In this issue:

EU CbC reporting directive in effect 1
Israeli tax authorities clarify PE/VAT issues for foreign digital suppliers 3
Colombia: Guidance issued on application of thin cap rules 5
Cyprus: Tax treaty update 5
European Union: Anti-tax avoidance directive finalized 6
India: ITAT clarifies treatment of web hosting services 7
Italy: Further clarifications issued on tax ruling regime for new investments 8
Panama: Country moves toward adoption of CRS 10
Switzerland: Parliament approves Corporate Tax Reform III 10
In brief 11
BEPS corner 12
Tax treaty round up 13
Are You Getting Your Global Tax Alerts? 14

EU CbC reporting directive in effect

The EU Council's directive on country-by-country (CbC) reporting of information by multinationals to tax authorities entered into force on 3 June 2016 (for prior coverage, see *World Tax Advisor*, 10 June 2016). The directive must be

implemented into the domestic law of the EU member states by 4 June 2017, although that law is required to have effect for accounting periods starting on or after 1 January 2016.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160610_bc.html

The CbC reporting directive follows the recommendations of the OECD in the final report issued on action 13 of the BEPS project (*Transfer Pricing Documentation and Country-by-Country Reporting*), and includes the common template agreed to by the countries involved in the project.

This directive relates to requirements for filing, and the sharing of, CbC information with tax authorities only. Separately, the European Commission has proposed requirements for public reporting of some CbC tax information by multinationals operating in the EU (for prior coverage, see *World Tax Advisor*, 22 April 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160422_2.html

CbC information to be submitted

Under the directive, parent companies of groups with members resident for tax purposes in more than one EU member state are required to report CbC information to the tax authorities of the member state in which they are resident for tax purposes. The reporting requirements apply to multinational groups with consolidated group revenue exceeding EUR 750 million, matching the recommendations in the BEPS action 13 report.

The filing requirement applies to tax years beginning on or after 1 January 2016, and multinationals must file reports within 12 months of the end of each accounting period. The tax authorities of the member states are required to automatically share CbC reports they receive with other member states in which the multinational group has operations within 15 months of the end of the period to which the report relates (18 months for the first period).

Where the parent of the multinational group is not resident in a jurisdiction that requires it to report CbC information to the tax authorities, the group may designate one EU-resident entity to file the information on behalf of the group, or elect another group entity that is required to file a CbC report to the tax authorities of its country of residence as a surrogate for the parent, provided the surrogate entity is resident in a jurisdiction that has an agreement for the sharing of information (under a tax treaty, tax information agreement or other agreed sharing mechanism).

The directive allows member states to defer CbC reporting obligations for non-EU headed groups by one year, to allow non-EU countries' legislation (in particular, that of the US) to catch up. However, several member states already have adopted CbC legislation as part of the minimum standard set by the OECD, including some form of local filing requirement.

Information to be reported

The information to be reported is listed in the common template prepared by the OECD, including, by country:

- Revenue, split between related party and unrelated party revenue;
- Profit/(loss) before income tax;
- Income tax paid (on a cash basis);
- Income tax accrued (current year);
- Stated capital;
- Accumulated earnings;
- Number of employees;
- Tangible assets other than cash and cash equivalents; and
- Details of all group entities by tax residence, and their country of incorporation (if different), along with the main business activity(ies) of each entity.

The directive provides that CbC reports are to be filed electronically, presumably following the xml schema developed by the OECD (although this has not yet been adopted).

Penalties

As is the case with other EU directives, the CbC reporting directive does not contain a specific penalty regime. Member states are required to set their own penalties, which should be "effective, proportionate and dissuasive."

Comments

The CbC reporting directive amends the 2011 directive on administrative cooperation and makes use of the existing "common communication network" for the exchange of information by EU member states, although the directive acknowledges that this will need to be updated.

The directive has had only minimal changes since the draft version was published at the end of January 2016; most notably, there has been an extension to the period of time member states have to share the contents of CbC reports with other member states for the first reporting period – this period has been extended from 15 months to 18 months, in line with the OECD recommendation.

It is clear that the EU intends to follow the internationally agreed recommendations of the OECD BEPS project on CbC reporting to tax authorities. The directive requires member states, in transposing the directive into domestic law, to refer to the OECD action 13 report for interpretation. The EU will continue to take account of future developments at the OECD level, presumably including the OECD review of the CbC template scheduled for 2020.

As recommended by the G20/OECD, member states should use the information contained within a CbC report to assess high-level transfer pricing risks and other risks related to BEPS, and also can use the information as a basis for making further inquiries in the course of a tax audit. Transfer pricing adjustments should not be made based only on the CbC information provided. However, the CbC reporting directive does not go as far as the OECD recommendations in stating that, should such an adjustment be made solely on the basis of the CbC report, it should be conceded by the tax authorities promptly in mutual agreement proceedings.

— Bill Dodwell (London)
Partner
Deloitte United Kingdom
bdodwell@deloitte.co.uk

Israeli tax authorities clarify PE/VAT issues for foreign digital suppliers

On 11 April 2016, the Israeli tax authorities (ITA) published the final version of a circular concerning the digital economy, which previously was released in draft form in April 2015 (for prior coverage, see *World Tax Advisor*, 25 March 2016). The circular clarifies the tax authorities' position regarding certain permanent establishment (PE) and VAT issues relating to foreign suppliers of digital goods and services to Israeli residents, and was drafted in light of the OECD's work on the BEPS project and its October 2015 release of the final reports on action 1 (addressing the challenges of the digital economy) and action 7 (preventing the artificial avoidance of PE status) (for prior coverage, see OECD alert, 5 October 2015).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160325_7.html
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-5-october-2015.pdf

The circular makes public the ITA's position on the manner in which certain tax principles should be interpreted, given the growing use of digital services and goods, and it focuses on three main topics:

1. PE issues that arise from the cross-border sale of products and services through the internet;
2. The attribution of income to PEs; and
3. Internet services that require their foreign suppliers to register with the Israeli VAT authorities (VATA).

PE issues arising from the sale of products and services through the internet

In its clarifications relating to PE issues, the circular provides different rules applicable to residents of countries that have concluded a tax treaty with Israel (reciprocating states) and residents of other countries (nonreciprocating states).

Reciprocating states: The circular generally adheres to the currently accepted interpretation of the OECD model tax treaty, as reflected in the commentary on "fixed place of business" and "agency permanent establishment" under sections 5(1) and 5(5) of the model, respectively.

In addition, following the release of the BEPS action 7 report concerning PEs, the circular sets out the ITA's interpretation of the types of activities that may benefit from the exemptions from PE status provided by section 5(4) of the model treaty for certain "preparatory or auxiliary" activities; in essence, the circular limits the scope of these exemptions. The circular provides the following:

- A collection of activities, each qualifying for an exemption on its own, will be considered to constitute a PE if, examined together, the aggregated activities are not merely preparatory and/or auxiliary in nature.
- Domestic operations involving activities not directly listed among the available exemptions may be eligible for an exemption only where their nature differs from the main business operations of the foreign enterprise and is considered inconsequential to the main goals of these operations.
- Preparatory and/or auxiliary activities conducted by a foreign enterprise in conjunction with another activity that is considered one of the main business operations of the foreign enterprise will be deemed to give rise to a PE.
- Operations conducted in Israel that are characterized by a significant digital presence (SDP) in Israel might not qualify for an exemption. Indications of an SDP could include a significant number of contracts signed with Israeli residents via the internet; services offered by the foreign enterprise that are used by many Israeli residents online; or where a foreign enterprise customizes its internet services to Israeli users. (This measure seems to go beyond the OECD's recommendations under the BEPS project, which do not include an SDP as an element in determining the existence of a PE.)

Nonreciprocating states: The circular provides that activities of foreign enterprises that are residents of nonreciprocating states are examined by the tax authorities in light of the domestic source rules in the Israeli Tax Ordinance. The circular identifies three types of business operations that may be considered as producing business income that originates in Israel:

1. Operations conducted through physical premises in Israel;
2. Operations supported by an Israeli agent and/or representative; or
3. Operations indicating the foreign enterprise has a "significant economic presence" (SEP) in Israel. Indications of an SEP could include the provision of online services relating to Israeli customers, a high volume of online transactions with Israeli customers, the provision of online services customized to Israeli customers, etc.

Attribution of income to PE

Reciprocating states: Under the circular, the income attributed to a PE of a foreign enterprise that is a resident of a reciprocating state must be determined based on the arm's length principle. The methodology used must eliminate the effect of the interdependent relationship between the foreign enterprise and the PE, while accounting for the functions performed, the assets held and the risks assumed by the PE.

Nonreciprocating states: Where a foreign enterprise is a resident of a nonreciprocating state, the circular provides that the income attribution must be determined according to a methodology that accounts for the relevant functions, assets and risks.

VAT registration requirement

Under the Israeli VAT law, foreign entities conducting business in Israel are required to register with the VATA. Generally, the import of goods (regardless of whether purchased online) into Israel by an Israeli importer would not require the exporter to register with the VATA; instead, the importer would have to pay VAT on the goods imported under a reverse-charge mechanism (regardless of whether the goods are tangible or intangible). However, the provision of online services to Israeli residents normally is considered as the provision of services in Israel (i.e. the conduct of business in the country), which requires the foreign supplier to register with the VATA and pay VAT.

The circular provides the tax authorities' interpretation of the VAT law, as well as the "conduct-of-business" terminology in light of the digital economy, and concludes that the provision of internet services should be considered as business conducted in Israel if one of the following conditions is fulfilled:

- The business activity of the foreign enterprise constitutes a PE in Israel for income tax purposes;
- The foreign enterprise has established a "business mechanism" in Israel (e.g. has employees in Israel, a branch in Israel, an office in Israel, etc.);

- An Israeli representative facilitates the foreign enterprise's business activities in Israel, and such activities are auxiliary in nature (e.g. data gathering, maintaining or establishing business relationships, marketing, debt collection, advisory, customer service, etc.); or
- The foreign enterprise has an SEP in Israel.

The tax authorities' interpretation of what constitutes the conduct of business significantly expands the scope of foreign enterprises that potentially may be considered as conducting business in Israel, beyond the treatment that generally has applied in practice, and thus potentially subjects these enterprises to VAT registration, a requirement to charge VAT on the services they render and a VAT reporting obligation. The circular also clarifies that foreign enterprises conducting business in Israel should not be considered as foreign residents for certain purposes of the VAT law and, therefore, any Israeli dealers that provide services to such foreign enterprises must charge the full VAT rate (17%) on the services supplied, instead of the 0% rate applicable to foreign service recipients.

— Yitzchak Chikorel (Tel Aviv)
Partner
Deloitte Israel
ychikorel@deloitte.co.il

Hagit Oren (Tel Aviv)
Senior Manager
Deloitte Israel
horen@deloitte.co.il

Colombia:
Guidance issued on application of thin cap rules

A ruling issued by Colombia's tax authorities (DIAN) on 25 May 2016 and that is effective as from that date clarifies the application of the thin capitalization rules and the scope of the term "interest" for purposes of the regime.

The thin cap rules limit the deductibility of interest expense when the total amount of interest-bearing debt during the tax year exceeds a 3:1 debt-to-equity ratio (4:1 for certain entities). The interest deduction restriction does not apply to transactions of financial institutions or where the taxpayer is under the control and supervision of the superintendence of finance.

According to the DIAN ruling, the thin cap rules apply to the total average amount of domestic and foreign loans, regardless of whether the loan is from a related or an unrelated party. The ruling also confirms that thin capitalization exists where (1) there is any discernible disproportion between the capital relationship of responsibility and the level of risk the company assumes to carry out its social purpose, and (2) the company's total average amount of interest-bearing debt exceeds three times the liquid equity of the immediately preceding year.

It should be noted that the DIAN ruling does not address the circumstances in which the transfer pricing regime applies because a loan between related parties does not carry interest or the interest is below an arm's length rate, or cases in which the thin cap rules do not apply because the interest concerned is payable on a loan or credit security with a term of eight years or more granted for purposes of financing infrastructure projects under the Public-Private Partnership scheme.

— Mario Andrade (Bogota)
Partner
Deloitte Colombia
maandrade@deloitte.com

Oscar Jiménez (Bogota)
Manager
Deloitte Colombia
ojimenez@deloitte.com

Cyprus:
Tax treaty update

The tax treaty between Cyprus and Bahrain, signed on 9 March 2015, entered into force on 26 April 2016 and will apply as from 1 January 2017; additionally, on 24 May 2016, Cyprus signed a tax treaty with Latvia. Both treaties are expected to expand trade between the treaty partner countries and attract foreign direct investment.

Bahrain treaty

The main provisions of the treaty, which generally is based on the OECD model tax treaty, are as follows:

- **Permanent establishment:** A building site or construction or installation project, or any supervisory activities in connection with such a site or project, will constitute a permanent establishment only if it lasts more than 12 months.
- **Dividends, interest and royalties:** Dividends, interest and royalties may be taxed only in the state of residence of the recipient.
- **Capital gains:** Gains derived by a resident of a contracting state from the disposal of immovable property situated in the other contracting state may be taxed in that other state. Gains arising from the disposal of shares will be taxable only in the contracting state in which the alienator is resident.

Cyprus does not levy withholding tax on dividends or interest, and Bahrain does not levy withholding taxes on dividends, interest or royalties. Should Bahrain decide at some point in the future to introduce withholding tax under its domestic law, the treaty will provide certainty that there will be no withholding tax on payments made to Cypriot tax residents.

Latvia treaty

The main provisions of the treaty with Latvia are as follows:

- **Permanent establishment:** A building site or construction or installation project will constitute a permanent establishment only if it lasts more than nine months (rather than 12 months, as provided under the OECD model tax treaty).
- **Dividends and interest:** A 0% withholding tax rate will apply to dividends or interest paid to a company (other than a partnership) resident in the other contracting state that is the beneficial owner of the dividends/interest; otherwise, the rate will be 10%.
- **Royalties:** A 0% withholding tax rate will apply to royalties paid to a company (other than a partnership) resident in the other contracting state that is the beneficial owner of the royalties; otherwise, the rate will be 5%.
- **Capital gains:** Gains derived by a resident of a contracting state from the disposal of immovable property situated in the other contracting state may be taxed in that other state. Gains derived by a resident of a contracting state from the disposal of shares in a company deriving more than 50% of their value, directly or indirectly, from immovable property situated in the other contracting state may be taxed in that other state.

Latvia does not levy withholding tax on dividends, interest or royalty payments, except when such payments are made to persons resident in a jurisdiction included on a black list issued by the Latvian government.

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

— Pieris Markou (Nicosia)
Partner
Deloitte Cyprus
pmarkou@deloitte.com

European Union:
Anti-tax avoidance directive finalized

After considerable debate on the EU anti-tax avoidance directive (ATAD) on 17 June 2016, the Dutch presidency declared the ATAD final, provided no objections were raised by 11 pm on 20 June (for prior coverage, see *World Tax Advisor*, 10 June 2016). The three-day postponement was intended to allow Belgium to decide whether it could accept

the compromises put forward at the EU Economic and Financial Affairs Council (ECOFIN) meeting. Since no objections were raised, the ATAD is expected to be ready for formal approval at the next European Council meeting.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160610_3.html

The revised deadline for the ATAD to be transposed into the national law of EU member states is 31 December 2018, so that it will take effect as from 1 January 2019 (with certain exceptions described below).

The revised ATAD provides for the minimum harmonization of rules in the areas of interest deductions, controlled foreign corporations and hybrid mismatches, and the introduction of a corporate general anti-abuse rule; the proposed "switchover clause" has been removed. The compromises agreed upon include allowing grandfathering of existing debt from the interest limitation rules and allowing EU member states that have national targeted rules equally effective to the interest deduction limitation rule to continue to apply those rules until the earlier of 2024 or the adoption of interest limits as a minimum standard by OECD members. New rules on exit taxation (i.e. where a company transfers corporate residence, or transfers assets to a permanent establishment) must be introduced as from 2020. The European Commission has been instructed to prepare a proposal to counter third-country hybrid mismatches before the end of 2016.

— Bill Dodwell (London)
Partner
Deloitte United Kingdom
bdodwell@deloitte.co.uk

India:
ITAT clarifies treatment of web hosting services

The Mumbai Income Tax Appellate Tribunal (ITAT) issued a decision on 31 March 2016 clarifying that a payment for web hosting services will not be treated as a royalty subject to withholding tax under India's domestic tax law in a case where the taxpayer receiving the services does not have a right to physical access or control over the equipment used to provide the services (*Savvis Communication Corporation*).

The rapid development and evolution of technology has been a major factor in the shift to a digital economy that is based on intangible property and digital goods and services. Most businesses today, whether local or multinational, use many information technology (IT)-enabled services. "Web hosting" is one such tool. In simple terms, web hosting services provided by a company involve the provision of storage space for data and applications on a server the company owns or leases for use by its clients, as well as the provision of internet connectivity (typically, in a data center). Generally, the clients of web hosting companies do not have any control over, or right to use, the server or equipment used by the web hosting company, and the services the web hosting company provides are restricted to the backup, maintenance and security of data and the uninterrupted use of services, and not for any use of equipment.

Similar to other IT services, the taxability of payments made for web hosting services has been a contentious issue in India, with an ongoing debate on whether payment for such services qualifies as a royalty for the use of equipment that is subject to withholding tax under India's domestic law.

Since India expanded its domestic law definition of "royalty" in 2012, the tax authorities have tried to impose the broader scope of the definition to encompass most IT services, including web hosting services, since a payment for the use of equipment now may be considered a royalty even if the equipment is not in the possession and control of the service recipient. This conflicts with the principle set forth in the commentary to the royalties article in the OECD model tax treaty, with respect to the taxability of "transponder leasing payments." The commentary notes that where payments are made by customers that do not acquire physical possession of the transponder, but simply the use of its transmission capacity, such payments would be regarded as services taxable as business income. If the same rationale is applied to payments made for web hosting services, where the customer does not have the physical possession of the equipment, the payments would not be taxable as royalties.

In a welcome development, the Mumbai ITAT held in *Savvis Communication* (a US-based web hosting service provider that provided services to Indian entities) that payments received for the provision of web hosting services in a case where the client did not have the right to use the equipment that was used to provide such services, or any physical access to that equipment, were not taxable as royalties under India's domestic law.

The Mumbai ITAT opined that the true test of whether a payment is a royalty is whether the consideration is paid for the provision of services, which may involve the use of scientific equipment, or paid for the use of equipment. In a case of the provision of services, the payment is not taxable as a royalty.

The ITAT held that the taxpayer was providing web hosting services with the help of sophisticated scientific equipment in the virtual world. The payment could not be treated as consideration paid for the use of, or the right to use, scientific equipment, so it was not taxable as a royalty under India's domestic law. The Mumbai ITAT relied on its own prior ruling, in which it held that "a payment cannot be said to be consideration for use of scientific equipment when [the] person making the payment does not have an independent right to use such an equipment and physical access to it."

Comments

While the Mumbai ITAT ruling should be a welcome decision for taxpayers, it is noteworthy that there is no discussion in the ruling on whether web hosting services could be classified as "fees for technical/included services" under India's domestic law or an applicable tax treaty. Nevertheless, taxpayers purchasing standard services involving the use of technology and equipment may rely on this decision as support that payments for the services should not be treated as royalties, as long as the taxpayers do not have physical control and possession over the equipment.

— Rajesh H. Gandhi (Mumbai)
Partner
Deloitte Haskins & Sells LLP
rajegandhi@deloitte.com

Italy:
Further clarifications issued on tax ruling regime for new investments

Italy's tax authorities issued guidance (Circular No. 25/E) on 1 June 2016 that provides important clarifications on the advance tax ruling regime for new investments (for prior coverage, see Italy tax alert, 23 September 2015). Tax rulings for new investments may cover projects undertaken by resident and nonresident companies and may apply to asset and share deals, as well as to any type of business reorganization or revamping of an existing business. Such rulings will provide certainty on the tax treatment of a qualifying investment in Italy.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-italy-23-september-2015.pdf

The implementation rules for the new advance tax ruling regime were issued on 29 April 2016 by a ministerial decree, and on 20 May 2016 through guidance issued by the tax authorities. The rules apply as from 20 May 2016.

The main clarifications provided in Circular No. 25/E include the following:

Qualifying persons: The parties entitled to file a tax ruling request for new investments include the following, among others:

- Italian companies and other entities carrying on commercial activities;
- Nonresident companies, regardless of whether they have a permanent establishment in Italy; and
- Groups of companies and any other associations of businesses (e.g. joint ventures, consortiums, temporary company associations, etc.).

Qualifying investments: Based on the clarifications in the circular, qualifying investments may include cash injections aimed at creating new economic initiatives, as well as business strategies aimed at reorganizing an existing activity to create more operational efficiency (e.g. investments to commence new economic activities; expansion of existing economic activities; diversification of production in a business unit; and restructuring processes aimed at resolving a company crisis). Qualifying investments also may include share deals, including leveraged buy-out transactions and reorganizations.

Qualifying investments must meet the following requirements:

- The investment must be carried out in Italy;
- The investment must generate positive, significant and long-term occupational effects by creating new jobs or by retaining existing jobs. The tax authorities will evaluate the employment impact of the investment on a case-by-case basis, although neither the law nor the implementation rules provide any specific parameters to be used in making this evaluation; and
- The total amount of the investment must meet a minimum threshold of at least EUR 30 million in value. Acquisition (and/or building) costs of tangible and intangible assets (and all related costs), acquisition costs of financial assets and increases of the operating working capital (i.e. increases of commercial receivables and inventory) will be included in determining the value of the investment.

Scope of rulings and application procedure: The circular clarifies that rulings for new investments may include topics that usually are covered by other types of tax rulings provided for under the Italian rules. In addition to the interpretation of a specific provision of the tax law, rulings for new investments may address issues such as the applicability of the general or specific anti-avoidance rules or the access to specific tax regimes (with an exception for certain specific topics that are covered by the "international tax ruling" regime (i.e. those involving certain cross-border issues) or other specific ruling regimes (e.g. advance pricing agreements, patent box rulings)).

A request for a tax ruling for new investments must include the following information (as provided in the April ministerial decree):

- Company name and VAT code/taxpayer number, name of legal representative, legal seat and "elected domicile";
- Detailed description of the investment plan, with particular emphasis on the value of the investment and the criteria the taxpayer used to assess whether the investment met the EUR 30 million threshold;
- Financial resources used to carry out the investment;
- Investment timing and implementation plan;
- Related employment aspects;
- Taxable revenue deriving from the investment; and
- Tax rules relevant to the investment plan, and the proposed interpretation of these rules.

The ruling request also should contain all information and documentation necessary to support the investment strategy, and the corresponding tax effects of the investment (however, information covered by confidentiality may be omitted if not strictly related to the ruling request).

A ruling request may be filed even after the activities described in the business plan have commenced (provided the tax authorities have not initiated an audit relating to the investment). However, the request must be filed before the deadline for the filing the relevant tax return to which the ruling would apply, or the deadline for complying with any other tax requirements connected with the investment plan.

The tax authorities generally must respond to a ruling request within 120 days (with the possibility to extend the term by 90 days if additional information is requested). If the tax authorities do not respond within the relevant time period, the authorities are deemed to agree with the taxpayer's interpretation of the investment plan, as described in the ruling request.

Effect of a ruling: The tax authorities' response to a ruling request (i.e. the issuance of a ruling or the failure to respond to a ruling request within the relevant timeframe) grants a safe harbor with regard to the tax matters covered by the ruling, binding the authorities in the case of a tax inspection or subsequent assessment. The effects of a ruling will extend to all of the entities involved in the investment plan that are described by the taxpayer (e.g. investors and beneficiaries). The response to a ruling request remains valid as long as the factual and legal circumstances described in the ruling remain unchanged.

Comments

The ruling regime for new investments – which is open to both resident and nonresident investors – should be particularly appealing to nonresident investors that are seeking a high level of certainty on the tax rules applicable to relevant Italian investments and seeking to minimize the possibility of disputes with the Italian tax authorities. If compared to other types of tax rulings currently available in Italy, a ruling for new investments – apart from its broad scope – provides the additional benefit that the tax authorities would not have the option to change their interpretation of the applicable tax law provisions, unless there is a change in the fact pattern or the tax law itself (which would include decisions issued by the Italian supreme court).

A ruling also would allow the taxpayer to access the "cooperative compliance regime" (an elective regime that permits taxpayers that have adopted an adequate internal audit model for managing and controlling their tax risks to obtain certain tax benefits), regardless of whether the turnover requirements (EUR 10 billion, according to the current regulations) are met in the specific case.

— Luca Bosco (Turin)
Partner
Deloitte Italy
lubosco@sts.deloitte.it

Stefano Schiavello (New York)
Partner/Client Service Executive
Deloitte Tax LLP
stschiavello@deloitte.com

Panama:
Country moves toward adoption of CRS

Panama has taken significant steps toward adopting the OECD's common reporting standards (CRS):

- On 19 April 2016, the Minister of the Presidency announced that Panama will begin to adopt the CRS so that it can begin exchanging financial account information on a bilateral basis with other jurisdictions starting in 2018.
- On 29 April 2016, the government established an independent committee of national and international experts, as a first step to make sure that Panama takes the appropriate measures to build relationships and transparency with other countries. The committee is responsible for evaluating Panama´s current legal framework and the practices of the country´s financial services industry, to identify any vulnerabilities that may exist and that can be improved upon, as well as developing Panama´s global financial policies.
- On 17 May 2016, Panamanian government officials met with the OECD in Paris to develop a framework to help guide the implementation of the CRS in Panama. The OECD has agreed to support Panama with any technical assistance that may be required for the implementation of the new legislation and the technological systems that would be required under the CRS.

Panama also has begun negotiations with other countries to adopt bilateral agreements on the automatic exchange of information that is required to be reported under the CRS. On 20 May 2016, representatives from Japan met with Panamanian officials to negotiate such an agreement. Although the negotiations are complete, the agreement is awaiting revisions from each of the governments and, therefore, it has yet to be signed. Panama also has agreed to begin negotiations with Germany and Singapore to adopt automatic exchange of information agreements in line with the CRS.

— Michelle Martinelli (Panama)
Partner
Deloitte Panama
mmartinelli@deloitte.com

Switzerland:
Parliament approves Corporate Tax Reform III

On 17 June 2016, the two chambers of the Swiss parliament formally approved the Corporate Tax Reform III (CTR III), which aims to align Swiss tax law with international standards and to enhance Switzerland's attractiveness as a location for multinational companies (for prior coverage, see Switzerland tax alert, 14 June 2016). The approved law, which could enter into effect as soon as 1 January 2018, mainly contains the following measures to attract multinational companies:
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-switzerland-14-june-2016.pdf

- Reduction of the headline corporate tax rates at the discretion of the individual cantons, so that more cantons could expect to be in the 12%-14% range for their effective combined federal/cantonal/communal tax rates;
- Introduction of a patent box at a cantonal/communal level that would be mandatory for all cantons and applicable to all patented intellectual property (IP) for which the R&D spend occurred in Switzerland (the OECD modified nexus approach). The cantons would be able to exempt up to 90% of the patent income from taxation for cantonal/communal tax purposes;
- Introduction of R&D incentives on a cantonal/communal level in the form of excess R&D deductions of up to 150% of qualifying expenditure, at the discretion of the individual cantons;
- Allowance of a step-up (including for self-created goodwill) for direct federal and cantonal/communal tax purposes upon the migration of a company, or of additional activities and functions, to Switzerland;
- Allowance of the tax-privileged release of hidden reserves for cantonal/communal tax purposes for companies transitioning out of tax-privileged cantonal tax regimes (such as mixed or holding companies) into ordinary taxation, over a period of five years;
- Introduction of a notional interest deduction (NID) on “surplus equity” (which would be defined per asset class) at the federal level and at the cantonal/communal level at the discretion of the individual cantons. The permitted NID rate would be equal to the 10-year Swiss government bond yield. However, insofar as the surplus equity finances intragroup receivables, such as loans or trade receivables, an arm’s length interest rate could be applied on the surplus equity portion. Cantons that opt to introduce an NID on equity would be required to tax at a cantonal/communal level at least 60% of the dividend income received by individuals from qualifying participations of at least 10%, under the partial taxation regime for dividends; and
- Reduction of the cantonal/communal annual net wealth tax in relation to the holding of participations, patented IP and intercompany loans, at the discretion of the individual cantons.

The combined tax reduction available through the patent box, the release of hidden reserves, the NID and the excess R&D deduction would be limited to a maximum of 80% of the cantonal/communal taxes. Cantons could opt to introduce a lower percentage threshold.

A referendum that would result in a national vote on the CTR III has been announced and likely will be held in 2017, so the law could become effective as soon as 1 January 2018.

— Raoul Stocker (Zurich)
Partner
Deloitte Switzerland
rstocker@deloitte.ch

Jacques Kistler (Geneva)
Partner
Deloitte Switzerland
jkistler@deloitte.ch

In brief

China: The State Administration of Taxation issued guidance (Bulletin 29) on 11 May 2016 that clarifies the administration of the VAT exemption for cross-border taxable activities. Bulletin 29 supplements the main guideline for the VAT reform (Circular 36) by providing detailed rules on VAT-exempt status, as well as guidance on the registration process and the responsibilities of taxpayers and the tax authorities. Chinese persons carrying out cross-border taxable activities must satisfy all of the following conditions to qualify for VAT-exempt treatment: (1) the activity must fall within the scope of the 20 activities listed in Bulletin 29; (2) the taxpayer generally must conclude a written contract with the service recipient for the supply of the cross-border services or intangible assets; and (3) where the taxpayer supplies services or intangible assets to overseas recipients, the resulting income must be received from overseas. Bulletin 29 is effective as from 1 May 2016, and it supersedes the previous VAT exemption guidance found in Bulletin 49, which is repealed as from the same date.

Spain: Effective 1 July 2016, large taxpayers (i.e. those in the large taxpayer registry) will be required to file their tax returns, tax refund requests and other documents electronically. Penalties will apply for noncompliance.

Taiwan: On 28 April 2016, Taiwan’s Executive Yuan submitted a proposal to the legislature that would introduce controlled foreign company (CFC) rules, as well as a “place of effective management” (POEM) test for the determination of a corporation’s tax residence. Measures to introduce CFC and POEM rules have been proposed in the

past (for prior coverage, see *World Tax Advisor*, 24 May 2013), but those proposals were not adopted. If the new proposal is approved, two new articles would be added to Taiwan's Income Tax Act.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130524_8.html

United States: The Treasury Inspector General for Tax Administration (TIGTA) has issued a report resulting from its audit of how the Internal Revenue Service (IRS) is managing the Offshore Voluntary Disclosure Program (OVDP). The OVDP provides US taxpayers that have intentionally failed to report income earned from offshore accounts or that have neglected to disclose foreign assets as required by law with an opportunity to become compliant with their tax obligations and potentially avoid significant penalties and criminal prosecution. TIGTA provided recommendations on how the IRS can improve in initiating compliance actions and assessing penalties to address noncompliance by taxpayers that are denied access to the OVDP or that withdraw from the program, and in addressing internal control weaknesses. The IRS plans to adopt most of these recommendations.

BEPS corner

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

Austria: Draft legislation has been introduced based on the OECD's three-tiered standardized approach to transfer pricing documentation. See global transfer pricing alert, 9 June 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-018-9-june-2016.pdf

European Union: The EU directive on country-by-country reporting, which follows the recommendations under BEPS action 13, entered into force on 3 June 2016. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160624_1.html

European Union: The anti-tax avoidance directive has been finalized, which would provide for the minimum harmonization of certain rules, including those in the areas of interest deductions, controlled foreign corporations and hybrid mismatches. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160624_5.html

Israel: A circular has been issued on the digital economy, which was drafted in light of the final reports on BEPS actions 1 and 7. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160624_1.html

Netherlands: A draft bill has been presented to parliament that proposes changes to bring the innovation box regime in line with the recommendations for patent box regimes under action 5 of the OECD BEPS project. The bill would introduce the nexus approach to qualify for benefits under the regime, so that the benefits would be granted only to the extent the taxpayer incurred the expenses to develop the relevant intellectual property (IP) right that gave rise to the IP income; IP developed with the assistance of related group companies no longer would qualify for the regime. The proposed measures would impose more regulatory and administrative burdens on companies claiming benefits under the regime. If approved, the new measures would apply as from 1 January 2017, with certain grandfathering rules available.

OECD: The OECD has approved the incorporation of BEPS-related amendments into the transfer pricing guidelines. See global transfer pricing alert, 17 June 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-021-17-june-2016.pdf

Switzerland: The Corporate Tax Reform III includes measures to introduce a patent box regime that would follow the modified nexus approach under action 5 of the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160624_9.html

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.

Cyprus-Latvia: When in effect, the treaty signed on 24 May 2016 provides for a 0% withholding tax rate on dividends and interest paid to a company (other than a partnership); otherwise, the rate will be 10%. A 0% rate will apply to royalties paid to a company; otherwise, the rate will be 5%.

Cyprus: See article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160624_4.html

Egypt-Saudi Arabia: When in effect, the treaty signed on 8 April 2016 provides for a 5% withholding tax rate where dividends are paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest will be 10%. A 0% rate will apply to royalties paid to the government; otherwise, the rate will be 10%.

France-Singapore: The 2015 treaty to replace the treaty dating from 1974 entered into force on 1 June 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 5% withholding tax where dividends are paid to a company that owns, directly or indirectly, at least 10% of the capital of the payer company. The domestic withholding tax rate may apply to dividends paid by an investment vehicle that derives income or gains from immovable property, whose income or gains are not taxed and that distributes most of its income annually to a shareholder that owns, directly or indirectly, at least 10% of the capital of the investment vehicle. Otherwise, the rate will be 15%. An exemption will apply to interest paid from one enterprise to another; otherwise, the rate will be 10%. Royalties will be taxable only in the state of residence of the recipient.

Japan-Taiwan: The 2015 tax agreement entered into force on 13 June 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 10% withholding tax rate on dividends, interest and royalties.

Malta-Azerbaijan: When in effect, the treaty signed on 29 April 2016 provides that where dividends are paid by a Malta company to an Azerbaijan resident, the Maltese tax on the dividends may not exceed the amount chargeable on the profits out of which the dividends are paid. An 8% rate will apply to dividends paid by an Azerbaijan company to a Malta resident. The rate on interest and royalties will be 8%.

Norway-Romania: The 2015 treaty to replace the treaty dating from 1980 entered into force on 1 April 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 5% withholding tax rate where dividends are paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company; otherwise, the rate will be 10%. The withholding tax rate on interest and royalties will be 5%.

OECD: Jamaica and Uruguay signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 1 June 2016, bringing the number of signatories to 96 countries. Brazil has deposited its instrument of ratification of the convention, which signifies that the convention will enter into force for Brazil on 1 October 2016. The multilateral convention provides for administrative assistance in tax matters: exchange of information on request, spontaneous exchanges, automatic exchanges, tax examinations abroad, simultaneous tax examinations and assistance in tax collection.

Saudi Arabia-Algeria: The 2013 treaty entered into force on 1 March 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 0% withholding tax rate on dividends and interest. The rate on royalties will be 7%.

Sweden-Armenia: When in effect, the treaty signed on 9 February 2016 provides for a 0% withholding tax rate where dividends are paid to a company (other than a partnership) that holds at least 25% of the capital or voting power of the payer company, that has owned the holding for at least two years before any claim for the application of the 0% rate is made and in whose hands the dividends are exempt from tax; a 5% rate will apply on dividends paid to a company (other than a partnership) that holds at least 10% of the capital or voting power of the payer company; otherwise, the rate will be 15%. A 5% rate will apply to interest and royalties.

Sweden-Azerbaijan: When in effect, the treaty signed on 10 February 2016 provides for a 5% withholding tax rate where dividends are paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company and whose participation in the payer company exceeds EUR 200,000 or its equivalent in the national currencies of the contracting states; otherwise, the rate will be 15%. An 8% rate will apply to interest. A 5% rate will apply to royalties payable for the use of, or right to use, a patent, trademark, design or model, plan, secret formula or process, or for industrial, commercial or scientific information; otherwise, the rate will be 10%.

Are You Getting Your Global Tax Alerts?

Regularly, Deloitte provides commentary and analysis on developments affecting cross-border transactions on a free subscription basis delivered straight to your email. Read the recent alerts below or visit the archive.

Austria
Austria plans introduction of standardized transfer pricing documentation
On 9 May 2016, Austria's tax authorities issued the draft Transfer Pricing Documentation Act, which would introduce mandatory standardized transfer pricing documentation requirements. The draft legislation is based on the OECD's three-tiered standardized approach to transfer pricing documentation, and would impose penalties for failure to comply with the CbC reporting obligations.
Issue date: 9 June 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-018-9-june-2016.pdf

OECD
OECD approves incorporation of BEPS amendments into transfer pricing guidelines
On 23 May 2016, the OECD Council formally approved the amendments to the transfer pricing guidelines set out in the BEPS report on actions 8-10 on aligning transfer pricing outcomes with value creation, and the report on action 13 regarding transfer pricing documentation and CbC reporting.
Issue date: 17 June 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-021-17-june-2016.pdf

United States
US Tax Court rules against IRS's use of CPM, applies CUT method
On 9 June 2016, the US Tax Court rejected the Internal Revenue Service's use of the aggregate comparable profits method in the *Medtronic Inc.* case to determine the appropriate royalty rate between Medtronic US and its Puerto Rican subsidiary.
Issue date: 14 June 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-020-14-june-2016.pdf

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.