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India plugs capital gains exemption loophole under tax treaty with Mauritius

After nearly a decade of negotiations, on 10 May 2016, India and Mauritius signed a protocol to amend the existing tax treaty that dates back to 1982. The most significant of the changes made by the protocol is a phased-in elimination of the residence-based taxation of certain capital gains, which will close off what commonly is known as the "Mauritius route" for investment into India. Specifically, the protocol will allow source-state taxation of capital gains from the sale of shares, which effectively will grant India taxing rights over gains derived by a Mauritius company from the sale of shares in an Indian company.

The current version of the India-Mauritius tax treaty provides that capital gains derived by an entity are taxable only in the state of residence of the seller; thus, gains derived by a Mauritius company from the sale of shares in an Indian company are not taxable in India under the treaty. Such gains are not taxable in Mauritius either, because Mauritius does not tax capital gains under its domestic law. As a result, capital gains from the sale of shares in an Indian company by a Mauritius company currently are exempt from tax in both India and Mauritius. This feature (known as the "Mauritius route") has made the Mauritius treaty immensely popular among investors in India, with almost one-third of foreign investment coming from Mauritius at

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one point. The treaty is used by various types of investors, including corporations, private equity funds and institutional funds that invest in the Indian stock market.

The Indian tax authorities have made several attempts to deny benefits under the Mauritius tax treaty on the grounds that the treaty is being abused by “shell” companies set up in Mauritius by Indian resident investors (and multinational companies) to route funds into India without having to pay Indian capital gains tax on their investments. The authorities have challenged exemption claims by Mauritius-based companies and have tried to deny treaty benefits on the grounds that the Mauritius company is not the beneficial owner of the shares, but rather a mere conduit. However, the Supreme Court of India (in the *Azadi Bachao Andolan and Ors* case) upheld the Mauritius treaty benefits, provided the person deriving the capital gains is in possession of a valid tax residence certificate issued by the Mauritius government. The court observed that neither the Mauritius treaty nor Indian domestic law included any anti-abuse provisions. The Supreme Court decision has been followed by various high courts and tribunals in subsequent rulings.

Over the past few years, the Indian and Mauritius governments have maintained an ongoing dialogue to renegotiate the treaty and put a stop to double nontaxation because the Indian government felt it was losing significant tax revenue. There also has been a perception that Mauritius was being used to “round trip” Indian money back into the country as foreign investment. The recent OECD base erosion and profit shifting (BEPS) project gave further impetus to this dialogue, which ultimately resulted in the signing of the protocol.

It is important to note that the Indian government remains committed to providing a stable and predictable tax structure and chose to avoid making any retroactive changes through the protocol by allowing the “grandfathering” of all investments made on or before 31 March 2017 and providing for a lower tax rate on capital gains during the two transition years ending on 31 March 2019. However, at the same time, the government has acknowledged the need to tackle treaty abuse and the round tripping of funds, prevent double nontaxation and encourage the flow of information between the two countries.

Source-based taxation of capital gains on share sales

Under the protocol, India will have the right to tax capital gains derived by a Mauritius company from the sale of shares of an Indian company acquired on or after 1 April 2017. However, grandfathering rules will provide protection to investments in shares acquired on or before 31 March 2017, that is, gains from the sale of such shares will be exempt from Indian tax.

The protocol also provides for a transition period before India will have the right to fully tax gains – gains arising during the period from 1 April 2017 to 31 March 2019 (in respect of shares acquired after 31 March 2017) will be taxed at 50% of the Indian domestic tax rate, subject to the fulfillment of conditions in the “limitation of benefits” (LOB) article (discussed below). As from 1 April 2019, capital gains from the sale of shares in an Indian company may be taxed in India at the full domestic tax rate.

The tax treatment of capital gains under the protocol is summarized in the following table:

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Particulars	Taxable in India	Rate of tax
Shares acquired on or before 31 March 2017 and sold thereafter	No	N/A
Shares acquired on or after 1 April 2017 and sold on or before 31 March 2019	Yes	50% of the domestic tax rate, subject to fulfillment of the LOB conditions
Shares acquired after 1 April 2019 and sold thereafter	Yes	Domestic tax rate

Introduction of LOB article

The protocol includes a new LOB article that will operate to deny a resident of Mauritius (including a shell/conduit company) the benefit of the 50% reduction in the tax rate on gains from a sale of shares of an Indian company during the transition period if the Mauritius company's affairs are arranged with the primary purpose of taking advantage of the benefits of the reduced tax rate in the transition rules.

A shell/conduit company will include any legal entity that falls within the definition of a "resident" under the treaty, but that has negligible or nil business operations or that carries out no real and continuous business activities in the contracting state. The protocol states that a resident will not be deemed to be shell/conduit company if (a) the company is listed on a recognized stock exchange of Mauritius; or (b) its total expenditure on operations in Mauritius is equal to or exceeds INR 2.7 million or MUR 1.5 million in the immediately preceding 12 months from the date the gains arise.

It is interesting to note that the protocol does not incorporate the "main purpose test" or "bona fide business test" mentioned in the 10 May 2016 press release issued by the Indian government to announce the signing of the protocol. The "primary purpose test" appears to be a subjective test, and no criteria to be fulfilled have been set forth.

Other source-based taxation changes

Interest income earned by banks: Interest that is derived and beneficially owned by a bank carrying on a bona fide banking business and that is a resident of the other contracting state currently is exempt from tax in the contracting state in which the interest arose (i.e. the source state). However, interest earned by other lenders is subject to withholding tax at the normal rates under domestic law.

The protocol will amend the interest article to set a maximum source-country withholding tax rate of 7.5% on gross interest payments to a resident of the other contracting state, including interest payments that are derived and beneficially owned by a bank carrying on a bona fide banking business. However, the protocol will "grandfather" interest payments to such a bank arising from loans or debt claims existing on or before 31 March 2017; in other words, interest arising in India and paid to a Mauritius resident bank will be subject to a 7.5% withholding tax rate in India if the relevant loan was concluded after 31 March 2017, and exempt from withholding tax in India if the loan was concluded on or before this date.

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“Other income” article: Currently, “other income” derived by a resident of a contracting state is subject to tax only in the country of residence of the recipient. The protocol will amend the other income article to provide for source-based taxation, so that a Mauritius resident deriving other income from India (e.g. other income arising on the receipt of shares of an Indian company for inadequate consideration) will be subject to tax in India.

New article on fees for technical services (FTS)

The protocol will add an FTS article to the treaty to cover managerial, technical and consultancy services. The absence of an FTS article in the existing treaty, coupled with the fact that the “other income” article provides for residence-based taxation (unless the recipient has a permanent establishment (PE) or fixed base in the source state), has allowed companies to argue that services provided by a Mauritius company to an Indian company should not be subject to tax in India. With the introduction of FTS article, such services will be subject to a maximum withholding tax rate of 10% in India.

Expansion of scope of PE

The protocol will broaden the scope of the PE article by introducing a clause on service PEs, which will include consultancy services. A service PE will be deemed to be created for a foreign company where an employee of the foreign company carries on activities in India (for the same or a connected project) for more than 90 days in any 12-month period. Interestingly, the article does not specifically provide that a PE will be created only to the extent services are provided in India, which is in line with India’s reservations to the OECD model commentary.

The introduction of the service PE provision, coupled with the new rules for FTS (discussed above), should prevent foreign companies deriving FTS from India from arguing that they should not be subject to tax in India because the treaty does not provide for such taxation – such companies will be liable to tax on the income attributable to the service PE in India or on the FTS.

Revised exchange of information (EOI) article

The protocol will amend the existing EOI article to bring it in line with international standards and to enhance the flow of information between the tax authorities of India and Mauritius. An interesting aspect of the protocol is that it will allow either of the countries to disclose information obtained under the EOI article in public court proceedings or in judicial decisions. The protocol also provides for the use of information for any other purpose, provided the use is consistent under the laws of both states and the competent authority of the state supplying the information authorizes the use.

New article for assistance in collection of taxes

The protocol will add a new article relating to assistance in the collection of taxes, under which the contracting states will lend assistance to each other in the collection of revenue claims. The term “revenue claim” will mean an amount owed in respect of taxes of any kind imposed by the contracting states (or their political subdivisions or local authorities), as long as the taxation is not contrary to the treaty or any other instrument to which the contracting states are

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parties, as well as interest, administrative penalties and costs of collection related to the amount owed. This article will enable one contracting state to collect taxes with the help of the other state if the first state is unable to collect the taxes on its own.

Impact of the protocol

The protocol to the India-Mauritius tax treaty clearly aims to address long-standing issues of treaty abuse and the round tripping of funds. The protocol, combined with India's general anti-avoidance rule that will become effective on 1 April 2017, will give more ammunition to the Indian tax authorities – it is possible that the Indian authorities increasingly may challenge Mauritius structures and attempt to deny treaty benefits, even during the transition period.

The changes to the capital gains article also will have ramifications for investments into India from Singapore, since the existing India-Singapore tax treaty links the benefits of residence-based taxation of capital gains on the sale of shares to the relevant article in the India-Mauritius treaty. According to recent press reports, it is understood that India will be renegotiating its tax treaty with Singapore (as well as the treaties with Cyprus and the Netherlands, both of which also restrict India's taxing rights on capital gains).

While the protocol focuses on gains derived from the sale of shares of Indian companies, it does not deal with other instruments such as debt, investments in an Indian LLP, derivatives, bonds, offshore securities etc. These types of instruments could be used more frequently by taxpayers to claim beneficial treatment of capital gains under the Mauritius treaty. To be more conservative, investors also could consider converting hybrid instruments into shares before 1 April 2017 to take advantage of the benefit of the grandfathering provisions.

Overall, the amendments made in the protocol are in line with India's commitment to the BEPS initiative (specifically, action 6 (preventing treaty abuse)) and the government's commitment to curbing the potential for double nontaxation. The prospective applicability of the provisions and the grandfathering of past investments are welcome moves, and will provide certainty to investors with existing investments in India.

The protocol will enter into force once both governments notify each other that the relevant procedures required under their domestic laws have been completed.

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Colombia:
Guidance issued on transactions involving transfers of Colombian assets between foreign entities

Colombia's tax authorities issued interpretive guidance on 31 March 2016 that clarifies when a merger or spinoff transaction in which Colombian assets are transferred between foreign entities will be subject to income tax in Colombia.

Under the Colombian tax code, capital gains derived from a transfer of Colombian assets carried out as part of a merger or spinoff transaction between two foreign entities generally are subject to income tax in Colombia. However, gains from the transfer of Colombian assets from one foreign entity to another foreign entity are exempt from Colombian tax where the Colombian assets comprise less than 20% of the total assets of the corporate group of which the selling entity is a member or, if the selling entity is not part of a group, less than 20% of the total assets of the selling entity.

The exemption does not provide a true "safe harbor" because the calculation of the 20% threshold is subject to various interpretations and the related accounting rules are not binding on foreign entities, since only Colombian entities are required to follow Colombian accounting rules.

The new guidance clarifies that the 20% limit must be calculated by including *all* of the assets held in Colombia (not only the Colombian assets that are transferred as part of the merger or spinoff), compared to the total global assets held. The guidance also clarifies that the taxable base of the assets transferred in the merger or spinoff will include only the value of the assets that actually are transferred as part of the transaction, and not all of the assets held by the group in Colombia.

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India:
Draft rules address foreign tax credit claims

On 18 April 2016, the Indian government released draft rules setting out the method for granting a foreign tax credit (FTC) in India, in conjunction with a recent review of the FTC by a Central Board of Direct Taxes commission. The proposed rules address the issues faced by Indian taxpayers in computing the amount of the FTC and the procedural aspects of claiming the credit – this is the first time rules have been proposed on these topics. The key features of the proposed rules and potential issues that may arise are discussed below.

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Background and key features of proposed rules

The proposed rules clarify that the FTC would be computed separately for each source of income arising from a particular country and would be limited to the lower of the income tax payable in India or the foreign tax paid on the foreign income. In other words, taxpayers would not be permitted to claim a refund from the Indian tax authorities if the foreign taxes paid are higher than the Indian income tax payable on the foreign income.

The proposed rules would clarify that, where a relevant tax treaty applies, a taxpayer's claim for an FTC under the treaty would be restricted to taxes that are covered by the treaty. If the taxpayer claims a credit for foreign taxes paid in a country or specified territory with which India does not have a tax treaty, the FTC would be available for taxes that are similar to India's income tax.

The proposed rules would clarify that taxpayers could claim an FTC against the Indian income tax, surcharge and cess, but not against interest, fees or penalties.

The proposed rules also would clarify that corporate taxpayers could claim an FTC against their minimum alternate tax (MAT) liability and noncorporate taxpayers could claim a credit against their alternate minimum tax (AMT) liability. Because the FTC leads to a discharge of tax liability, it is possible that the credit could cause the cash tax payable under the MAT/AMT to actually be lower than the tax liability under the normal tax provisions for a particular year.

The following documents would need to be furnished to claim an FTC in India:

- A certificate from the tax authorities of the foreign country specifying the nature of the income and the amount of foreign tax paid or withheld (a withholding tax certificate issued by the overseas payer would be considered sufficient in this regard);
- A tax payment receipt, where the payment has been made by the Indian taxpayer; and
- A declaration that the foreign tax for which the FTC is being claimed is not under dispute.

Potential issues

- In practice, the proposed source-by-source basis of computing the FTC may be complicated and cumbersome for both taxpayers and the tax authorities. It also could lead to a situation where a taxpayer is unable to claim a full credit for the foreign tax paid against the tax liability in India on the foreign income, since the FTC for each source of income from each country would be limited to the tax payable in India on that foreign income.
- There is no provision under Indian tax law or the proposed rules that would allow taxpayers to carry forward the unutilized foreign tax paid to be set off against appropriate income in the future. If the proposed rules are not revised to address this issue, taxpayers would permanently lose the unutilized foreign tax paid. This is an important issue that needs to be addressed in future guidance.
- The proposed rules do not specifically address the issue of computing the FTC where a taxpayer benefits from a tax holiday.

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- As a safeguard measure, the rules would not permit a taxpayer to claim an FTC if the foreign tax is being disputed by the taxpayer in the foreign country. This is likely to create issues for Indian companies that are disputing the tax liability in another country, e.g. where the dispute is not resolved until after the period for the taxpayer to rectify the order has expired. Additionally, where a tax audit/tax assessment/tax examination in the foreign jurisdiction results in an additional tax liability and the taxpayer pays the additional foreign tax, an analysis would need to be made if the proposed rules would allow the taxpayer to increase a previous claim for an FTC.
- The proposed rules would create a dichotomy under which business income in foreign exchange is converted into Indian rupees by taking into account the exchange rate on 31 March (the end of the Indian tax year), whereas tax payments are converted from foreign exchange by applying the exchange rate on the date of payment of the tax.
- The year in which the FTC may be claimed becomes a challenge when the foreign country and India follow different financial years. The proposed rules clarify that the FTC would have to be claimed in the year in which the income corresponding to the foreign tax is subject to tax in India. If the foreign income is subject to tax in India over two financial years, by implication, the associated FTC could have to be split in the same proportion in which the foreign income is split over the two financial years, which could lead to practical challenges.

Overall, the proposed rules are welcome and should provide some clarity on the methodology for claiming an FTC in India. However, as discussed above, there are some issues relating to FTC claims that may need to be addressed. The timing for the issuance of final rules is unclear.

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Netherlands:
Tax court extends fiscal unity regime to certain third-country situations

The Second Instance Tax Court of Arnhem/Leeuwarden issued a decision on 26 April 2016 on the compatibility of the Dutch fiscal unity regime with the nondiscrimination article in a tax treaty between the Netherlands and a non-EU/European Economic Area (EEA) country. The court ruled that Dutch resident companies that were held by Israeli companies should be able to form a Dutch fiscal unity (that includes only the Dutch resident companies) based on the nondiscrimination article in the Netherlands-Israel tax treaty. The court overruled a 2015 decision of the First Instance Tax Court of Gelderland, which had concluded that the Dutch fiscal unity regime need not be extended to third-country (i.e. non-EU/EEA) situations. The Second Instance Tax Court's decision may be appealed to the Dutch Supreme Court.

Overview of fiscal unity regime

Under the fiscal unity regime, two or more companies can be treated as a single taxpayer if certain requirements are met. Fiscal unity status offers a number of benefits: (1) entities within

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the group can offset profits and losses; (2) intragroup transactions between members of a fiscal unity are ignored, thus allowing the nonrecognition or deferral of income/capital gains; and (3) the group can submit a consolidated tax return.

The following requirements must be met for a fiscal unity to be formed:

- The head of the fiscal unity must hold at least 95% of the shares of each entity in the group;
- The companies to be consolidated must have a qualifying legal form;
- The companies to be consolidated must be resident in the Netherlands (this includes a Dutch permanent establishment of a foreign company);
- All companies in the fiscal unity must use the same financial year and the same rules for the determination of their profits; and
- Each participating company must submit a request for application of the regime.

Indirectly held companies can be included in a fiscal unity, but only if all intermediary companies are included in the group. As a result, in practice, a fiscal unity can exist between a Dutch parent company and its “sub-subsidiary” only if that indirectly held company is at least 95% directly held by another Dutch entity, and the intermediary company also is included in the fiscal unity. A comparable approach applies for sister companies, i.e. they can be part of a fiscal unity only if the connecting joint parent company (and any other intermediary companies) are included in the fiscal unity.

Background on previous cases and Dutch response

In three previous cases relating to the fiscal unity regime – all involving group structures and having the common feature that some companies in each group were established in another EU member state – the issue was whether the denial of a fiscal unity would infringe EU law. These cases primarily involved two fact patterns:

- A Dutch resident company held 100% of the shares of another EU resident company, which, in turn, held 100% of the shares in a second Dutch resident company; and
- Multiple Dutch resident sister companies were held by the same EU resident parent company.

In all cases, the fiscal unity requests were limited to the Dutch resident companies; the connecting EU companies and the nonresident EU parent company were not included. The Dutch tax authorities denied the requests because the connecting companies were nonresident EU entities. The cases were appealed up to the Court of Justice of the European Union (CJEU), which held on 12 June 2014 (joined cases C-39-41/13) that the fiscal unity regime in the Netherlands Corporate Income Tax Act is incompatible with the freedom of establishment principle in the Treaty on the Functioning of the European Union (for prior coverage of the CJEU decision, see the EU tax alert, 12 June 2014). The case was referred back to the Dutch Second Instance Tax Court of Amsterdam to issue a final decision, and that court ultimately confirmed the conclusions reached by the CJEU (for prior coverage, see *World Tax Advisor*, 9 January 2015).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-eu-120614.pdf
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150109_4.html

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In response to the Amsterdam court decision, the government published an update of the fiscal unity decree indicating that a request for a fiscal unity between a Dutch parent and a Dutch lower-tier subsidiary held through one or more intermediary companies in another EU/EEA member state, or a request for a fiscal unity between Dutch subsidiary (sister) companies directly or indirectly held by a parent company in another EU/EEA member state, may be approved. The decree applies only to situations in which all connecting companies are resident in an EU/EEA member state. (Additionally, a bill that would amend the Dutch corporate income tax act to bring the fiscal unity regime in line with the CJEU and Amsterdam court decisions is pending in parliament.)

Current case: Treatment of non-EU/EEA situations

An issue not considered by the CJEU in the above cases was whether a fiscal unity would be possible where a non-EU/EEA country is present in the chain of ownership, i.e. where:

- A Dutch resident company holds 100% of the shares of a *non-EU/EEA* company, which, in turn, holds 100% of the shares in a second Dutch resident company; or
- Multiple Dutch resident sister companies are held by the same *non-EU/EEA* parent company.

The latter situation was challenged in court in the current case. Since the parent company was not an EU/EEA resident, no appeal was made under EU law. The taxpayer, however, filed an appeal based on the nondiscrimination article in the applicable bilateral tax treaty.

The circumstances involved an Israeli group of companies that held qualifying participations in several Dutch resident companies; a fiscal unity between all group companies could have been formed if the Israeli group companies had been resident in the Netherlands. The taxpayer requested the formation of a fiscal unity including only the Dutch resident companies (because of the requirement that the companies be at least 95% owned by a Dutch or EU/EEA parent), and the tax authorities rejected the request. The taxpayer then resorted to the nondiscrimination article in the Netherlands-Israel tax treaty, claiming that the fiscal unity limitation was discriminatory. The nondiscrimination article provides that an enterprise of one contracting state (the Dutch resident company) that is held by an enterprise of the other contracting state (the Israeli company) must not be subjected to taxation in the Netherlands that is different or more burdensome than the taxation to which other similar enterprises of the Netherlands are (or may be) subjected.

The First Instance Tax Court of Gelderland sided with the Dutch tax authorities, concluding that the denial of the request was not discriminatory in terms of the Netherlands-Israel tax treaty, since a fiscal unity between only the Dutch resident sister companies would not have been possible if the parent company had been resident in the Netherlands.

On appeal, the Second Instance Tax Court of Arnhem/Leeuwarden reached a different conclusion. That court held that a fiscal unity between the Dutch resident companies held by an Israeli parent company should be possible based on the nondiscrimination article of the Netherlands-Israel tax treaty, since, if the parent company were a resident of the Netherlands, a fiscal unity between the parent company and the sister companies would have been

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possible. Rejecting the fiscal unity between only the sister companies in the case at hand, thus, would have been incompatible with the nondiscrimination provision in the treaty.

Comments

The Second Instance Tax Court took a broad interpretation of the nondiscrimination article in the Netherlands-Israel tax treaty. However, it is likely that the Dutch tax authorities will appeal the decision to the Supreme Court.

In the meantime, affected taxpayers should review their ownership structures and consider whether a fiscal unity between Dutch resident sister companies may be beneficial in cases where the parent company is not resident in an EU/EEA country. Comparable reasoning could be applied to argue that Dutch resident parent companies and sub-subsidiaries that are held by intermediary companies that are resident outside the EU/EEA should be able to form a fiscal unity (including only the Dutch companies). However, for a fiscal unity to be possible, a tax treaty between the Netherlands and the non-EU/EEA country would have to be in force that contains a nondiscrimination article. Since a fiscal unity request can have retroactive effect for up to three months, affected companies should act immediately.

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New Zealand: Tax reform bill introduced

The Taxation (Annual Rates for 2016-17, Closely Held Companies and Remedial Matters) Bill was introduced into parliament by the Minister of Revenue on 3 May 2016. The bill contains over 70 different reforms, some of which are a result of consultation on various issues papers released in 2015.

The bill includes tax changes in the following areas:

- The tax rules for closely held companies, including changes to the rules for "look-through" companies, to address the complexity of the rules;
- Nonresident withholding tax (NRWT) and the approved issuer levy (AIL), including the following changes:
    - An amendment aimed at removing the ability for related taxpayers to benefit from a mismatch between the time when income tax deductions are available for interest expenditure and the time when the associated NRWT arises;
    - Changes to limit the circumstances in which the AIL can be paid instead of the NRWT, by broadening the circumstances under which a situation is considered to involve related parties (meaning that AIL will not apply) to target back-to-back loans and multiparty arrangements where a third party is interposed in a lending arrangement to mask what otherwise would be an associated party loan; and

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- Amendments to the NRWT and source rules to ensure that NRWT and AIL cannot be circumvented through the use of a branch structure;

- Technical issues relating to the goods and services tax;
- The interaction of the loss grouping and imputation rules, including changes to enable the transfer of imputation credits to another company in a commonly owned group as part of a loss grouping arrangement;
- A clarification to ensure the “time bar” that prevents the tax authorities from increasing a tax assessment under certain circumstances will apply to ancillary taxes; and
- Amendments to the empowering provision for New Zealand’s tax treaties to clarify that anti-avoidance rules can still override the effect of a treaty.

The bill has been added to the long list of legislation before parliament and will be referred to the Finance and Expenditure Committee, which will call for submissions. Given that some initiatives are intended to apply from 1 April 2017, this should act as an incentive for the bill to progress this calendar year.

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Taiwan:
MOF provides new guidance on procedure for EOI requests

Taiwan’s Ministry of Finance (MOF) issued guidance on 21 April 2016 that is designed to assist the relevant government agencies and the competent authorities with the operation of the exchange of information (EOI) article in Taiwan’s tax treaties.

The main points in the guidance are as follows:

Criteria for EOI requests: The request must specifically state the circumstances of the case, and the facts must fall within the scope of the following provisions in the applicable tax treaty:

- Personal scope;
- Taxes covered; and
- Effective period of the treaty.

Procedure for Taiwan government agencies to request information: Taiwan government agencies (e.g. tax collection agencies) that make an information request should prepare the relevant documents and submit an application to the competent authority (International Fiscal Affairs Department of the MOF). After confirming that all criteria for the request are fulfilled, the competent authority will submit the request to the competent authorities of the treaty partner country.

Procedure for reviewing requests from another country: After receiving an EOI request from a treaty partner country, the Taiwan competent authority will:

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- Confirm that all criteria for the request are fulfilled; and
- If Taiwan government agencies will need to conduct additional investigations to obtain the requested information, confirm that one of the following criteria also is fulfilled:
  - Taiwan has a tax interest in the requested information; or
  - If Taiwan does *not* have a tax interest in the requested information, the EOI article in the applicable tax treaty must provide that Taiwan may not decline the EOI request merely because it does not have a tax interest or because the requested information is held by a bank or other financial institution.

Taiwan's competent authority has received 28 information requests from other countries during the past decade. With the new global emphasis on exchanges of information between countries to achieve greater transparency in tax matters, it is likely that EOI requests in Taiwan will increase. The MOF guidance is expected to enhance the ability of Taiwan government agencies and the competent authority to handle these requests in a more efficient and effective manner.

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In brief

Colombia: The Finance Minister has clarified that the structural tax reform bill that will be presented to Congress in the second half of 2016 will seek to: (i) prevent tax evasion; (ii) consider the interests of the productive private sector in Colombia; (iii) promote tax equality; (iv) enhance the competitiveness of Colombian industry; and (v) present a better framework for the private sector (both corporations and individuals). (For coverage of recommendations submitted to the government regarding the structural tax reform, see *World Tax Advisor*, 12 February 2016.) The government will consult with the private sector before presenting the tax reform bill to Congress.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_4.html

France: On 18 May 2016, the supreme court requested a preliminary ruling from the constitutional council on the constitutionality of former article 145-6b ter of the French tax code (now article 145-6c). These rules exclude dividends received from nonvoting shares from the benefits of the participation exemption unless the parent company holds shares representing at least 5% of the capital and voting rights of the dividend-paying company. Should the constitutional council conclude that article 145-6b ter is unconstitutional, it could limit the effects of its decision, for instance, to litigation that has been filed or to litigation already before the courts. To protect themselves against such limits, potentially affected companies should file claims as soon as possible with the French tax authorities for corporate tax paid in 2014 and 2015. The council has three months to issue a decision.

OECD: The OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes have announced that Bahrain, Lebanon, Nauru, Panama and Vanuatu have committed to share financial account information automatically with other countries, and are

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expected to begin exchanging this information in September 2018. A total of 101 jurisdictions have now agreed to implement information sharing through the Common Reporting Standard developed by the OECD and G20 countries. Lebanon also has joined the Global Forum, which brings the forum's membership to 133 jurisdictions.

Puerto Rico: The Treasury Department has issued an administrative determination that addresses the transition from the sales and use tax (SUT) regime to the new VAT regime that is scheduled to apply as from 1 June 2016 (for prior coverage, see *World Tax Advisor*, 11 March 2016), as well as a draft of the monthly VAT return form. The first VAT returns would be due on 20 July 2016. However, a bill filed on 29 April 2016 would repeal the new VAT regime and would provide that the current SUT regime would remain in force. The legislative developments have created additional uncertainty as to whether the VAT will commence on 1 June 2016.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_ib.html

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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.

Cyprus: On 27 April 2016, the Ministry of Finance announced its intention to amend the legislative framework in relation to country-by-country (CbC) reporting, following the draft EU directive that would amend the administrative cooperation directive to implement CbC reporting in accordance with the OECD recommendations under action 13 of the BEPS initiative (for prior coverage, see *World Tax Advisor*, 12 February 2016). The ministry stated that it supports the provisions of action 13 and that all necessary procedures will be taken to adopt the relevant provisions in domestic tax legislation.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_1.html

India: The new protocol to the existing tax treaty with Mauritius contains provisions that are in line with India's commitment to the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160527_1.html

OECD: The OECD's Forum on Tax Administration issued a communiqué following its 10th meeting, which was held in Beijing on 11-13 May 2016. The meeting focused on effective implementation of the OECD/G20 international tax agenda; building modern tax administrations to respond to an increasingly digital world; and helping to build capacity in tax administration so that all countries can benefit from the changes in the international tax landscape.

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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.

Bulgaria-Romania: The 2015 treaty to replace the 1994 treaty entered into force on 29 March 2016 and will apply as from 1 January 2017. When in effect, the new treaty provides for a 5% withholding tax rate on dividends (except for dividends that are hidden profit distributions under Bulgarian domestic law or income assimilated to dividends for tax purposes under Romanian domestic law, which will be subject to the domestic law of the relevant state). The rate on interest and royalties will be 5%.

Chile-Uruguay: When in effect, the treaty signed on 1 April 2016 provides for a 5% withholding tax rate where dividends are paid to a company that controls or holds directly at least 25% of the voting rights or the capital of the payer company; otherwise, the rate will be 15%. However, as a result of special wording in the treaty, the reduced rates will not apply and dividends distributed from Chile will be subject to the domestic withholding tax rate, with credit for corporate tax paid. A 4% rate will apply to interest derived from the sale of machinery and equipment on credit and on loans granted by banks for a period of at least three years to finance investment projects; otherwise, the rate will be 15%. The rate on royalties will be 10%.

Cyprus-Bahrain: The 2015 treaty entered into force on 26 April 2016 and will apply as from 1 January 2017. When in effect, the treaty provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

India-Mauritius: See article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160527_1.html

India: The Central Board of Direct Taxes (CBDT) issued a circular on 25 February 2016, which clarifies that the provisions of the India-UK tax treaty are applicable to a partnership, estate or trust that is a resident of either contracting state to the extent the income derived by such partnership, estate or trust is subject to tax in that state as the income of a resident (either in its own hands or in the hands of its partners or beneficiaries). A protocol to the treaty that entered into effect in 2013 amended the definition of the term “person” to delete UK partnerships from the definition, and amended the residence provisions so that, in the case of a partnership, estate or trust, the term “resident of a Contracting State” applies only to the extent the income derived by the partnership, estate or trust is subject to tax in that state as the income of a resident (either in the hands of the partnership, estate or trust, or in the hands of its partners or beneficiaries). Because there was some concern that the term “person” did not cover partnerships and, hence, that the treaty would not apply to partnerships, clarification was sought from the CBDT.

Indonesia-Armenia: The 2005 treaty entered into force on 8 April 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 10% withholding tax rate on dividends

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paid to a company that holds directly at least 25% of the equity capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Ireland-Estonia: On 4 May 2016, the Irish Revenue announced that, as a result of the application of a most-favored nation clause in the tax treaty with Estonia, the withholding tax on royalties under the treaty is reduced to 0% as from 1 January 2016. Previously, the rate was 5% for royalties paid for the use of industrial, commercial and scientific equipment, and 10% for other royalties.

Netherlands-Israel: See article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160527_4.html

Portugal-Sao Tome and Principe: When in effect, the treaty signed on 13 July 2015 provides for a 10% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10% and that on technical service fees, 15%.

Portugal-Vietnam: When in effect, the treaty signed on 3 June 2015 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that owns directly at least 70% of the capital of the payer company and a 10% withholding tax rate on dividends paid to a company (other than a partnership) that owns directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10% and that on "technical fees," 7.5%.

Singapore-Cambodia: When in effect, the treaty signed on 20 May 2016 provides for a 10% withholding tax rate on dividends, interest and royalties.

Slovakia-Barbados: When in effect, the treaty signed on 28 October 2015 provides for a 0% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 5%. A 10% rate will apply to interest. A 0% rate will apply to royalties paid in respect of a copyright of literary, artistic or scientific work (including cinematograph films and films or tapes used for radio or television broadcasting and other means of image or sound reproduction); a 5% rate will apply to royalties paid in respect of a patent, trademark, design or model, plan, secret formula or process or software, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

Taiwan: See article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160527_6.html

United Kingdom-United Arab Emirates: When in effect, the treaty signed on 12 April 2016 provides for a 15% withholding tax rate (other than on dividends paid to a pension scheme, which are exempt) on dividends paid out of tax-exempt income (including gains) derived directly or indirectly from immovable property by an investment vehicle that distributes most of the income annually; otherwise, the rate will be 0%. A 0% rate will apply to interest paid to an individual; a company whose principal class of shares is substantially and regularly traded on a recognized stock exchange; a pension scheme; a financial institution that is unrelated to and dealing wholly independently with the payer; or any other company, provided the competent authority of the contracting state responsible for granting the benefits determines that the main,

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or one of the main, purposes for the establishment, acquisition or maintenance of the company is not to secure benefits under the treaty interest article; otherwise, the domestic rate will apply. A 0% rate will apply to royalties.

United Kingdom-Uruguay: When in effect, the treaty signed on 24 February 2016 provides for a 0% withholding tax rate on dividends paid to a pension scheme; a 5% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. A 0% rate will apply to interest paid to a financial institution on a loan of at least three years for the financing of investment projects or to a pension scheme; otherwise the rate will be 10%. A 10% rate will apply to royalties.

United Kingdom: The tax authorities have updated their guidance on how to obtain a certificate of residence, which is a prerequisite to qualifying for relief under a double tax treaty. The guidance covers companies, individuals, partnerships, pension schemes, trusts, charities, CIVs and public bodies.

United States: An intergovernmental agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act was signed with Panama on 27 April 2016.

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Iceland

New law updates króna-denominated assets subject to restrictions
Iceland's parliament passed a law on 22 May 2016 that further defines and updates the króna-denominated assets that are subject to special restrictions. The law sets out which assets constitute "króna assets" subject to restrictions, the applicable restrictions and the exemptions that apply to such assets. The law contains stringent restrictions that potentially could affect nonresident holders of offshore króna.
Issue date: 23 May 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-iceland-23-may-2016.pdf

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