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European Commission state aid investigation of Gibraltar tax rulings extended

The European Commission announced on 7 October 2016 that it is extending the scope of its ongoing state aid investigation of rulings issued by the Gibraltar tax authorities, which began with a review of the tax ruling procedure, to include a formal investigation of whether the tax ruling system and/or the specific rulings reviewed violate the EU state aid rules (for prior coverage, see *World Tax Advisor*, 10 October 2014). Interested parties are invited to submit comments within one month of the date of publication of the announcement, i.e. by no later than 7 November 2016.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/141010_6.html

Background

In October 2013, the European Commission initiated a formal investigation regarding whether the Gibraltar Income Tax Act 2010 (ITA 2010) selectively favors certain categories of companies, in breach of the EU state aid rules. The investigation focused on the exemption for certain passive income available under the ITA 2010 at the time.

The ITA 2010 came into effect on 1 January 2011, when the previous tax act was repealed. At that time, intercompany interest income and royalty income were not within the scope of taxation. The Gibraltar government subsequently amended its tax legislation to bring both of these sources of income within the scope of corporate tax in July 2013 and January 2014, respectively.

The European Commission’s preliminary investigation of Gibraltar’s tax system, which dates back to 2012 (in parallel with the formal investigation), also included a review of the tax rulings procedure. As a result, a sample of 165 tax rulings out of a total of 340 rulings granted were selected by the commission for a review covering the years 2011 to 2013. This sample is summarized in the commission’s published letter dated 1 October 2014, which is reproduced in the announcement published on its website on 7 October 2016.

European Commission announcement

The review of the selected rulings has resulted in the European Commission extending its formal state aid investigation to include an assessment of whether the tax rulings system and the 165 rulings reviewed result in a breach of the EU state aid rules. The preliminary comments made by the commission are as follows:

- There does not seem to be any designated procedure for the request of information by the Gibraltar tax authorities;
- The Gibraltar tax authorities do not conduct any substantive analysis or provide reasoning in the tax rulings; and
- There may be misapplications of the provisions of the ITA 2010 in the tax ruling practice.

Government response

The Gibraltar government is confident that the tax rulings issued do not constitute EU state aid, since they merely confirm the application of legislation to the particular set of facts and circumstances provided by the parties requesting the ruling, and the rulings are caveated as being dependent on the facts and circumstances provided and on current legislation; any deviations would result in the ruling becoming invalid. The Income Tax Office reportedly has reviewed the 165 rulings listed in the European Commission letter and is confident that none of the rulings is incorrect based on the ITA 2010, in light of the background provided when the ruling was requested.

The government also claims that the rulings have been applied across the board and not to a particular industry, category or group of taxpayers and, therefore, they do not indicate any type of selectivity.

Comments

Companies included in the list of 165 rulings selected by the commission should review the facts and circumstances applicable to the ruling they received and consider submitting detailed comments to the commission in respect of its investigation before 7 November 2016. Other companies (including those not in the 165) that have obtained rulings under the ITA 2010 should review their own rulings to assess their position and monitor the progress of this matter closely.

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Australia:
ATO targets certain restructurings and cross-border related party loans

The Australian Taxation Office (ATO) released two taxpayer alerts on 15 September 2016 that identify tax issues that the ATO currently has under risk assessment. One alert deals with certain arrangements entered into by taxpayers to avoid the application of the Multinational Anti-Avoidance Law (MAAL), while the other relates to cross-border related party loans.

Arrangements to avoid MAAL

The MAAL generally applies where there has been an avoidance of permanent establishment status by a foreign entity, the foreign entity makes supplies to Australian customers and there is a relevant "principal purpose" to obtain a tax advantage (for prior coverage, see *World Tax Advisor*, 11 December 2015).
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/151211_3.html

The arrangement identified by the ATO in the alert involves the following circumstances:

- A partnership is substituted for the foreign entity in an arrangement, so that, thereafter, it is the partnership that makes supplies to Australian customers.
- The partnership comprises a newly incorporated Australian resident company (as a minority partner) and a newly incorporated foreign company.
- The partnership enters into agreements that make the partnership the supplier of the goods or services to Australian customers. The foreign entity may act as an agent for the partnership, to minimize the impact from the customer viewpoint.

The ATO views such an arrangement as lacking a commercial basis and considers that no changes have been made to the underlying functions of the parties involved.

Since the partnership comprises an Australian resident partner, the partnership is technically an "Australian entity" for tax purposes and, on this basis, the MAAL would not apply.

The ATO is of the view that such structures are likely to be "artificial and contrived," ineffective in avoiding the MAAL's application and likely to result in closer scrutiny from the ATO. (For coverage of other arrangements that have been put into place by taxpayers in response to the MAAL, which are similarly under the ATO's scrutiny, see *World Tax Advisor*, 13 May 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160513_1.html

Cross-border related party loans

In the alert relating to cross-border related party loans, the ATO targets arrangements involving the funding of an overseas entity or operations by an Australian entity, where the funds are subsequently loaned back with interest to the Australian group in a manner that generates Australian tax deductions while not generating Australian assessable income. Typically, the income from the interest flows is not taxed offshore. The alert provides three examples of the arrangements the ATO is reviewing, including situations involving the use of a US Delaware general partnership and the use of a UK limited liability partnership.

The ATO has indicated that related party cross-border financing is a key focus area, which raises a range of issues (including transfer pricing, thin capitalization, interest withholding tax and the general anti-avoidance rule, among others). The ATO's position has been strengthened by a series of recent court decisions relating to such issues.

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France: Budget bill for 2017 released

The 2017 budget bill (the final one of François Hollande's presidential term) released by the French government on 28 September 2016 contains no major changes to the tax system, but there are several measures that could benefit businesses, stimulate the hiring of employees and benefit the economy in general. The main proposals are the introduction of a pay-as-you earn (PAYE) system for personal income tax purposes, a progressive decrease in the corporate tax rate, an increase in the rate of the competitiveness and employment tax credit (CICE), an expansion of a tax benefit for certain "impatriates" and changes to the requirements to make advance payments of corporate income tax.

Parliament will begin discussing the budget bill in mid-October.

PAYE for personal income tax

Individuals currently pay personal income tax in France on the income they earned during the previous year (e.g. in 2016, individuals pay the income tax due on income earned in 2015). The budget includes a proposal to introduce a PAYE system as from 1 January 2018, under which employers would have to withhold personal income tax due by employees from their monthly salary. The annual filing of a tax return still would be required.

Progressive decrease in corporate tax rate

The current standard corporate income tax rate of 33.33% would be progressively reduced to 28% over the four-year period from 2017 to 2020:

- In 2017, the reduced 28% rate would apply only to small and medium-sized enterprises (SMEs) with profits up to EUR 75,000;
- In 2018, the 28% rate would apply to the first EUR 500,000 of profits for all companies;
- In 2019, the 28% rate would be extended to all profits of companies having an annual turnover of less than EUR 1 billion; and
- In 2020, the 28% rate would become the standard corporate income tax rate.

Increase in CICE rate

The CICE, introduced in 2013, is calculated on the portion of the gross payroll not exceeding 2.5 times the national minimum wage (i.e. excluding the entire amount of gross monthly wages higher than EUR 3,564). The rate of the CICE is 6% for wages paid as from 2014, with no cap on the total amount paid.

Payment of the CICE can be offset against the corporate income tax liability for three years, with any excess CICE being refundable by the French tax authorities. SMEs may benefit from an immediate refund of excess CICE on an annual basis. The tax credit must be used for specific purposes stated in the law (mainly investment, research, innovation, training, recruitment, etc.) and may not be used to increase dividend distributions or the salary package of employees carrying on managerial functions.

The 2017 budget bill proposes increasing the CICE rate from 6% to 7% for remuneration paid as from 1 January 2017.

Exemption from payroll tax for impatriation bonuses

French companies and permanent establishments of foreign companies that are not subject to VAT, or whose turnover was at least 90% exempt from VAT in the preceding year, are liable to a payroll tax at a rate ranging from 4.25% to

20%, depending on the amount of the individual salaries paid. Banks and insurance institutions are the main groups affected.

To encourage the relocation of expatriates (particularly expatriates from London to the Paris financial center in light of Brexit), the draft bill would extend the period for which "impatriation bonuses" for foreign employees that come to work in France as from 6 July 2016 are exempt from income tax from five to eight years. Additionally, the bill would provide an exemption from payroll tax on these tax-exempt impatriation bonuses.

Expanded requirements for estimated tax installment

The 2017 budget bill would expand the scope of companies that are required to pay their fourth corporate income tax installment based on estimated profits of the current year (rather than on profits of the previous fiscal year) to include companies with annual turnover exceeding EUR 250 million, and would increase the amount of the installment.

Under the French tax code, the corporate income tax for each fiscal year is payable in quarterly installments and one final payment. The quarterly installments are calculated with reference to the taxable results of the previous fiscal year. However, the fourth quarterly installment for large companies is determined on the basis of the estimated profits for the current fiscal year.

For fiscal years beginning after 1 January 2017, the budget bill would require the fourth installment for large companies to be determined under the following rules:

- For companies with turnover between EUR 250 million and 1 billion and whose estimated profits increased by more than 50% compared to the previous fiscal year, the fourth installment would be 80% (currently 75%) of the difference between the tax calculated on the estimated profits for the current fiscal year and the three installments already paid;
- For companies with turnover over EUR 1 billion and up to EUR 5 billion and whose estimated profits increased by more than 25% compared to the previous fiscal year, the fourth installment would be 90% (currently 85%) of the difference between the tax calculated on the estimated profits for the current fiscal year and the three installments already paid; and
- For companies with turnover exceeding EUR 5 billion and whose estimated profits increased by more than 11% compared to the previous fiscal year, the fourth installment would be 98% (currently 95%) of the difference between the tax calculated on the estimated profits for the current fiscal year and the three installments already paid.

For companies that do not fall in any of the above categories, the rules on the payment of the fourth installment would remain unchanged.

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

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India:
FDI policy liberalized for financial services

On 9 September 2016, the Indian government took another step in opening up foreign direct investment (FDI) possibilities by liberalizing the FDI policy applicable to the financial services sector. Liberalization policies for this sector initially were announced by the Finance Minister in the budget in February 2016, but the government now has further eased the restrictions.

The new FDI policy, which applies as from 9 September 2016, eliminates the previous list of 18 financial service activities in which up to 100% foreign investment was permitted under the "automatic route" (i.e. where government approval is not required). FDI now is permitted under the automatic route for any financial services activities (other than those for which special rules exist), provided the activities fall under the supervision of a financial services regulator in India (e.g. the Securities and Exchange Board of India (SEBI), Reserve Bank of India, Pension Fund Regulatory and Development Authority, etc.). Foreign investment in financial services activities that are unregulated in India (or where only part of the activities are regulated, or where there is doubt regarding the regulatory oversight) must be approved by the government.

The revised FDI policy also has replaced the minimum capitalization requirements with the minimum capitalization standards prescribed by the relevant regulator.

Key impacts

- Foreign investors may invest in many more financial services activities under the automatic route (e.g. commodity broking).
- Foreign investors likely will benefit from the relaxation in the minimum capitalization standards (e.g. the SEBI prescribes a minimum capitalization of INR 3 million (approximately USD 45,000) for foreign investment in stock-broking activities, as compared to the minimum USD 50 million prescribed under the previous FDI policy).
- Investment advisory services now may require approval from the government if the activity is not regulated by a financial services regulator in India.

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Malaysia:
Group relief for companies clarified

Malaysia's Inland Revenue Board (IRB) issued a public ruling on 22 August 2016 to explain and clarify the provisions of the Income Tax Act 1967 (ITA) relating to the tax treatment of group relief for companies that are resident and incorporated in Malaysia.

Group relief is available to all locally incorporated resident companies under the ITA. Group relief allows 70% of an adjusted loss (as defined under the ITA) incurred by one company (the surrendering company) in the basis period for a year of assessment (YA) to be surrendered to one or more related companies (the claimant companies) that have a positive defined aggregate income, to reduce the overall tax payable by the group of companies. "Defined aggregate income," in relation to a YA, is the aggregate income of a claimant company for that year, reduced by deductions for current-year losses, expenditure on prospecting operations, qualifying preoperational business expenditure, approved donations, etc.

Criteria for group relief

To be eligible for group relief, both the surrendering and the claimant companies must satisfy the following criteria:

- Be incorporated and resident in Malaysia in the basis period for the relevant YA;
- Be related companies (as described below) throughout the basis period for the YA and the 12-month period immediately preceding the basis period;
- Have paid-up capital in respect of ordinary shares of more than MYR 2.5 million at the beginning of the basis period for the YA;
- Have a 12-month basis period ending on the same date;

- Make an irrevocable election to surrender or claim an amount of adjusted loss in the tax return for that YA; and
- Be subject to tax at the corporate tax rate (currently 24%).

Additionally, the claimant company must have positive defined aggregate income for that YA.

Related companies eligible for group relief

To be eligible for group relief, the surrendering and claimant companies must pass two tests.

The first-level test is an ordinary shareholding requirement, under which a surrendering company and a claimant company are considered related companies if:

- At least 70% of the paid-up ordinary share capital of the surrendering company is owned directly or indirectly by the claimant company, or vice versa; or
- At least 70% of the paid-up ordinary share capital of the surrendering company and the claimant company is owned directly or indirectly by another company.

It is important to note that any direct or indirect holdings by companies that are not resident or not incorporated in Malaysia will be disregarded for purposes of this test.

Under the second-level test, where the ordinary shareholding requirement is satisfied, the company that is the 70% owner must be beneficially entitled, directly or indirectly, to at least 70% of the residual profits and residual assets available for distribution to the other company's equity holders (i.e. its ordinary shareholders and creditors of noncommercial loans).

The percentage of an equity holder's beneficial entitlement to residual profits or assets of a company is determined as follows:

$$\frac{\text{Value of ordinary shares + value of noncommercial loans attributable to an equity holder}}{\text{Value of ordinary shares + value of noncommercial loans attributable to all equity holders}} \text{ X } \text{Residual profits/assets of company}$$

For purposes of these calculations:

- An "ordinary share" is any share other than a share that carries only a right to dividends calculated as:
  - A fixed amount or a fixed rate percentage of the nominal value of the shares; or
  - A fixed rate percentage of the profits of the company.
- A "noncommercial loan" is any borrowing other than a commercial loan.
- A "commercial loan" is any borrowing that entitles the creditor to only a return calculated as:
  - A fixed amount or a fixed rate percentage of the amount of the borrowing; or
  - A fixed rate percentage of the profits of the company.

Companies ineligible for group relief

Group relief is not available to a surrendering or a claimant company for the basis period for a YA where, during the period, that company:

- Is a pioneer company or has been granted approval for an investment tax allowance under the Promotion of Investment Act 1986;
- Is exempt from tax on its shipping profits or is subject to a ministerial exemption from tax under the ITA;
- Has made a claim for a reinvestment allowance;
- Has made a claim for a deduction in respect of an approved food production project;
- Has made a claim for a deduction for the cost of acquisition of proprietary rights;
- Has been granted a deduction for the cost of acquisition of a foreign-owned company; or
- Has made a claim for a deduction under any rules that provide that group relief will not be available to that company.

Special rules for more than one surrendering or claimant company

A company may surrender an adjusted loss to one or more claimant companies. The surrendering company must first surrender the amount of the adjusted loss necessary to fully set off the amount of defined aggregate income of the first claimant company, and any balance of the loss may be surrendered to the second claimant company (and so on, based on the order of priority (described below)).

A claimant company may claim an adjusted loss from one or more surrendering companies. The adjusted loss surrendered by the first surrendering company must be fully deducted from the defined aggregate income of the claimant company before the adjusted loss from the second surrendering company may be deducted (and so on, based on the order of priority).

The surrendering company and the claimant company must specify the order of priority by both making an irrevocable election in the prescribed forms, filed along with the income tax return form (Form C).

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Taiwan:
VAT proposed on nonresident suppliers of digital services

Taiwan’s Minister of Finance (MOF) published a draft bill on 22 September 2016 that would require nonresident providers of e-services to private consumers in Taiwan to register with the Taiwan tax authorities, account for VAT and remit a 5% VAT to the authorities. If approved, the draft bill would amend the Value-Added and Non-Value Added Business Tax Act (VAT Act) and would apply as from 1 January 2017.

The rules are designed to ensure that VAT on cross-border transactions is paid in Taiwan when the individual e-service recipient is located in Taiwan, and are similar to the rules introduced in the EU and in Korea in 2015. The rules also take into account the recommendations in the OECD’s International VAT/GST Guidelines published in 2015.

As noted above, the proposed measures would apply only to business-to-consumer (B2C) supplies, and the existing threshold of NTD 3,000 below which VAT is not payable would be abolished (because the VAT compliance obligations would shift to the foreign seller). The reverse charge would continue to apply to business-to-business (B2B) supplies of e-services.

Although not included in the draft law, a registration threshold and a definition of e-services would be incorporated in rulings or in the Enforcement Rules of the VAT Act following enactment of the amended VAT act. A simplified electronic VAT registration process is expected to apply to foreign suppliers.

Because it may be difficult for a foreign service provider without a fixed place of business in Taiwan to open a bank account in Taiwan to pay the VAT due in Taiwan currency, a foreign service provider would be allowed to appoint a tax agent to assist in meeting the nonresident’s VAT compliance obligations.

Comments

Definition of e-services: A ruling issued by the MOF in 2005 (Ruling No. 09404532300) currently governs the VAT and income tax treatment of online transactions. The ruling specifies several types of transactions that are deemed to be online transactions, for example:

- Electronically supplied services, such as films and games;
- The supply of audio and audio-visual content; and
- The transmission of signals for interactive communications.

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However, since the ruling is more than 10 years old and the pace of technology change continues to accelerate and evolve, it is possible that the Taiwan tax authorities may refer to the rules introduced in other countries when making changes to the Enforcement Rules of the VAT Act.

Parties required to register: Various parties may be involved in the supply of e-services, such as an actual direct service provider, businesses that supply e-services through electronic platforms and payment processors. The draft bill does not specify which party would be required to register for VAT, so this would need to be clarified. The Taiwan government may look to the rules in other countries when deciding who would bear the burden of registration.

VAT registration and permanent establishment (PE) status: The draft bill does not stipulate whether VAT registration would create a PE for the foreign company in Taiwan for income tax purposes.

Under the draft bill, a foreign supplier of services to Taiwan customers would be required to register for VAT purposes if it has a fixed place of business in Taiwan (this already is the case under the current VAT act). The draft bill would extend the registration requirement (although under a simplified process) to foreign suppliers that do not have a fixed place of business in Taiwan.

Foreign service providers should assess whether they have a fixed place of business in Taiwan under their current business models and, if so, should register as soon as possible. Failure to do so could expose the provider to retroactive VAT liability. Providers without a fixed place of business in Taiwan but supplying services to individual consumers in Taiwan should be prepared to carry out the simplified registration if the draft bill is enacted.

Future developments: Many issues relating to the VAT rules applying to foreign service providers still require interpretation and clarification – these include the scope of "e-services," the person responsible for registration and the PE issue. Foreign businesses supplying e-services to Taiwan private consumers should closely monitor the progress of the draft bill and assess any potential tax risks.

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Turkey:
New withholding tax obligation on e-business

A law published in Turkey's official gazette on 7 September 2016 (and effective as from that date) introduces a new withholding tax obligation that encompasses payments made through e-business and other online activities. The rules are incorporated in the existing Tax Procedures Code (TPC), the Income Tax Law and the Corporate Tax Law, in the relevant provisions governing the withholding tax obligations of resident and nonresident taxpayers.

The Council of Ministers is authorized to determine the extent of withholding tax liability for parties (buyers and sellers) and/or intermediaries involved in taxable transactions, regardless of the following:

- Whether the recipient of the payment is a taxpayer in Turkey;
- Whether the payer or intermediary is obliged to withhold tax;
- Whether the payment relates to the trading of goods or services;
- Whether the transaction is carried out electronically or otherwise; or
- Whether the payment has been deducted from the tax base of the payer.

The council also is authorized to determine the withholding tax rates to be applied within the minimum and maximum limits specified by the relevant tax legislation with respect to business groups, types of operations, sectors and commodity groups.

The Council of Ministers is expected to issue the relevant decree (or decrees) in the near future.

Draft TPC

It should be noted that the new withholding tax obligation introduced in the existing TPC appears to be in line with the proposed definition of a "permanent establishment" in a new draft TPC. For example, the draft TPC provides as follows, in relation to a "place of business in the electronic environment":

1. The assignment or the use of the internet, an extranet, intranet or a similar telecommunications environment or tool for commercial, industrial or professional activities would result in the creation of an "electronic PE"; and
2. The Ministry of Finance would be authorized to determine the scope of an electronic PE, as well as the rules and procedures for the application of the rules. Specifically, the Ministry would determine the taxpayer's duties, the intermediaries involved in the supply of goods and services in the electronic environment or for the collection of payment, as well as the purchasers of such goods and services. Such persons would be severally liable for the payment of the relevant taxes.

Based on the proposed definition in the draft TPC, intermediaries involved in the supply of goods and services and/or the collection of payments, as well as the purchasers of goods and services, could be severally liable for the payment of the relevant withholding taxes.

Under another measure in the draft TPC, the Turkish tax authorities would establish a data center that would be used to monitor and collect information on digital economic activities.

Even though the draft TPC has not been enacted and it is unclear when it will become law, the Turkish tax authorities already are monitoring digital economic activities through a new monthly notification procedure. The TPC General Communiqué No. 464, which applies as from 1 July 2016, requires intermediary service providers, banks, internet advertising service intermediaries and cargo and logistics companies to provide specific information to the tax authorities with respect to their electronic transactions.

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Vietnam: Changes to transfer pricing rules proposed

The Vietnamese government recently released a draft decree that proposes comprehensive changes to Vietnam's transfer pricing rules to better align them with OECD and BEPS principles.

The draft decree, which has been sent to the Ministry of Finance for comments, proposes significant changes to the definition of a related party, sets out the types of related party expenses that would be considered nondeductible based on a "substance-over-form" analysis and provides a safe-harbor limitation for deductions of related party interest expense.

The decree would increase taxpayer compliance burdens by requiring a substantial amount of local company and group business-specific information to be reported (including information relating to the newly introduced concepts of an "ultimate holding company" and "headquarters") and imposing shorter information submission deadlines. Reporting requirements for certain related party transactions, however, would be relaxed. Other proposals include revisions to comparability analysis factors and the establishment of priority levels for independent comparables.

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In brief

Belarus: On 6 October 2016, the upper house of parliament adopted the law introducing VAT on electronic services provided by foreign entities (for prior coverage, see *World Tax Advisor*, 9 September 2016). The new rules will apply as from 1 January 2018.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_ib.html

Costa Rica: The tax authorities published guidance on 13 September 2016 that clarifies the requirement for certain taxpayers to prepare a transfer pricing information return. The resolution, which applies as from the date of issuance, provides that large Costa Rican taxpayers and entities operating under the Free Zone Regime are required to file the transfer pricing information return annually by the last business day of June (with the filing for the 2015 and 2016 periods due in June 2017). Penalties will be imposed for failure to file the return.

Egypt: Parliament approved a draft law on tax dispute resolutions on 30 August 2016. The purpose of the law is to streamline the settlement of pending tax cases.

European Union: The Court of Justice of the European Union (CJEU) issued a decision on 21 September 2016 in a case involving the agreement between the European Community and its member states and Switzerland on the free movement of persons. The CJEU held that Germany was not permitted to discriminate against a German national who had exercised a right to live in Germany and work in Switzerland and was not offered the same beneficial treatment as if he had worked in another EU member state. The case was referred to the CJEU on 8 September 2015 by the Finance Court of Baden-Württemberg.

New Zealand: The "Netflix tax," which became effective on 1 October 2016, requires offshore businesses providing remote and online services and supplies of intangibles to a New Zealand private consumer to collect and pay goods and services tax (GST) if the cumulative amount of the supplies to New Zealand private consumers within a 12-month period is expected to exceed NZD 60,000 (for prior coverage, see *World Tax Advisor*, 10 June 2016). The effective date of the Netflix tax coincides with the 30th anniversary of GST in New Zealand (currently applicable at a rate of 15%).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160610_8.html

Nigeria: A waiver program announced by the tax authorities provides a specific period for companies to take certain actions to avoid the payment of penalty and interest charges on delinquent tax liabilities originally due between 2013 and 2015. Notably, the waiver is not applicable to outstanding tax due. Companies must apply for the waiver program during the period from 5 October 2016 to 24 November 2016.

Thailand: The cabinet has approved the extension of the 7% VAT rate for another year, so that the reduction from the standard 10% rate will apply until 30 September 2017.

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.

Bulgaria: The Ministry of Finance published a draft bill on 16 September 2016 that would implement the mandatory automatic exchange of CbC reports under the EU directive of 25 May 2016. The draft bill provides that multinational enterprise groups headquartered outside Bulgaria would be required to file CbC reports in Bulgaria if their consolidated group revenue exceeds EUR 750 million, with a reduced reporting threshold of BGN 100 million applying for groups with a Bulgarian resident ultimate parent company. If approved, the measures would apply as from 1 January 2017.

Denmark: The government has published a final statutory order on CbC reporting. See Global Transfer Pricing Alert 2016 – 031, 7 October 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-031-7-october-2016.pdf

France: The government has published an administrative decree on CbC reporting. See Global Transfer Pricing Alert 2016 – 032, 7 October 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-032-7-october-2016.pdf

Norway: Contrary to expectations, the budget proposal for FY2017 includes no BEPS-related measures. See Norway tax alert, 6 October 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-norway-6-october-2016.pdf

OECD: On 6 October 2016, the OECD secretary general delivered a progress report to the G20 Finance Ministers on transparency and exchange of information for tax purposes, as well as comments on beneficial ownership. The proposed new standards in this area will be based on peer reviews, enhanced cooperation between the Financial Action Task Force and the OECD-supported global forum and support in identifying effective implementation.

United Kingdom: On 15 September 2016, the UK enacted hybrid mismatch legislation as part of the Finance Act 2016, which will come into effect on 1 January 2017 (with no grandfathering for existing arrangements). The rules as a whole are intended to implement the best practice recommendations in the OECD's final report on BEPS action 2. The UK is one of the first countries to introduce these recommendations. Hybrid mismatch arrangements are defined as cases where an amount is deductible in one jurisdiction but not taxed in any other jurisdiction (i.e. a deduction/no inclusion mismatch), or where an amount is deductible more than once (a double-deduction mismatch). Under hybrid mismatch rules, deductions may not be permitted for payments from the UK to non-UK recipients if the arrangement gives rise to a deduction/no inclusion mismatch, including those that arise because the payee is a company that has one or more permanent establishments.

Vietnam: The government has released a draft decree that proposes to better align domestic transfer pricing rules with OECD and BEPS principles. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161014_8.html

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Denmark

Final statutory order on country-by-country reporting issued
On 31 August 2016, Denmark's government published the final version of the statutory order on CbC reporting, which applies as from 1 September 2016, the last step in the country's implementation of BEPS action 13.
Issue date: 7 October 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-031-7-october-2016.pdf

France

Decree on country-by-country reporting published
The French government published an administrative decree on 1 October 2016 that defines the filing procedures for, and the contents of, the CbC report. The decree is aligned with the recommendations of the OECD's final report on BEPS action 13.
Issue date: 7 October 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-032-7-october-2016.pdf

Exemption from surtax on distributions within tax-consolidated groups ruled unconstitutional
France's constitutional court issued a decision on 30 September 2016, concluding that the exemption from the 3% surtax on distributions made within a tax-consolidated group does not comply with the equality principle in the French constitution. The exemption is to be abolished as from 1 January 2017, but other ongoing proceedings bring into question the validity of the surtax itself.

Issue date: 5 October 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-5-october-2016.pdf

Norway

Financial activities tax proposed, along with reduction in corporate rate

Norway's budget proposal for FY2017, announced on 6 October 2016, includes a proposed reduction in the corporate tax rate and the introduction of a "financial activities tax." Contrary to expectations, no BEPS-related measures were included in the budget measures.
Issue date: 6 October 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-norway-6-october-2016.pdf

Spain

Rules governing advance payment of corporate income tax modified

Legislation published in Spain's official gazette on 30 September 2016 introduces changes to the requirement for certain companies to make advance payments of corporate income tax. The new rules are effective for fiscal years beginning on or after 1 January 2016 and apply to prepayments due in October 2016 and thereafter.
Issue date: 6 October 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-spain-6-october-2016.pdf

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