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In this issue:

Egypt introduces new VAT law

A new VAT law, ratified by the Egyptian president on 8 September 2016 and effective as from that date, replaces the country's general sales tax law that had been in effect since 1991. Unlike the sales tax, which was imposed on the final sale of goods, VAT will be applied at each stage of the production and distribution chain of goods and services.

The parliament approved the VAT law on 28 August 2016 after prolonged discussions amidst budgetary pressures and public concern around the potential inflationary impact of VAT. The government expects additional revenue of EGP 25-EGP 30 billion (around USD 2.8-USD 3.3 billion) from the application of the new VAT regime.

Executive regulations applicable to the VAT law are expected to be issued before 8 October 2016.

Overview of the regime

Scope and rates: The scope of the VAT is broad, generally applying to the supply of all goods and services at a rate of 13% (increasing to 14% on 1 July 2017). Services are broadly defined in the law as anything that is not classified as "goods," which means that intellectual property, consultations and management services, etc. will be subject to VAT.

The law contains a list of 57 categories of goods and services that will be exempt from VAT. These include basic food products; provision of natural gas production; transmittal and distribution of electricity; banking services and other regulated nonbanking financial services and insurance services; rental of residential or nonresidential property; and health and education services. In addition, certain Egyptian state bodies and entities will be exempt from VAT by virtue of an international agreement or special law.

Certain goods and services specified in tables in the new law ("tabled items") will be subject only to a VAT "table rate" (e.g. 5% for construction contracts; from EGP 0.30 to EGP 1.30 per liter for oil products; and 10% for consultation and professional services). However, other items, such as automobiles, household electrical goods, air conditioning equipment and mobile telecommunications services, will be subject to the table rate in addition to the general rate, potentially making the effective VAT rate on these items over 20% ("double taxed items"). All capital goods, including plant and machinery related to production or the provision of a service, will be subject to a 5% VAT rate.

The arm's length principle will apply to all related party transactions for purposes of calculating the appropriate amount of VAT, and the law contains anti-abuse provisions, under which any transaction that is deemed by the tax authorities to be intended mainly to avoid or postpone the tax will be subject to reclassification and re-pricing by the authorities, with the burden of proof resting on the party responsible for collecting the tax.

Input VAT: Input VAT may be offset against output VAT under the new law for all items subject to the general rate. For services and most goods included as tabled items, input VAT may not be offset against output VAT (except for construction contracts, tobacco and edible oils).

Exported goods or services will be subject to a zero rate of output VAT, allowing the exporter a potential refund/offset of input VAT paid for all items subject to the general rate and for some tabled items. Goods and services provided to Egyptian free zone entities also will be considered zero rated.

A refund of input VAT on exported goods and services will be possible only if the proceeds of the exports are deposited in an Egyptian bank or settled according to rules to be specified in the forthcoming executive regulations. This will be an issue for many companies facing foreign currency shortages in Egypt that export goods and services against amounts due to them from related parties or that settle payments directly with overseas suppliers, rather than collecting the proceeds in Egyptian banks.

The law does not allow an offset or refund of input VAT for exempt goods and services or for goods and services sold to exempt parties, except where covered by an international agreement, made to diplomatic missions and personnel or made for purposes of national security.

A credit balance due from the Egyptian tax authorities on any type of tax other than VAT (i.e. a credit balance arising from overpaid corporate income tax, salary tax, etc.) may be "horizontally" offset against a VAT liability.

VAT registration: Resident providers of goods or services that are subject to only the general VAT rate are required to register for VAT purposes if their revenues equal or exceed EGP 500,000 (around USD 56,000 or EUR 50,000); however, they may voluntarily register if their revenues do not meet this threshold. No minimum registration threshold exists for suppliers of tabled items and double taxed items, which are required to register irrespective of their revenues.

Reverse charge: Nonresident suppliers of taxable goods and services to a non-VAT-registered resident customer (including business-to-consumer (B2C) transactions) must appoint a VAT representative in Egypt to fulfill the nonresident's VAT compliance obligations (e.g. filing the return, paying VAT to the authorities). If no representative is appointed, the resident recipient of the goods or services will be required to calculate the VAT on the cost of the items received and remit the VAT to the tax authorities.

Nonresident suppliers of taxable services to a VAT-registered resident customer (including only business-to-business (B2B) service transactions) also must appoint a VAT representative in Egypt to fulfill the nonresident's VAT compliance obligations; otherwise, the resident registered recipient of the services will be required to calculate the VAT on the cost of the services received and remit the VAT to the tax authorities within 30 days after receipt of the service.

VAT returns: VAT returns must be prepared on a monthly basis and filed within two months of each month end.

VAT refunds: Refunds of VAT will be paid within 45 days from the date a refund request is made (provided the request includes all relevant supporting documents and required data). The law provides for four categories of refunds: (i) refunds of input VAT related to the export of goods and services; (ii) refunds of VAT applied by mistake; (iii) refunds of a credit balance lasting for more than six months; and (iv) refunds of input VAT related to equipment and machinery.

Invoicing and records retention: VAT invoices must be issued in a specified format. The minimum records to be kept should include a sales and purchases register, and should be retained for at least five years.

Penalties: A "delay fine" will be imposed for underpayments of VAT, in an amount equal to 1.5% per month (or any portion thereof) of the tax unpaid; however, no delay fines will be imposed for mistakes, errors or delays resulting from the transition from the sales tax system to the VAT system in the first three months of the new system. In cases of tax evasion, in addition to the original tax and related delay fines, a penalty of EGP 5,000 to EGP 50,000 may be applied or a prison sentence of three to five years may be imposed.

Transition rule for contracts: The VAT law contains a transition rule, under which contracts existing on the date the law became effective will be amended by force of law to apply the new VAT provisions and rates. Executive regulations will be issued to provide the procedures for amending such contracts.

Comments

It is hoped that the executive regulations will clarify certain aspects of the new VAT law, particularly with respect to the reverse charge rules and the rules allowing a refund of input VAT on exported goods or services only if the proceeds are deposited in an Egyptian bank.

The shift from a general sales tax structure to a VAT regime represents a sea change for businesses in Egypt, with the transition likely creating challenges for businesses that now will be responsible for charging and collecting VAT and remitting it to the government. For businesses that are unfamiliar with VAT, implementation may require major changes to business operations, and likely will require immediate actions, such as:

- Developing an understanding of VAT registration and compliance obligations;
- Ensuring that the relevant books and records are maintained in the appropriate manner;
- Revising all existing contracts that will be amended by the force of the law;
- Revising the terms of business with customers to ensure that VAT becomes a cost to customers, not to suppliers; and
- Revising relevant internal systems to ensure they can address the charging and recovery of VAT.

The VAT law is part of the package of economic reform that the government is adopting, and is relying on to generate substantial revenue, while keeping an eye on its inflationary impact.

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China:
Third protocol signed to tax arrangement with Macau

The third protocol to the double taxation arrangement (DTA) between China and Macau, signed on 19 July 2016, contains three major changes:

- A broadening of the definition of transportation business to include income and profits derived from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport;
- A reduction from 7% to 5% in the Chinese withholding tax rate on rental payments derived from the leasing of aircraft and ships (the 7% rate that applies for non-aircraft and ship leasing will remain unchanged); and
- The inclusion of anti-avoidance measures in the dividends, interest, royalties and capital gains articles that will operate to deny benefits under the DTA if the main purpose for entering into an arrangement is to obtain these benefits.

China's DTA with Hong Kong, another Special Administrative Region of the PRC, contains similar provisions in the fourth protocol to that arrangement (for prior coverage, see *World Tax Advisor*, 24 April 2015). However, the protocol with Hong Kong also contains a provision expanding the exchange of information article – in addition to China's individual income tax and enterprise income tax, the tax information exchange obligation also applies to VAT, consumption tax, business tax, land appreciation tax and real estate tax. Under the exchange of information provision, if China's State Administration of Taxation has questions about a Hong Kong taxpayer with respect to any of the above taxes, the Hong Kong Inland Revenue Department will be required to respond to the SAT's request. This provision will strengthen the anti-treaty abuse measures and fulfill Hong Kong's obligations to meet global standards for enhancing tax transparency. It is likely that similar information exchange measures eventually will be introduced in Macau for the same purpose.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150424_2.html

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Mexico:
Tax package for 2017 presented

The 2017 tax package submitted by Mexico's president to the congress on 8 September 2016 includes proposed changes to the income tax law, the VAT law and the federal fiscal code, among others. The bill now must be discussed by the congress, first in the House of Representatives and then in the Senate, with the debates expected to be concluded by the end of October. If approved, the measures generally would apply as from 1 January 2017.

It is important to note that, except for an increase in the fees for transfer pricing ruling requests to cover, among others, the costs related to an onsite functional analysis, there are no proposals related to Mexico's implementation of BEPS recommendations. Further, no changes are proposed to the tax rates.

The following are some of the proposals that may be of general interest to nonresidents:

Income tax

Depreciation rate: The 7% depreciation rate that applies to machinery and equipment used in the processing of crude oil and natural gas would be eliminated, and a 10% depreciation rate for machinery and equipment used in infrastructure related to the transportation, storage and processing of hydrocarbons would be introduced.

Research and technology development tax incentive: The research and technology development tax incentive that was in effect until 2009 would be reintroduced. Under this incentive, taxpayers that conduct research and technological development would be granted a tax credit equal to 30% of expenses incurred and investments made in the fiscal year that are related to the research or development of technology. The (nontaxable) credit could be applied against the income tax due in the year in which the credit is determined, with any excess available for carryforward for the following 10 years. Unlike the 2009 incentive, however, the credit would apply on only the incremental expenses/investments made in the year in comparison to the average of the expenses/investments in the previous three fiscal years. Taxpayers would have to meet certain requirements to qualify for the credit (e.g. submit an information return that contains details of the expenses incurred, etc.). The total amount of the tax incentive credit to be distributed among all applicants would be capped at MXN 1,500 million for each fiscal year or MXN 50 million per taxpayer.

Nontaxable income: Economic and monetary support granted to legal entities and individuals by the Mexican government would be considered nontaxable income (and any expenses incurred with respect to such support would be nondeductible).

VAT

Export of information technology (IT)-related services: To bring Mexico in line with other countries that have introduced VAT rules governing the export of IT-related services, a provision would be added to the VAT law to allow a zero rate to apply to such services supplied by Mexican residents. Several requirements would need to be met to qualify for the zero rate, including that both the IP address of electronic devices through which the services are rendered and the address of the internet services provider would have to be in Mexico and the address of the recipient of the services would have to be abroad. The zero rate would not be applicable to services rendered through virtual networks or when the services relate to assets in Mexico.

Input VAT incurred during preoperational periods: The treatment of input VAT paid during the preoperational phase would be amended to provide that the VAT would be creditable at the time the taxpayer commences taxable operations (subject to some exceptions) at a rate of 16% (general rate) or 0% (export and other special cases); otherwise, the taxpayer would have to absorb the tax. Taxpayers engaged in the exploration and extraction of oil and gas resources would not be subject to this rule.

Import of tangible goods and supply of services: The VAT law would be clarified to provide that in the case of a temporary use or enjoyment of tangible goods in Mexico that were physically delivered outside Mexico, VAT would not be paid on goods that had been subject to VAT at the time of import. The proposed rules also would clarify that where services are provided by a nonresident, but used and enjoyed in Mexico, the importation of the services for VAT purposes would be deemed to take place at the time the consideration for the services is paid.

Federal fiscal code

Registration of legal representative: Legal representatives would be required to obtain a tax ID number from the tax authorities, as well as an authorized electronic signature. A public notary would have to state in incorporation deeds and the minutes of shareholders' meetings that the legal representative must obtain a tax ID number or, accordingly, verify that the number appears in such documents.

Electronic reviews: The 2014 tax reform introduced rules that allow the Mexican tax authorities to initiate electronic reviews of taxpayers. However, a constitutional challenge to this procedure was made by taxpayers. The Supreme Court issued its decision in the case on 6 July 2016, generally upholding the constitutionality of the measure, but with some stipulations (for prior coverage, see *World Tax Advisor*, 9 September 2016). As a result, Mexico's president has proposed the following changes to the procedure relating to electronic reviews: (i) the taxpayer would be able to voluntarily accept observations made by the tax authorities; (ii) the issuance of a final resolution in the case would be possible only after the taxpayer is granted an opportunity to present rebuttal evidence; (iii) the tax authorities would

have 40 business days after the taxpayer has submitted its arguments and evidence to issue a final resolution; (iv) the electronic review procedure would not be able to exceed six months (two years where customs issues are involved); and (v) the review could be suspended or settled through a conclusive settlement procedure (i.e. a procedure that allows a “fast track” resolution of disputes to avoid an appeal).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_ib.html

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Netherlands:
Changes proposed to related party and acquisition financing rules

On Budget Day, 20 September 2016, the Dutch government released proposed legislative changes to the existing rules limiting the deduction of interest expense. The proposals generally would expand the scope of the related party financing rules and close certain loopholes in the acquisition financing rules. Changes also were announced with respect to the Dutch dividend withholding tax obligations of cooperatives.

The draft bill will be debated in the coming months and, if approved, the rules would apply for book years starting on or after 1 January 2017.

Related party financing rules

Under Dutch tax law, interest expense on debt, including costs and currency exchange results, which are payable to a related party are, in principle, not deductible for Dutch corporate income tax purposes if the financing is used for “tainted” transactions (e.g. the acquisition of shares, profit distributions, repayments of capital and capital contributions). Parties are considered related if a direct or indirect shareholder holds an interest of at least one-third in the Dutch taxpayer; if the Dutch taxpayer holds an interest of at least one-third in its subsidiary; or if the Dutch taxpayer and its “sister company” both are directly or indirectly at least one-third held by another entity or individual.

Based on the wording of the current law, whether parties are related is determined by considering each entity separately, even if a group of entities acts in concert. Under these rules, four or more separate entities that each hold a direct or indirect interest of less than one-third in a Dutch taxpayer would not qualify as a related party for purposes of the related party financing rules. (This situation often occurs in private equity structures, where the fund consists of several limited partnerships.)

The draft bill proposes to amend the definition of “related party,” so that entities that directly or indirectly own less than one-third each in the Dutch taxpayer but that jointly act as a “coordinating group” of companies would be considered a related party for book years starting on or after 1 January 2017. The bill explicitly states that this definition would apply to existing structures (i.e. there would be no grandfathering of existing structures), but the explanatory notes accompanying the bill seem to imply that the proposed amendments would not have retroactive effect.

According to the explanatory notes, the following factors would be considered indicative of the existence of a coordinating group:

- Control is exercised by a coordinating entity (e.g. general partner/management entity);
- Each investor provides funding in approximately the same pro rata debt-to-equity ratio to the Dutch taxpayer; and
- The investors individually cannot decide to rescind their investments.

The proposals confirm that, even where an investing entity qualifies as a related entity, these Dutch interest deduction disallowance rules would not apply if the taxpayer can provide evidence demonstrating valid business reasons for the tainted transaction and financing.

Acquisition financing rules

Under the existing acquisition financing rules, interest payments and related costs on debt from affiliates or third parties that is related to the acquisition of the shares in a Dutch entity (or Dutch fiscal unity) that subsequently is included within a fiscal unity with the acquiring entity cannot be offset against the acquired entity's profit (except to the extent that they fall below an EUR 1 million threshold). However, the limitation on acquisition financing will not apply:

- To the extent the interest costs are offset against "own" income at the level of the acquiring company; or
- Irrespective of the amount of the acquiring company's own income, to the extent that no more than 60% of the acquisition price is financed with debt (in the year of inclusion in the fiscal unity). The maximum percentage of debt financing is thereafter reduced by 5% each year over a seven-year period, down to 25% of the acquisition price in year eight.

Additionally, "grandfathering" rules are available for structures that were in place before 15 November 2011.

The following changes are proposed to the acquisition financing rules:

- **Debt pushdowns within a fiscal unity:** The calculation prescribed for the acquiring entity's own profit currently results in an "unforeseen" outcome after a debt pushdown within the fiscal unity. To avoid this outcome, the calculation method would be amended. However, the amended rule would not apply to a debt pushdown where the acquiring entity and the acquired entity (or acquired Dutch fiscal unity) are not included in a Dutch fiscal unity.
- **60% financing safe harbor:** In practice, the decrease of the 60% financing safe harbor by 5% annually can be avoided by transferring the acquired entity to a newly set up acquisition vehicle within the group. To avoid having the time period for the safe harbor restart after such a transfer within the group that results in a subsequent inclusion of the acquired entity in a new fiscal unity, the draft bill proposes that, in a situation where an acquired entity is financed with an acquisition debt that already falls within the scope of the acquisition financing rules, the original time period for the safe harbor would continue to run after inclusion of that entity in a new fiscal unity. The same principle would apply in a situation where the acquired entity is excluded from the fiscal unity and subsequently re-included within the same fiscal unity.
- **Grandfathering rules:** In situations where a Dutch entity (or fiscal unity) was included in a fiscal unity with the acquiring entity prior to 15 November 2011, the acquisition financing rules do not apply. These grandfathering rules remain available if the acquisition debt is subsequently refinanced or if the existing "grandfathered" fiscal unity is transferred to a new shareholder. According to parliamentary history relating to the implementation of the acquisition financing rules in 2012, the latter rule also applies if the existing grandfathered fiscal unity is subsequently included in another fiscal unity (e.g. transferred to a new shareholder and included in a new fiscal unity, with the new shareholder becoming the new parent company of the fiscal unity).

  To avoid sheltering the acquisition debt from the scope of the acquisition financing rules at the level of the new fiscal unity, the draft bill proposes that, in such a situation, the grandfathering rules no longer would apply. Contrary to the preliminary proposals (announced in June 2016), this limitation of the grandfathering rules would apply only to new fiscal unities formed in a book year starting on or after 1 January 2017.

EU anti-tax avoidance directive (ATAD)

The "earnings stripping" rule in the ATAD is expected to be implemented into Dutch tax law not earlier than 1 January 2019 (for prior coverage, see *World Tax Advisor*, 24 June 2016). Under the earnings stripping rule, the deductibility of borrowing costs, such as interest expenses, would be limited to 30% of a taxpayer's earnings before interest, tax, depreciation and amortization (EBITDA). It has been confirmed that, following the introduction of the earnings stripping rule, the existing Dutch interest deduction limitation rules would be re-evaluated, although the related party financing rules likely would remain intact to avoid base erosion.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160624_5.html

Dividend withholding tax for Dutch cooperatives

Under current legislation, a Dutch cooperative is not required to withhold Dutch dividend withholding tax, except in certain abusive situations. As a result, in addition to its original purpose (i.e. cooperation among its members), the Dutch cooperative may be used as an (intermediary) holding company within an international entrepreneurial-driven structure to mitigate Dutch dividend withholding taxes. Since, under certain circumstances, this differs from the Dutch dividend withholding tax obligation of a Dutch NV/BV, on Budget Day 2016, the Secretary of Finance issued a letter that shares his views on how to achieve more equal treatment. His views include broadly framed preliminary proposals; formal legislative proposals are expected to follow, which would aim to take effect as from 1 January 2018.

Under the preliminary proposals, to the extent a Dutch holding cooperative has a member with an interest of 5% or more, it would be treated in a similar manner as a Dutch NV/BV. At the same time, the current withholding exemptions would be broadened. In short, dividends from participations distributed to a parent company established in a treaty country would be exempt from Dutch dividend withholding tax, except in an abusive situation. Ultimately, an exemption would be granted only in entrepreneurial-driven structures, although the Secretary of Finance's letter does not contain a definition of what would be considered entrepreneurial-driven structures. If the preliminary proposals are adopted, private equity funds investing from a nontreaty country via a Dutch cooperative no longer would benefit from the dividend withholding tax exclusion currently applicable for Dutch cooperatives.

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New Zealand:
Discussion document released on hybrid mismatch arrangements

On 6 September 2016, the New Zealand government announced the release of a discussion document (Paper) that contains proposals for addressing hybrid mismatch arrangements.

The Paper proposes that New Zealand should adopt the OECD recommendations on hybrid mismatch arrangements, as proposed under action 2 of the BEPS action plan, and seeks input on how the OECD recommendations could be implemented in the country. Recommendations seek to prevent the misalignment of domestic rules resulting in unintended tax advantages, which would be primarily achieved through the use of "linking rules" that change the usual tax treatment of cross-border transactions to ensure that there is no hybrid mismatch in such cases.

The Paper is divided into two parts. Part I describes the problem of hybrid mismatch arrangements, the case for responding to the problem and a summary of the OECD recommendations. Part II explains the OECD recommendations in greater detail and discusses how they could be incorporated into New Zealand tax law.

The Paper considers 12 specific OECD recommendations on BEPS action 2, and proposes a number of changes to New Zealand's tax law to implement them.

There are a significant number of proposals included in the Paper, many of which are complex. Proposals appear ominous, as page 1 states: "It is expected that most hybrid arrangements would be replaced by more straightforward (non-BEPS) cross-border financing instruments and arrangements following the implementation of the OECD recommendations in New Zealand."

There is recognition that the rules (in particular, recommendation 6: deductible hybrid payments rule) will result in complexity for foreign branches of New Zealand companies, so submissions are requested on whether there should be an active branch income exemption. There also is a proposal to treat companies that are resident in another country under a tax treaty as nonresident for New Zealand tax purposes. Proposals are expected to apply to payments made after a taxpayer's first tax balance date following enactment.

The Paper makes it clear that the final decision in relation to the proposed implementation of the OECD recommendations in New Zealand will be made after the consultation phase; comments on the Paper must be submitted by 17 October 2016.

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Switzerland:
Federal tax holiday rules revised

On 3 June 2016, Switzerland's Federal Council adopted an ordinance that amends the country's rules for granting federal tax holidays. The main changes, which apply as from 1 July 2016, include (i) the introduction of a Swiss franc (CHF) cap per new job created and per job preserved; (ii) changes to the economic development areas that qualify for a federal tax holiday, to take into account regional planning policies; and (iii) increased transparency of the federal tax relief granted.

During the planning phase of the federal tax holiday reform, which commenced in 2013, the Federal Council held discussions with the European Commission and the OECD Forum on Harmful Tax Practices (FHTP). Based on these discussions, the FHTP declared in 2015 that the EU/OECD will not challenge tax incentive regimes, such as the Swiss tax holiday regime. Accordingly, neither the Swiss federal nor the cantonal tax holidays should be affected by the Swiss Corporate Tax Reform III (for prior coverage, see *World Tax Advisor*, 24 June 2016) or by the OECD BEPS project.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160624_9.html

Eligible beneficiaries: Industrial companies and production-related service providers (both new and existing companies and permanent establishments of nonresident companies) that are located in designated economic development areas and that create new jobs through a new venture or preserve existing jobs through a substantial realignment of their existing business may qualify for federal corporate income tax relief in the form of tax credits, for a period of up to 10 years.

Industrial companies include both manufacturing companies and information technology service providers. Production-related service providers must create at least 10 new jobs within the first five years of the holiday period, but there is no such requirement for industrial companies.

A federal tax holiday will be granted only if the canton in which the business is located has granted a cantonal tax holiday for the same type of business activity and the new business activity or undertaking has a particular importance to the regional economy. The business activity or undertaking must meet at least four of the following eight criteria:

1. Creation of new jobs in line with federal tax holiday guidelines;
2. Investment within the region;
3. Integration with the cantonal economic development strategy;
4. Regional purchase orders or acquired services;
5. Collaboration with local research or educational institutions with a direct connection to the planned project;
6. Provision of training opportunities within the region;
7. Innovative solutions for the improvement of the production/manufacturing of new goods or new processes; or
8. Sales market reach beyond the region where the tax holiday is granted.

Amount of federal tax relief: The new rules grant a maximum tax credit of CHF 95,000 per year for each newly created full-time job and a maximum tax credit of CHF 47,500 per year for each full-time job preserved. The total amount of federal tax relief is further limited to the amount granted by the canton. The total amount of credits to be generated during the holiday period may be utilized up front (subject to “clawback” provisions), and unused credits may be carried forward within the agreed tax holiday period of up to 10 years.

Qualifying regional economic development areas: A federal tax holiday may be granted in 93 regional areas in the following 19 cantons (including eight newly added cantons): Aargau, Appenzell Ausserrhoden, Appenzell Innerrhoden, Basel-Landschaft, Berne, Freiburg, Glarus, Graubünden, Jura, Lucerne, Neuenburg, St. Gallen, Solothurn, Thurgau, Ticino, Uri, Valais, Vaud and Zurich.

The tax holiday regional areas generally are more attractive under the new regime, because they are not necessarily limited to small municipalities and generally are closer to urban centers.

Commencement of federal tax holiday period: A federal tax holiday generally will commence when a newly established company becomes subject to income tax. In the case of an existing company, the tax holiday begins at the start of the calendar year in which the company generates its first revenue related to the new business project. For businesses involving construction, it may be possible to defer the start of the federal tax holiday for up to five years, to no later than 1 January of the sixth year after the calendar year in which the request for the federal tax holiday was made.

Transparency: Swiss companies whose statutory financial statements are subject to a Swiss audit must have the number of their full-time employees confirmed on an annual basis by their auditors and must share this information with the federal and cantonal income tax authorities. In addition, the State Secretariat for Economic Affairs will publish, on an annual basis, the company name and location and the number of jobs created by the new business.

Transitional rules: Federal tax holidays that were granted under the old rules (i.e. that were granted before 1 July 2016 and that are applicable beyond 1 July 2016) will not be affected by the federal tax holiday reform and will remain unchanged until the tax holiday period expires, provided the relevant conditions are fulfilled. Cantonal tax holidays are not affected by the new federal rules; however, some cantons may decide to implement rules similar to the federal rules.

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In brief

Bahamas: The Ministry of Financial Services issued a press release on 6 September 2016 announcing that the OECD common reporting standard for the automatic exchange of information is a priority initiative for the Bahamas. The government is committed to beginning the automatic exchange of information in 2018, and will opt for the bilateral, rather than the multilateral, approach. An implementation framework and action plan have been developed to ensure that the Bahamas meets its commitment, and draft enabling legislation and guidelines are nearly finalized.

Belgium: The minister of finance has announced plans to substantially reform the country’s corporate tax system, to simplify and improve the corporate tax regime and enhance Belgium’s competitive position on the global stage, and to accomplish these goals in a budget-neutral manner. A phased-in reduction of the nominal corporate income tax rate is proposed, from 33.99% to 27% in 2017, to 24% in 2018 and to 20% in 2019. Other proposals include phasing out the 3% crisis surcharge and the reduced-rate regime for small and medium-size companies, increasing the benefit of the dividends received deduction from 95% to 100%, abolishing the 0.412% tax on capital gains on shares realized by multinationals, abolishing the notional interest deduction regime, introducing limitations on the use of certain carryforwards and the interest expense deduction and introducing a “diverted profits tax.” The proposals now must be discussed within the government, and it is unclear whether and how the final corporate tax reform will take shape.

Canada: The Department of Finance released a package of draft legislation on 16 September 2016 that may require taxpayers to amend tax returns filed in prior years or evaluate whether to file certain elections before the end of 2016. The package would affect, in particular, taxpayers that sell or reduce their ownership interest in a foreign affiliate earning foreign accrual property income and foreign affiliates that make upstream loans to their shareholders or other non-arm's length persons.

Colombia: The Constitutional Court has ruled that the prohibition against offsetting tax credit balances relating to the income tax for equality (CREE, which applies in addition to the corporate income tax) against other types of tax obligations is unconstitutional. The court applied a reasonableness test and concluded the prohibition was disproportionate based on the principle of tax equality. The court opined that limiting the rights of taxpayers to use their CREE tax credits to pay their other tax obligations puts the taxpayers in an unfair position and violates the tax principles of equality and justice.

Colombia: The tax administration has published a legal opinion that limits the joint and several liability a legal representative may have relating to the tax obligations of a foreign investor to only those periods of time in which the legal representative has an enforceable power of attorney or agency agreement for the foreign investor. Because joint and several liability stems from the legal representative's right to sign and submit tax returns for the foreign investor, which is granted by a power of attorney or agency agreement, the termination of this right will end the liability of the legal representative for future tax obligations.

European Union: On 15 September 2016, the European Commission published an update on its progress in compiling the first common EU list of noncooperative tax jurisdictions. A pre-assessment was presented in the Council Code of Conduct Group on Business Taxation on 14 September. Based on the results, the group will decide on the jurisdictions to screen, which should be endorsed by finance ministers before the end of the year. The screening of the selected countries should begin in January 2017, with a view to having a first EU list of noncooperative tax jurisdictions before the end of 2017.

European Union: The European Commission announced on 14 September 2016 that it will issue a proposal on the debt-equity bias in November 2016, in the context of its proposal on the common consolidated tax base. The commission plans to call on the European Council to adopt the measure as rapidly as possible.

Germany: As expected, on 14 September 2016, the government formally initiated the legislative process relating to 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 carryforward category for "business continuation losses" (for prior coverage, see *World Tax Advisor*, 9 September 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_ib.html

India: The president signed a bill to introduce goods and services tax (GST) on 9 September 2016, following ratification by 16 Indian states (for prior coverage, see *World Tax Advisor*, 19 August 2016). The government plans to roll out the new regime on 1 April 2017. GST will be imposed nationwide on the supply of goods and/or services, and will be levied and collected at each stage of the supply of goods and/or services. It will replace the many state levies that exist under the sales tax system.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160819_ib.html

Puerto Rico: A tax amnesty program that applies until 21 October 2016 waives the penalties for the late filing of corporation annual reports. The amnesty applies to both for-profit and nonprofit corporations (but not limited liability companies). At the conclusion of the amnesty program, the Puerto Rico State Department intends to cancel the certificate of incorporation or the authorization to do business in Puerto Rico of any corporation that has not filed an annual report for at least two consecutive years.

United States: The IRS has issued a legal memorandum that concludes a withholding agent met the standard of compliant behavior for avoiding penalties for failure to file a correct information return, since there was no evidence that the agent knew (or should have known) that a taxpayer identification number (TIN) provided by a foreign payee on Form W-8BEN and reported on Form 1042-S was incorrect. The memorandum states that, generally, penalties should be applied only where a withholding agent knew or should have known of a TIN error on a W-8BEN, and absent actual knowledge or a reason to know that claims are incorrect, a withholding agent may rely on claims made on a withholding certificate or other documentary evidence. The memorandum also provides that even if a penalty had been asserted against the agent, it could be waived if the agent could demonstrate the failure was due to reasonable cause and not willful neglect under a facts and circumstances analysis, or under the safe-harbor if the payee certified that the provided TIN was correct.

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.

New Zealand: The government has released a discussion paper proposing the adoption of the OECD recommendations under BEPS action 2. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160923_5.html

OECD: On 8 September 2016, the OECD published comments received on the discussion draft on the attribution of profits to a permanent establishment under BEPS action 7, as well as comments received on the discussion draft on revised guidance on profit splits under actions 8-10. A public consultation on the discussion drafts will be held on 11-12 October 2016.

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.

Austria-Iceland: When in effect, the treaty signed on 30 June 2016 provides for a 5% 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; otherwise, the rate will be 15%. Interest will be taxable only in the state of residence of the recipient. The rate on royalties will be 5%.

Chile-South Africa: The 2012 treaty entered into force on 11 August 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. However, as a result of special wording in the treaty, the reduced rates will not apply in Chile; dividends distributed from Chile will be subject to the 35% domestic tax rate, but the corporate tax paid will be creditable against the withholding tax on dividends. A 5% rate will apply to interest paid on loans granted by a bank or insurance company; bonds or securities that are regularly and substantially traded on a recognized securities market; and sales on credit paid by the purchaser of machinery and equipment to a recipient that is the seller of the machinery and equipment; otherwise, the rate will be 15%. A 5% rate will apply to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate will be 10%.

China-Macau: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160923_2.html

China-Romania: When in effect, the treaty signed on 4 July 2016 to replace the 1991 treaty provides for a 3% withholding tax rate on dividends. A 0% rate will apply to interest paid in connection with a sale of equipment, merchandise or services on credit, or paid on a loan granted by a financial institution; otherwise, the rate will be 3%. The rate on royalties will be 3%.

Germany-Israel: The 2014 treaty to replace the 1962 treaty entered into force on 9 May 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 5% rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate generally will be

10%. However, where the distributing company is a real estate investment company, the rate will be 15% where distributions are paid to a recipient that holds directly less than 10% of the capital of the distributing company; otherwise, the domestic rate will apply. A 0% rate will apply where interest is paid on corporate bonds traded on a stock exchange in the source state, or to a pension fund; otherwise, the rate will be 5%. Royalties will be taxable only in the state of residence of the recipient.

India-Kenya: When in effect, the treaty signed on 11 July 2016 to replace the 1985 treaty provides for a 10% withholding tax rate on dividends, interest and royalties.

Liechtenstein: Liechtenstein ratified the Convention on Mutual Administrative Assistance in Tax Matters on 22 August 2016. The convention provides for administrative assistance in tax matters, i.e. exchange of information on request, spontaneous exchanges of information, automatic exchanges of information, tax examinations abroad, simultaneous tax examinations and assistance in tax collection. The convention will enter into force for Liechtenstein on 1 December 2016.

Malta-Vietnam: When in effect, the treaty signed on 15 July 2016 provides that where dividends are paid by a Malta company to a Vietnam resident, the Maltese tax on the dividends may not exceed the amount chargeable on the profits out of which the dividends are paid. Where dividends are paid by a Vietnam company to a Malta resident, a 5% rate will apply if the recipient is a company that holds directly at least 50% of the voting power in the payer company; otherwise, the rate will be 15%. The rate on interest will be 10%. A 5% rate will apply to royalties paid for the use of, or the right to use, a patent, design or model, plan, secret formula or process, or for information concerning industrial or scientific experience; a 10% rate will apply to royalties paid for the use of, or the right to use, a trademark or for information concerning commercial experience; otherwise, the rate will be 15%.

Netherlands-Ethiopia: The 2012 treaty entered into force on 1 September 2016 and the 2014 protocol to the treaty will enter into force on 30 September 2016. Both will apply as from 1 January 2017 in the Netherlands and as from 8 July 2017 in Ethiopia. When in effect, the treaty and protocol provide for a 5% withholding tax rate on dividends paid to a company that holds at least 10% of the capital of the payer company and on dividends paid to pension funds; otherwise, the rate will be 15% for dividends paid by a Netherlands resident company and 10% for dividends paid by an Ethiopia resident company. The rate on interest and royalties will be 5%.

Pakistan: Pakistan signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 14 September 2016, making it the 104th country to join the convention.

Portugal-Saudi Arabia: The 2015 treaty entered into force on 1 September 2016 and will apply as from 1 January 2017. 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 10% of the capital of the payer company; otherwise, the rate will be 10%. A 10% rate will apply to interest, and an 8% rate to royalties.

Saudi Arabia-Kazakhstan: The 2011 treaty entered into force on 1 September 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 5% withholding tax rate on dividends and a 10% rate on interest and royalties.

Saudi Arabia-Sweden: The 2015 treaty entered into force on 1 September 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds at least 10% of the capital of the payer company; otherwise, the rate will be 10%. Interest will be taxable only in the state of residence of the recipient. The rate on royalties for the use of, or the right to use, industrial, commercial, or scientific equipment will be 5%; otherwise, the rate will be 7%.

Singapore: The tax authorities (IRAS) announced on 16 September 2016 that Singapore has entered into a competent authority agreement with the UK tax authorities for the automatic exchange of financial account information based on the common reporting standard endorsed by the OECD and the Global Forum for Transparency and Exchange of Information for Tax Purposes. Under the agreement, which will commence by September 2018, each tax authority will automatically share with the other tax authority information on financial accounts held in its country by tax residents of the other country.

Singapore-Ethiopia: When in effect, the treaty signed on 24 August 2016 provides for a 5% withholding tax rate on dividends, interest and royalties.

Singapore-South Africa: When in effect, the treaty signed by Singapore on 30 November 2015 and by South Africa on 23 November 2015 to replace the 1996 treaty provides for a 5% withholding tax rate on dividends paid to a company that holds at least 10% of the capital of the payer company; otherwise, the rate will be 10%. A 0% rate will apply to interest paid in respect of a debt instrument listed on a recognized stock exchange; otherwise, the rate will be 7.5%. The rate on royalties will be 5%.

United States: An intergovernmental agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) was signed with Trinidad and Tobago on 19 August 2016.

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Brazil
Definition of "substantial economic activities" clarified for grey list
A normative ruling published on 14 September 2016 clarifies the definition of the term "substantial economic activities" for purposes of determining whether a jurisdiction should be included on Brazil's "grey list" of jurisdictions and amends the list of black and grey jurisdictions.
Issue date: 15 September 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-15-september-2016.pdf

United States
Notice 2016-52 introduces new foreign tax credit splitter arrangements
The US treasury and the Internal Revenue Service issued a notice on 15 September 2016 announcing their intent to issue regulations that will identify two new foreign tax credit splitter arrangements.
Issue date: 19 September 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-19-september-2016.pdf