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UK launches consultation on tax deductibility of corporate interest expense

The UK HM Treasury published a consultation document on 12 May 2016 concerning the detailed policy design and implementation of previously-announced proposals to limit the tax deductibility of corporate interest expense as from 1 April 2017. The consultation comprises 46 questions, and closes on 4 August 2016.

The UK proposals follow the recommended approach set out in the final report for limiting base erosion involving interest deductions and other financial payments that was issued by the OECD in October 2015 as part of the G20/OECD BEPS project (specifically action 4; for prior coverage, see OECD tax alert, 6 October 2015), and have been subject to a previous consultation in the UK. The basic approach is to limit interest deductions to 30% of tax-based EBITDA.
URL: http://www.oecd.org/tax/limiting-base-erosion-involving-interest-deductions-and-other-financial-payments-action-4-2015-final-report-9789264241176-en.htm
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-6-october-2015.pdf
URL: https://www.gov.uk/government/consultations/tax-deductibility-of-corporate-interest-expense/tax-deductibility-of-corporate-interest-expense-consultation

The new rules would apply to all forms of interest (irrespective of the identity of the lender), other financial costs that are economically equivalent to interest, expenses incurred in connection with the raising of financing and certain closely related other costs, such as net debits arising on derivative contracts with either interest rates (including Retail Prices Index (RPI) swaps), currencies or debt as the only underlying subject matter. (Balances arising from cash pooling are not explicitly referred to and, therefore, presumably would be within scope.) Such amounts are together referred to as “tax interest.” Exchange gains and losses on principal amounts would be excluded from tax interest, but gains and losses on the retranslation of interest and other financial costs would be included, as would impairment losses arising from loan relationships (excluding nonlending money debts, such as trade debtors), other gains and losses arising on “related transactions” (broadly, acquisitions and disposals of rights and liabilities under loans or in-scope derivatives) and finance lease receivables.

The limits on interest deductibility would be calculated across all UK group companies, rather than on an individual company basis. There would be a single calculation of the amount of interest relief (and equivalent finance costs – collectively referred to as “interest”) available for the UK group, based on the aggregated amounts of net tax interest and tax EBITDA across all companies in the group that are within the charge to UK corporation tax, under either of the main calculations discussed below (i.e. the fixed ratio rule or the group ratio rule).

The interest restriction rules would be subject to targeted anti-avoidance measures to prevent groups from entering into arrangements to undermine the effect of the rules, but the design of these rules has not yet been considered.

Fixed ratio rule

Under the fixed ratio rule, rule, tax-deductible net interest expense would be restricted to 30% of “tax EBITDA,” based on the aggregated amount of tax EBITDA of each UK resident group company and UK permanent establishment. A company’s tax EBITDA would be equal to the aggregate of the amounts brought into account for tax purposes for the year (e.g. profits chargeable to corporation tax, including capital gains and allowable losses) that do not comprise tax interest, tax depreciation or tax amortization. If the aggregated tax EBITDA amount is negative, it would be subject to a floor of zero.

There would be a *de minimis* allowance of GBP 2 million per annum, which HM Treasury estimates would exclude 95% of groups from the new rules.

If a group is subject to a restriction on its tax-deductible interest as a result of the operation of the fixed ratio rule, it would have to decide how much of the interest restriction would be allocated to each UK group company (limited to that company’s net “tax interest” expense (as defined above)).

Restricted interest could be carried forward indefinitely and could be treated as a deductible interest expense in a subsequent period. Conversely, where a group has surplus capacity for a period, it could carry this surplus forward for three years and use it as additional interest capacity in these subsequent periods. This difference in time periods could mean that the proposed carryforwards would not provide an adequate solution to the various mismatches (typically, between the group accounts and the tax measures of items, such as derivatives) that are identified in the document.

Rules with similar effect to the existing worldwide debt cap rules would be applied, such that a group's net UK tax interest amounts could not exceed the global net adjusted group interest expense of the group (referred to as the "modified debt cap rule" in the consultation document). The modified debt cap rule would operate to prevent groups with little external debt from gearing up to the fixed ratio limit, and reflects concerns expressed by some countries as part of the discussion at the OECD on BEPS action 4. The separate worldwide debt cap regime would be repealed.

Group ratio rule

The new rules also would include a group ratio, based on the net interest to EBITDA ratio for the worldwide group. The group ratio would be defined as:

$$\frac{\text{Net qualifying group interest expense}}{\text{Group EBITDA}}$$

Where a group chooses to apply the group ratio, it would use the group ratio, calculated above, in place of the 30%-of tax-EBITDA limit used under the operation of the fixed ratio rule. However, the amount deductible under the group ratio rule would be capped at the amount of net qualifying group interest expense. In any case, the GBP 2 million *de minimis* allowance would be available, subject to the modified debt cap rules.

The group ratio rule would not be mandatory and, therefore, it would be up to groups to calculate whether the fixed ratio or the group ratio would give them the better result.

Although the definition of qualifying group interest would exclude amounts arising from related-party lending, once the group ratio has been calculated and applied to tax EBITDA, tax interest up to the group ratio limit would be deductible irrespective of whether it arises on related-party or third-party debt.

The amounts used to determine the group ratio would be calculated using accounting measures, rather than tax measures, in recognition of the impracticability of aligning tax concepts from different jurisdictions worldwide. IFRS, UK GAAP or the accounting standards of Canada, China, India, Japan, Korea (ROK) or the US would be deemed acceptable (with IFRS as the default measure where groups use other GAAPs).

Where the group has net qualifying group interest income, the amount of net qualifying group interest expense would be considered to be zero, and the group ratio would be undefined if group EBITDA is zero or less. In that case, the interest limit under the group ratio would simply be the amount of net qualifying group interest expense.

The group ratio is intended to provide an interest deduction limit commensurate with both the group's external borrowing and its UK activity. However, the mechanics of the calculation mean that there are circumstances where the results could be considered to be distortive, for example, where group EBITDA is very small compared to group interest expense. HM

Treasury is considering two options to address this: (1) limit the availability of the group ratio to current-year finance costs only, primarily to prevent “excessive” surplus capacity from being carried forward; or (2) cap the group ratio to between 30% and 100%.

Comments

The consultation document raises a number of issues, including the following:

- Unused interest expense from periods before the new rules take effect that is carried forward into the new regime as part of either nontrading loan relationship deficits or trading losses would not be subject to the new interest restrictions. It is not clear how this would apply to late-paid related-party interest, given that elsewhere the document states that no special provisions are proposed for timing differences between when interest is deductible for tax purposes and when it is recognized in the accounts.
- Setting the right boundary for derivatives is difficult. The main proposal would seem to risk including items that might be expected to be excluded, for example, interest differentials on currency forwards that hedge trading transactions.
- Differences in the timing of taxation compared to recognition for purposes of the accounts, for example, in relation to derivatives (which may be taxed on an accruals-type basis, but accounted for at fair value) and changes in accounting policy, could cause distortions in the calculations. It will be important for companies to provide real examples to the government to highlight issues, particularly where there is a risk of tax relief for third-party finance costs being partially or even entirely lost (which could happen in relation to derivatives).
- The separate worldwide debt cap regime would be repealed, but part of its effect would be carried into the new rules by providing that UK deductions always would be limited to the worldwide group’s interest cost on third-party debt, i.e. to prevent groups with low levels of third-party debt from using the full 30% limit in the UK.
- There would be new definitions of “related party” that would limit some minority shareholder debt from qualifying as third-party debt (the measure used to set the group ratio).
- Infrastructure groups may consider that a proposed exemption for public benefit projects remains too narrowly focused. The government does not favor “grandfathering” of existing debt, other than in exceptional circumstances. However, it accepts that grandfathering may be needed to protect the financial viability of some existing infrastructure projects, and it seeks more evidence that any adverse impacts of the new debt rules could not be mitigated in other ways.
- Real estate is another sector where the new restrictions could have a material impact, due to its typically high levels of leverage. There are specific concerns for REITs, which the government acknowledges need to be addressed. The government also is considering whether and how the rules should apply to nonresident corporate landlords. Given the amount of UK real estate (both commercial and residential) held by non-UK investors, it will be important that such taxpayers are given sufficient time to consider and engage with government on this issue.
- The government is keen to receive views in respect of specific regimes, such as oil and gas, funds and securitization companies.

The consultation document proposes major changes to the UK tax treatment of interest expense. It is important for affected taxpayers to provide the government with detailed examples of issues, and hopefully draft legislation will be released iteratively, so that practical problems can be identified.

It is clear that much of the detail of specific circumstances is still to be worked through by HM Treasury and the tax authorities. Groups should assess the impact of the proposed rules on their particular fact pattern, and make representations where they encounter uncertainty or unforeseen difficulty.

The commencement date for the proposals is 1 April 2017, with a straddling period of account approach, that is, calculations would be needed to split 2017 into pre- and post-1 April 2017 periods, except for the repeal of the worldwide debt cap and the introduction of the modified debt cap rule, which would commence for the first period of account to begin on or after 1 April 2017.

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Argentina: Voluntary disclosure, tax amnesty among proposals sent to congress

Argentina's executive branch sent a bill to the congress on 1 June 2016 that includes the introduction of a voluntary disclosure regime and a tax amnesty, as well as changes to the income tax, minimum presumed income tax and net wealth tax. The congress is expected to review the bill in the near future, and, unless otherwise provided, the measures would enter into force on the day following the day that the bill is published in the official gazette.

- **Voluntary disclosure regime:** Following OECD recommendations, the Argentine government intends to implement a regime for the voluntary disclosure of assets held in Argentina or abroad as of 31 December 2015. The window for declaring assets would be available until 31 March 2017 and would require disclosure of the assets along with a payment that would range from 0% to 15% of the total amount disclosed, depending on various factors (such as the amount to be disclosed, the timing, the nature of the assets and the destination of the funds). The disclosure is expected to provide relief from unpaid taxes and penalties and the application of criminal laws relating to tax, customs and foreign exchange.
- **Tax amnesty:** A tax amnesty that would forgive fines and significantly reduce interest on amounts payable would be available until 31 March 2017. In general, federal taxes, social security taxes (other than health care system payments) and supplementary

charges related to exports and imports (even if under administrative or judicial consideration) would be eligible for the amnesty. The amount payable under the regime either could be paid (1) in cash, with a 15% discount, or (2) in up to 60 installments, at a monthly interest rate of 1.5% of the unpaid amount, with a 5% payment in cash.

- **Income tax:** The 10% withholding tax levied on dividend payments made to nonresidents would be abolished.
- **Minimum presumed income tax:** The minimum presumed income tax would be abolished for tax years beginning on or after 1 January 2019. The tax currently is imposed at a rate of 1% on the assets of Argentine tax residents, including shareholdings in foreign companies (but not resident companies), with a reduced rate applying to taxpayers carrying on certain activities (e.g. banking and insurance). The minimum tax is imposed only where its amount exceeds the taxpayer's income tax liability.
- **Net wealth tax:** The rate of the net wealth tax applicable to equity interests in Argentine entities would be reduced from 0.5% to 0.25%, as from the 2016 tax period. If certain conditions are fulfilled, taxpayers that fully complied with all of their tax liabilities for fiscal years 2014 and 2015 and that did not participate in the voluntary disclosure or tax amnesty regimes would be exempt from the net wealth tax. The net wealth tax would be abolished for tax years beginning on or after 1 January 2019.

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European Union: No unanimous agreement on anti-tax avoidance directive

The EU Economic and Financial Affairs Council (ECOFIN) failed to reach political agreement on the EU anti-tax avoidance directive (ATAD) during its meeting on 25 May 2016. As a result of disagreements among the EU member states on certain measures included in the proposed directive (in particular, the anti-hybrid rule, the scope of the controlled foreign corporation (CFC) rule and the inclusion of the "switchover" clause), the topic has been postponed to the next ECOFIN meeting to be held on 17 June 2016. However, the ECOFIN did formally adopt the directive on the exchange of tax-related information between EU member states, which will implement recommendations under action 13 of the OECD base erosion and profit shifting (BEPS) project on country-by-country (CbC) reporting by multinationals, into a legally binding EU instrument.

The ATAD was released by the European Commission on 28 January 2016 as part of a broader package to prevent aggressive tax planning, boost tax transparency and create a level playing field for all businesses in the EU (for prior coverage, see EU tax alert, 28 January

2016). The directive on the exchange of information also was included in the package, as were recommendations to EU member states on how to reinforce their tax treaties in an EU-law compliant manner and a communication on an external strategy for effective taxation.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-28-january-2016.pdf

The draft ATAD reflects some of the actions in the OECD's BEPS project, although it goes further than BEPS in some areas. The first draft was followed by several updated drafts resulting from political discussions and compromises.

The proposed ATAD would require all EU member states to introduce restrictions on interest deductibility, hybrid mismatch rules, CFC rules, a general anti-avoidance rule (GAAR) and an exit charge to prevent the shifting of assets or a company's residence to a low-tax jurisdiction. A switchover rule would enable member states to deny tax exemptions if income had been taxed at a low or zero rate in a non-EU country before being remitted to the EU. The first three proposed measures are found in the BEPS actions, but the GAAR, exit tax and switchover clause are not reflected in the project.

The measures EU member states have disagreed on include the scope of the anti-hybrid rule, which, as currently drafted, would apply only to hybrid mismatches within the EU – some member states have taken the position that the rule should apply to hybrid mismatches involving third countries. The ECOFIN has asked the European Commission to prepare a proposal on hybrid mismatches involving third countries by October 2016. Areas of contention regarding the CFC rules relate to whether the rules should apply both within and outside the EU, the substance requirement and whether the burden of proof should be on the taxpayer or the tax authorities. Finally, there is disagreement among the member states as to whether the switchover clause should be included in the ATAD at all, since it is not recommended as part of the BEPS actions. The switchover clause may be dropped in the final version of the ATAD.

Enactment of a directive generally requires the unanimous agreement of all 28 EU member states. As a result, further drafting of the ATAD likely will be needed so that a compromise approach can be reached. A new round of voting will take place during the meeting scheduled for 17 June 2016. The Slovakian government (which takes over the presidency of the council of the EU from the Dutch on 1 July) has said that it also will push for an agreement if the draft is not agreed upon in June.

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Germany:
Draft tax law includes CbC reporting rules

On 1 June 2016, Germany's Ministry of Finance issued a draft tax law that includes certain measures based on the recommendations in the final reports issued under the OECD BEPS initiative (for prior coverage, see OECD tax alert, 5 October 2015) and the amendments to the

EU administrative cooperation directive to introduce country-by-country (CbC) reporting (for prior coverage, see *World Tax Advisor*, 12 February 2016). The draft law also includes certain non-BEPS-related measures in response to judicial developments in cases where Germany's Federal Tax Court (BFH) decision went against the views of the tax authorities. The measures in the draft law generally were anticipated.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-5-october-2015.pdf
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_1.html

Notable proposed measures are discussed below; additionally, the draft law would implement automatic information exchange procedures regarding advance cross-border tax rulings, to comply with a new EU directive (for prior coverage, see *World Tax Advisor*, 8 January 2016), and would introduce a six-year retention period for information required to be exchanged under the Foreign Account Tax Compliance Act Agreement with the US.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_6.html

With the exception of the proposed CbC reporting rules, the proposed rules are expected to apply as from 1 January 2017; the CbC reporting rules would apply for fiscal years (FYs) beginning after 31 December 2015 (except for the "secondary mechanism," which would apply only for FYs beginning after 31 December 2016).

Details on proposed changes

CbC reporting: The proposed CbC rules would require multinational companies with consolidated group turnover of EUR 750 million or more to file a CbC report. The requirements for the report would be based on the recommendations under action 13 of the BEPS initiative and the EU CbC directive.

In line with the report on action 13, the draft law would require a CbC report consisting of three parts: (i) an overview of the aggregate allocation of income, taxes and business activities (including capital, assets and employees) to each tax jurisdiction; (ii) a list of all "constituent entities" of the multinational group included in the aggregation for each tax jurisdiction; and (iii) additional information that is necessary to understand the information provided for the first two parts. The draft law also includes rules for the determination of a "surrogate parent entity" and a "local entity," for purposes of the CbC reporting rules. Certain information regarding an entity's status as an ultimate parent entity, surrogate parent entity or local entity would have to be included in the annual tax return of the respective entity.

CbC reports would have to be filed electronically with the federal tax office no later than 12 months after the end of the relevant FY. The draft law provides for a 15-year retention period for the data (which would have to be fulfilled by the federal tax authorities).

The draft law also would introduce a mechanism for the automatic exchange of CbC reports between governments.

Master file reporting obligation: The OECD recommendations under BEPS action 13 include the introduction of "master file" and "local file" reporting requirements for transfer pricing documentation purposes. An obligation for companies to prepare a local file already is part of the German tax law in certain cases; only minor changes are proposed by the draft law. The draft law would introduce a new obligation to prepare a "master file" for certain German taxpayers that are part of a multinational group with consolidated turnover of at least EUR 100 million in the preceding year. However, as with the local file, the master file would have to be prepared only upon a request from the tax authorities in the case of a tax audit. The information would have to be provided to the tax authorities within 60 days of the request (30 days for extraordinary business transactions).

Treaty override provision for the application of the arm's length principle: In 2014, the BFH held that Germany's tax treaties can limit Germany's taxing rights based on section 1(1) of the Foreign Tax Act (FTA) if the treaty contains a provision equivalent to the associated enterprises article (article 9) in the OECD model treaty and if the prices paid between the entities involved are at arm's length. The draft law proposes to amend section 1(1) of the FTA to eliminate this limitation. (Germany's constitutional court recently held that the legislature can enact tax treaty override provisions that aim to secure Germany's taxation rights; for prior coverage, see *World Tax Advisor*, 25 March 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160325_5.html

Trade tax on income subject to controlled foreign company (CFC) rules: In 2015, the BFH held that passive income of a wholly-owned, low-taxed foreign subsidiary that is subject to income tax under the German CFC rules is not subject to German trade tax. The BFH concluded that this CFC income constitutes deemed income of a foreign permanent establishment for German tax purposes and, thus, is deductible from the trade tax base. The proposed amendment of the trade tax rules by the draft law would reverse the BFH's decision.

In addition, another proposed change would allow the exclusion of foreign passive income of foreign permanent establishments for trade tax purposes only if the foreign permanent establishment (or partnership) is situated in the EU and has sufficient substance. This change is expected to restrict the use of certain intellectual property structures where license income may not be subject to taxation for trade tax purposes.

Trade tax on certain dividends distributed by a nonresident subsidiary: In 2014, the BFH held that dividends distributed by a nonresident subsidiary to a German parent company that is a controlled entity in a German tax group are fully exempt from trade tax (not merely 95% tax exempt; for prior coverage, see *World Tax Advisor*, 22 May 2015). The draft tax law includes an amendment to the trade tax rules that would reestablish the 95% participation exemption for such dividends.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150522_8.html

Participation exemption for finance companies and financial institutions: The draft law would clarify that the exception to the application of the 95% participation exemption for banks and financial institutions (which requires full recognition of dividend income/capital gains and losses) applies only to income from shares that are accounted for as trade assets (as defined in the Commercial Code) at the time of their acquisition. In addition, the definition of a finance company for purposes of the relevant rules would be clarified.

Domestic switch-over and subject-to-tax clauses: To prevent the nontaxation or the low taxation of certain items of income of a taxpayer that is subject to unlimited tax liability in Germany, certain clauses in the income tax code provide that a tax exemption for the relevant income based on an applicable tax treaty is granted only if the income is actually subject to tax in the other treaty partner state at a certain minimum rate. The draft law would amend the relevant rule in the income tax code in response to certain 2015 BFH decisions and would clarify that the clauses also would apply if only part of the income is subject to tax in the other state.

Comments

The draft law is silent regarding the long-awaited anti-hybrid rule (which was proposed in 2014 but has never been implemented; for prior coverage, see Germany tax alert, 19 December 2014). Tax practitioners are eagerly awaiting this piece of BEPS legislation; however, draft rules may not be published until 2017, so that they can be aligned with the EU anti-tax avoidance directive.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-germany-191214.pdf

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Hong Kong:
Corporate treasury center rules enacted

The Inland Revenue (Amendment) (No. 4) Bill 2015, passed by Hong Kong's Legislative Council on 26 May 2016 and published in the official gazette on 3 June 2016, introduces rules designed to attract foreign companies to establish their corporate treasury centers (CTCs) in Hong Kong, to provide centralized treasury management services to companies in their groups. The new rules should help reinforce Hong Kong's position as a competitive finance and corporate treasury hub.

The key features of the new measures that are relevant to CTCs and other Hong Kong taxpayers carrying on intragroup financing businesses are as follows:

- A profits tax concession of 8.25% (i.e. 50% of the prevailing profits tax rate) for a qualifying CTC on profits from certain qualifying corporate treasury activities;
- A deduction for interest paid by a Hong Kong taxpayer (other than a financial institution, but not necessarily a CTC) that carries on an intragroup financing business in Hong Kong, on loans from foreign associated corporations, if certain conditions are fulfilled; and
- A deeming provision, under which interest income of a Hong Kong taxpayer (other than a financial institution, but not necessarily a CTC) that arises through or from the carrying on of an intragroup financing business in Hong Kong will be deemed Hong-Kong source taxable receipts.

The CTC rules and interest deductibility rules apply retroactively as from 1 April 2016, and the deeming provision on interest income applies as from 3 June 2016.

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Hungary:
Changes to IP regime adopted

On 7 June 2016, the Hungarian parliament passed a tax bill that includes changes to the existing intellectual property (IP) regime, in line with action 5 of the OECD's BEPS project (*Countering Harmful Tax Practices More Effectively*). The bill introduces the modified nexus approach to limit the beneficial tax treatment of intangible assets and royalty income, and will substantially reduce the scope and extent of benefits available under the IP regime.

The new rules apply as from 1 July 2016, although "grandfathering" rules provide a limited window of opportunity for companies to qualify under the current regime and maintain benefits for an additional five years.

The current IP regime offers the following benefits:

- 50% of the income qualifying as royalties may be claimed as a special deduction in calculating the corporate income tax base, with the adjustment capped at 50% of the total accounting profit before tax;
- The definition of royalties for purposes of the deduction encompasses a broad range of licensing income, including income from the licensing of patents and other industrial IP, know-how, trademarks, trade names, business secrets and copyrights, including "author" rights;
- Unconditional availability of amortization expense deduction for tax purposes;
- A "super deduction" from the corporate income tax base for certain R&D costs, resulting in a double deduction of such costs; and
- A full exemption for capital gains realized on the alienation of qualifying IP.

Transition rules apply to assets acquired or developed before 30 June 2016, with the result that the benefits of the current regime may continue to apply for the period from 1 July 2016 to 30 June 2021:

- To qualify for the grandfathering rules, the taxpayer must have benefitted from the IP regime in relation to the relevant IP in a tax return filed before 30 June 2016, or must be otherwise entitled to such benefits between 1 January 2016 and 30 June 2016 (if no tax return is due before 30 June 2016 in this respect).
- For IP rights acquired from related parties during the period from 1 January 2016 to 30 June 2016, the grandfathering rules are available after 31 December 2016 only if the seller was entitled to benefit from any corporate income tax incentives related to the IP at the time of the transfer.
- IP rights acquired from unrelated parties during the period from 1 January 2016 to 30 June 2016 are entitled to benefit from the grandfathering rules without having to fulfill any specific conditions.

IP acquired or developed after 30 June 2016 falls within the scope of the new rules.

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Iceland:
Draft anti-tax evasion bill targets ownership in low-tax jurisdictions

Iceland’s Minister of Finance and Economic Affairs presented a draft bill to parliament on 25 May 2016 that contains measures to combat tax evasion with respect to ownership of entities in low-tax jurisdictions. The draft bill, which was prepared in response to the “Panama Papers,” would introduce substantial restrictions on the ability of Iceland residents to engage in transactions with parties in low-tax jurisdictions and expand the powers of the tax authorities to obtain information on such transactions.

The bill would introduce the following changes to Iceland’s tax laws:

- Limits on the ability to change domicile/permanent residence or transfer assets to a low-tax jurisdiction;
- Limits on the ability to deduct losses incurred by a company located in a low-tax jurisdiction;
- Limits on the ability to transfer a sole proprietorship to a private limited company in a low-tax jurisdiction;
- Limits on the ability to engage in cross-border mergers and divisions with a company in a low-tax jurisdiction;
- Extension of the period in which the Iceland tax authorities tax can issue a reassessment of tax on income or assets located in a low-tax jurisdiction, from six to 10 years;
- Extension of the statute of limitations from six to 10 years for the tax authorities to impose penalties on persons for providing incorrect or misleading information relating to assets in a low-tax jurisdiction; and

- Enhanced disclosure requirements for persons who provide tax or other services relating to companies, funds or institutions in low-tax jurisdictions; such persons would be required to provide the tax authorities with a list of persons to whom such services are provided, as well as details of the activities, assets and equity relating to such services.

It currently is unclear whether or when the bill will be passed.

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New Zealand:
"Netflix tax" bill passed

The bill commonly referred to as the "Netflix tax" bill was passed by the New Zealand parliament on 13 May 2016 and will apply as from 1 October 2016. Following the passage of the bill, the New Zealand tax authorities (IRD) issued rules and guidance on practical aspects of implementing and complying with the new measures.

The bill broadens the scope of the goods and services tax (GST) rules to capture cross-border supplies of services and intangibles (including digital downloads) made by offshore suppliers to New Zealand-resident consumers (i.e. business-to-consumer supplies, but not business-to-business supplies). Insurance services provided by offshore suppliers also will be caught by the rules. As from 1 October, any offshore business providing remote and online services and supplies of intangibles to a New Zealand private consumer will need to collect and pay GST if the cumulative amount of supplies provided to New Zealand private consumers within a 12-month period is expected to exceed NZD 60,000.

GST registration for overseas service suppliers will be available from 1 August 2016 and likely will require the supplier to provide information such as its identity, contact details, country of residence, website address, type of business, etc.

For the period from 1 October 2016 to 31 March 2017, nonresident suppliers of remote services will have a taxable period of six months (or an optional taxable period of two months); thereafter, GST returns will have to be filed quarterly with period ends of 30 June, 30 September, 31 December and 31 March.

The legislation requires a nonresident to determine if its customer is a New Zealand resident and if it is a GST-registered business. Nonresidents are required to assume that a New Zealand resident customer is not a GST- registered business unless the customer has provided its GST registration number or New Zealand business number, or the customer has notified the supplier that it is a GST-registered business.

It should be noted that the new rules do not address the collection of GST on the online purchases of goods from overseas; this issue still is being considered by New Zealand Customs and the IRD.

New Zealand is just one of a number of countries worldwide that have introduced, or are considering the introduction of, GST or VAT on cross-border supplies, e.g. Japan, Korea, Norway, South Africa and Switzerland already have rules to deal with aspects of this often "untaxed" area of commerce, and Australia has proposed similar rules that would apply as from 1 July 2017.

With less than four months until the GST rules affecting nonresident suppliers come into effect, it is important that offshore businesses supplying remote services to consumers in New Zealand are ready to comply.

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In brief

European Union: The text of the EU directive that extends the duration of the minimum 15% standard VAT rate until 31 December 2017 was published in the EU official journal on 31 May 2016.

European Union: On 3 June 2016, the European Commission's Directorate-General for Competition published a working paper on state aid and tax rulings in relation to transfer pricing. The paper notes that it is a working paper and not a statement of how the commission will approach a specific case. Nevertheless, the paper flags certain areas, i.e. finance company rulings, where the finance company pays only a small margin; deductions for notional payments; and issues relating to one-sided transfer pricing and inappropriate transfer pricing methods. The paper notes that the "DG Competition's focus is on cases where there is a manifest breach of the arm's length principle" and where there are "serious reasons" to consider that state aid may have been granted through a tax ruling.

Greece: The standard VAT rate on the mainland increased from 23% to 24% on 1 June 2016. The reduced and the super-reduced VAT rates for the mainland (i.e. 13% and 6%, respectively) remain unchanged. It was announced in September 2015 that the 30% reduction in the VAT rates (to 4%, 9% and 16%) on the Aegean Islands would be abolished in three phases on 1 October 2015, 1 June 2016 and 1 January 2017 (for coverage of the first phase, see *World Tax Advisor*, 9 October 2015). The application of the reduced VAT rates for the phase-two islands (i.e. Alonissos, Andros, Antiparos, Karpathos, Kea, Milos, Sifnos, Skyros, Syros, Thasos and Tinos) is abolished as from 1 June 2016 and replaced with the 6%, 13% and 24% rates that apply on the mainland.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151009_ib.html

Indonesia: The Director General of Taxation has issued a regulation requiring taxable entrepreneurs that have used e-VAT invoices to prepare and submit their annual corporate income tax returns and VAT returns electronically as from 27 April 2016. The regulation does not indicate whether the e-filing requirements apply to the 2015 annual corporate income tax return.

Latvia: On 2 June 2016, Latvia signed the accession agreement to become a member of the OECD. Latvia will become the 35th member of the OECD after it has taken the appropriate steps at the national level to accede to the OECD convention and deposited its instrument of accession.

New Zealand: The 2016 budget announced on 26 May 2016 does not include any tax-related policies, except for a 10% increase in the excise tax on tobacco products.

Puerto Rico: The VAT law scheduled to become effective on 1 June 2016 was repealed by the House of Representatives and the Senate in a bill that became effective on 26 May 2016. As a result, the 10.5% sales and use tax continues to apply.

Russia: A draft law submitted to the State Duma for a second reading on 8 June 2016 would require foreign businesses supplying electronic services (e-services) to private customers (i.e. business-to-consumer or B2C supplies) in Russia to register for VAT purposes and charge VAT at a rate of 15.25%. The first draft law was approved by the State Duma on 26 February 2016 (for prior coverage, see *World Tax Advisor*, 22 January 2016), but following discussions with the government and businesses, the State Duma Committee on Budget and Taxation made some changes to the draft to clarify technical issues relating to registration and communications with the tax authorities via the taxpayer portal, and to amend some areas that were unclear and propose some new provisions.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160122_1.html

Thailand: The cabinet has approved proposed changes to the Revenue Code that would address tax evasion and tax fraud, in line with standards proposed by the Financial Action Task Force. The rules empower the director general of the Thai tax authorities to freeze assets temporarily, and tax avoidance/evasion will be treated as offenses under the anti-money laundering law.

BEPS corner

In each issue that provides updates on developments in the OECD's BEPS initiative, *World Tax Advisor* includes a "BEPS corner" covering these developments.

European Union: Unanimous agreement has not yet been reached on the draft anti-tax avoidance directive that reflects some of the actions in the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160610_3.html

European Union: On 26 May 2016, the council of the European Union approved the directive on the country-by-country (CbC) reporting of tax information by multinational companies and the automatic exchange of such information between EU tax authorities. The directive took effect on 3 June 2016 and EU member states must transpose the directive into their national law by 4 June 2017. The directive is the first prong of the anti-tax avoidance package released by the European Commission on 28 January 2016, and will implement the OECD recommendations under action 13 of the BEPS project into an EU instrument (for prior coverage, see EU tax alert, 28 January 2016).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-28-january-2016.pdf

Germany: A draft law would introduce certain BEPS-related measures, including measures relating to CbC reporting and a master file reporting obligation for transfer pricing purposes. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160610_4.html

Hungary: The parliament has adopted the modified nexus approach to limit the beneficial tax treatment of intangible assets and royalty income in accordance with action 5 of the BEPS project.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160610_6.html

OECD: On 31 May 2016, the OECD invited comments on technical issues relating to the development of a multilateral instrument to implement the tax treaty-related BEPS measures. The final report on BEPS action 15 (*Developing a Multilateral Instrument to Modify Bilateral Tax Treaties*) concluded that such a multilateral instrument is desirable. An ad hoc group was set up on 27 May 2015, with the objective of developing a multilateral instrument to modify existing bilateral tax treaties to swiftly implement the tax treaty-related measures; the group aims to conclude its work by 31 December 2016. The request for input outlines the background and purpose of the multilateral instrument and describes the technical issues arising from its development, including the issues to be considered in the context of the optional provision on a mutual agreement procedure (MAP) arbitration provision. Comments, which are due before 7 July 2016, should focus on technical issues regarding implementation and on issues related to the development of the MAP arbitration, rather than on the scope of the provisions to be covered.

OECD: The BEPS timetable has been updated. A discussion draft on the design and operation of the group ratio rule for interest deductions will be published on 6 July 2016, with comments due by 3 August; a consultation paper on hybrid mismatches and branches will be released on 15 July, with comments due by 28 July; and a discussion document on interest limitations in the banking and insurance sectors will be issued on 18 July, with comments due by 29 August.

United Kingdom: A consultation document outlines the policy design and implementation of proposals to limit the tax deductibility of corporate interest expense as from 1 April 2017. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160610_1.html

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Iceland

Foreign currency auction date announced

The Central Bank of Iceland has announced that the anticipated foreign currency auction, in which the bank will offer to purchase króna-denominated assets in exchange for cash payments in foreign currency, will take place on 16 June 2016. The bank is offering to buy króna falling within the definition of "offshore króna" under the law passed on 22 May 2016 that defines and updates the króna-denominated assets that are subject to special restrictions.

Issue date: 27 May 2016

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-iceland-27-may-2016.pdf

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