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In this issue:

Belgian government plans replacement for patent income deduction

The Belgian government is preparing for the introduction of a new “innovation income deduction” (IID) to replace the patent income deduction (PID) that was abolished as from 1 July 2016 (for prior coverage, see *World Tax Advisor*, 22 July 2016). The PID was abolished to bring Belgium in line with the recommendations of the OECD in its report on BEPS action 5 (countering harmful tax practices) and related discussions at the EU level. A conditional “grandfathering” rule will allow taxpayers to claim the “old” PID regime until 30 June 2021 with respect to certain qualifying intellectual property (IP) rights.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160722_ib.html

The planned IID would be compliant with the "modified nexus approach" agreed upon within the OECD and the EU Code of Conduct group, and is expected to be adopted before the end of 2016. Once enacted, the IID, in principle, would apply retroactively as from tax year 2016 (but only for financial years ending on or after 1 July 2016).

Although the "pre-draft" legislation has not yet been finalized (i.e. it is still under discussion by the government), there seems to be some consensus on the framework for the IID. The general principles of the new IID regime would be similar to the previous PID regime, in that the IID would provide a tax-specific deduction for qualifying IP income arising from qualifying IP rights. However, some major changes are expected, compared to the previous PID regime.

The main features of the proposed regime are as follows:

Qualifying IP rights: Similar to the previous PID regime, the IP rights that qualify for the planned IID regime would comprise patents and supplementary protection certificates of which a company is the full owner, co-owner, usufructuary, licensee or exclusive right holder. However, the list of qualifying IP rights would be expanded and reportedly could include certain plant variety rights and orphan drug rights (requested or acquired on or after 1 July 2016), as well as copyrighted software (generated on or after the same date).

It is possible that the IID may be able to be applied on a provisional basis from the time a qualifying IP right is requested (subject to recapture if the IP right ultimately is not granted), as opposed to the PID regime that could apply only from the time qualifying IP rights were granted.

Qualifying IP income: The income streams to which the new IID regime would apply likely would comprise the following income elements, to the extent that these are part of the taxable results of a Belgian company or a Belgian permanent establishment of a foreign company and calculated at arm's length:

- License fees;
- IP income embedded in the sales price of products/services;
- IP income embedded in the production process; and
- Compensation for damages for IP right infringements, awarded on the basis of a judicial decision, amicable settlement or insurance agreement.

Quantification of deduction: The most significant changes compared to the previous PID regime relate to the quantification of the deduction. The deduction under the planned IID regime would be calculated in three steps, in line with the modified nexus approach:

1. Calculation of the net amount of qualifying IP income;
2. Application of a "modified nexus" fraction; and
3. Multiplication of the result by the IID rate.

The amount of the IID calculated would be deductible from taxable profits. Contrary to the PID regime, any excess IID reportedly could be carried forward for use in future tax years.

Unlike the PID regime (which, as a general rule, applied on a gross basis), the IID regime would apply to only the net amount of qualifying IP income that exclusively relates to a qualifying IP right (i.e. the gross qualifying IP income related to the qualifying IP right, less the "overall expenditure" deducted as an expense and borne in the taxable period). In principle, the net income would have to be determined separately for each qualifying IP right (although it also could be determined for each type or group of products or services in certain cases).

Although this has yet to be clarified, the IID regime reportedly would include a "recapture" rule that would require taxpayers to first use certain overall expenditure relating to a qualifying IP right before being able to claim the IID on the net income arising thereon, and a "ventilation" rule, under which current-year or carried-forward negative net IP income from a qualifying IP right would need to be deducted from positive net IP income earned on other qualifying IP rights.

The amount of net qualifying IP income calculated would have to be multiplied by a specified modified nexus fraction, which, in principle, would have to be determined separately for each qualifying IP right (or each type or group of products or services). That fraction, in essence, would correspond to a cumulative amount of qualifying expenditure over a cumulative amount of overall expenditure.

Qualifying expenditure would have to directly relate to a qualifying IP right, and would not include, for example, interest payments and costs related to real property. Overall expenditure generally would comprise the same expenses as qualifying expenditure, with the addition of certain expenses incurred by the taxpayer in acquiring the qualifying IP right and certain expenses incurred by the taxpayer in relation to outsourcing to a related party.

The amount resulting after calculating net income and applying the modified nexus fraction reportedly would be eligible for a 90% deduction (compared to 80% under the old PID regime).

Taxpayers would have to prepare and retain documentation regarding each IP right (or each type or group of products or services).

Taxpayers that are eligible to continue applying the PID regime until 30 June 2021 under the grandfathering rule would need to choose between claiming the PID or the IID regime (for the period up to 30 June 2021). The government likely will make this choice irrevocable, with the result that taxpayers that have opted to apply the PID regime under the grandfathering rule would not be able to "switch back" to the IID regime, and vice versa.

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Brazil:
Consultation launched on proposed MAP rules

Brazil's tax authorities and the Ministry of Finance jointly released a public consultation document on 18 August 2016 that aims to provide guidance on the operation of the mutual agreement procedure (MAP) in the context of Brazil's 32 existing tax treaties, and to implement the OECD recommendations under action 14 of the BEPS project (*Making Dispute Resolution Mechanisms More Effective*).

To date, Brazil's tax authorities have not issued any internal rules or guidance on the MAP. The consultation document, which contains the text of a new normative ruling (NR), would provide more transparency to better enable taxpayers to enjoy the benefits of existing tax treaties, and it would reinforce Brazil's commitment as a G20 member to set minimum standards in this area.

The consultation document provides guidance on the requirements and criteria for Brazilian taxpayers to invoke the MAP in a relevant tax treaty to resolve treaty-related disputes. It also includes a form that would have to be used to initiate the MAP procedure and to request any corresponding tax refund. Under Brazil's treaties, the MAP may be invoked only with respect to Brazil's corporate income tax and social contribution on net profits and the foreign taxes identified in the treaty.

The deadline for submitting a MAP request to the Brazilian tax authorities would be five years (except under the treaties with Argentina, Belgium, Ecuador and Portugal, where the deadline is two years, and under the treaties with China and Finland, where the deadline is three years) from the date the taxpayer considers that the relevant actions result, or would result, in taxation not in accordance with the treaty. Any refunds previously claimed would have to be included in the MAP request. Cases that already have been decided by an administrative or judicial court, as well as taxes that fall outside the statute of limitations period, would not be eligible for the MAP.

The tax authorities likely will issue the NR after the public consultation procedure is completed on 2 September 2016.

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China:
Tax authorities recoup IIT based on PE created by foreign employees

The Chinese tax authorities recently were reported to have successfully recovered substantial amounts of tax undercharges from foreign companies after the authorities determined that the companies had created permanent establishments (PEs) in China by sending employees to work in the country. While it may not be surprising that the Chinese tax authorities sought to recover enterprise income tax (EIT) from the foreign companies by identifying PE of the companies in China, the cases illustrate that Chinese individual income tax (IIT) liabilities also can arise for the foreign employees working in the PE.

The cases demonstrate the consequences of creating (an unintended) PE: the income generated by the PE that is connected with the activities of the employees will be subject to EIT, and the expatriate assignees' employment income earned from working in China will be subject to IIT. In this case, the PE generally will be deemed to bear the cost of the employee's employment income and, therefore, the employee may not qualify for tax relief that otherwise would apply under an income tax treaty between China and the individual's home country, regardless of how long he/she is physically present in China.

Beijing case

One of the published cases, which involved the Beijing local tax bureau, was posted on the State Administration of Taxation's (SAT's) social media site (WeChat) on 1 August 2016.

The case involved an investigation of a Sino-foreign joint venture manufacturer (Company A). During the period from 2009 to 2014, Company A received services (e.g. onsite technical support, post-sales assistance, etc.) from various groups of employees who were sent to China by Company A's foreign parent (Company B). Company A took the position that the foreign employees were not liable for Chinese IIT because each individual had spent less than 183 days in China and the individuals' remuneration was paid and borne by Company B. However, the Beijing tax bureau determined that the foreign employees rendered services for the same project and that the length of their cumulative stay in China reached the PE threshold (i.e. 183 days in any 12-month period) under the applicable tax treaty. Therefore, Company B was deemed to have created a PE in China and the remuneration of the foreign employees working under the PE was considered a cost borne by the PE. As a result, the employees were not entitled to treaty relief, even though their actual physical stays in China were for less than 183 days.

The Beijing tax bureau's final assessment indicated that the foreign employees' activities had created 19 PEs of Company B in China, and a backlog of IIT and surcharges totalling RMB 23 million was collected.

Comments

Global mobility, which has become a norm in today's global business economy, can have significant tax (as well as other) consequences for a company. Examples of global mobility range from seconding full-time employees to work in another country, to sending staff on a short-term basis to carry out or complete temporary projects (e.g. project management, quality control, training, provision of technical advice, etc.), to business travel. Any type of cross-border employment or recurring travel can give rise to myriad challenges, including, for example, challenges relating to immigration, income tax and salary tax compliance, relocation, social security, etc.

Although many foreign companies are aware of the potential Chinese EIT risks arising from PEs, it seems that companies often have different levels of understanding of how the PE rules may affect the IIT liabilities of their expatriates working in China. Some companies may believe their expatriates can be exempt from Chinese IIT as long as each employee's stay in China remains under the threshold in the relevant tax treaty (e.g. 183 days in a calendar year). It may be easy for companies to overlook the interaction between PE and IIT issues, and as demonstrated by the Beijing case, a PE of the employer could jeopardize employees' entitlement to tax treaty protection. The consequences can be severe, ranging from financial penalties to reputational risks.

The dramatic increase in overseas companies sending employees to China to provide services has raised the awareness of the Chinese tax authorities about the potential creation of a PE and the need to intensify the scrutiny of foreign employers and their employees. The recently published cases signal that the tax authorities are looking closely at foreign companies and their expatriates working in China. The frequency and scope of inspections and tax audits carried out by the local tax authorities on PEs have grown exponentially, with the local bureaus conducting extensive investigations that include reviews of historical tax filings/submissions of documents, interviews of company personnel and onsite examinations. The local tax authorities also are working more closely with the SAT and the border authorities to expand the information channel for discovering PEs.

Foreign companies that frequently send employees to China should monitor developments and take appropriate actions to manage any potential tax risks. The following are some areas that should be considered when assessing PE and relevant EIT/IIT issues:

- Nature of the activities carried out by expatriates and the duration of projects or services rendered in China;
- Contractual documents and intercompany charges, e.g. salary reimbursements or service fees;
- Assignment arrangements and a determination of the identity of the "economic employer";
- Physical presence of expatriates in China and possible IIT reporting obligations; and
- Other factors, such as immigration formalities, etc.

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France:
Validity of 3% dividend surtax referred to CJEU

France's Administrative Supreme Court referred a case to the Court of Justice of the European Union (CJEU) on 27 June 2016, requesting a preliminary ruling on whether the 3% surtax on dividend distributions is in line with the EU parent-subsidiary directive (PSD).

Introduced in 2012, the 3% surtax is levied on French entities subject to corporate income tax, including French permanent establishments (PEs) of foreign companies. The surtax is levied at the level of the distributing company and is calculated based on the gross amount of the dividend, with the tax due at the time of the distribution. The surtax is levied on most dividend distributions (including deemed dividends). French tax law does not provide a mechanism to avoid a double (or multiple) levying of the surtax where dividends are distributed up a chain of companies.

Questions have arisen as to whether the surtax constitutes a "withholding tax" under the PSD. Under the PSD, no withholding tax may be levied on dividend distributions if the following requirements are met:

- Both the parent company and the subsidiary have a qualifying legal form;
- Both the parent company and the subsidiary are residents of an EU member state;
- Both the parent company and the subsidiary are subject to tax in an EU member state; and
- The parent company holds at least 10% of the shares of the subsidiary.

These requirements were met in the case referred to the CJEU, which meant that no withholding tax could be levied on the dividend distributions. The Administrative Supreme Court has questioned the validity of the 3% surtax in the context of the PSD, specifically, whether the surtax effectively constitutes a withholding tax.

The CJEU previously has ruled that a levy is considered a withholding tax when (i) the tax is due on the gross amount of the dividend; (ii) the tax is due at the time the dividend is distributed; and (iii) the taxpayer is the recipient (and not the payer) of the dividend. In one case, the CJEU relaxed this definition by considering the last requirement to be less important, although, in a subsequent case, the CJEU stated that it may have erred in that judgment.

The French court has asked the CJEU to determine whether the French surtax is a withholding tax for purposes of applying the PSD, since in the case of the surtax, the taxpayer is the distributing company and not the recipient of the dividend. If the CJEU rules that the surtax is a withholding tax, the surtax no longer could be levied where all other requirements for application of the PSD are met, and surtax already withheld potentially could be reclaimed.

In the case of French resident companies that enter into a fiscal consolidation, the surtax is levied only upon a dividend distribution that leaves the fiscally integrated group (i.e. the surtax is not levied on each distribution within the group). Since the fiscal consolidation regime is limited to French resident companies, multiple surtax levies can be avoided only in domestic situations. During the proceedings before the French court, the taxpayer argued that this violates EU law and that it should be entitled to the same fiscal advantage, i.e. a single levying of the surtax that would have taken place had the taxpayer entered into the tax consolidated group. This point, however, was not referred to the CJEU, but instead to the French constitutional court, which now must rule whether such an exemption complies with the equality principle in the French constitution.

Depending on how the CJEU (and constitutional court) rule on the cases, potentially affected EU and non-EU groups with French companies that have paid the 3% surtax in the past should consider filing protective claims to protect their entitlement to a refund of the surtax.

This article has been prepared in part by professionals in Taj, French tax and legal firm, member of Deloitte Touche Tohmatsu Limited.

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Italy:
Special tax regime for “inpatriates” available

Italy’s Minister of Economy and Finance issued a decree on 26 May 2016 that provides the implementing rules to allow qualifying taxpayers to benefit from a new special tax regime for “inpatriates” (i.e. certain individuals coming to Italy for work). The regime was introduced in September 2015 by the “Growth and Internationalization Decree”, which includes several provisions that aim to make the Italian tax system more attractive and competitive, some of which could have a significant impact on the international mobility of personnel. The measures relating to the special regime for inpatriates apply as from 1 January 2016.

Overview of special regime

The decree provides that, under certain conditions, and for a maximum of five years, only 70% of the employment income derived in Italy by employees who transfer their tax residence to Italy is subject to taxation, i.e. 30% of such income is tax-free.

The following conditions must be fulfilled to benefit from the tax exemption:

- The employee was not a tax resident of Italy in the five years preceding the year of transfer of tax residence, and he/she is engaged to remain in Italy for at least two years;
- The employee works in Italy under an employment contract with an Italian company, or a foreign company in the same group as an Italian company;
- The employee performs his/her employment activity in Italy for more than 183 days during the tax year; and
- The employee has a managing role or he/she has advanced qualifications or specialization, as defined.

The beneficial tax treatment also applies to certain EU citizens (i.e. those with a university degree who worked outside of Italy for at least 24 months before the transfer to Italy and those who studied outside of Italy for at least 24 months before the transfer, to obtain a graduate or post-graduate degree), regardless of whether the conditions above are fulfilled.

A beneficiary of the regime may lose the exemption if he/she fails to maintain an Italian residence for at least two years. In this case, previously exempted income will be subject to taxation, and penalties and interest may apply.

Comments

The new legislation may be attractive for both Italian nationals working abroad who wish to return to Italy and foreign nationals commencing an employment activity in Italy. Since the legislation does not restrict the employment contract to a contract with an Italian company (i.e. the contract may be with a foreign company in the same group), it is possible that foreign employees assigned to Italy could benefit from the new tax exemption (if they are assigned to an Italian company within the same group).

Numerous conditions must be fulfilled to qualify for the regime and coordination with other tax relief provisions (e.g. the exemption for professors and researchers returning to Italy) is necessary, so a case-by-case analysis should be undertaken for all individuals wishing to benefit from the regime.

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Italy:
“White list” updated

An updated version of the “white list” of jurisdictions that allow an effective exchange of information with Italy (established through a decree dated 4 September 1996) has been issued through a ministerial decree dated 9 August 2016 and published in Italy’s official gazette on 22 August 2016. Investors resident in white-listed jurisdictions may be eligible for various tax benefits in Italy.

The new version of the list includes jurisdictions with which Italy recently has concluded exchange of tax information agreements (including the British Virgin Islands, the Cayman Islands, Hong Kong and Switzerland). The 2016 decree also provides an option for the Italian tax authorities to remove jurisdictions from the white list that do not carry out an effective exchange of information with Italy.

The applicability of several beneficial Italian tax measures is based on the residence of a foreign investor in a white-listed jurisdiction, the most important of which include the following:

- A full exemption from substitute tax on interest paid to entities resident in white-listed jurisdictions on Italian government bonds and bonds issued by Italian banks or Italian resident entities;
- A full exemption from withholding tax on interest paid to entities resident in white-listed jurisdictions on deposits and current accounts (other than those held with banks and the postal service) and on payments for any type of guarantee;
- A full exemption from tax on capital gains from the sale of nonqualified participations in Italian private companies (i.e. holdings of less than 20% of voting rights or less than 25% of economic rights) by entities resident in white-listed jurisdictions; and
- A full exemption from withholding tax on amounts paid to specific qualified white-listed investors by certain Italian REITs.

The date from which the updated white list applies is unclear – since the decree does not provide any specific date for its entry into force, it arguably is applicable from the date of publication in the official gazette (22 August 2016).

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In brief

Belarus: The government has announced that it intends to impose VAT at the standard rate of 20% on sales of digital content by nonresident companies to Belarus consumers. Under the current rules, where digital content is supplied to a Belarus business, the Belarus legal entity customer pays 20% VAT under the reverse-charge mechanism; when a similar supply is made to an individual customer in Belarus there is no mechanism to enforce the payment of VAT because the reverse charge applies only to a supply of services to a legal entity. The government intends to close this gap in the law by deeming Belarus to be the place of supply of digital content and requiring nonresident suppliers to register for VAT purposes (under a simplified system) and pay VAT at a rate of 20%. The new rules would apply as from 1 January 2017.

China: The State Council issued a notice on 8 August 2016 that sets out some high-level guidelines aimed at improving the Chinese business environment and stimulating economic growth. The measures include the following: (1) ensuring that the burden on taxpayers is not increased following the introduction of VAT to replace the business tax; (2) enhancing the super deduction for research and development expenses; (3) reviewing the rules on administrative fees, with a view to reducing the amount of the fees; (4) reducing financial costs for small and micro companies; (5) encouraging companies with good credit to issue overseas bonds; and (6) reducing the burden on the employers' portion of social security contributions. Each government department (e.g. the Ministry of Finance, State Administration of Taxation, Ministry of Science and Technology) will be responsible for reviewing its respective areas and taking steps to achieve the above objectives. The State Council will carry out an assessment of the project at the end of March 2017.

Colombia: The administrative court issued a decision on 1 June 2016 concluding that there is no statutory deadline for a taxpayer to register an extension of an agreement providing for the importation of technology, in order to deduct the associated payment (e.g. royalty, technical assistance fee, technical services fee, etc.). A decree issued in 1975 establishes the statutory requirements for the deduction of such payments, which include registration of the agreement with the tax authorities. However, since the law does not specify a timeframe or deadline for registration, the court held that the registration requirement will be deemed to be met if the agreement is registered with the tax authorities, either before or after the payment is made. The decision should make it easier for taxpayers importing technology to deduct relevant payments made abroad, although, to avoid disputes with the tax authorities, such agreements should be registered before the end of the tax year in which the deduction is claimed.

Denmark: As from 1 July 2016, a 22% Danish dividend tax (reduced from 27%) may be levied on dividends distributed to a nonresident company. However, Danish companies still have an obligation to withhold tax at the 27% rate, so the recipient must submit an application to the Danish tax authorities to recover the "excess" dividend tax withheld (this may be subject to change in future legislation). The tax authorities have acknowledged that the application of the 27% rate violates the freedom of establishment principle under the Treaty on the Functioning of the European Union because it exceeds the 22% corporate income tax rate currently applicable to Danish companies. The reduced 22% dividend tax also applies to dividends received by companies that are resident outside the EU/European Economic Area (EEA), but only EU/EEA companies have the option to apply for a refund of excess dividend tax withheld on distributions made before 1 July 2016; the amount of the available refund will depend on the applicable tax rates in the income year in which the dividend was distributed.

European Union: The Court of Justice of the European Union (CJEU) issued a decision on 21 July 2016, concluding that the limitation of the Austrian energy tax rebate (ETR) to production enterprises infringes EU law because the simplified notification requirements necessary for a state aid measure to be approved under EU law were not fulfilled. As a result, Austrian service providers may claim an ETR for 2011 and subsequent years. However, affected taxpayers should be aware that revised requirements to qualify for the simplified notification process entered into force in 2015 and the CJEU did not rule on whether Austria has fulfilled these new requirements, which could have led to the limitation of the ETR to production enterprises being effective as from 2015.

Finland: The parliament has approved a bill that will shorten the period to obtain a refund of tax withheld on Finnish-source dividends from five years to three years following the end of the calendar year in which the tax was withheld. The president still must ratify the law, with the new rules expected to be introduced as from 1 January 2017 and applying to withholding taxes paid in 2017 or thereafter.

Germany: The Ministry of Finance has issued a first version of a draft law that would provide an additional opportunity for taxpayers to obtain relief from the strict general change-in-ownership rules by introducing a new net operating loss (NOL) carryforward category for "business continuation losses." Application of the change-in-ownership rules results in the forfeiture of tax loss carryforwards. Under the proposed rule, the general change-in-ownership rules would not be applicable where the business operations of the loss corporation are continued and unchanged from the time of incorporation or at least during the three fiscal years before the change-in-ownership. If these conditions are fulfilled and the taxpayer files an application, the regular NOL carryforward would be transformed into a business continuation NOL carryforward. The government is expected to decide on 14 September 2016 whether to formally initiate the legislative process.

Hungary: The Labor Code has been amended to introduce new rules that impose significant additional administrative obligations on Hungarian companies employing foreign individuals. As from 18 June 2016, Hungarian companies employing expatriates will be jointly and severally liable with the foreign employer with regard to recording and compliance obligations if the following conditions are fulfilled: (1) an employee of a foreign company performs work at a Hungarian company based on a service agreement concluded between the two companies, and (2) the Hungarian company was, or should have been, aware that the foreign employer failed to comply with its wage and contribution payment obligations with respect to the employee working in Hungary under the service agreement. The interpretation and practical application of the legislation raise questions, and the range of potential penalties for noncompliance is unclear.

Ireland: The Ministry of Finance published a statement on 2 September 2016 announcing that it has decided to appeal the decision of the European Commission in the Apple state aid case. The commission announced on 30 August 2016 that it has concluded that Ireland granted undue tax benefits of up to EUR 13 billion to Apple, and that this is illegal under EU state aid rules, because it allowed Apple to pay substantially less tax than other businesses (the commission sent a letter to the Irish government on 11 June 2014 setting out its preliminary view that Apple's advance transfer pricing rulings granted by the Irish Revenue Commissioners constitute state aid (for prior coverage, see *World Tax Advisor*, 27 June 2014)). The commission has ordered Ireland to recover the illegal aid. The commission's full decision has not yet been published; a version will be made available in the state aid register once any confidentiality issues have been redacted and resolved.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140627_ib.html

Luxembourg: A law that modernizes the law on commercial companies and introduces a new form of company was published in the official gazette on 19 August 2016 and entered into force three days after its publication. For prior coverage, see *World Tax Advisor*, 19 August 2016.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160819_6.html

Mexico: The Tax Administration Service (SAT) announced on 4 August 2016 that in September the SAT will begin electronically reviewing information in its possession relating to any taxpayer omission or failure to comply with the rules relating to e-accounting, monthly estimated payments, information returns, electronic invoices and reporting, information provided by third parties, etc. A "conclusive agreement" procedure (i.e. a procedure that allows the "fast track" resolution of disputes to avoid an appeal) will be available that may allow taxpayers to settle disputes with the SAT resulting from the electronic review process.

New Zealand: A tax bill released in August 2016 aims at implementing the business tax simplification measures announced as part of this year's budget (for prior coverage, see *World Tax Advisor*, 13 May 2016). From a policy perspective, little has changed compared to the original announcement. There have been some changes to the measures, with the most significant changes relating to provisional tax (including a change that would expand the availability of the method for aligning the tax payments with when income is earned to include taxpayers with income of over NZD 5 million, provided they use an approved software package) and "use of money" interest. The bill also includes amendments to the disclosure requirements for foreign trusts with New Zealand resident trustees and amendments to implement the G20/OECD Standard for Automatic Exchange of Financial Account Information in Tax

Matters. The report back on the bill is due in February 2017, and many of the business tax reforms would apply as from 1 April 2017.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160513_ib.html

Puerto Rico: The US Court of Appeals for the First Circuit issued an opinion on 24 August 2016 that affirms the district court decision that struck down certain provisions of Puerto Rico's alternate minimum tax (AMT) regime as unconstitutional (for prior coverage, see *World Tax Advisor*, 13 May 2016). As a result of the decision, the injunction prohibiting the Puerto Rico Treasury Department from levying, collecting or enforcing the unconstitutional components of the AMT regime continues to apply.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160513_7.html

Taiwan: On 27 July 2016, the Executive Yuan issued its interpretation of the recently approved place of effective management (POEM) rules that will be used to determine the tax residence of a corporation (for prior coverage, see *World Tax Advisor*, 19 August 2016). According to the Executive Yuan, a foreign entity will be deemed to have its POEM in Taiwan if all of the following criteria are met: (1) the key management, financial and human resource decisions necessary for the operation of the business of the enterprise are made by a person resident in Taiwan or the corporate decisions are made in Taiwan (with specific examples provided for the terms "key decision-makers," "corporate decision-making location," "key management and "commercial decisions"); (2) the financial statements, accounting documents and minutes of the board of directors' meetings or the minutes of the shareholders' meeting are produced or retained in Taiwan; and (3) the main business activities of the enterprise are carried out in Taiwan. The implementation date of the POEM rules also has been clarified: previously, one of the factors affecting the implementation date was thought to be Taiwan's own implementation of the common reporting standards (CRS), but it has been clarified that the government meant the adoption and implementation of CRS by neighboring jurisdictions, such as Hong Kong and Singapore.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160819_9.html

(#US) United States: On 24 August 2015, the treasury released a white paper entitled, "The European Union's Recent State Aid Investigations of Transfer Pricing Rulings," in which the treasury voices concerns about the European Commission's approach to the taxation of multinationals and state aid. The paper argues that the approach undermines tax treaties, internationally accepted transfer pricing guidelines and the BEPS project.

BEPS corner

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

Belgium: A new "innovation income deduction" is planned to replace the patent income deduction, in line with the recommendations in the OECD report on BEPS action 5. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_1.html

Brazil: A public consultation document contains a normative ruling that would implement the OECD recommendations under BEPS action 14 in relation to the operation of the country's mutual agreement procedure. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_2.html

OECD: The OECD published a discussion draft relating to branch mismatch structures under action 2 of the BEPS action plan (neutralizing the effects of hybrid mismatch arrangements) on 22 August 2016. The draft identifies and analyzes five basic types of mismatches in tax outcomes that may arise from the use of a branch structure, and provides preliminary recommendations on domestic rules to neutralize the mismatches. The October 2015 OECD report on BEPS action 2 set forth recommendations designed to neutralize hybrid mismatches by targeting arrangements involving three types of mismatches in tax outcomes: deduction/no inclusion outcomes, double deduction outcomes and indirect deduction/no inclusion outcomes (for prior coverage, see OECD tax alert, 16 October 2015). The discussion draft applies the analysis and recommendations from the BEPS action 2 report to arrangements involving mismatches that may occur where the jurisdictions in which a branch and its head office are located have

different tax accounting rules for allocating income and expenditure between the branch and the head office (including cases where the taxpayer is not treated as having a taxable presence in the branch jurisdiction).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-16-october-2015.pdf

OECD: The OECD Secretary General has delivered his report to the G20 leaders at their meeting in Hangzhou, China. The two-part report addresses the following: the BEPS project, tax transparency, tax policy tools to support sustainable and inclusive growth, tax and development, as well as a progress report on transparency and exchange of information for tax purposes. The report notes that the global forum on transparency and the financial action task force will be issuing a report in October 2016 on the provision of beneficial ownership information, essentially as part of the automatic exchange of information under FATCA and the common reporting standard. The secretary general also noted that it will provide details to the G20 leaders' meeting in 2017 of "uncooperative" jurisdictions, i.e. jurisdictions that essentially are not participating in the automatic exchange of information.

United States: The treasury has released a white paper in which it voices concerns about the European Commission's approach to the taxation of multinationals and state aid. See the "in brief" item in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_ib.html#US

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