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France's abolition of surtax exemption on tax-consolidated distributions will not apply retroactively

The French government announced on 20 October 2016 that the termination of the exemption from the 3% surtax on distributions within tax-consolidated groups will not have retroactive effect. The announcement was made during discussions relating to the 2017 finance bill.

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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 and, therefore, is unconstitutional (for prior coverage, see France tax alert, 5 October 2016).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-5-october-2016.pdf

During the finance bill discussions, the Secretary of State for the Budget pointed out that the constitutional court gave the government until 1 January 2017 to come up with a remedy to the unconstitutional measure. The secretary confirmed that the proposed options for addressing the exemption for tax-consolidated groups would not have retroactive effect, and that the revisions would apply only to fiscal years starting as from 1 January 2017. The secretary reassured groups that the exception would continue to apply until the end of 2016.

The government is consulting with affected groups on measures to replace or amend the 3% surtax rules; a proposal is expected to be announced in mid-November 2016 during the discussions on the amended finance bill for 2016.

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Australia:
Changes proposed to improve debt-equity characterization rules

On 10 October 2016, the government released exposure draft (ED) legislation and an explanatory memorandum setting out proposed amendments to improve Australia's debt-equity rules. The ED proposes a new integrity rule (the scheme aggregation rule) for establishing when two or more schemes should be aggregated and treated as a single scheme for tax purposes.

The proposed changes were recommended by the Board of Taxation following a post-implementation review of Australia's debt-equity rules. The board's report found that the current integrity rules targeting multiple arrangements are broadly drafted and, therefore, create significant uncertainty for businesses.

The proposed replacement rule (the scheme aggregation rule) is based on two tests: the interdependence test and the design test. These tests are aimed at ensuring that multiple schemes are aggregated only where such aggregation would accurately reflect the economic substance of the arrangement.

The closing date for submissions on the ED is 21 November 2016.

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Belgium:
Draft bill to implement amended PSD presented to parliament

The Belgian government deposited a draft law with the parliament on 27 September 2016 that would implement the amended EU parent-subsidiary directive (PSD) into domestic law and make changes to the exit tax rules to bring them in line with EU law.

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Implementation of amended PSD

The anti-hybrid rule, included in the PSD in 2014, is designed to prevent deduction/noninclusion mismatches resulting from hybrid instruments issued between related companies in EU member states, and it requires the member state of the parent company to tax payments received on hybrid instruments where the payments are deductible in the member state of the subsidiary. The general anti-avoidance rule (GAAR), added to the PSD in 2015, is designed to prevent tax avoidance by requiring member states to deny the dividend withholding tax exemption under the PSD in cases where tax avoidance is involved.

To implement the anti-hybrid rule, the "subject-to-tax" requirements of Belgium's dividends received deduction (DRD) regime would be expanded to include a provision stipulating that the DRD would not be available to the extent the payer of the dividends could deduct or has deducted the payment in computing its taxable income.

To implement the GAAR, both the subject-to-tax requirements of the DRD regime and the provisions relating to withholding tax would be amended to deny the application of the DRD or an exemption from withholding tax for dividends that are related to a legal arrangement or series of arrangements deemed by the Belgian tax authorities (i) to be artificial (i.e. not set up for valid business reasons that reflect economic reality), and (ii) that have been put in place for the main purpose (or one of the main purposes) of obtaining the DRD/withholding tax exemption or the benefits of the PSD in another EU member state.

Based on the draft legislation, the rules would apply retroactively as follows:

- The new DRD rules would apply to dividends distributed or attributed as from 1 January 2016. However, if the financial year of distribution or attribution was closed before the first day of the month following the date the law is published in Belgium's official gazette, the rules would apply to dividends distributed or attributed as from the first day of the month following publication; and
- The GAAR would apply to dividends distributed or attributed as from the first day of the month following the date the law is published in Belgium's official gazette.

The amendments to the subject-to-tax requirements of the DRD regime and the withholding tax exemption rules would apply in Belgium with respect to dividends from both EU and non-EU payer companies.

Deferral regime for payment of exit tax

The draft law includes measures relating to Belgium's exit tax rules (which subject companies transferring their seat or assets from Belgium to another EU member state to immediate taxation), and that respond to a formal letter issued by the European Commission in September 2014. In that letter, the commission requested that Belgium bring its exit tax legislation in line with the freedom of establishment principle in the Treaty on the Functioning of the European Union.

The draft law would retain the general rule that an immediate and final exit tax will be levied in the case of outbound reorganizations or transfers of a company's seat if assets are not maintained in a Belgian permanent establishment.

Taxpayers would be granted an option to pay the exit tax immediately or in equal installments over a five-year period. The option to defer the payment of the exit tax would be available only in the case of certain listed outbound reorganizations or transfers of a seat to an EU member state or a European Economic Area member state that has concluded an agreement with Belgium on mutual assistance in the recovery of taxes (currently, only Iceland and Norway have concluded such agreements). The draft legislation also specifies how the exit tax would be calculated, whether a guarantee would have to be provided and the circumstances in which the deferral regime would expire.

The exit tax rules would apply as from tax year 2017 to transactions taking place as from the date the law is published in the official gazette.

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Belgium:
New tax treaty signed with Japan

On 12 October 2016, the governments of Belgium and Japan signed a new tax treaty to replace the existing treaty dating from 1970 (as amended by protocols signed in 1988 and 2010 and that entered into force in 1990 and 2013, respectively). The new treaty is expected to promote further mutual investment and economic exchanges between the two countries.

The newly signed treaty completely revamps the existing treaty. The business profits article is updated, and the treaty contains an arbitration provision in the mutual agreement procedure article and includes a provision for the assistance in the collection of taxes.

In addition, the treaty provides for the following reductions in the withholding tax rates on dividends, interest and royalties:

- Dividends will be exempt where the recipient holds at least 10% of the voting power of the dividend-paying company for at least six months, ending on the date on which entitlement to the dividends is determined, as well as where the dividends are derived from certain activities and are paid to a pension fund; otherwise, the rate will be 10% (currently, a 5% rate applies where dividends are paid from a Belgian company to a Japanese company (10% where dividends are paid from a Japanese company to a Belgian company) that holds at least 25% of the voting shares of the payer company for the six-month period immediately preceding the date the dividends become payable; otherwise, the rate is 15%); and
- Interest and royalties generally will be exempt, except that a 10% withholding tax rate will apply to certain interest (currently, a 10% rate generally applies to both interest and royalties).

The treaty also contains a limitation on benefits (LOB) provision that will result in the denial of the reduced withholding tax rates if the requirements of the LOB are not met.

The new treaty will enter into force once the ratification procedures are completed by both countries.

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Bulgaria:
New reporting obligation introduced for nonresident entities

New rules included in Bulgaria's corporate income tax act introduce new reporting obligations for nonresident legal entities operating in the country through a permanent establishment (PE). The rules, which were published in the official gazette on 27 September 2016 and apply as from that date, require an entity to disclose the identity of its owners or shareholders in its annual corporate income tax return, as well as the extent of the participation of such owners/shareholders, if it exceeds 10%.

This change in Bulgaria's law came about as a result of a peer review conducted by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes in December 2015, which concluded that the Bulgarian tax authorities generally lack information about the owners of nonresident legal entities operating in the country through a PE.

The benefit of requiring a nonresident entity to provide its ownership information in the annual corporate income tax return is that the tax authorities will have the information at their disposal and will not have to request the information from other institutions and/or registers; the information will be updated annually; and control over the obligation to produce the information will be more effective. Notably, there are no penalties for noncompliance with the new transparency provision.

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Because the rules are effective as from 27 September 2016, the FY 2016 corporate tax return will be the first return in which the reporting obligation applies. However, since the Bulgarian tax authorities have not yet published the FY 2016 return, it is not clear exactly how the information must be reported. The return should be published by the end of calendar year 2016.

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European Union:
AG opines Luxembourg VAT exemption for cost-sharing groups incompatible with EU law

Advocate General Kokott of the Court of Justice of the European Union (CJEU) delivered her opinion on 6 October 2016 in the infringement case brought by the European Commission against Luxembourg, regarding its implementation of the "cost-sharing" exemption in the EU VAT directive.

Under the directive, the exemption applies when two or more persons or organizations with exempt (financial, insurance, real estate, hospital, etc.) and/or nonbusiness activities (nonprofit organizations or public bodies) join together on a cooperative basis to form an independent cost-sharing group to make supplies of services to members. However, to qualify for the exemption, the members' activities must be exempt from VAT (or be beyond the scope of VAT, for nonprofit organizations and public bodies); the shared services must be directly necessary for the members' activities; and the group must claim reimbursement of each member's share of the joint expenses.

Under Luxembourg law, the services provided by an independent group to its members are completely free of VAT, provided the taxed activities of the group member do not exceed 30% of annual turnover (or 45% in certain cases). (Other EU member states allow similar thresholds of taxable turnover, e.g. 10% in Belgium and 20% in France.) Group members are permitted to deduct the VAT charged to the group on purchases of goods and services, up to an amount consistent with their VAT deduction rights and their shares in the cost-sharing services. Under Luxembourg's administrative practice, operations carried out by a member in its own name, but on behalf of the group, are regarded as nontaxable.

The European Commission considers these rules to be incompatible with EU law, and in 2011 it officially asked Luxembourg to revise its VAT rules relating to an independent group of persons. Since Luxembourg did not amend the rules, the commission referred the case to the CJEU on 8 June 2015.

AG Kokott's opinion recommends that the CJEU conclude that Luxembourg has infringed the VAT directive by exempting services supplied by autonomous groups to their members in cases where the services are not directly necessary for the members' exempt activities, by allowing an input tax deduction to members where supplies are made to the groups – as an example, hospitals would be able to use the exemption for expensive equipment, but not to share administrative services that could be used for both exempt and taxable activities. The AG further opined that Luxembourg should not have adopted an administrative practice that ignores for VAT purposes purchases that are made by the member in its own name but for the account of the group.

The CJEU now must issue its decision in the case.

Comments

The cost-sharing exemption is widely applied in many EU member states. It is worth noting that the commission stated in a 2010 working document that the regime is underused, due to overly restrictive conditions imposed by some member states and a lack of guidelines in some other member states. Thus, it was somewhat of a surprise for the commission to challenge the Luxembourg regime, which is designed to offer a flexible and practical tool for the sharing of costs and resources.

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Luxembourg:
VAT treatment of directors' fees clarified

The Luxembourg VAT authorities published guidance on 30 September 2016 regarding the VAT treatment of fees for director services, along with a comprehensive list of "frequently asked questions" (FAQ, available in French on the tax authorities' website). The circular, which will apply as from 1 January 2017, confirms that director services constitute an economic activity that generally will make the director a taxable person for VAT purposes (for prior coverage, see *World Tax Advisor*, 11 March 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_ib.html

Luxembourg VAT, at the standard rate of 17%, will be applicable to director services when the services are considered to be carried out in Luxembourg by virtue of the place-of-supply rules. As a result, services rendered by a Luxembourg director and services rendered by a non-Luxembourg director to a Luxembourg company generally will be subject to VAT:

Independent Luxembourg directors will have to register for VAT purposes by 1 January 2017, at the latest, and will have to file VAT returns to report their income from director fees. However, the VAT registration obligation will not apply to an employee acting as a director for his/her employer; in such cases, the obligation to register and file the VAT return will remain at the level of the employer.

Luxembourg companies that are considered taxable persons for VAT purposes and that receive services from a non-Luxembourg director will have to self-assess the VAT on the director fees under the reverse-charge mechanism. This could lead to a final cost of 17% of the taxable amount for companies that do not have the right to deduct input VAT (e.g. banks, insurance companies), unless an exemption applies for the director services.

In their FAQ, the VAT authorities remind taxpayers that the taxable amount for VAT purposes includes any amount paid to directors for their services, including the withholding tax applicable to director fees.

The circular also reiterates the following:

- Services carried out by directors serving in an honorary capacity (rather than in an active capacity) can benefit from an exemption from the Luxembourg VAT law if the amounts received by the director qualify as a reimbursement of costs; and
- Directors may opt for the "small enterprises" regime available for taxable persons with an annual turnover of less than EUR 25,000 per year. Under the regime, the turnover would be exempt from VAT and the director would be subject to limited VAT obligations, while simplified VAT registration would remain mandatory.

Although not mentioned in the circular, it is commonly understood that services carried out by directors of investment funds and certain other entities qualifying to receive VAT-exempt management services may be VAT-exempt when they qualify as "specific and essential" for the activity of the fund.

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In brief

Belgium: The government has reached a 2017 budget agreement that includes, among other measures, an increase in the standard withholding tax rate from 27% to 30% as from 1 January 2017; a new anti-abuse rule for "internal capital gains;" the abolition of the "speculation tax"; minimum employment and residence period requirements for certain tax and social benefits; and measures to tackle tax and social fraud. No agreement has been reached on (i) corporate tax reform; (ii) taxation of private capital gains on shares; or (iii) support measures to boost investment for start-ups and small and medium-sized enterprises.

France: On 19 October 2016, the French parliament voted to extend the scope of the French financial transaction tax (FTT) to include intraday transactions and to increase the FTT rate from 0.2% to 0.3%. The proposed tax on intraday transactions, which was considered and rejected in 2014 and again in 2015, would provide funds for development assistance to poor countries and would conform to some aspects of the ongoing European FTT project. If enacted, these measures would apply as from 1 January 2017.

Indonesia: The Ministry of Finance and the Directorate General of Taxes have issued several regulations to implement the tax amnesty introduced for previously unreported net assets from fiscal years ending on or before 31 December 2015 (for prior coverage, see *World Tax Advisor*, 22 July 2016). Taxpayers that elect to participate in the amnesty (which is available from 1 July 2016 to 31 March 2017) can pay a special tariff on the net assets, rather than the unpaid taxes and penalties that otherwise would apply. The topics covered in the regulations include the tax offices and other designated locations where tax amnesty declarations may be submitted; revisions to the instructions for completing the declaration form; the re-registration and reactivation of individual taxpayers in connection with the tax amnesty; and the categories of individual taxpayers that may choose not to participate in the tax amnesty program without being subject to penalties.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160722_5.html

OECD: The OECD has launched a survey on the impact of tax uncertainty on business, which will gather information about (i) economic factors affecting tax and other business decisions, (ii) sources of tax system uncertainty and (iii) measures to enhance tax system certainty. The survey has been commissioned by the G20, and the anonymous results will be presented to G20 finance ministers in 2017. The survey should be completed by individuals working for private sector businesses and firms at a senior level who are involved in investment and location decisions and their tax implications. The survey is located on the OECD's website and must be completed by 16 December 2016.

Puerto Rico: On 19 October 2016, the Department of Treasury shared a draft of the transfer pricing regulations under the Puerto Rico Internal Revenue Code. The draft regulations focus on the application of the arm's length principle to evaluate the transfer pricing policies of associated enterprises and are based on the OECD transfer pricing guidelines, as well as the regulations issued under section 482 of the US Internal Revenue Code. The regulations will become final 30 days after being filed with the Puerto Rico state department.

Puerto Rico: As a result of the court decision that struck down certain provisions of Puerto Rico's alternative minimum tax (AMT) regime as unconstitutional (for prior coverage, see *World Tax Advisor*, 9 September 2016), the Puerto Rico Treasury Department has issued guidance to clarify that these AMT provisions do not apply to the 2016 taxable year and to establish a mechanism for companies to claim a credit (not a refund) for excess taxes paid in the 2015 taxable year. The guidance also specifies that the relevant provisions should not be considered in calculating 2016 estimated tax payments, and any estimated tax already deposited relating to those provisions can be applied against the 2016 income tax liability.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_ib.html

United States: The Internal Revenue Service released a notice on 1 July 2016, providing the proposed qualified intermediary (QI) agreement for certain foreign persons to simplify their withholding obligations under certain provisions of the Internal Revenue Code. The notice also provides guidance on procedures for the qualified derivatives dealer regime announced in temporary regulations in 2015.

Uzbekistan: The government has amended the requirements for Uzbek joint stock companies that receive direct foreign investment, focus on production activities in certain industries and meet other requirements to qualify for certain tax incentives. Provided the foreign investment participation accounts for at least 15% (reduced from 33%) of the joint stock company's authorized capital, a temporary corporate income tax, social infrastructure tax, unified tax

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and national road fund contribution concession will be granted for a period of up to seven years. In another move, newly registered production enterprises with foreign investment will be able to be taxed at the rate that applied at the time they carried out their state registration for a period of five years.

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.

Ireland: The government has released updated guidance on CbC reporting. See Global Transfer Pricing Alert 2016-033, 19 October 2016.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-033-19-october-2016.pdf

OECD: The OECD announced on 21 October 2016 that Brazil, Guernsey, Jersey, the Isle of Man and Latvia have signed the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of CbC reports under action 13 of the BEPS project, bringing the total number of signatories to 49. Brazil also has signed the CRS Multilateral Competent Authority Agreement (CRS MCAA) for the automatic exchange of financial account information pursuant to the OECD/G20 common reporting standard (CRS), in time to commence exchanges in 2018.

OECD: On 20 October 2016, the OECD released documents (approved by the members of the inclusive framework on BEPS) that will form the basis of the mutual agreement procedure (MAP) peer review and monitoring process under action 14 of the BEPS project, which calls for effective dispute resolution mechanisms to resolve tax treaty-related disputes. In a press release accompanying the documents, the OECD stated that the peer reviews will be carried out in groups, starting in December 2016, and that it will publish updated MAP profiles of all members of the inclusive framework. The OECD will request input from taxpayers before the peer reviews are initiated.

Singapore: The tax authorities (IRAS) on 10 October 2016 released CbC reporting guidelines that generally align with BEPS action 13 and require a Singapore-headquartered multinational enterprise (MNE) group to submit a report where the group (which excludes equity method investments and nonconsolidated partnerships) has (i) subsidiaries or operations in at least one foreign jurisdiction and (ii) consolidated group revenue in the preceding financial year of at least SGD 1.125 million. The first filing date for Singapore MNEs will be 31 December 2018 (for financial years ending on 31 December 2017). IRAS will enter into automatic exchange agreements with the tax authorities of the jurisdictions identified in the reports only after establishing that a jurisdiction has a strong rule of law and is able to ensure the confidentiality of the information and prevent its unauthorized use. For prior coverage, see *World Tax Advisor*, 22 July 2016.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160722_6.html

United Nations: A UN committee has agreed to incorporate certain BEPS changes into the UN model treaty. See the tax treaty round up item in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161028_tr.html

Tax treaty round up

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

Unless otherwise noted, the developments discussed below are not yet in force.
Argentina-Chile: The 2015 tax treaty entered into force on 11 October 2016 and will apply as from 1 January 2017 for withholding tax purposes. When in effect, the treaty provides for a 10% 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%. As a

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result of special wording in the treaty, however, the reduced rates will not apply in Chile; dividends distributed from Chile will be subject to the domestic withholding tax rate, with a credit for the corporate tax paid. A 4% rate will apply to interest derived from the sale of machinery and equipment on credit by a recipient that is the seller of the machinery/equipment; a 12% rate will apply to interest on loans granted by banks and insurance companies or from bonds or securities that are regularly and substantially traded on a recognized securities market; otherwise, the rate will be 15%. A 3% rate will apply to royalties paid for the use of, or the right to use, news. A 10% rate will apply to royalties paid in respect of copyrights of literary, artistic or scientific works (excluding royalties for cinematograph films and works on film, tape or other means of reproduction for use in connection with television); a patent, trademark, design or model, plan, secret formula or process; and industrial, commercial or scientific equipment and information concerning industrial, commercial or scientific experience, as well as payments for technical assistance. Otherwise, the rate will be 15%.

Belgium-Japan: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161028_4.html

Canada-Israel: When in effect, the treaty signed on 21 September 2016 to replace the 1975 treaty provides for a 0% withholding tax rate on dividends paid to (i) a qualifying organization that administers or provides benefits under one or more pension plans and does not hold, directly or indirectly, more than 10% of the capital or voting power of the payer company; or (ii) the government, a political subdivision or local authority or the central bank where the recipient does not hold, directly or indirectly, more than 25% of the capital or voting power of the payer company; a 5% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15% (except for distributions from an Israeli real estate investment fund to a Canadian recipient that holds directly at least 10% of the capital of the fund, which will be subject to the domestic rate). A 0% rate will apply to interest paid to a qualifying organization that administers or provides benefits under one or more pension plans and does not hold, directly or indirectly, more than 10% of the capital or voting power of the payer company; a 5% rate will apply to interest paid on arm's length terms to a financial institution; otherwise, the rate will be 10%. A 0% rate will apply to copyright royalties and other similar payments in respect of a literary, dramatic, musical or other artistic work (but excluding royalties in respect of motion picture films and television broadcasting) and to royalties for the use of, or the right to use, computer software or a patent or for information concerning industrial, commercial or scientific experience (excluding royalties provided in connection with a rental or franchise agreement); otherwise, the rate will be 10%.

China-Cambodia: When in effect, the treaty signed on 13 October 2016 provides for a 10% withholding tax rate on dividends, interest and royalties.

Croatia: The tax authorities announced on 22 September 2016 that the reporting deadline under Croatia's FATCA agreement with the US (signed on 20 March 2015) will be postponed until 30 September 2017, since the agreement has not yet been ratified and has not entered into force. Reporting originally was scheduled to begin in September 2015 and previously had been postponed to 30 September 2016.

Egypt-Bahrain: When in effect, the treaty signed on 26 April 2016 to replace the 1997 treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%.

Finland-Estonia: On 3 October 2016, the Finnish tax administration announced that, as a result of the application of a most-favored nation clause, the withholding tax on royalties under the treaty is reduced to 0% as from 1 January 2016. The rate provided under the treaty is 5% for royalties paid for the use of industrial, commercial and scientific equipment, and 10% for other royalties.

Germany-Armenia: When in effect, the treaty signed on 29 June 2016 to replace the 1981 treaty between Germany and the former USSR provides for a 7% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; a 15% rate will apply to distributions on certificates of a German investment fund that are directly or indirectly connected to income from immovable property, and to distributions by a German real estate investment company whose profits are wholly or partially tax exempt or that is entitled to deduct the distributions when determining its profits; otherwise, the rate will be 10%. A 5% rate will apply to interest, and a 6% rate to royalties.

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Germany-Japan: The 2015 treaty to replace the 1966 treaty, as amended by the 1979 and 1983 protocols, enters into force on 28 October 2016 and will apply as from 1 January 2017 for withholding tax purposes. When in effect, the new treaty provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership) that has owned directly, for a period of 18 months ending on the date on which entitlement to the dividends is determined, at least 25% of the voting shares of the payer company; a 5% rate will apply to dividends paid to a company (other than a partnership) that has owned directly, for a period of six months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares of the payer company; otherwise, the rate will be 15%. The 0% and 5% rates will not apply to dividends paid by a German real estate investment trust company with listed share capital or a German investment fund. Dividends paid by a Japanese company that is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income for Japanese tax purposes may be taxed under Japan's domestic law. Interest (with exceptions for certain contingent interest arising in Japan) and royalties will be taxable only in the state of residence of the recipient.

Hong Kong-Korea: The 2014 tax agreement entered into force on 27 September 2016 and will apply as from 1 April 2017 for withholding tax purposes. When in effect, the agreement provides for a 10% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

India-Korea: The 2015 treaty to replace the 1985 treaty entered into force on 12 September 2016 and will apply as from 1 April 2017 in India and as from 1 January 2017 in Korea. When in effect, the new treaty provides for a 15% withholding tax rate on dividends and a 10% rate on interest, royalties and technical service fees.

Ireland-Pakistan: The 2015 treaty to replace the 1973 treaty entered into force on 11 October 2016 and will apply as from 1 January 2017 in Ireland and as from 1 July 2017 in Pakistan. When in effect, the new treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest, royalties and fees for technical services will be 10%.

Japan-Slovenia: When in effect, the treaty signed on 30 September 2016 provides for a 10% withholding tax rate on dividends where the dividends are tax-deductible for the payer company or where the payer company is subject to a reduced rate of tax on income if it distributes its profits; otherwise, the rate will be 5%. The rate on interest and royalties will be 5%.

Korea-Brunei: The 2014 treaty entered into force on 14 October 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 25% of the capital of the payer company; otherwise, the rate will be 10%. A 0% rate will apply to interest paid in connection with the sale of industrial, commercial or scientific equipment on credit or in connection with the sale of merchandise by an enterprise to another enterprise on credit; otherwise, the rate will be 10%. The rate on royalties will be 10%.

Korea-Poland: The 2013 protocol to the 1991 treaty entered into force on 15 October 2016 and will apply as from 1 January 2017. When in effect, the protocol provides for a 5% withholding tax rate on royalties. The protocol does not amend the rates under the dividends or interest articles.

Korea-Tajikistan: The 2013 treaty entered into force on 28 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 25% of the capital of the payer company; otherwise, the rate will be 10%. A 0% rate will apply to interest paid in connection with the sale of industrial, commercial or scientific equipment on credit or in connection with the sale of merchandise by an enterprise to another enterprise on credit; otherwise, the rate will be 8%. The rate on royalties will be 10%.

Luxembourg-Ukraine: When in effect, the protocol to the 1997 treaty (which is not yet in force) signed on 30 September 2016 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 15%. A 5% rate will apply to interest paid on loans granted by a bank or other financial institution; otherwise, the rate will be 10%. A 5% rate will apply to patent and trademark royalties, and a 10% rate to copyrights.

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OECD: The OECD launched a new database on 20 October 2016 that lists the bilateral relationships between jurisdictions implementing the automatic exchange of information (AEOI) under the common reporting standard (CRS). According to a news release issued by the OECD, most of the relationships are based on the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, although the database also lists exchange relationships based on bilateral agreements and the EU framework. The database is expected to grow as more jurisdictions nominate the partners with which they will undertake AEOI. The OECD intends to publish the next update on the bilateral exchange relationships before the end of 2016.

Singapore: Competent authority agreements were signed with Japan and Korea on 13 and 14 October 2016, respectively, relating to the automatic exchange of financial account information (AEOI) based on the common reporting standard (CRS). The CRS is an internationally agreed standard for AEOI, endorsed by the OECD and Global Forum for Transparency and Exchange of Information for Tax Purposes. The CRS sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as the customer due diligence procedures to be followed by financial institutions. The AEOI under the CRS will commence by September 2018.

Slovakia-Ethiopia: When in effect, the treaty signed on 30 September 2016 provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. A 5% rate will apply to interest and royalties.

United Nations: During the 12th meeting of the UN Committee of Experts on International Cooperation in tax matters on 11-14 October 2016, the committee agreed to incorporate the BEPS changes on permanent establishments and on treaty abuse into the UN model treaty, which means that UN model user countries would be able to benefit from the BEPS multilateral instrument to change their treaties. The committee also agreed to a new article and commentary on fees for technical services in the UN model.

United States: Intergovernmental agreements to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) were signed with the Dominican Republic (on 15 September 2016) and with Guyana (on 17 October 2016).

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Ireland
Updated guidance on CbC reporting released
On 13 October 2016, the Irish Revenue released updated guidance on CbC reporting, including a step-by-step guide on the annual notification requirements. The first notification deadline is 31 December 2016 for accounting periods ending on that date.
Issue date: 19 October 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-033-19-october-2016.pdf

United States
IRS announces position on unilateral APA applications by maquiladoras
On 14 October 2016, the Internal Revenue Service announced that US taxpayers with maquiladora operations in Mexico will not be exposed to double taxation if they enter into a unilateral advance pricing agreement with the Mexican tax authorities under an elective framework recently agreed to by the US and Mexican competent authorities.
Issue date: 24 October 2016
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-034-24-october-2016.pdf

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Final and temporary regulations address treatment of certain interests in corporations as stock or indebtedness

On 13 October 2016, the US treasury and the Internal Revenue Service released final and temporary regulations under section 385 of the Internal Revenue Code that (i) establish threshold documentation requirements that ordinarily must be satisfied for certain related-party interests in a corporation to be treated as indebtedness for US federal income tax purposes; and (ii) treat as stock certain related-party interests that otherwise would be treated as indebtedness for US federal income tax purposes. The regulations are significantly narrower in scope than the proposed regulations issued on 4 April 2016.

Issue date: 14 October 2016

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-14-october-2016.pdf

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