). The congress is expected to approve the bill in January 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-chile-230814.pdf

The main proposals that would affect foreign investors are changes to the fully or partially integrated tax regimes, the thin capitalization rules and the general anti-avoidance rule (GAAR). Changes also are proposed to the repatriation regime that applied during 2015.

Full tax credit for certain treaty countries and changes to fully integrated regime

A temporary measure would be introduced that would entitle shareholders in countries that have signed a tax treaty with Chile that has not entered into force as of 1 January 2017 to a full corporate tax credit (and thus the 35% combined rate) until 31 December 2019. This measure could benefit investors in countries such as Argentina, China, Italy, South Africa and the US – countries that have signed treaties with Chile that are not yet in force (in the event these treaties do not enter into force in 2016).

Under the existing rules, business income derived by an enterprise in Chile is subject to a 24% first category income tax (FCIT), but such income also is subject to income tax on a cash basis when distributed to the shareholders/partners of the enterprise, at rates that vary depending on whether the shareholder/partner is resident or nonresident. Nonresident shareholders are subject to a 35% withholding tax on dividends. The tax paid by the enterprise may be used as a credit against the liability of the shareholders/partners, resulting in an overall income tax rate of 35% on distributed profits for nonresident shareholders.

The 2014 tax reform introduced a "dual tax regime" that will apply to taxpayers subject to the FCIT as from 2017 and that will allow taxpayers to opt to be taxed under a fully integrated regime or a partially integrated regime. Under the fully integrated regime, shareholders will be subject to the additional withholding income tax at the time the profits are accrued, and corporate tax paid will be fully creditable against the tax levied on the shareholder. The combined income tax rate for nonresident shareholders under this regime will be 35%. Under the partially integrated regime, shareholders will be subject to the additional withholding income tax at the time profits are distributed, but corporate tax will not be fully creditable against tax levied on the shareholders at the time of the distribution. The combined rate for nonresident shareholders under the partially integrated regime will be 44.5%, although shareholders located in a country that has concluded a tax treaty with Chile will be entitled to a full tax credit and thus may benefit from the combined rate of 35%. In the absence of the newly proposed measure, residents of countries whose tax treaties with Chile still are pending could become subject to a combined rate of 44.5% in 2017 if the relevant treaty does not enter into force in 2016.

The proposed law also would restrict the fully integrated regime to companies whose owners are subject to final taxes (resident individuals or any nonresident). Thus, the regime would continue to be available to foreign investors, but only in relation to Chilean companies in which the foreign investor holds a direct participation and that are not organized as a stock corporation or a special form of a joint stock company (*sociedad en comandita por acciones*).

Thin capitalization rules

The following changes would be made to the thin capitalization rules:

- The application of the rules would be extended to apply to loans that benefit from a reduced withholding tax rate on interest under a tax treaty. This change would resolve the uncertainty that arose following the issuance of a general ruling by the Chilean tax authorities that seemed to include these loans within the scope of the thin capitalization rules, a position that would be inconsistent with the current statutory language.
- Short-term liabilities (90 days or less, including extensions/renovations) with unrelated parties would be excluded from the computation of the total debt (e.g. trade receivables).
- In addition to the exemption from the thin capitalization rules that applies to certain banks, insurance companies and other institutions subject to the authority of the Superintendence of Banks and Financial Institutions or of the Superintendence of Securities and Insurance, Chilean entities engaged in activities that have been qualified as financial activities by the Treasury Department would be outside the scope of the thin capitalization rules, provided 90% or more of their assets relate to loans or leases with purchase options granted to unrelated parties for at least 330 days per year. Indebtedness with related and unrelated parties would not be able to exceed 120% of those assets. Chilean entities that are affiliates of entities resident in a listed tax haven or in a jurisdiction with a preferential tax regime would be excluded from the exemption.

General anti-avoidance rule

Several clarifications would be made to the GAAR that applies to transactions executed or concluded as from 30 September 2015 and that permits the Chilean tax authorities to disallow tax benefits derived from abusive or aggressive tax planning structures:

- A transaction, operation or series thereof would be deemed to be concluded before 30 September 2015 (and thus not subject to the new GAAR) if the characteristics or elements that determine its legal effects for tax purposes are not modified after that date (even if the transactions continue to produce effects after that date).

- The GAAR would apply to transactions or contracts concluded before 30 September 2015 if the relevant rights or obligations continue to be produced or exercised periodically after that date or are subject to conditions precedent. The GAAR would apply to the effects produced after 30 September 2015.
- Transactions or operations concluded before 30 September 2015 would be taken into account to determine whether transactions or operations carried out after that date are part of a set or series of transactions concluded after 30 September, in which case, the GAAR would apply to the tax effects produced.

Repatriation of retained profits

The one-year window (for calendar year 2015) for the repatriation of retained profits at a reduced rate would be extended to April 2017 and the regime would be enhanced. The benefit of the regime is that the Chilean entity would pay a substitute tax of 32% less a corporate tax credit (three percentage points less than the normal rate) on all or part of the retained profits. The amount on which the Chilean entity has paid the substitute tax could be distributed to shareholders tax free at any time. Thus, investors could repatriate retained Chilean profits with a savings of three percentage points.

Miscellaneous

- As from 1 January 2017, nonresidents with permanent establishments in Chile would be required to obtain a separate Chilean tax ID for the head office and for each of the permanent establishments. The bill is not clear as to the proposed deadline for obtaining the additional IDs.
- The foreign tax credit rules would be simplified and enhanced. Additionally, the benefit of the foreign tax credit would be extended to tax incurred by subsidiaries in a third country on income that flows up to Chile, provided Chile has concluded a tax treaty or exchange of information agreement with the relevant country.
- A consultative committee composed of the heads of the legal, regulatory and audit departments of the Chilean tax authorities would be created to advise the head of the tax authorities on issues relating to the application of the GAAR. The opinions of the committee would not be binding.

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European Union:
Directive on information exchange on cross-border tax rulings adopted

The European Council, on 8 December 2015, adopted the new directive aimed at improving transparency on tax rulings (for prior coverage, see EU tax alert, 7 October 2015 and *World Tax Advisor*, 27 March 2015). The directive will require EU member states to exchange information automatically on advance cross-border tax rulings and advance pricing arrangements (APAs) as from 1 January 2017. Member states will be required to transpose

the new rules into national law before the end of 2016. In the meantime, existing obligations for member states to exchange information will remain in place.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-europeanunion-7-october-2015.pdf
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150327_4.html

The following rules will apply to advance cross-border tax rulings and APAs issued before 1 January 2017:

- For rulings/APAs issued, amended or renewed between 1 January 2012 and 31 December 2013, information will have to be exchanged if the rulings/APAs still were valid on 1 January 2014;
- For rulings/APAs issued, amended or renewed between 1 January 2014 and 31 December 2016, information will need to be exchanged, regardless of whether the rulings/APAs still are valid; and
- Member states will have the option (but will not be obliged) to exclude from the information exchange advance tax rulings and APAs issued to companies with an annual net turnover of less than EUR 40 million at a group level, if the rulings/APAs were issued, amended or renewed before 1 April 2016. However, this exemption will not apply to companies conducting mainly financial or investment activities.

The directive is in line with developments within the OECD, and with its work on the tax base erosion and profit shifting (BEPS) project. G20 leaders approved the outcome of that work at a summit held on 15-16 November 2015.

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United States:
President signs extenders package

The US president signed a legislative package into law on 18 December 2015 that combines a bill to renew dozens of expired tax deductions, credits and incentives with omnibus appropriations legislation that sets spending levels for government agencies for the remainder of fiscal year 2016. The legislation also includes several provisions to overhaul the tax treatment of real estate investment trusts (REITs).

The “extenders” component of the package makes permanent several lapsed business, individual and charitable giving incentives, including the research credit. It also renews a handful of provisions – such as “bonus” depreciation, the work opportunity and new markets tax credits and production and investment tax credits for wind and solar energy – for five years. Other provisions are extended through 2016.

Provisions that are of particular relevance to taxpayers engaging in cross-border transactions are highlighted below.

Extenders provisions:

- The exception from "subpart F" for certain foreign income derived in the active conduct of a banking, financing, securities or insurance business is made permanent.
- Regulated investment company (RIC) qualified investment entity treatment under the Foreign Investment in Real Property Tax Act (FIRPTA) is made permanent.
- Provisions allowing for an exemption from gross-basis tax and withholding on interest-related dividends and short-term capital gains dividends paid by RICs to foreign investors are made permanent.
- The application of the "lookthrough" rule that excludes from subpart F certain payments of interest, dividends, rents and royalties between related controlled foreign corporations under the foreign personal holding company rules is extended retroactively through 2019.
- The "section 199" deduction with respect to income attributable to domestic production activities in Puerto Rico is renewed through 2016, retroactive to the end of 2014.

REIT provisions: The legislation makes certain modifications to the tax treatment of REITs, including amendments to the FIRPTA exception for certain stock of REITs and an increase in the rate of withholding of tax on dispositions of US real property interests from 10% to 15% under certain circumstances.

Related-party loss rules: The legislation modifies the related-party loss rules (which generally disallow a deduction for a loss on the sale or exchange of property to certain related parties or controlled partnerships) to prevent losses from being shifted from a tax-indifferent party (for example, a person not subject to US tax) to another party in whose hands any gain or loss with respect to the property would be subject to US tax. The provision generally is effective for sales and exchanges of property acquired after 2015.

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In brief

China: The Ministry of Finance and the State Administration of Taxation (SAT) issued guidance on 23 October 2015 that extends two individual income tax (IIT) incentives nationwide from 1 January 2016, with a view to stimulating technological innovation. The incentives, which previously were available only in National Innovation Demonstration Zones, allow the deferral of the payment of IIT by qualifying employees and individual shareholders of high-new technology enterprises for stock awards or the capitalization of undistributed profits/reserves. The SAT issued additional guidance on 16 November 2015 (which also applies as from 1 January 2016) on the calculation of taxable income/tax and administration issues relating to the incentives.

European Union: In a resolution passed on 16 December 2015, the European parliament outlined the legal steps it considers are needed to improve corporate tax transparency. The parliament has asked the European Commission, *inter alia*, to table a proposal for country-by-country reporting on profit, tax and subsidies by June 2016; table a proposal for introducing a "fair taxpayer" label; introduce a common tax base initially, with a view to it becoming consolidated; and table a proposal for a common European tax identification number. The parliament also asked for better dispute resolution, guidelines on patent boxes, a stronger mandate for the Code of Conduct group and common definitions of permanent establishment, economic substance and tax havens. The Commission has three months to respond to the recommendations, either by providing a legislative proposal or an explanation for not doing so.

Mauritius: The tax authorities issued a communique on 22 December 2015 indicating that the date for implementing the OECD common reporting standard (CRS) will be delayed. CRS was intended to be introduced as from 1 January 2016.

OECD: On 14 December 2015, the OECD released an announcement responding to a request by the EU to include additional fields in the CRS XML Schema. The OECD agreed to adopt future changes to the schema that aim to address the concerns of all stakeholders involved, while seeking to ensure that one single global standard is maintained going forward. An OECD working party has noted the usefulness of the proposed fields and has agreed to review the technical changes by the end of 2017, to make a recommendation to the Committee on Fiscal Affairs by no later than the beginning of 2018. If accepted, the schema changes would be implemented in time for reporting for the 2019 calendar year.

Oman: The Shura Council adopted several amendments to the Income Tax Law on 22 December 2015. The proposals, which aim to offset the 2016 budget deficit, include increasing the corporate income tax rate from 12% to 15%; removing the exemption threshold of OMR 30,000, so that all Omani companies, regardless of their size, will be subject to income tax; increasing the tax rate for oil and gas industry-based companies from 12% to 35%; limiting the tax-exempt activities that are currently available; and extending the 55% income tax rate applicable to oil companies to liquefied natural gas companies (this measure was part of the 2015 budget proposals). The proposals will take effect when enacted and published in the official gazette.

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.

Australia: On 17 December 2015, the Australian Taxation Office (ATO) issued a "companion guideline" to the recently passed "Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015" (for prior coverage, see *World Tax Advisor*, 11 December 2015). The guideline explains how the ATO will apply the new provision in the Income Tax Assessment Act 1997 concerning the implementation of country-by-country (CbC) reporting, including transfer pricing documentation. The new law will apply to all multinationals with an Australian

presence (i.e. Australian resident entities or business operations conducted through an Australian permanent establishment) with annual global income of AUD 1 billion or more.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151211_3.html

European Union: The new directive aimed at improving transparency on tax rulings is in line with the OECD's work on the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_6.html

France: The amended finance bill for 2015 and the finance bill for 2016 have been adopted by parliament and upheld by the constitutional court. See article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_1.html

Italy: The Stability Law for 2016 provides a number of significant changes to Italy's tax rules, including the introduction of CbC reporting rules. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_2.html

United Kingdom: Anti-hybrid legislation included in the finance bill for 2016 closely follows the OECD recommendations in this area. See UK tax alert, 11 December 2015.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-11-december-2015.pdf

United States: Proposed regulations would require annual CbC reporting by certain US taxpayers that are the ultimate parent of a multinational enterprise group. See US transfer pricing alert, dated 6 January 2016.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_alerts.html

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Argentina
Foreign exchange control restrictions eased

On 16 December 2015, the new Argentine government eased the stringent foreign exchange controls that have been in place for the past several years and that restricted the inflow and outflow of foreign currency and were accompanied by formal authorization requirements. The policy changes, which are implemented through new central bank regulations, apply immediately.
Issue date: 26 December 2015
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-argentina-26-december-2015.pdf

Brazil

Netherlands holding companies re-included on “grey list” of privileged tax regimes

The Brazilian government issued guidance on 18 December 2015 that revokes the 2010 guidance that removed the Netherlands holding company regime from Brazil’s “grey list” of privileged tax regimes because the Dutch government was unable to provide evidence that domestic tax legislation existed to justify the non-inclusion of the holding company regime as a privileged tax regime.

Issue date: 21 December 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-21-december-2015.pdf

United Kingdom

Anti-hybrid legislation included in finance bill for 2016

The UK anti-hybrid rules are included in the draft clauses for finance bill 2016 published for consultation on 9 December 2015. The anti-hybrid clauses will completely replace the existing arbitrage rules as from 1 January 2017.

Issue date: 11 December 2015

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-11-december-2015.pdf

United States

US issues country-by-country reporting regulations

The US treasury released proposed regulations on 21 December 2015 that require annual country-by-country reporting by US entities that are the ultimate parent entity of a multinational enterprise group with annual revenue of USD 850 million or more.

Issue date: 6 January 2016

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-16-001-6-january-2016.pdf