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Papua New Guinea taxation of resources/non-resources sectors harmonized, CbC reporting introduced

The legislative instruments giving effect to the tax changes announced in Papua New Guinea's (PNG's) 2017 budget presented on 1 November 2016 have been passed. The 2017 budget is the Minister for Finance's last budget before the 2017 national elections. As expected, the budget does not include a major overhaul to the tax legislation before the elections, but there are some unexpected and significant changes, mostly in line with the Tax Review Committee recommendations that were published in 2015.

The most important tax changes affecting companies are as follows (unless otherwise noted, the changes will apply as from 1 January 2017):

Corporate tax rate and deductions

In line with the recommendations of the Tax Review Committee, a number of tax concessions for resources companies will be removed to simplify the system and harmonize the taxation of resources companies with non-resources companies.

The company tax rate applying to resident companies will be standardized at 30% across all sectors of the economy. Resident companies operating in the petroleum industry currently are taxed at different income tax rates, up to 50%. The alignment is being implemented along with the standardization of a 15% dividend withholding tax across all industries (see below).

The double deduction for pooled exploration expenditure currently available to mining companies will be repealed.

Additional Profits Tax (APT)

The APT, which applies to companies operating in the resources sector in addition to the company income tax, will be revamped. The APT currently applies only if a resources company receives a return that is above the average rate of return on its investments, and it applies only to gas projects (in practice, the APT is applied only to the "PNG LNG" project). The changes will extend the APT to all resources projects. Under the revamped tax, the hurdle rate will be a flat nominal rate of 15%; there will be a single APT threshold rate of 15% and an APT rate of 30%.

Dividend withholding tax

The dividend withholding tax, currently applicable at a rate of 17% to dividends paid to residents and nonresidents, will be standardized at 15%, applicable to all sectors. Dividends paid or credited by mining companies currently attract a rate of 10%, while dividends from petroleum and gas companies' operations are exempt income and not subject to any dividend withholding tax. Dividends paid out of mining, petroleum and gas operations now will be treated similarly to dividends paid out of other business operations. The standard dividend withholding tax rate, therefore, will result in a significant increase in the tax costs to the resources sector.

Dividend withholding tax no longer will apply where a PNG company pays dividends to another PNG company. Tax will have to be withheld only where a PNG company pays or credits a dividend or an amount that is deemed to be a dividend to a resident individual, a resident trust estate or a nonresident person. Dividend withholding tax no longer will be a final tax, which means that dividend income will not be excluded from the assessable income of the recipient. For instance, a resident individual who is in the highest income tax bracket will have an effective tax rate of 59.4% apply to dividend income.

Interest withholding tax

The exemption from income tax and interest withholding tax for foreign companies lending to a company engaged in the PNG resources industry will be repealed, in line with the measure to standardize the corporate income and withholding tax rates that apply to companies operating in the resources and non-resources industries.

Foreign contractor tax (FCT)

The taxation of foreign contractors will be standardized. The FCT withholding tax regime no longer will be correlated with 25% of the nonresident income tax rate of 48% (i.e. 12%); instead, a standard 15% withholding tax will apply to all foreign contractors operating in PNG. Under the new FCT rules, foreign contractors no longer may apply for taxation on a net income basis, under which the contractor prepares and files an annual income tax return with the PNG tax authorities. Taxation on a net income basis has been especially beneficial to foreign contractors that had operating margins below 25% on their PNG contracts, so this reform is significant for foreign contractors working in PNG. The PNG client, which is the tax agent to the foreign contractor, will be required to submit the foreign contract to the PNG tax authorities within 14 days of its signing and deduct and pay the foreign withholding tax to the authorities; penalties will apply for noncompliance.

CbC reporting

A CbC reporting obligation, in line with action 13 of the OECD's BEPS project, will be introduced in relation to transfer pricing. An annual CbC report will be required where a parent company of a multinational enterprise (MNE) group is located in PNG for tax purposes. Separately, a qualifying subsidiary located in PNG or a PNG branch of a foreign subsidiary of an MNE group will have to file a CbC report with the PNG tax authorities in specific circumstances.

The report will have to contain aggregate information relating to the amount of revenue, profit or loss before income tax, income tax accrued, stated capital, earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE group operates. In addition, the report will need to include the identity of each qualifying entity of the MNE group, setting out the jurisdiction of tax residence of such entity (and, where different from such jurisdiction of tax residence, the jurisdiction under whose law such entity is organized) and the nature of the main business activities of such entity.

The CbC report will have to be prepared in a standard template from the OECD and filed with the PNG authorities no later than 12 months after the last day of the reporting fiscal year of the MNE group. The tax authorities will use the CbC report for purposes of assessing high-level transfer pricing risks and other BEPS-related risks in PNG, as well as for economic and statistical analyses, but the information will need to be kept confidential. However, transfer pricing adjustments by the tax authorities will not be based on the reports.

Taxation of housing benefits provided to employees

Of particular concern to companies with tax equalization schemes for expatriate employees, the taxable value of housing benefits provided to employees has been increased. This will have a substantial effect on how much income tax employees pay on such benefits. For instance, employees in the highest rental bracket (above PGK 5,000 per week) will pay an additional PGK 19,656 per annum in income tax. Employers increasing an employee's remuneration to compensate for the higher tax should account for the fact that the increase is also taxable.

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Australia: GST to apply to low value imported goods

The Australian government issued draft legislation on 4 November 2016 that would extend the goods and services tax (GST) to apply to low value imported goods.

Based on the proposed changes, which would apply as from 1 July 2017, foreign entities with an annual GST turnover of AUD 75,000 or more would be liable to account for GST on goods with a value lower than AUD 1,000 supplied to unregistered Australian consumers; goods with a value exceeding AUD 1,000 would continue to be taxed upon importation.

The obligation to account for GST would rest with either the overseas supplier, the operator of an electronic distribution platform (EDP) or the "goods forwarder" (i.e. the entity that assists consumers in bringing goods they have acquired overseas into Australia). The overseas supplier would be directly liable to account for GST on the goods sold directly to customers, unless it obtains a statement from the customer and the supplier reasonably believes the goods to be imported will result in a taxable importation. Alternatively, if the sale is made through an EDP that meets certain requirements, the EDP would be liable to account for GST on the sale, unless the EDP agrees with the overseas supplier for the liability to revert back to the supplier. Goods forwarders generally would be liable to account for GST only if they are directly engaged by the customer.

Registered businesses in Australia that purchase low value goods for business use would not have GST applied to such goods if they quote their Australian business number to the overseas supplier. If a consumer makes misrepresentations when dealing with the overseas supplier, the consumer could be subject to penalty provisions.

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Colombia:
Tax treaty signed with UK

On 1 November 2016, Colombia and the UK signed the first tax treaty between the two countries.

The main objectives of the treaty are to (i) reduce barriers to cross-border trade and investment; (ii) provide legal certainty to businesses and employees operating between Colombia and the UK, since the treaty provisions will prevail over domestic legislation; (iii) provide clear rules on the tax treatment of various activities and sources of income and reduce the withholding tax on payments made by a resident of one contracting state to residents of the other state; and (iv) allow residents of one contracting state to request a tax credit for tax paid in the other state.

The treaty provides for the following withholding tax rates on dividends, interest and royalties paid by a resident of one contracting state to a beneficial owner in the other state:

- **Dividends:** Dividends paid to a pension scheme or fund (or in the case of Colombia, a mandatory pension fund) will be exempt. A 5% rate will apply where the dividends are paid to a company that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 15%. The 15% rate also will apply to dividends paid by a Colombian company out of profits that have not been taxed at the corporate level or where profits of a resident of the UK attributable to a Colombian permanent establishment have not been subject to tax in Colombia and such profits, upon transfer out of Colombia, are treated as a dividend equivalent under Colombian law.
- **Interest:** Interest paid to a pension fund (or in the case of Colombia, a mandatory pension fund) will be exempt; otherwise, the rate will be 10%.
- **Royalties:** 10%. The term "royalties" means "payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information (knowhow) concerning industrial, commercial or scientific experience."

The treaty includes special provisions regarding tax abuse that will operate to deny treaty benefits if obtaining the benefit was one of the principal purposes of an arrangement. The treaty also contains an OECD-compliant exchange of information provision and a provision for assistance in the collection of taxes.

The treaty will enter into force once both countries have completed their legislative procedures and exchanged diplomatic notes.

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European Union:
Commission finds Hungarian advertisement tax breaches EU law

The European Commission announced on 4 November 2016 that it has concluded that Hungary's advertisement tax violates EU law.

Under Hungary's 2014 Advertisement Tax Act, companies were taxed at a rate depending on their advertisement turnover, and companies with a higher advertisement turnover were subject to a significantly higher tax rate.

In March 2015, the commission opened an in-depth investigation into whether the tax complied with EU state aid rules (for prior coverage, see *World Tax Advisor*, 27 March 2015). The commission now has concluded that it did not. Because of the progressive rates in the 2014 act, companies with a low advertisement turnover were liable to pay substantially less advertisement tax, even in proportion to their advertisement turnover, than companies with a higher advertisement turnover. This gave companies with a low turnover an unfair economic advantage over competitors.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150327_ib.html

When the commission opened the investigation, it also asked Hungary to suspend the application of the tax. Hungary suspended the tax but implemented an amended version, without notifying it to or consulting the commission. The investigation by the commission showed that the amended advertisement tax, in effect since July 2015, did not fully address the commission's concerns. The commission's decision requires Hungary to remove the unjustified discrimination between companies under both the 2014 Advertisement Tax Act and the amended version.

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Italy:
Treatment of interest on certain medium or long-term loans clarified

In a ruling dated 29 September 2016, Italy's tax authorities clarified that if interest qualifies for the domestic withholding tax exemption for certain medium and long-term loans, the interest is not subject to tax in Italy as financial income and the nonresident lender is not required to file an Italian tax return.

Background

Under Italian tax law, foreign companies with a permanent establishment (PE) in Italy are subject to Italian taxation on the income realized through, and attributable to, the PE. Foreign companies without an Italian PE are taxed on Italian-source income based on the specific rules provided for the category of income realized (financial income, real estate income, etc.).

Financial income (such as interest) paid by an Italian company generally is subject to a specific withholding tax regime, under which interest payments made by an Italian company to a foreign company are subject to a domestic withholding tax of 26% (12.5% before 1 July 2014). However, an exemption or a reduction in the withholding tax rate may apply under the EU interest and royalties directive or an applicable tax treaty.

Italy's legislation was amended in 2014 to introduce a domestic withholding tax exemption that applies to interest payments and other income arising from medium or long-term loans (generally, loans with a duration longer than 18 months) granted to Italian companies by certain nonresident entities. The provision targeted interest payments to the following recipients: (i) banks established in the EU; (ii) insurance companies incorporated under the provisions of an EU member state; and (iii) certain nonleveraged collective investment undertakings (OICRs) based in the EU (or a European Economic Area country included on Italy's "white list"), even if the OICR was transparent for tax purposes.

The domestic exemption provision was modified in January 2015, and again in February 2016. As a result of the modifications:

- The reference to nonleveraged OICRs has been replaced by a reference to foreign institutional investors subject to regulatory supervision in their country of establishment, even if the investor is transparent for tax purposes; and
- Qualifying loans must be granted in accordance with the rules provided by the Italian banking law.

Ruling

The ruling was based on a request by an Austrian bank that granted a long-term loan to an Italian company as to whether the interest payments from the Italian borrower that qualified for the withholding tax exemption still would be taxable in Italy as financial income realized by a nonresident company without an Italian PE, and whether an Italian tax return had to be filed to declare and pay tax on the income.

The tax authorities clarified that, if all the requirements necessary to qualify for the withholding tax exemption are met, the interest income earned by the foreign lender is not taxable in Italy and, thus, no tax return has to be filed; such interest is taxable only in the lender's country of residence (in this case, Austria).

The tax authorities also clarified that, in line with the modifications to the exemption described above, the bank granting the loan must meet certain requirements provided by the Italian banking law concerning the authorization to carry out banking and financing activities with the public.

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Switzerland: Characterization of a PE for VAT purposes

Switzerland's tax administration issued an administrative decision on 7 January 2016 that clarifies the definition of a permanent establishment (PE, also known as a "fixed establishment") for VAT purposes, specifically in the context of servers located in the country. The tax administration rejected a VAT refund request from a non-Swiss-established entity on the grounds that the company's server located in Switzerland constituted a PE of the non-Swiss entity. This decision provides one example of how the concept of a PE is evolving; additionally, multinationals should be aware of broader tax developments (e.g. those relating to the BEPS initiative and EU case law) that may affect whether a PE exists for VAT purposes.

Decision of the Swiss tax administration

In Switzerland, a server can be regarded as a PE based on the published tax guidance of the Swiss tax authorities (VAT Info 13 "electronic and telecommunication services"), provided the server is not used only for preparatory or auxiliary services. It is not necessary for a foreign entity to own the server to create a PE, but it must specifically lease the server itself, and not merely the server's storage and computing capacity. In determining whether a server forms a VAT PE in Switzerland, the tax authorities will analyze each case on its facts.

Under the facts relating to the refund request, the foreign company utilized co-location services from a Swiss data center and used the Swiss servers to grant the foreign company's customers access to a variety of cloud-based applications. The Swiss tax administration took the position that the cloud-based applications constituted the core business of the foreign company and that they did not merely have a preparatory or ancillary function. Therefore, the servers formed a VAT PE in Switzerland, through which the foreign company performed its business activities.

Interaction of Swiss position with other developments

The concept of a PE for VAT purposes is important, since whether a PE exists will determine the place where certain services are subject to VAT and whether a business may exercise a right to claim a refund of VAT (as a non-established person).

Recent developments, such as the OECD's BEPS project, the 2014 decision of the Court of Justice of the European Union (CJEU) in the *Welmory* case and the EU Union Customs Code (UCC) that became effective on 1 May 2016 are refining the understanding of the concept of a PE, but at the same time are raising questions on how the concept may be applied in practice in the EU (for prior coverage of the CJEU decision, see *World Tax Advisor*, 24 October 2014 and for prior coverage of the UCC, see *World Tax Advisor*, 22 April 2016). The *Welmory* case relates to VAT in the context of e-commerce, while the recommendations under the BEPS project (and the rules under the UCC) are broader in scope.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/141024_3.html
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160422_1.html

BEPS: In many countries, the definitions of a PE for corporate income tax purposes and for VAT purposes are linked in practice. Implementing the recommendations under action 7 of the BEPS project, "Preventing the Artificial Avoidance of Permanent Establishment Status," likely would result in far-reaching changes to the rules for determining the taxable presence of an enterprise in a particular country, especially in situations where intermediaries (such as agents, commissionaires, etc.) are used to avoid creating a PE in a country. For example, the BEPS recommendations lower the threshold for determining when an independent agent would be considered a PE of a company, so that if such an agent acts exclusively (or almost exclusively) for one or more enterprises to which it is closely related, it would not be considered an independent agent. (Similarly, the amended "exporter" definition in the UCC refers to an entity that is established in the customs territory of the EU, holds the contract with the consignee in the non-EU country at the time of filing the export and/or has the power to determine that the goods can be transported out of the EU.)

Additionally, the implementation of action 7 could affect companies operating with an inventory of goods in several countries, since, under the BEPS recommendations, having inventory in a country may create a PE if this inventory is essential for the company's core activity.

CJEU decision in *Welmory*: The CJEU provided valuable guidance on the question relating to when a fixed establishment will be deemed to exist in the context of e-commerce. The court held that a PE in a digital context requires an appropriate structure in terms of human and technical resources (such as computer equipment, servers and software) to enable the person to receive the services supplied and use them for its business. The decision also confirms that jurisprudence on the interpretation of fixed establishments continues to be relevant after the introduction of the EU VAT package on 1 January 2010 that updated the place of supply rules for the provision of services within the EU.

It would appear that both the BEPS recommendations and the CJEU decision in *Welmory* imply that if an economic activity can be performed without requiring an effective human and material structure in a country, then another structure (such as a technical structure involving computer equipment, servers and software) may be sufficient to characterize a PE from a VAT perspective. The Swiss tax administration's position on when a server can create a VAT PE seems broadly in line with this interpretation.

Comments

The concept of a PE/fixed establishment clearly is evolving. Businesses operating in Europe with a presence in multiple countries should assess how these developments will affect their existing processes, organization and models for VAT purposes. In addition, for businesses involved in international operations, the future implementation of new business models should be closely monitored to identify any potential risk of a PE/fixed establishment characterization from both a corporate income tax and a VAT perspective, and to avoid incurring additional costs and obligations.

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In brief

Austria: The Ministry of Finance has published draft amendments to the federal tax law that address the income tax aspects of the use of company cars; the treatment of situations where an employer pays wages without deducting the wage tax; and measures to harmonize the definition of real estate in the VAT act and the VAT exemption for small businesses with EU law. Additionally, taxpayers involved in disputes with the tax authorities would be able to file an appeal directly to the tax court of appeals in certain cases, and taxpayers would be able to apply for assistance in taxation proceedings (currently, assistance may be requested only in fiscal penalty proceedings).

China: The Ministry of Finance and the State Administration of Taxation issued a circular on 4 November 2016 that increases the export VAT refund rate for 418 products. The export VAT refund is a mechanism used to encourage/discourage the export of certain products, with the rate adjusted periodically. Goods exported from China generally are not subject to VAT, and exporters may apply for a refund of the VAT incurred in relation to the goods exported. However, unlike most countries with VAT systems, China commonly does not grant a full refund for VAT incurred on inputs if the manufactured good is exported, which means there is a net VAT cost suffered by the exporting company. The government now has announced that, retroactively as from 1 November 2016, a full VAT refund will be available (i.e. at a rate of 17%, compared to the previous rates of rates of 0%, 5%, 13% and 15%).

China: Guidance issued by the Ministry of Finance and the State Administration of Taxation that applies as from 1 September 2016 expands the preferential individual income tax (IIT) policies relating to equity compensation plans and capital contributions made to a Chinese company in the form of technology. The key IIT incentives provided in the new rules on equity compensation plans are as follows: (i) favorable IIT treatment is extended to equity compensation plans offered by unlisted companies; specifically, taxation of equity awards granted to employees may be deferred until the time the employee disposes of the equity; (ii) equity compensation plans offered by companies listed on the Shanghai and Shenzhen stock exchanges continue to benefit from the tax treatment provided in earlier guidance, but the new guidance extends the period for the individual to settle the tax due; and (iii) favorable IIT treatment is offered to investors that make equity investments in Chinese companies using achievements in technology.

China: A reform of the resource tax launched on 1 July 2016 aims to create a fair and efficient tax regime by eliminating duplicate charges and promoting economic development, the conservation of resources and protection of the environment. Central and local governments are required to review all local levies on mineral resources, abolish any that are inconsistent with the objectives of the reform policy and cease collecting the mineral resource compensation fee and the "price adjustment fund" for all mineral resources. The reform also changes the method for calculating resource tax due from the volume of sales to the sales price of the resources, to help keep pace with fluctuations in the prices of resource products. The reform expands the scope of the resource tax to include water resources (including both surface and ground water), although the taxability of water currently is being piloted in Hebei province.

Hungary: The prime minister announced on 17 November 2016 that the corporate tax rate would be reduced to a single flat rate of 9% starting on 1 January 2017. Currently, a 10% rate applies to a tax base up to HUF 500 million, with a 19% rate applying to a base exceeding this amount. The proposal still must be passed by parliament, but this is expected to take place in the coming weeks.

Italy: A law decree published on 24 October 2016 includes measures to significantly amend the VAT warehouse regime as from 1 April 2017 and some changes to VAT reporting obligations and filing deadlines. The decree must be converted into law within 60 days from its publication date and it is possible that the provisions could be revised before that time. The government also has published a draft of the 2017 budget law, which, among other things, would introduce VAT grouping in the country as from 1 January 2018.

Netherlands: An advocate general (AG) to the Dutch Supreme Court issued an opinion on 9 November 2016, recommending that the court refer two cases involving the compatibility of the Dutch dividend withholding tax with EU law to the Court of Justice of the European Union (CJEU). Although the AG opined that the tax is compatible with EU law and that the relevant legal issues already have been resolved by the CJEU (for prior coverage, see *World Tax Advisor*, 25 March 2016), he advised that referral to the CJEU could be warranted for practical and procedural reasons. Many similar cases, in which foreign investment vehicles have filed dividend withholding tax refund claims on the grounds that the tax was levied contrary to EU law, are pending before the tax authorities and lower tax courts. The number of cases could increase without a final CJEU decision, so a referral could be the only practical solution to end the debate on the issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160325_ib.html

Panama: A law dated 27 October 2016 requires certain legal entities to maintain accounting records and supporting documentation and sets out additional administrative measures, including provisions relating to the situations in which the failure to comply with certain tax and administrative obligations can result in the suspension of a legal entity's corporate rights. The recordkeeping obligations apply to resident legal entities that do not carry out operations that are consummated or take effect within Panama, and related obligations apply to these entities' resident agents in Panama.

Poland: A draft bill includes some proposed changes to the penalties for failure to comply with VAT obligations and a requirement for certain taxpayers to e-file VAT returns as from 1 January 2017, including taxpayers that are registered for "VAT-UE" transactions, taxpayers to which the mandatory reverse-charge mechanism applies and taxpayers that are required to e-file for corporate income tax or personal income tax purposes. E-filing may trigger significant issues for foreign-based entities because it generally requires an e-signature and, due to the technical constraints of the Ministry of Finance's e-filing platform, only Polish e-signatures currently are accepted.

Spain: A law that became effective on 2 October 2016 requires certain taxpayers, including legal entities and entities without legal personality, to communicate with the tax authorities exclusively through electronic means as from that date. Appeals submitted on paper to the tax authorities or the Central Economic Administrative Court will be considered not to be timely filed and will be treated by the tax authorities as not having been submitted.

United Kingdom: On 8 November 2016, the tax authorities published an updated version of their Statement of Practice, which provides general guidance on how the authorities interpret the UK advance pricing agreement (APA) legislation and operate the APA program. The APA program has been in effect since 1999 to assist businesses in determining the most appropriate methodology to derive the arm's length outcome for complex transfer pricing issues and prevent disputes arising that otherwise may result in a mutual agreement procedure being necessary at a later stage.

United States: On 24 October 2016, the Financial Accounting Standards Board issued a final Accounting Standards Update (ASU) that removes the prohibition against immediate recognition of the current and deferred income tax effects of intra-entity transfers of assets other than inventory. For public business entities, the ASU is effective for annual periods beginning after 15 December 2017, and interim periods within those annual periods. For all other entities, the ASU is effective for annual periods beginning after 15 December 2018, and interim periods within annual periods beginning after 15 December 2019. Early adoption is permitted as of the beginning of the annual reporting period.

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.

Brazil: The tax authorities published a normative ruling (NR) on 10 November 2016 that provides guidance on the mutual agreement procedure (MAP) in the context of Brazil's 32 tax treaties and implements the OECD's recommendations on dispute resolution under action 14 of the BEPS project. A public consultation document had been issued on 18 August 2016 (for prior coverage, see *World Tax Advisor*, 9 September 2016), and the NR includes minor changes to the original document, such as allowing non-Brazilian tax residents to request the MAP if they were Brazilian tax residents when a treaty infringement occurred. The NR also allows the MAP to be invoked with respect to other Brazilian taxes (rather than just Brazil's corporate income tax and social contribution on net profits and the foreign taxes identified in the treaty) if the relevant treaty has a nondiscrimination clause that enables such an expansion. The NR applies as from the date it was published.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_2.html

Papua New Guinea: The 2017 budget introduces a CbC reporting requirement in line with action 13 of the OECD's BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161125_1.html

Switzerland: The implementation of the recommendations under action 7 of the BEPS project may affect whether a Swiss permanent establishment exists for VAT purposes. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161125_6.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.

Chile-China: The 2015 treaty entered into force on 8 August 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 10% withholding tax rate on dividends. As a result of special wording in the treaty, however, the reduced rate 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 4% withholding tax will apply on interest derived from loans granted by banks, insurance companies and other financial institutions; otherwise, the rate will be 15% for the first two years after the treaty enters into effect, reducing to 10% thereafter. A 2% withholding tax 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%.

Colombia-United Kingdom: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161125_3.html

Cyprus-Latvia: The 2016 treaty entered into force on 27 October 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 0% withholding tax rate on dividends, interest and royalties paid to a company (other than a partnership); otherwise, the rate on dividends and interest will be 10% and that on royalties, 5%.

Estonia-Vietnam: The 2015 treaty entered into force on 13 November 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 at least 70% of the voting rights of the payer company; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%, and that on technical service fees, 7.5%.

Finland-Portugal: When in effect, the treaty signed on 7 November 2016 to replace the 1970 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 15%. The rate on interest will be 10% and that on royalties, 5%.

Finland-Sri Lanka: When in effect, the treaty signed on 6 October 2016 to replace the 1982 treaty provides for a 7.5% 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-Turkmenistan: When in effect, the treaty signed on 12 December 2015 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 15%. The rate on interest and royalties will be 10%.

Germany-Turkmenistan: When in effect, the treaty signed on 29 August 2016 to replace the 1981 treaty between Germany and the former USSR 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 15%. A 0% rate will apply to interest paid in connection with the sale on credit of industrial, commercial or scientific equipment, or with the sale of goods on credit by one enterprise to another; otherwise, the rate will be 10%. The rate on royalties will be 10%.

Korea-Serbia: The 2016 treaty entered into force on 17 November 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%. 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 copyright of literary, artistic or scientific work (including cinematograph films or films or tapes used for radio or television broadcasting). A 10% rate will apply to royalties paid for the use of, or the right to use, a patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

Panama: On 27 October 2016, Panama became the 105th country to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The convention provides for the exchange of information on request, spontaneous exchanges, automatic exchanges, tax examinations abroad, simultaneous tax examinations and assistance in tax collection.

Portugal-Bahrain: The 2015 treaty entered into force on 1 November 2016 and will apply as from 1 January 2017. When in effect, the treaty 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 will be 10% and that on royalties, 5%.

Saudi Arabia-Ethiopia: The 2013 treaty entered into force on 1 October 2016 and will apply as from 1 January 2017 for Saudi Arabia and as from 8 July 2017 for Ethiopia for withholding tax purposes. When in effect, the treaty provides for a 5% withholding tax rate on dividends and interest and a 7.5% rate on royalties.

Singapore-Laos: The 2014 treaty entered into force on 11 November 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 8%. The rate on interest and royalties will be 5%.

United Kingdom-Lesotho: When in effect, the treaty signed on 3 November 2016 to replace the 1997 treaty 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; a 15% rate will apply to dividends paid out of income (including gains) derived from immovable property by an investment vehicle that distributes most of the income annually and whose income from the immovable property is tax exempt; otherwise, the rate will be 10%. The rate on interest will be 10% and that on royalties, 7.5%.

United States: Intergovernmental agreements to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA), have been signed with Antigua and Barbuda (dated 31 August 2016) and Saudi Arabia (dated 15 November 2016).

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France
Scope of exemption from 3% surtax to be broadened
The French government has decided to maintain the exemption from the 3% surtax for dividends distributed within members of a French tax-consolidated group, but to broaden the scope of the exemption to apply to distributions made by French subsidiaries to their foreign parent companies, provided a 95% ownership requirement is met.
Issue date: 19 November 2016
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-19-november-2016.pdf

United States
Performance audit of IRS concludes transfer pricing issues not being properly evaluated
In a final report issued 3 November 2016, the Treasury Inspector General for Tax Administration concluded that transfer pricing issues are not being properly evaluated by the Internal Revenue Service because of various procedural barriers at the agency.
Issue date: 10 November 2016
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-037-10-november-2016.pdf