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Direct and indirect tax implications of Brexit

In an historic referendum held on 23 June 2016, the UK electorate voted for the country to leave the EU. The vote, however, will have little, if any, immediate impact on direct or indirect taxes. The UK remains an EU member state, and EU laws and treaty obligations will continue to have effect, until a secession agreement is concluded with the EU.

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Under article 50 of the Consolidated Treaty on the European Union, the UK is required to officially notify the European Council of its decision to leave the EU. The UK then has two years to negotiate the secession agreement, although this period can be extended with the unanimous agreement of the other 27 member states. During this time, EU laws, treaty obligations and access to the Court of Justice of the European Union (CJEU) will continue to have effect.

The former prime minister announced that the timing for triggering the secession negotiations will be a matter for his successor (a new prime minister was appointed on 13 July 2016). Few changes are likely to occur while the secession negotiations take place, and the scope of future tax changes would be determined by the outcome of those negotiations.

Following secession, it is possible that the UK's approach to taxation could diverge from the current position, since future governments could have more freedom of choice. Some of the possible models for post-EU arrangements would include continued adherence to the EU's direct tax obligations.

Some indirect taxes (principally VAT and customs duties) are EU taxes. The UK would need to introduce its own customs duty system, although some models would allow the UK to remain in the customs union with the EU/European Economic Area (EEA) member states. VAT already is a part of UK law and would continue without the EU VAT directive, subject to future changes and new legislation for some minor points.

Even without EU legal constraints, the UK is unlikely to develop wholly new tax systems. The EU direct tax restrictions are relatively minor and the focus on a territorial system of corporate tax is a model adopted by many other countries. Similarly, there is a worldwide focus on VAT systems, and many emerging economies are introducing VAT. In that context, it would be surprising if future UK governments were to make fundamental system-wide changes. Minor changes could be made more easily.

Potential indirect and direct tax implications of Brexit are discussed below, following a general discussion of alternatives to EU membership.

Possible alternatives to EU membership

One key difficulty in determining the implications of the UK leaving the EU is that there are a number of alternatives to full EU membership, which offer different balances in terms of advantages and disadvantages. Options include:

- **Membership in the EEA (Norway model):** Norway (as well as Iceland and Liechtenstein) is a member of the EEA, but is not in the EU. The EEA model allows access to the single market and, thus, comes with many of the key obligations of EU membership, including financial contributions (about 83% of those required of full EU membership, in the case of Norway). EEA members must follow most of the rules of the single market, but without a vote or veto on how those rules are made. EEA members have to accept the free movement of people, in line with the EU treaty freedoms.
- **Negotiated bilateral agreement (Switzerland model):** Bilateral agreements with the EU typically offer limited access to the single market (i.e. some combination of tariff-free trade, specified access to the services market and guarantees that companies operating in these markets are treated in a fair and nondiscriminatory manner). Bilateral agreements rarely go far in establishing a customs union or addressing non-tariff barriers. Switzerland's arrangements with the EU go furthest in replicating the benefits of EU membership, but bring an increased proportion of the obligations, including accepting the free movement of people, making a significant contribution to EU spending and compliance with the majority of rules governing the single market.
- **Advanced free trade agreement (Canada model):** This approach would further reduce access to the single market. The EU-Canada agreement does not give tariff-free access to the single market for all Canadian manufactured goods, does not cover a number of key sectors and requires Canada to accept EU rules when exporting to the EU. Specifically, the Canadian agreement does not cover services, which is a key part of the UK economy.
- **World Trade Organization (WTO) membership:** The WTO sets out rules governing trade between WTO members (which include the UK). WTO rules do not include any preferential access to the single market, or to any of the 53 markets with which the EU has negotiated free trade agreements.

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Indirect tax implications

Customs duty: Following secession, the UK likely would cease to be part of the EU customs union. Control of customs duty, and entitlement to all of the revenue generated, would revert to the UK. UK legislation likely would be needed to replace the EU directives, regulations and council decisions that currently govern customs duty. While the UK could enact domestic law that replicates the effect of the current EU provisions, the fact that the UK has raised objections to some of those provisions suggests that some changes might be made.

Duty rates that currently are under EU control would come under UK management. Although this could lead to changes, it would appear likely to be a longer-term process, if it happens at all.

Customs and international trade programs (e.g. the authorized economic operator program) are likely to continue unchanged in effect (although domestic legislation to implement them may be needed), as are other customs processes, such as temporary importation, duty suspension, etc.

Perhaps the most significant customs duty-related change affecting businesses would be the recognition of trade with EU member states as imports and exports. Depending on the outcome of the secession negotiations, duty may be payable when goods move to and from EU member states, and this, and the related import and export formalities, could create some impediments to trade, as well as extra compliance costs.

The UK would lose the benefit/burden of EU-level trade agreements. The UK likely would seek to replace most, if not all, of these agreements with independently negotiated agreements. The timeframe for negotiating such new agreements is uncertain.

Excise duty: Following secession, EU-level influence on excise duties would cease. However, since excise duty rates are not fully harmonized (maximum and minimum rates are governed by EU guidance, as are the holding and movement of excisable goods), this is unlikely to result in material changes to rates in the UK market.

As with customs duty, movements of excisable goods between the UK and EU member states would be treated as imports or exports. Subject to any agreements reached during the secession negotiations, such movements likely would be subject to different procedures (potentially involving additional compliance costs and considerations) than the current "intra-EU trading" rules.

VAT: With effect from the date of secession, taxpayers no longer would be able to rely on the "direct effect" of EU laws, and the teleological approach to the interpretation of UK VAT law (which has its origins in the way that EU law is written and interpreted) may be less widely applied. The UK courts and tribunals would revert to interpreting the UK provisions and would have far less regard to decisions emerging from the CJEU (although the fact that, for the foreseeable future, UK VAT law will have its roots in EU law makes it likely that the courts and tribunals still would need to consider existing and future CJEU case law when applying UK provisions).

The fact that the UK no longer would have to comply with EU VAT law (VAT rates, scope of exemptions, zero-rating, etc.) would mean that, following secession, the UK would have more flexibility in those areas. It is not possible to accurately forecast possible changes, but any future government would need to consider such changes in the context of its revenue position.

With respect to day-to day VAT matters for businesses, the practicalities of cross-border transactions would change following secession. Invoicing and reporting protocols relating to cross-border supplies would be revised, since what have been intra-EU transactions would become "imports" and "exports." This could have an adverse impact on reporting and on cash flow. Certain sectors potentially would see wholesale changes in how they account for VAT (e.g. businesses in the travel sector no longer would be required to account for VAT under the tour operators margin scheme (TOMS)). Suppliers of business-to-consumer e-services to the remaining EU member states that have chosen to operate under the EU's "mini one-stop shop" would need to register in another EU member state to continue participation in the scheme. The UK likely would introduce its own version of the scheme for businesses selling to UK consumers. It is unclear if other margin schemes would be retained post-secession.

Once released from the need to comply with EU VAT law, the UK could embark on a wholesale review of the scope and coverage of VAT. In theory, the UK could replace VAT altogether, perhaps with a goods and services tax, a sales tax or even something like the UK's old purchase tax, collected at the wholesale stage. However, given the trend toward VAT

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and VAT-equivalent taxes worldwide and the importance of VAT revenue to the UK's finances, such a radical change seems highly unlikely, even in the longer term.

Any changes to the UK's VAT system would require changes in businesses' tax and accounting systems. Some of these changes (particularly those related to trade with the remaining EU member states) are likely to be complex and time-consuming. Systems that companies invested in when they changed from paper-based administrative documentation to electronic documentation potentially would become redundant. However, UK businesses presumably no longer would have to file EC Sales Lists and Intrastat returns.

Other indirect taxes: Following secession, the UK no longer would be bound by the EU capital duty directive and related case law.

Indirect taxes, such as the air passenger duty, landfill tax, climate change levy and aggregates levy, would not be affected directly by an exit from the EU, since they are not governed by EU law (although they may be affected by wider taxation reviews following Brexit, and the possibility that the EU's state aid rules may no longer be relevant (depending on the post-EU arrangements) also might influence the direction of indirect tax policies).

Direct tax implications

Relevant EU law for direct taxes: Direct taxes are less likely to be directly affected by the UK's leaving the EU than many other areas. Unlike indirect taxes, direct taxes are not expressly dealt with by the EU treaties – direct taxes are solely a national competency, which must be exercised in accordance with the EU treaties.

The EU treaties authorize the European Council to issue directives to approximate laws, regulations and provisions directly affecting the establishment and functioning of the internal market. All tax directives require unanimity, and there is no joint role with the European parliament. Member states have chosen to implement a number of directives to aid intra-EU trade and investment, as well as administrative cooperation, including the following:

- The parent-subsidiary directive, which eliminates withholding taxes on dividends paid to parent companies in certain cases;
- The interest and royalties directive, which eliminates certain withholding taxes on qualifying interest and royalties;
- The mergers directive, which concerns the deferral of tax on gains that become due at a company or shareholder level for certain cross-border mergers, divisions, transfers of assets and exchanges of shares taking place within the EU;
- The mutual assistance directive on administrative cooperation between tax authorities (including recent amendments requiring the exchange of rulings within the EU as from 2017 (for prior coverage, see *World Tax Advisor*, 8 January 2016) and the intra-EU exchange of country-by-country (CbC) information between tax authorities for accounting periods starting on or after 1 January 2016 (for prior coverage, see *World Tax Advisor*, 24 June 2016));
  URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_6.html
  URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160624_1.html
- The mutual assistance directive in connection with the recovery of tax, etc.; and
- The anti-tax avoidance directive (recently adopted and generally required to be applied as from 1 January 2019; for additional coverage, see the article in this issue).
  URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160722_bc.html#EU

The four EU treaty freedoms – freedom to provide services, free movement of people, free movement of capital and freedom of establishment – are relevant for direct tax purposes. The CJEU adjudicates whether the national law of EU member states infringes any of the treaty freedoms, and has found infringements related to certain aspects of the UK corporation tax legislation. In some cases, the UK legislation has been changed so that the infringement is no longer relevant. In other cases – in particular, group relief for cross-border losses – the UK legislation has been changed to eliminate the infringement, but there are open challenges to the application of the legislation.

Changes if the UK leaves the EU: As noted above, the vote in favor of exit from the EU may start a lengthy secession process and, in the meantime, EU laws and treaty obligations continue to have effect. Subject to any transitional provisions, in principle, the directives (and the EU transfer pricing arbitration convention) no longer would

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apply after the UK leaves the EU. However, the domestic legislation into which the directives have been transposed presumably would remain in force unless future governments choose to repeal it.

The UK has a broad tax treaty network, including treaties with the other 27 EU member states. The UK's treaty policy is to eliminate withholding taxes (and it does not have a domestic dividend withholding tax). Under tax treaties, there would be a withholding tax on dividends from Austria, Czech Republic, Germany and Italy to the UK and interest/royalty withholding tax on payments to the UK from Italy, Portugal and Romania.

If the UK leaves the EU but remains within the EEA, it would need to ensure that domestic law continues to comply with the treaty freedoms referred to above, since they are broadly the same in the EEA agreement as in the EU treaties. A similar position could apply with a negotiated agreement along the lines of the Swiss-EU agreement.

While the mutual assistance and recovery assistance directives would not apply if the UK leaves the EU, the UK has signed the OECD/Council of Europe multilateral convention on mutual administrative assistance in tax matters, which is similar in scope to the two EU directives, although the details are not identical. Additionally, the exchange of information on tax rulings is covered by action 5 of the OECD BEPS project, and the UK has introduced its own separate law to cover the exchange of CbC reporting information (see the global transfer pricing alert, 9 March 2016).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-007-9-march-2016.pdf

Upon secession, the jurisdiction of the CJEU would cease completely in relation to UK matters. It is expected that ongoing claims in respect of earlier years would be decided by the UK courts without reference to the CJEU.

State aid rules and harmful tax practices: The EU treaties' state aid provisions can be relevant for direct tax purposes. There is no current state aid finding or litigation involving UK direct tax, and even if litigation were commenced before the EU courts, it would cease upon secession.

State aid provisions similar to those in the EU treaties are included in the EEA agreement. However, it is not clear that there is any EEA institution equivalent to the European Commission to investigate possible infringements of the state aid provisions in the way the Commission has.

Leaving the EU would mean that the UK no longer would remain committed to the EU code of conduct for business taxation, nor fall under the remit of the code of conduct group. However, the group's work overlaps to a marked extent with that of the OECD's forum on harmful tax practices, which is mandated to identify and eliminate harmful features of preferential tax regimes in OECD member countries. As an OECD member country, the UK would see little, if any, change in this area upon exiting the EU.

Company law and accounting directives: The EU has company law directives and accounting directives; some tax definitions rely upon company law and some reporting relies on accounting directives. The EU has a modified version of IFRS and interpretations.

With respect to company law and accounting directives, and the EU's recommendation concerning the definition of micro, small and medium-sized enterprises, the definitions presumably would not change in the short term. After leaving the EU, the UK could, however, change the the definitions if it wished. Additionally, the UK no longer would need to apply the EU-endorsed IFRS, but could use IFRS.

Tax law of other member states: Some UK tax reliefs are offered only in relation to EU member states (e.g. provisions that allow businesses to restructure their operations with the EU on a tax-neutral basis). In many cases, the legislation is drafted in terms that simply refer to "member states" without naming specific jurisdictions. Thus, as membership of the EU changes, whichever countries are member states at that point in time may benefit from the reliefs in the UK legislation. It would not be surprising to find those reliefs withdrawn, unless the UK attains EEA-like membership, but proactive steps would be required to amend the existing UK law.

Similar types of preferential treatment are included in the legislation of other EU member states. It seems reasonable to assume that once the UK leaves the EU, the preferential treatment offered by some, if not all, of the other member states would cease. Where member states have taken a similar approach to the UK (e.g. where the provisions are formulated by reference to EU membership rather than by naming individual jurisdictions), presumably UK businesses

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would automatically cease to benefit from them from the time EU membership is lost, with no action required from the member states.

Social security: An EU-wide social security directive essentially provides that individuals on short-term moves remain liable to home country social security. Upon secession, UK domestic law would apply, subject to the existence of any applicable social security agreements.

Other tax implications

Systems and controls: Considerable planning and resources may be needed to implement appropriate changes within the ERP systems and compliance processes currently used by businesses to account for VAT. For example, tax codes and client reference data may need to be thoroughly reviewed and updated and compliance procedures, as well as spreadsheets or automated tools used in the tax return preparation process, would need to be amended.

Restructurings: Tax managers likely will want to participate in strategic discussions within their organizations in advance of secession, to evaluate the potential tax impact of any proposed commercial or corporate structural changes. Substantial corporate restructuring may require a wholesale review of the business' tax operating model.

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China introduces CbC reporting and master file/local file requirements

On 29 June 2016, China's State Administration of Taxation (SAT) issued rules (Bulletin 42) that introduce new transfer pricing reporting and documentation requirements. The rules, which generally are in alignment with the three-tiered framework for transfer pricing documentation found in the final report on action 13 of the OECD BEPS project, are designed to improve the reporting of related party transactions and contemporaneous documentation. Bulletin 42 applies retroactively as from 1 January 2016.

Notably, while Bulletin 42 generally adopts the OECD approach, it also requires a technical analysis and consideration of positions that are familiar to the China market. Requirements that were signaled in the September 2015 discussion draft revisions to Circular 2 (the main framework for China's transfer pricing and anti-abuse rules), including country-by-country (CbC) reporting, the master and local files, the special issue file and value chain analysis, also are covered in Bulletin 42 (for prior coverage, see the China tax alert, 21 September 2015). A special issue file will need to be prepared for cost sharing arrangements (CSAs) and in certain thin capitalization cases.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-china-21-september-2015.pdf

Circular 2 covers areas such as transfer pricing adjustments, CSAs, controlled foreign companies, thin capitalization and the general anti-avoidance rule. Bulletin 42, however, addresses only the reporting of related party transactions and the preparation of contemporaneous documentation; it replaces the transfer pricing documentation rules in Circular 2 (chapters 2 and 3, and articles 74 and 89) and repeals other related guidance (Circular 114). The SAT will be issuing additional rules to complete the planned overhaul of Circular 2.

Bulletin 42 covers issues that have been the focus of the Chinese tax authorities for a number of years, addressing practical issues they have encountered and laying a new landscape for transfer pricing practice and management in China. Additionally, the implementation of BEPS action 13 represents a dramatic shift in China's policies and is a milestone in the "internationalization" of the country's transfer pricing practices.

Related party relationships and transactions

Bulletin 42 revises the related party relationship definitions in Circular 2 to ensure that relationships between individuals are taken into account when considering the relationship between two parties. Two parties will be considered to be related if they have "other substantial common interests." There are changes to reflect public comments on the rules in respect of relationships involving directors on boards and senior management personnel. In

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addition, the new rules recognize that related party relationships may change, and that relationships should be recognized during the periods in which they exist.

The types of covered related party transactions are updated from the Circular 2 definitions to more comprehensively cover the types of transactions that take place between related parties, thus expanding the potential coverage of special tax adjustments. The final rules effectively are unchanged from those signaled in the September 2015 discussion draft, and cover tangible and intangible assets, financial assets (e.g. equity investment), financing transactions (e.g. cash pooling, guarantee fees and all kinds of interest accrued on advances and deferred payments) and service transactions.

Reporting of related party transactions

Bulletin 42 includes the formal templates and filing instructions for the Annual Related Party Transactions Reporting Forms ("New Forms"), including the CbC reporting form. The New Forms replace the previous nine forms, and increase the total number of forms to 14. Overall, the information disclosure requirement is increased.

The New Forms will take more time to complete, given the increase in the number of forms and the amount of information required. The design of the forms reflects the enhanced requirements of the tax authorities on disclosure, especially for related party relationships and transactions, while at the same time attempting to streamline the preparation and reduce uncertainty in the filing process. The inclusion of the CbC form also shows how China has adopted the requirements of BEPS action 13, and lays the foundation for future CbC information exchanges.

Taxpayers will need to pay close attention when preparing the forms to ensure consistency across all of the forms, as well as with the transfer pricing documentation, audit report and other associated documents.

CbC reporting

The SAT has included the CbC form in the reporting forms for related party transactions, and seems to require taxpayers to provide both Chinese and English versions. Consistent with the treatment in the discussion draft, a CbC form will be required for the following taxpayers:

- A China resident enterprise that is the ultimate parent of a multinational enterprise group that has consolidated revenue greater than RMB 5.5 billion in the previous fiscal year; or
- A China resident enterprise that is designated by the multinational group to be the filing entity (consistent with the secondary filing mechanism provided in the BEPS action 13 report).

Bulletin 42 includes a number of definitions for the purpose of determining the group parent and member entities; these definitions are consistent with those in the recommendations under BEPS action 13. Of interest to some taxpayers, the rules also partially or entirely exempt Chinese enterprises from the filing requirement if the information relates to "national security." There are provisions that allow the Chinese tax authorities to request copies of CbC reports from overseas tax authorities, as well as provisions to require the information from local entities if the overseas tax authorities do not provide the information.

Submission deadline

The filing deadline for the New Forms generally should be the same as the date the annual enterprise tax return is due, i.e. 31 May of the following year.

Contemporaneous documentation

A major focus of the feedback on the discussion draft was the framework for transfer pricing documentation. Overall, the requirements for the master and local files are similar to those signaled in the discussion draft, with revisions to the thresholds for preparation; the requirement for the special issue file for service transactions has been removed, although the analysis for service transactions now is required to be incorporated into the local file, along with information regarding equity transfers. Of particular note, the new rules retain the detailed disclosure requirements from the discussion draft, meaning that the value chain analysis, location-specific advantages and other matters of concern to the SAT will need to be addressed. It has been confirmed that transactions with related parties in Hong

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Kong, Macau and Taiwan will be considered cross-border related party transactions. The deadlines for preparing the documentation have been revised (see the table below).

The following table compares the requirements of Bulletin 42 and Circular 2 for the preparation of the contemporaneous documentation:

Item	Circular 2 (Chapter 3)	Bulletin 42
Report structure	China country file only	Three-part framework: master file, local file, special issue file
Threshold for preparation	• The annual sum of related party purchases and sales exceeds RMB 200 million (for toll manufacturing activities, the amount is calculated based on the import/export customs declaration prices); or • The annual sum of other related party transactions exceeds RMB 40 million (for related party financing, the amount is calculated based on the interest received/paid) The value of related party transactions under a CSA or advance pricing agreement (APA) is not taken into account in determining the annual sum of related party transactions	**Master file:** • An enterprise has transactions with overseas related parties during the year and the ultimate holding company of the group in which the enterprise is a member, which consolidates the enterprise into its financial statements, has prepared a master file; or • An enterprise has related party transactions exceeding an aggregate of RMB 1 billion during the year **Local file:** • The annual sum of related party purchases/sales exceeds RMB 200 million (for toll manufacturing activities, the amount is calculated based on the import/export customs declaration prices); • The annual sum of related party purchases/sales of financial assets or intangible assets exceeds RMB 100 million; or • The annual sum of other related party transactions exceeds RMB 40 million The value of related party transactions under an APA will not be taken into account in determining the annual sum of related party transactions **Special issue file:** • An enterprise enters or implements a CSA; or • An enterprise with a related party debt-to-equity ratio exceeding the threshold (i.e. 2:1 for nonfinancial entities and 5:1 for financial entities) wishes to demonstrate that its related party financing is in compliance with the arm’s length principle

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Item	Circular 2 (Chapter 3)	Bulletin 42
Report structure	China country file only	Three-part framework: master file, local file, special issue file
Exempt from preparation	• Related party transactions covered under an APA; or • The foreign shareholding percentage is lower than 50% and related party transactions are carried out only among domestic parties	• If the related party transactions of the enterprise are only between the enterprise and its domestic related parties, the enterprise may be exempt from the preparation of the master file, local file and special issue file requirements • Related party transactions that are covered under an APA may be exempt from the preparation of the local file and special issue file requirements
Deadline for preparation	31 May of the following year	• Master file: Within 12 months of the fiscal year end of the group's ultimate holding company • Local file and special issue file: By 30 June of the following year
Deadline for submission	Within 20 days of a request by the tax authorities	Within 30 days of a request by the tax authorities

Comments

Bulletin 42 will require multinational enterprises to invest more time and resources to comply with China's contemporaneous documentation and reporting requirements. In particular, in the absence of a consistent threshold or filing requirement for the master file from the OECD, China's regulations may be different from the rules in other countries. Difficulties could arise where a foreign parent company is not required to prepare a master file in the country where it is located, while its Chinese subsidiary is required to prepare a master file according to Chinese domestic law.

Additionally, Bulletin 42 requests taxpayers to provide some sensitive and complicated information in the New Forms and in the contemporaneous documentation. The depth and scope of the content that needs to be analyzed has increased significantly. Taxpayers should take early action to ensure they are prepared for this change and communicate with related parties so that information can be collected on time. Furthermore, given the increased disclosure requirements, and collaboration and information sharing between tax authorities, taxpayers will need to improve the efficiency of information collection, control compliance costs and maintain consistency with the transfer pricing information disclosed globally.

It is worth noting that the multilateral convention on mutual assistance in tax collection entered into force for China on 1 February 2016 and will apply as from 1 January 2017. More than 130 countries will be able to exchange tax information with China by that time. Additionally, on 12 May 2016, the SAT signed the CbC multilateral competent authority agreement for the automatic exchange of CbC reports for multinational enterprise groups. Some countries are drafting or have announced national regulations for CbC reports. Therefore, multinational enterprise groups will face more stringent information transparency and compliance requirements.

The OECD recently published additional guidance on filing requirements for CbC reports that makes suggestions on several outstanding issues, including the filing of CbC reports during the transition period and the effects of exchange rate fluctuations on the filing threshold (for prior coverage, see the global transfer pricing alert, 1 July 2016). Taxpayers should monitor whether the additional guidance will cause any changes to the filing regulations in the different countries in which they operate.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-023-1-july-2016.pdf

Overall, the information required to be disclosed through the reporting of related party transactions and contemporaneous documentation will be more transparent, and the information exchange between tax authorities of different jurisdictions should be more extensive and efficient. This will enable the Chinese tax authorities to obtain

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more control over taxpayer information for the purpose of risk assessment and the determination of tax audit targets, and will allow the SAT to participate more actively in global anti-tax avoidance actions.

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Austria:
EU directive on automatic exchange of tax rulings to be implemented

The first chamber of the Austrian parliament (National Council) agreed on a bill on 6 July 2016 that would implement the amended EU mutual assistance directive on the automatic exchange of tax rulings into Austria's domestic law. The bill is subject to approval by the parliament's second chamber (Federal Council), which is expected shortly so the bill can be published in the official gazette.

The December 2015 amendment of the EU mutual assistance directive on administrative cooperation includes a requirement for EU member states to exchange information automatically on advance cross-border tax rulings and advance pricing arrangements (APAs) as from 1 January 2017, and to transpose the new provisions into their national law by 31 December 2016 (for prior coverage, see *World Tax Advisor*, 8 January 2016). The bill before Austria's parliament would implement the amendments to the directive into Austria's EU Mutual Assistance Act, as described below.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_6.html

The bill contains the same definitions of advance cross-border tax rulings and APAs as provided in the amended directive. According to the legislative materials, the rulings that would fall within the scope of the automatic exchange provisions in Austria would mainly include unilateral APAs (issued under section 118 of the Federal Fiscal Code). The bill does not explicitly state whether other advance cross-border rulings would be subject to the automatic exchange provisions. Bilateral or multilateral arrangements based on provisions corresponding to article 25(3) of the OECD model tax treaty (regarding a mutual agreement procedure) would be included under the automatic exchange of information provisions.

Starting in September 2017, Austria would exchange advance cross-border tax rulings and APAs that are issued as from 1 January 2017 with other member states on a semi-annual basis. The exchange of information provisions would apply retroactively to rulings/APAs that were issued, amended or renewed between 1 January 2012 and 31 December 2016. Rulings that were issued in 2012 or 2013 would have to be exchanged only if they were still valid on 1 January 2014.

The Austrian bill includes the option offered under the directive to exclude from the information exchange rulings issued on or before 31 March 2016 to a group of companies with group-wide annual net turnover not exceeding EUR 40 million in the fiscal year before the year the ruling was issued (unless the group engages mainly in financial and investment activities).

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India:
New treaty with Cyprus to provide for source-based taxation of capital gains

On 29 June 2016, the governments of India and Cyprus reached an agreement on a new tax treaty to replace the existing treaty dating from 1994.

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Significantly, the governments agreed on a change to the tax treatment of capital gains on the sale of shares. The new treaty would eliminate the capital gains tax exemption under the existing treaty. Such gains would be subject to taxation in the source state, although a "grandfathering" rule would apply for investments made before 1 April 2017; gains derived from investments made before that date would be taxed only in the country in which the seller is a resident.

The proposed changes to the capital gains article were expected in light of India's recent renegotiation of its tax treaty with Mauritius (for prior coverage, see *World Tax Advisor*, 27 May 2016 and the article in this issue). The changes also demonstrate the commitment of the Indian government to implement action 6 of the OECD BEPS project ("Preventing the Granting of Treaty Benefits in Inappropriate Circumstances").
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160527_1.html
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160722_tr.html

The revised treaty likely will revive trade and economic activity between the two countries and pave the way for the Indian government to remove Cyprus from its list of "notified jurisdictions" with retroactive effect as from 1 November 2013. India included Cyprus on its blacklist on the grounds that Cyprus did not engage in an adequate exchange of information with India (for prior coverage, see *World Tax Advisor*, 22 November 2013).
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/131122_4.html

The provisional agreement with Cyprus will be presented to the Indian cabinet for its approval, after which the new tax treaty can be signed.

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Indonesia:
Tax amnesty introduced

A tax amnesty that provides Indonesian corporate and individual tax residents an opportunity to obtain tax relief for previously unreported net assets was approved by the Indonesian parliament on 28 June 2016, with implementing regulations issued shortly thereafter.

Under the tax amnesty, taxpayers can report their undisclosed assets from fiscal years ending on or before 31 December 2015 and pay a special tariff on the net assets, rather than the unpaid taxes and penalties that otherwise would apply. The amnesty is available for the nine-month period from 1 July 2016 to 31 March 2017, with the tariff rate based on the type of assets and when they are reported to the Indonesian tax office:

Assets	Reported: 1 July 2016 to 30 September 2016	Reported: 1 October 2016 to 31 December 2016	Reported: 1 January 2017 to 31 March 2017
Offshore assets declared but not repatriated	4%	6%	10%
Onshore assets declared, and offshore assets declared and repatriated	2%	3%	5%

Reduced tariff rates will apply to small and medium-sized Indonesian businesses (i.e. those with annual revenue of no more than IDR 4.8 billion): the rate will be 0.5% on gross assets valued at up to IDR 10 billion, and 2% on gross assets valued at more than IDR 10 billion.

Cash should be reported based on its nominal value, while noncash assets should be reported based on their fair value (i.e. the value of assets based on the taxpayer's assessment of their condition).

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Taxpayers intending to repatriate assets through a branch of an Indonesian bank overseas must retain the assets in Indonesia for at least three years from the date the assets were placed with the overseas branch. The branch must transfer the assets to Indonesia no later than the next business day.

To participate in the amnesty, a taxpayer must submit a declaration in person to the tax office or to a designated location (e.g. an Indonesian consulate or embassy); otherwise, the declaration will be deemed not to have been submitted.

To encourage taxpayers to participate in the tax amnesty, the implementing regulations provide that if the tax office discovers assets of nonparticipating taxpayers that were acquired between 1985 and 2015 within three years after the amnesty law became effective, the tax office will issue an underpaid tax assessment notice and penalty (the amount of the underpaid tax assessment will be 25% (for an entity) and up to 30% (for an individual), as well as a penalty of up to 48% of the amount of the assessment.

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Singapore:
Government joins framework for implementing BEPS measures

The government announced on 16 June 2016 that Singapore is joining the inclusive framework for the global implementation of the BEPS project as proposed by the OECD and endorsed by the G20 in February 2016 (for prior coverage, see *World Tax Advisor*, 11 March 2016). By joining this framework, Singapore will work with other participating jurisdictions to ensure the consistent implementation of BEPS-related measures, and a level playing field across jurisdictions.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_bc.pdf

Singapore supports the key principle underlying the BEPS project, i.e. that profits should be taxed where the real economic activities generating the profits are performed and where value is created. This principle also is in line with Singapore's own tax policies, which have been designed to support substantive economic activities, create skilled jobs, and build new and enduring capabilities in Singapore.

Position on BEPS minimum standards

Singapore is committed to implementing the four minimum standards under the BEPS project:

1. Countering harmful tax practices;
2. Preventing treaty abuse;
3. Requiring transfer pricing documentation; and
4. Enhancing dispute resolution.

In keeping with this commitment, Singapore intends to implement country-by-country (CbC) reporting for Singapore-headquartered multinational enterprises for financial years beginning on or after 1 January 2017 (rather than financial years beginning on or after 1 January 2016, with the first reports due one year from the last day of the financial year end of the ultimate parent, as recommended in the OECD report on action 13).

Singapore-headquartered multinationals thus would have a "gap" year because the 2016 financial year would not be covered under Singapore's rules, whereas most countries that already have adopted CbC reporting follow the recommendations in the BEPS report on action 13. As a result, Singapore-headquartered multinationals likely will have to use one of the secondary measures (i.e. have a "surrogate parent company" that is resident in a country that does have CbC legislation in place file the report with its tax authorities, or make multiple local filings). Alternatively, the Singapore tax authorities could allow voluntary filing for the 2016 financial year.

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Comments

In accordance with the BEPS report on action 13, the CbC report filing obligation likely would fall on a Singapore-resident company that is the ultimate parent company of a multinational group with global turnover over a designated threshold, and not on an ultimate parent company that is Singapore-incorporated, but not Singapore-resident. However, this point has not been specifically confirmed by the Singapore government.

The government has indicated that the implementation details for CbC reporting will be released by September 2016, after consultation with Singapore-headquartered multinationals.

In view of the gap year issue, Singapore ultimate parent companies should begin to consider their positions relating to CbC reporting. Specifically, such companies should consider which countries where their group has operations will require a CbC report to be filed for the 2016 financial year, as well as whether existing information technology systems are sufficiently robust to capture the required information; make decisions relating to the information to be included in the report (e.g. exchange rates, reconciliation to financial statements, etc.); and be aware of filing dates in various countries.

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Turkey:
New R&D incentives aim to stimulate investment

A package of measures that enhances the incentives for research and development (R&D) in Turkey applies as from 1 March 2016. The rules are designed to facilitate investment, increase production and stimulate innovation.

Turkey provides for a 100% deduction of R&D expenditure for qualifying R&D projects, as well as an additional deduction of 50% of the R&D expenditure increase over the prior year (a "super deduction"). The Council of Ministers will prescribe the conditions that must be satisfied to qualify for the super deduction.

The measures provide as follows:

- Design activities and employment expenditure related to such activities are included within the scope of the incentives.
- To qualify for the additional 50% deduction, the company must increase its R&D and design expenditure, as compared with the previous year. To ensure that smaller businesses with increasing levels of R&D activity can qualify for the incentive, companies meeting this requirement no longer need to have at least 500 full-time equivalent R&D personnel to benefit from the super deduction.
- The government will finance the salaries of qualifying employees for a two-year period by paying an amount corresponding to the monthly minimum wage for each employee who holds at least an undergraduate degree in fundamental sciences.
- The income tax exemption rate applicable to wages of employees is increased to 95% for personnel with a Ph.D., 90% for personnel with a masters' degree and 80% for other personnel.
- Goods imported for qualifying R&D projects are exempt from customs duties, and documents relating to R&D projects (including documents relating to the import of goods) are exempt from stamp duty and fees.
- Order-based R&D and design project expenditure incurred in R&D or design centers falls within the scope of the 50% corporate income tax deduction for the R&D or design centers, and the company issuing the order also can benefit from the deduction.
- The Council of Ministers is authorized to reduce the minimum number of R&D personnel required to set up an R&D center from 30 to 15.

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In brief

Belgium: A draft bill presented to the parliament on 23 June 2016 and approved by the Finance Committee on 8 July would abolish the Belgian patent income deduction (PID) regime, subject to a five-year "grandfathering" period. The draft bill still needs to receive formal approval by parliament, which is expected to occur in the near future. Under the PID, enterprises are allowed to deduct 80% of gross income derived from qualifying patents and supplementary protection certificates from their taxable income. The abolition of the PID has been proposed as a result of the OECD recommendations under action 5 (countering harmful tax practices) of the BEPS project.

Denmark: The tax authorities published a ruling on 9 May 2016 relating to the beneficial ownership of dividends paid by Danish companies. According to the ruling, the tax authorities may deny a withholding tax exemption for dividends under certain circumstances involving a portfolio investment in Denmark through a nonresident holding company that does not qualify as the beneficial owner of the dividends. The ruling could affect private equity investors in Denmark.

Ecuador: The standard VAT rate increased from 12% to 14% on 1 June 2016. The rate increase, introduced in a law that aims to fund reconstruction following the April 2016 earthquake, will remain in effect for one year and then will revert to 12%.

European Union: On 5 July 2016, the European Commission issued a press release announcing the next steps to strengthen tax transparency and tackle tax evasion and avoidance in the EU. The commission notes that progress has been made in these areas at the EU level, but there still are gaps in the EU and international tax frameworks. The commission, therefore, is proposing additional measures within five priority areas: (1) harness the link between anti-money laundering and tax transparency rules; (2) improve the exchange of information on beneficial ownership; (3) increase oversight of enablers and promotors of aggressive tax planning; (4) promote higher tax good governance standards worldwide; and (5) improve the protection of whistle-blowers. The commission will take the measures forward in the coming months and will determine the most appropriate action at the EU level.

European Union: On 8 July 2016, the European Commission launched two investigations into the corporate tax exemptions granted by Belgium and France to ports undertaking commercial operations in their countries. In January 2016, the commission asked both countries to align their taxation of ports with EU state aid rules by abolishing the exemptions because it considered the tax breaks to give an unfair advantage to certain ports. Neither Belgium nor France took steps to comply with the commission's request, so the commission has opened an in-depth investigation to assess whether the incentives distort competition.

Hungary: New grant schemes aimed at supporting investment projects of large enterprises and R&D activities of companies (including large enterprises) have been launched. The scheme for investment projects supports investments aimed at job creation and is available to large Hungarian enterprises in the processing industry, if certain conditions are fulfilled. The minimum amount of a nonrefundable grant under this scheme is HUF 50 million, and the extent of the aid varies depending on the location of the investment project. Grant applications must be submitted to the Ministry for National Economy, and grant contracts may be signed until 31 December 2016. Under the scheme for R&D activities, companies may apply for nonrefundable grants between HUF 80 and HUF 500 million, either independently or as part of a consortium for their R&D projects implemented in Budapest and Pest county, if certain conditions are fulfilled. Applications may be submitted until 31 December 2016 and the project proposals will be evaluated in several stages, with the deadline for submission for the first decision being 17 August 2016.

India: The Finance Ministry released a draft model goods and services tax (GST) law on 14 June 2016 that would form the framework for the adoption of the law expected to be adopted by the central and state governments. The draft law outlines the framework for the collection of the central and state GSTs, but does not comment on the GST rate, which is yet to be finalized. The government panel that prepared the draft has recommended three broad rates of 17%-18% (standard rate), 12% (essential items) and 40% (luxury items). If the draft legislation is approved during the current

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parliamentary session (which runs until August), GST likely will be introduced with effect from 1 April 2017, although this date is not definite and may change as a result of the consultation process.

India: The government announced several changes to the foreign direct investment (FDI) policy on 20 June 2016, with the aim of providing an impetus to employment and job creation in India. The changes include increasing the sectoral caps for foreign investment; transitioning additional activities from the government approval route to the automatic approval route; and relaxing the conditions for foreign investment. Most sectors would be covered under the automatic approval route, except for those on a short negative list. Areas in which the FDI rules would be relaxed include defense; pharmaceuticals; civil aviation; private security agencies; establishment of a branch office, liaison office or project office; and single brand retail trading. Formal amendments to the FDI policy and Foreign Exchange Management Act regulations are needed for the changes to enter into effect.

Japan: On 1 June 2016, the prime minister announced that the increase in the consumption tax (JCT) would be postponed to 1 October 2019. The JCT increase to 10% initially was planned for 1 October 2015, as part of the two-stage JCT increase from 5% to 8%, and then to 10%. After the first increase to 8% on 1 April 2014 resulted in an economic downturn, the prime minister postponed the second increase to 1 April 2017 and he removed the "economic conditions" clause from the law, stipulating the government's discretion to delay or cancel a JCT rate increase based on prevailing economic conditions. The JCT increase to 10% then was postponed for a second time to avoid a further weakening of consumer spending. The implementation of a reduced JCT rate of 8%, as well as the related changes in invoicing requirements, which were set for 1 April 2017, also are likely to be delayed until 1 October 2019.

Latvia: The country deposited its instrument of accession to the OECD convention and became a full member on 1 July 2016.

South Africa: The tax authorities published a notice on 24 June 2016 that lists additional considerations that may cause an application for a binding private ruling or a binding class ruling to be rejected. These cover items in respect of income taxes (e.g. applications concerning residence or tax status), the value added tax and certain other considerations. As from the date of publication, the notice replaces all previous relevant notices.

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.

China: The tax authorities issued the long-awaited rules that introduce new transfer pricing and documentation requirements based on BEPS action 13. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160722_2.html

European Union: On 12 July 2016, the EU Economic and Financial Affairs Council (ECOFIN) formally adopted the EU anti-tax avoidance directive (ATAD) that was finalized in June 2016 (for prior coverage, see *World Tax Advisor*, 24 June 2016). The EU member states will have to transpose the provisions of the ATAD into their domestic law and generally will be required to apply them as from 1 January 2019, except for the exit taxation rules, which are to be applied as from 1 January 2020. In addition, member states that have targeted rules that are equally effective to the interest deduction limitation rule may continue to apply them until the earlier of 2024 or the adoption of interest limits as a minimum standard by OECD members.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160624_5.html

Ireland: The tax authorities have published guidelines on the bilateral advance pricing agreement program that was launched in response to action 14 of the OECD's BEPS project. See the global transfer pricing alert, 30 June 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-022-30-june-2016.pdf

OECD: On 11 July 2016, the OECD released the following items under actions 4 and 5 of the BEPS project:

- A discussion draft on the design and operation of the group ratio rule, produced as part of the follow-up work after the October 2015 release of the final report on BEPS action 4 (interest deductions and other financial

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payments). The draft focuses on the calculation of a group's net third-party interest expense, the definition of group EBITDA and the effect of losses on the operation of the group ratio rule. Comments on the discussion draft are due by 16 August 2016; and

- A standardized format (the "ETR XML Schema") for implementing the exchange of tax rulings between jurisdictions on topics that could give rise to BEPS concerns, under BEPS action 5 (harmful tax practices), along with a user guide that provides additional guidance on reporting.

OECD: The OECD issued two discussion drafts related to the BEPS project on 4 July 2016, covering (1) the attribution of profits to permanent establishments (see OECD tax alert, 8 July 2016), and (2) revised guidance on profit splits (see OECD tax alert, 8 July 2016).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-8-july-2016-permanent-establishments.pdf
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-8-july-2016-profit-splits.pdf

OECD: The OECD has issued additional guidance on the CbC reporting requirement found in its final report on BEPS action 13. See the global transfer pricing alert, 1 July 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-023-1-july-2016.pdf

OECD: The first meeting of the new inclusive framework to tackle BEPS was held in Kyoto on 30 June-1 July 2016. At that time, 36 countries and jurisdictions already had formally joined the new inclusive framework and committed to implement the BEPS package, bringing to 82 the total number of countries and jurisdictions participating on an equal footing in the project. (The Singapore government announced it was joining the inclusive framework on 16 June 2016; see the article in this issue.) On 7 July 2016, Angola and the Seychelles became the 83rd and 84th members of the inclusive framework, and Jamaica became the 85th on 15 July 2016. The other countries and jurisdictions attending the Kyoto meeting are likely to join the inclusive framework in the coming months. During the meeting in Kyoto, five countries (Argentina, Curacao, Georgia, Korea and Uruguay) signed the multilateral competent authority agreement for the automatic exchange of CbC reports under the BEPS project, bringing the total number of signatories to 44 countries. The CbC agreement allows all signatories to bilaterally and automatically exchange CbC reports with each other, as contemplated by action 13 of the BEPS action plan.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160722_6.html

United States: The treasury department has issued final regulations that require annual CbC reporting by certain US entities. See the global transfer pricing alert, 1 July 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-024-1-july-2016.pdf

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Tax treaty round up

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

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

Estonia-Vietnam: When in effect, the treaty signed on 26 September 2015 provides for a 5% withholding tax rate on dividends paid to a company that holds more than 70% of the voting rights of the payer company; otherwise, the rate will be 10%. The withholding tax rate on interest and royalties will be 10%, and that on technical service fees, 7.5%.

Iceland-Liechtenstein: When in effect, the treaty signed on 27 June 2016 provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company for at least one year prior to the payment of the dividends, or paid to a pension fund or qualified charitable entity; otherwise, the rate will be 15%. Interest will be taxable only in the state of residence of the recipient. A 5% rate will apply to royalties paid for the use of, or the right to use, a patent, trademark, design or model, plan, secret formula or process; other royalties will be taxable only in the state of residence of the recipient.

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India: The government issued a press release on 13 June 2016 announcing that it has set up a working group to examine issues arising from the revised protocol to the India-Mauritius tax treaty that was signed on 10 May 2016 (for prior coverage, see *World Tax Advisor*, 27 May 2016). The protocol provides for a phased-in elimination of the residence-based taxation of certain capital gains, which will close off what commonly is known as the "Mauritius route" for investment into India. Specifically, the protocol will allow source-state taxation of capital gains from the sale of shares, which effectively will grant India taxing rights over gains derived by a Mauritius company from the sale of shares in an Indian company. The working group will submit a report to the Central Board of Direct Taxation within three months.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160527_1.pdf

Malaysia-Slovakia: The 2015 treaty entered into force on 11 April 2016 and applies in Malaysia from 1 January 2016 for withholding tax purposes and in Slovakia from 1 January 2017. The treaty provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company for an uninterrupted period of at least 12 months; otherwise, the rate is 5%. The rate on interest and royalties is 10%.

Spain-Qatar: When in effect, the treaty signed on 10 September 2015 provides for a 0% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company and on dividends paid by a company whose shares are substantially and regularly traded on a stock exchange of one of the contracting states to a recipient that holds directly at least 1% of the capital of the payer company; otherwise, the rate will be 5%. Interest and royalties will be taxable only in the state of residence of the recipient.

United Kingdom-Algeria: The 2015 treaty entered into force on 16 June 2016 and will apply as from 1 January 2017 for withholding tax purposes. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the distributing company; otherwise, the rate will be 15%. The rate on interest will be 7%, and that on royalties 10%.

United Kingdom-Turkmenistan: When in effect, the treaty signed on 10 June 2016 to replace the 1985 treaty between the UK and the former USSR, provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly or indirectly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. A 10% rate will apply to interest and royalties.

United States: A protocol is being negotiated to the tax treaty with Luxembourg that would include a provision that is consistent with article 1(8) of the 2016 US model treaty. See United States tax alert, 24 June 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-24-june-2016.pdf

Uruguay-United Arab Emirates: The 2014 treaty entered into force on 13 June 2016 and will apply as from 1 January 2017 for withholding tax purposes. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) or a government institution; otherwise, the rate will be 7%. A 10% rate will apply to interest. A 0% rate will apply to technical service fees related to the exploration, extraction or exploitation of hydrocarbons paid from the government of one contracting state to the government of the other contracting state; a 5% rate will apply to royalties for the use of industrial, commercial or scientific equipment; and a 10% rate will apply to all other types of royalties and technical service fees.

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Ireland
Ireland introduces bilateral APA program
On 23 June 2016, the Irish Revenue published bilateral advance pricing agreement (APA) guidelines relating to the operation of the country's APA program, which is effective for applications received on or after 1 July 2016. The

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guidance outlines the framework of the program, the requirements to apply for an APA, and the roles and responsibilities of taxpayers and Irish Revenue.
Issue date: 30 June 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-022-30-june-2016.pdf

OECD

Discussion draft issued on attribution of profits to PEs

On 4 July 2016, the OECD issued a discussion draft relating to the attribution of profits to permanent establishments (PEs). The draft follows the work previously undertaken by the OECD in relation to preventing the artificial avoidance of PE status (action 7 of the BEPS project).
Issue date: 8 July 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-8-july-2016-permanent-establishments.pdf

Discussion draft issued on revised guidance on profit splits

On 4 July 2016, the OECD issued a discussion draft relating to the revised guidance on profit splits. The draft deals with work in relation to actions 8-10 of the BEPS project on ensuring that transfer pricing outcomes are in line with value creation.
Issue date: 8 July 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-8-july-2016-profit-splits.pdf

OECD issues additional guidance on CbC reporting

On 29 June 2016, the OECD issued additional guidance on the implementation of the country-by-country reporting requirement introduced in the final report on BEPS action 13.
Issue date: 1 July 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-023-1-july-2016.pdf

United States

United States issues final CbC reporting regulations

On 29 June 2016, the US Treasury Department released final regulations that require annual country-by-country reporting by US entities that are the ultimate parent entity of a multinational enterprise group with annual revenue of USD 850 million or more.
Issue date: 1 July 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-024-1-july-2016.pdf

US and Luxembourg announce agreement to adopt exempt branch provision from 2016 US model treaty

The US and Luxembourg are negotiating a protocol to the existing tax treaty. The negotiators have agreed to adopt a provision that is consistent with article 1(8) of the 2016 US model treaty. This announcement came in conjunction with the introduction in Luxembourg of a bill that would authorize Luxembourg to enter into the protocol amending the treaty with retroactive effect.
Issue date: 24 June 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-24-june-2016.pdf

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