In this issue:

UK releases draft legislation on rules restricting deductibility of corporate interest expense 2
Austria: CbC reporting notification due by end of 2016 8
Brazil: Consultations launched on ruling exchanges and CRS 9
Ireland: Tax authorities issue more updated guidance on CbC reporting 10
Italy: Tax court decisions cast doubt on compatibility of participation exemption regime with EU law 11
Poland: Changes to corporate income tax rules target tax avoidance/evasion 12
Saudi Arabia: Changes made to taxation of listed companies 13
Spain: New VAT reporting requirements introduced 14
United Kingdom: Draft legislation released on reform to substantial shareholder exemption 15
In brief 16
BEPS corner 17
Tax treaty round up 18
Are You Getting Your Global Tax Alerts? 20

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

UK releases draft legislation on rules restricting deductibility of corporate interest expense

On 5 December 2016, following extensive consultation, the UK government released draft legislation on the new rules restricting the deductibility of corporate interest expense (for prior coverage, see *World Tax Advisor*, 10 June 2016). The draft Finance Bill 2017 includes the core provisions and will be updated by the end of January 2017 for some areas where additional work is needed, including additional group ratio rule definitions, some industry-specific provisions and other points of detail, such as available elections to limit mismatches between tax and accounting measures. The government also published a summary of responses to the May 2016 consultation, setting out its decisions on all aspects of the new rules.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160610_1.html

The rules represent part of the UK government's implementation of the G20/OECD BEPS project and are expected to raise over GBP 1 billion annually.

General operation and scope

According to the draft legislation, as from 1 April 2017, all groups would be able to deduct net interest expense of up to GBP 2 million, but deductions for interest expense over this de minimis amount would be restricted where a group's "aggregate net tax-interest expense" exceeds its "interest capacity." Interest capacity would be calculated as the group's current year "interest allowance" plus any brought-forward interest allowance amounts (that would expire if not used within five years). The interest allowance would be calculated by the application of either the fixed ratio or the group ratio.

The components of "tax-interest" (the amounts potentially subject to restriction) would be similar to those within the scope of the current worldwide debt cap rules, with the important addition of certain derivative amounts. The finance costs and income covered would include: loan relationship debits and credits, with certain exclusions; derivative contract debits and credits on specified "in-scope" derivatives, again with certain exclusions; financing costs and income implicit in finance leases and debt factoring (and similar) arrangements; and guarantee fee income.

There appears to be no adjustment to deal with interest deductible on a paid basis that accrued before 1 April 2017, i.e. such interest would be within the scope of the proposed rules (in accordance with expectations following the May consultation).

Fixed ratio rule

The fixed ratio is drafted broadly in line with the proposals in the consultation document. The tax-deductible net interest expense would be restricted to 30% of tax EBITDA, based on the aggregated amount of tax EBITDA of each UK resident group company and UK permanent establishment, supplemented by any unexpired brought-forward interest allowance.

Tax EBITDA is the company's total profit or loss for corporation tax purposes, adjusted for tax interest, capital allowances, relevant intangible debits or credits (broadly, amortization), non-allowable capital losses, brought-forward losses and group relief from companies within the worldwide group. There would be no adjustment for group relief from nongroup companies and there is an apparent inconsistency between the claimant company (where relief reduces tax EBITDA) and the surrendering company in a no-group situation.

The fixed ratio also would include what was described in the consultation document as the "modified debt cap." As such, the interest allowance under the fixed ratio would be the lower of: (i) 30% of the aggregate tax EBITDA of the group for the period; or (ii) the adjusted net group-interest expense of the group for the period.

The adjusted net group-interest expense for the period broadly would be the total current-year net interest expense of the worldwide group per the consolidated financial statements (in respect of prescriptively defined matters), adjusted for specific items such as capitalized interest (included) and preference share dividends (excluded).

The policy objective underlying the modified debt cap is to prevent groups with little external borrowing gearing up to the fixed ratio rule limit in the UK. The government believes that this rule is required to sufficiently protect the UK

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

Exchequer against BEPS risks, and that it is consistent with the OECD recommendation that countries consider introducing rules to tackle specific BEPS risks that are not addressed by the fixed ratio and the group ratio.

Group ratio rule

As outlined in the consultation, the rules would permit groups to elect, for each period of account, to calculate their interest allowance under a group ratio. The draft legislation incudes the framework for the group ratio, but some of the detailed definitions for the group ratio and its application (e.g. to joint ventures) will be published in January 2017.

Where a group elects to use the group ratio, it would calculate its interest allowance as the lower of: (a) the group ratio percentage of the aggregate tax EBITDA of the group for the period; or (b) the qualifying net group-interest expense (as yet undefined) of the group for the period. The group ratio would be calculated as:

$$\frac{\text{Qualifying net group-interest expense}}{\text{Accounts EBITDA}}$$

Accounts/group EBITDA is expected to be the group EBITDA from the consolidated financial statements. The group ratio would be restricted to 100% of tax EBITDA, meaning that, contrary to the May 2016 consultation paper, in loss-making years, no relief would be available. Although acknowledging that this restriction may give rise to a permanent restriction for highly leveraged projects (where the restriction in loss-making years may never be reclaimed), the government considers this to be an acceptable risk when balanced against the complexity of other options to prevent the operation of the group ratio undermining the new rule. Relief may be available through the public benefit infrastructure exemption (see below), where applicable.

The purpose of (b) above would appear to be to provide an equivalent of the modified debt cap for the group ratio. However, details of this definition are part of the package to be released in January 2017.

The government's response to the consultation document also states that it intends to address some of the potential mismatches between tax interest and group interest by allowing a "once and for all" election:

- Excluding fair value movements on derivatives (but seemingly not loan relationships) in line with the operation of the "disregard regulations";
- Optional adjustments for capitalized interest on development property and other items of trading stock; and
- Optional recognition of transitional adjustments resulting from changes in accounting policy.

To better align the group's accounting profits with the calculation of taxable profits, the government also has announced its intention to provide for adjustments to group EBITDA, again under a once and for all election, including:

- Exclusion of fair value movements on derivatives (but seemingly not loan relationships);
- Exclusion of fair value movements on capital assets;
- Optional recognition of pension costs on a paid basis;
- Optional recognition of the cost of employee share options on exercise;
- Optional adjustment to the calculation of gains on asset disposal in line with the tax basis; and
- Optional recognition of amounts from changes in accounting policy.

Interest deductions and capacity carried forward

Once a disallowed amount has been calculated, a group would be able to – with the consent of individual companies – determine how that amount should be allocated between group members (alternatively, the allocation would be made on a pro rata basis). The group would need to file an interest restriction schedule within 12 months of the year-end. The disallowed amount could be allocated only to group companies within the charge to UK corporation tax that have a net interest expense (and only to the extent of their net interest expense). Unlike the worldwide debt cap, the allocations could not be made to companies with a gross interest expense, but net interest income overall.

Disallowed tax-interest expense would be able to be carried forward indefinitely to be used in subsequent accounting periods (to the extent there is an excess interest allowance). If the activity of the company ceases or becomes negligible, any excess interest would lapse. Disallowed amounts that have not lapsed would be "reactivated" in subsequent periods, provided there is sufficient interest capacity. Disallowed amounts could be carried forward on an

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

individual company basis and would be treated as tax-interest of the subsequent year (i.e. the year they are reactivated).

In accounting periods where the interest allowance exceeds total current year tax-interest expense and brought-forward disallowed tax-interest expense, the excess interest capacity could be carried forward for five years (initially proposed to be three years).

Relevant accounting standards

The worldwide group would be determined in accordance with the definition of a group for International Accounting Standards (IAS). Alternative group definitions would not be permitted, to maintain consistency in the application of the rules. Subsidiaries would be excluded from the worldwide group where investments in them are required to be held at fair value through profit and loss under IAS.

However, for purposes of calculating any of the accounts-based amounts required by the rules, such as the net group-interest expense, the relevant financial statements of the worldwide group would be the actual consolidated financial statements of the worldwide group's ultimate parent and subsidiaries. These accounts would have to be prepared in accordance with IAS (or not materially different from those prepared under IAS) or the GAAP of one of the following countries: Canada, China, India, Japan, Korea, the UK or the US.

References to amounts "recognized" in financial statements are references to amounts translated into sterling at the average rate of exchange for the period of account. This could lead to distortions where UK companies prepare their accounts (and, therefore, tax returns) in a currency other than sterling.

Other considerations

Derivative contracts: Certain derivative contracts would fall within the scope of the rules, i.e. contracts whose underlying subject matter consists only of one or more of: interest rates; retail price index (RPI) or similar indices; currency; and loan relationships. Pure currency derivatives (such as forward contracts), therefore, would be within scope, even if they have no function in financing the group, meaning that the interest differential ("forward points") element of pure currency contracts would need to be identified and included in the calculations.

There is an apparent exclusion of RPI derivatives from the group ratio measures, but this is presumed to be an omission that will be corrected.

One of the most significant issues arising from the consultation was the potential restriction (depending on the particular facts) of losses inherent in derivative contracts as of 1 April 2017, where such losses have not yet been deducted (e.g. interest rate swaps within the disregard regulations). The election to calculate the group ratio excluding derivative fair values, effectively applying disregard regulations principles, hopefully would resolve this, but uncertainty will remain until the law is published in January.

Foreign exchange: In accordance with the government's response to the consultation, foreign exchange gains and losses in respect of principal amounts would be excluded from the definition of tax interest. Foreign exchange differences wrapped up in interest amounts are expected to be included. It appears that the intention is to similarly exclude foreign exchange amounts from the definition of group interest for the purposes of the group ratio, but there is some uncertainty in the drafting on this point.

Change of accounting policy and transitional adjustments: Any credits or debits in respect of a transitional adjustment on a change of accounting policy arising before April 2017 would be ignored. It is unclear from the drafting whether this is limited to loan relationships, or also would cover derivative contracts, which we believe to be the intention and is important as the significant transitional adjustments on a change of accounting policy (e.g. adoption of "new" UK GAAP) have tended to arise on derivatives.

Related transactions: The draft legislation specifically excludes impairment losses (and reversals) on financial instruments. However, any other amounts arising in respect of "related transactions" would be included within tax interest and group interest. This would include in tax-interest both amounts that are commercially equivalent to interest, such as premiums on early redemption of loans, and amounts that relate to credit risk, such as credits from

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

the release and substantial modification of loans that are not exempt (or would not be exempt for a UK company) under corporate rescue provisions.

Public benefit infrastructure exemption (PBIE): The draft legislation does not include details on the PBIE (expected to be published with the other outstanding clauses by the end of January 2017). The government's response to the consultation process states the intention to introduce an exemption that is wider than that initially proposed in the consultation document.

The exemption is to apply by way of an irrevocable election on a company-by-company basis, and should exclude a "qualifying company" from the group's interest restriction calculations. To fall within these provisions, a qualifying company would have to undertake activities such as the provision, upgrade or maintenance of public benefit infrastructure (PBI), the undertaking of public benefit services or integral services using infrastructure of a qualifying company (within the same worldwide group).

The definition of PBI is expected to cover (*inter alia*): water, gas and electricity transmission, distribution and supply; coal, gas, renewable and nuclear energy generation; port and airports; and the rail network, with a requirement that the infrastructure have an expected economic life of at least 10 years.

Qualifying companies would include those that have operating income only from qualifying activities, interest income or distributions from qualifying companies, such that a chain of holding companies that receive only interest income and distributions from a qualifying company also would be considered qualifying companies. Immaterial nonqualifying income or assets would not disqualify a company, but a company could not hold shares in nonqualifying companies.

Interest expense of qualifying companies would be excluded from the rules, except for nonqualifying interest, which includes most related party debt. All interest income and tax-EBITDA would be excluded, which means companies would need to carefully evaluate whether the election would be beneficial.

Interest expense in relation to related party financial instruments generally is not intended to be excluded by virtue of the PBIE. However, for loans agreed pre-12 May 2016, there would be a very limited "grandfathering" provision (not expected to apply beyond some private finance initiative businesses).

Banks and insurance: There is no specific exclusion from the rules for banking and insurance groups. Many such groups will have net interest income and, therefore, generally should not be subject to restrictions. The government has stated that it will monitor the situation to determine whether specific rules are required for "mixed" groups that combine non-financial services businesses with a regulated bank or insurer.

Real estate: The rules would provide flexibility for real estate investment trusts (REITs) to apply the restrictions in such a way that they would not be forced to pay excessive distributions to maintain their REIT status. The introduction of an election to disregard the impact of fair value movements on property assets held as investments, which could distort the group ratio calculation and unduly restrict the ratio in a particular year, also is beneficial for the real estate sector.

The extension of the PBIE to property rental businesses generally is an interesting development, which opens up the possibility that interest on third-party loans secured by UK investment property may, where the security is limited to the asset or company, be outside the scope of the rules. The publication of this legislation will determine the true application.

Controlled foreign companies (CFCs): The government's response to the consultation has confirmed that it has not changed its stance on the exclusion of interest chargeable under the CFC rules; the CFC charge would be excluded on the basis that this is primarily an anti-avoidance measure.

Joint ventures: The legislation applicable to joint ventures has yet to be released. The government has stated that its intention is to permit joint ventures to elect to use a "blended group ratio" based on the weighted average group ratios of their corporate investors. This is intended to address concerns raised during the consultation that joint ventures would suffer restrictions unfairly when third party debt is issued by an investor and the funds are "on-lent" to the joint venture.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

Double tax relief: The draft legislation includes an exclusion from tax-interest and tax EBITDA for any income upon which the UK corporation tax payable is reduced by a credit for foreign tax. The amount excluded would be determined by dividing the foreign tax credit by the rate of corporation tax otherwise applicable. No provisions would be included to disregard the effect of the interest restriction on the maximum amount of double tax relief available.

Patent box: The government's response to the consultation confirms that it does not intend the effect of the patent box incentives to be diminished and, as such, will ensure that the effect of the patent box regime would be disregarded when applying the rules. This is a welcome change to the previous proposals, which were inconsistent with the proposals for other innovation tax reliefs. Excluding the patent box deduction from tax EBITDA is consistent with the previously stated policy objective of excluding the impact of different financing methods on the patent box benefit. Full details of this have yet to be released.

Administrative points: A worldwide group could elect to appoint an active UK member company as the group's reporting body. If no reporting body is appointed, the UK tax authorities (HMRC) could appoint one. The reporting body would be responsible for submitting the interest restriction return to HMRC within 12 months of the end of the group's accounting period.

The interest restriction return would need to include details of all UK group companies, whether the group is subject to interest restrictions in the period, whether the group is subject to interest reactivations in the period, a statement of calculations and a statement of interest restrictions. The statement of calculations would need to contain details of the total disallowed amount for the period and whether the group has elected to use the group ratio to calculate its interest allowance for the period. The statement of allocated interest restrictions would show how the group's restricted interest would be allocated among the members of the group.

To the extent a company has notified its intention to be a consenting company to HMRC (i.e. to accept the nominated company as the reporting body on its behalf) the reporting body would have discretion as to how to allocate any interest disallowance to the consenting company. However, if a company is a non-consenting company, any interest disallowance could be allocated only on a pro rata basis. For groups that operate on a divisional basis, such that no one entity has visibility over the activities of all of the UK group companies, this pro-rata allocation may provide a sensible solution to the allocation of interest restrictions.

Broadly, the compliance requirements are similar to those under the current worldwide debt cap, but many more companies/groups will be in scope. There would be an option to produce abbreviated statements for groups that do not suffer a restriction, but there still would be compliance requirements for all groups with UK operations.

Anti-avoidance

The draft legislation includes a targeted anti-avoidance rule that would apply where:

- Arrangements are entered into with the main purpose, or one of the main purposes, being to obtain a tax advantage; and
- The tax advantage is attributable, wholly or partly, to absolute or timing advantages under the interest deductibility rules.

The result of any transactions being caught by this rule would be that the arrangements would be counteracted by just and reasonable adjustments to bring into account amounts left out of account, or leave out of account amounts brought in by the operation of these arrangements. While the rule should apply only from 1 April 2017, it appears that arrangements entered into at any time could, in theory, be within scope.

The anti-avoidance rule is drafted broadly and it will be important, in practice, that straightforward actions taken by groups to mitigate unintended and unexpected impacts are not affected, and also that action taken to align interest expenses to taxable profits – for example, the movement of taxable income into the UK – also is unaffected.

Timetable

The rules would come into force as from 1 April 2017. For accounting periods that straddle 1 April 2017, there would be two notional accounting periods; one ending 31 March 2017 and the other beginning 1 April 2017. The

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

apportionment of amounts between these two periods would be on a time basis, unless a just and reasonable apportionment is more appropriate.

In a change to the proposals of the consultation document, the existing worldwide debt cap provisions would be repealed with effect from 1 April 2017 and the modified debt cap would come into effect on that date, at the same time as the rest of the interest restriction rules.

Draft legislation on a number of provisions has yet to be published. The main areas outstanding include:

- Details of the PBIE;
- Detailed definitions forming part of the group ratio calculation;
- Elections to mitigate tax and accounting mismatches, such as derivative fair values;
- Rules for particular industries, including oil and gas, REITs, leasing and patent boxes;
- Definition of related parties and "acting together," which will be particularly important for privately held groups; and
- Administrative rules relating to interest and penalties.

Updated legislation is anticipated by the end of January 2017 and is expected to cover all of the outstanding issues.

Comments

The broad framework of the draft legislation is consistent with the May 2016 consultation and is broadly based on the BEPS action 4 paper. As the draft legislation is incomplete, it will be difficult to fully understand the implications of the proposals for many groups until the rest of the draft law, including details of the operation of the group ratio and elections to reduce mismatches between tax and accounting measures, is published in early 2017. What is clear is that the rules would impose an additional compliance burden, to some extent, on all groups operating in the UK.

As anticipated, the government has retained the initially announced timing, reaffirming the UK's commitment to implement the BEPS project. Introducing the rules from a fixed date of 1 April 2017 imposes a burden on groups, as they will have to prepare notional consolidated financial statements under either IAS or one of the other acceptable GAAPs for periods ending 31 March 2017 and commencing 1 April 2017. The decision to repeal the existing worldwide debt cap rules and introduce the modified debt cap with effect from 1 April 2017 would provide some small mitigation to this burden.

Disallowed interest expenses would be able to be carried forward indefinitely until they could be utilized in an accounting period where there is an excess interest allowance, unless the activity of the company ceases or becomes negligible, at which point any excess interest would lapse. The legislation operates by carrying forward disallowed interest on a company, rather than group, basis, which would provide some flexibility for groups where companies join or leave the group.

The initial consultation document provided for a three-year restriction on the carryforward of excess interest capacity. The draft legislation would increase this to five years. While we welcome this extension, this restriction still could lead to permanent restrictions for groups with significant timing differences between accounting and taxable profits. The proposed election to exclude fair value movements on derivatives (and to mitigate certain other mismatches) should help to restrict this potential exposure; however, the legislation for this has not yet been published and uncertainty remains on important points such as whether losses inherent in derivative contracts as of 1 April 2017, which have not yet been deducted by companies, will be restricted under the rules.

Affected groups have been anticipating details of the PBIE, now to be published in January. The government's consultation response states that the exemption will be wider than that initially proposed, which is welcome, although how beneficial it is will depend on the details of the definition. Electing into the exemption is irrevocable, and careful analysis will be needed as to whether companies would benefit, given the complete exclusion of interest income and tax EBITDA for electing companies, whereas not all interest expense may be excluded.

Banking and insurance companies would not be excluded from the rules (which are likely to be positive for banks and insurers with net interest income); there would be flexibility for REITs, and ring-fenced oil and gas activities would be excluded.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

The inclusion of a targeted anti-avoidance provision is not unexpected. The provision would take effect where there are "relevant avoidance arrangements" that have a main purpose of securing a tax advantage. The tax advantage must be at least partly attributable to absolute and timing advantages arising under the draft legislation for restricting interest deductibility. The anti-avoidance provision appears to be very broad and it will be important that, in practice, the rule does not prevent groups from mitigating disallowances through "house-keeping" actions, or indeed the alignment of taxable profits and interest expense through bringing taxable income into the UK.

Overall, the draft legislation contains the basic framework of the rules, but some of the detail remains outstanding. Despite this, given the limited time until commencement, it is important for groups to model the potential impact of the restrictions, consider whether any action is required to mitigate unexpected impacts and consider the processes that will be needed to collect the relevant information to satisfy the various compliance obligations, particularly for those groups that have not previously been within the scope of the worldwide debt cap. Modelling the impact also will need to take into account other legislative changes; for example, the impact of the hybrid mismatch provisions commencing 1 January 2017 (for prior coverage, see *World Tax Advisor*, 14 October 2016) and the reform of loss utilization (as from 1 April 2017), where relevant.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161014_bc.html

— Bill Dodwell (London)
Partner
Deloitte United Kingdom
bdodwell@deloitte.co.uk

Jim Charlton (London)
Partner
Deloitte United Kingdom
jicharlton@deloitte.co.uk

Ben Moseley (Manchester)
Partner
Deloitte United Kingdom
bmoseley@deloitte.co.uk

Austria:
CbC reporting notification due by end of 2016

Austria's Transfer Pricing Documentation Act (TPDA) was published in the federal law gazette on 1 August 2016 and became effective on 2 August. The new documentation rules, which are in line with the OECD's recommendations under BEPS action 13, adopt the three-tier documentation approach and require the preparation of a master file, a local file and a country-by-country (CbC) report. The rules apply for multinational enterprise (MNE) groups' financial years beginning on or after 1 January 2016. In addition, notification obligations relating to the CbC report apply for financial year 2016, and entities required to file a notification must do so by 31 December 2016.

Filing obligation

The CbC reporting obligation applies where the global consolidated revenue of an MNE group in the immediately preceding fiscal year is at least EUR 750 million. The report must be filed by the ultimate parent company of the group and is due 12 months after the fiscal year end (i.e. the first reports will be due by 31 December 2017). If an Austrian company is the ultimate parent, it must file the report. However, where the ultimate parent is a nonresident and the following requirements are met, an Austrian company may assume the responsibility, or it will be appointed by the tax authorities to file the report on behalf of the group (as a "surrogate" parent entity):

- The ultimate parent company is not required to prepare a CbC report in its country of residence;
- There is no exchange of information arrangement between Austria and the country where the ultimate parent is resident; and
- As a result of circumstances in the ultimate parent's country of residence, there is no possibility to receive the information.

Notification requirement

According to the TPDA, each Austrian entity that is part of an MNE group that is required to file a CbC report must inform the competent tax office by the last day of the relevant reporting year. Austrian entities that are part of an MNE

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

group with consolidated revenue of at least EUR 750 million in fiscal year 2015 and that maintain financial accounts on a calendar-year basis must provide the following information to the Austrian tax authorities by 31 December 2016:

- Whether the Austrian entity is the ultimate parent entity or a surrogate parent entity; or
- If the Austrian entity is not the reporting entity, which constituent entity is obliged to file the report and the jurisdiction where that entity is resident.

Notification procedure

On 28 November 2016, the notification form was published on the Ministry of Finance website. This paper form may be used (optionally) to meet the notification requirements relating to the CbC reporting obligation. The form must include the following information for the notifying entity, the reporting entity and the ultimate parent entity: name and legal form, tax residence, address, VAT number, tax identification number and commercial register number (or comparable number for another jurisdiction).

Comments

Potentially affected Austrian companies (particularly those that maintain their group financial accounts on a calendar-year basis) should act immediately, since the first notifications must be submitted by 31 December 2016. As a first step, however, a determination must be made as to whether a CbC report is required; if so, the filing entity must be identified and the Austrian tax authorities notified in a timely manner.

— Andrea Lahodny (Vienna)
Partner
Deloitte Austria
alahodny@deloitte.at

Brazil: Consultations launched on ruling exchanges and CRS

Brazil's tax authorities and the Ministry of Finance have released two public consultation documents: one on 29 November 2016 that contains measures relating to the exchange of rulings between tax authorities, as recommended under action 5 of the OECD BEPS project, and another on 7 December that contains measures to implement the OECD recommendations regarding the common reporting standards (CRS). The contents of both consultation documents will be included in normative rulings (NR) that will be issued after the consultation periods end on 16 December 2016.

Exchange of rulings

The first consultation document contains a proposed new article that would be included in NR 1,396/2013, which regulates ruling procedures. Rulings on transfer pricing, permanent establishments and certain research and development incentives would be subject to the mandatory exchange of information with other tax authorities. Private letter rulings, resolution acts and interpretative acts would fall within the scope of the exchange of information.

Based on the new article to be included in NR 1,396, taxpayers would be required to disclose the following additional information when requesting a ruling from the Brazilian authorities:

- Direct and ultimate controlling party, as well as the place of residence of the controlling party;
- Countries of residence of all related parties with whom any transactions that are part of the request are carried out; and
- Country of residence of the head office and permanent establishment (if applicable).

For rulings issued after 1 January 2010, taxpayers may be requested to produce such additional information.

A summary of the ruling issued by the Brazilian tax authorities would be provided to the tax authorities of the countries involved in situations where Brazil has an exchange of information agreement with the relevant countries.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

Common reporting standards

The consultation document on CRS contains the text of a new NR that would provide guidance to financial institutions that are required to file Brazil's financial information return (*e-financeira* return). The *e-financeira* was introduced in 2015 for reporting financial information on entities and individuals, including information necessary to comply with the US Foreign Account Tax Compliance Act. The return has been mandatory for financial institutions since 1 December 2015.

The consultation document contains guidance on how to identify, classify and report information subject to the automatic exchange, in the context of the CRS. As per the consultation document, Brazil intends to commence automatic exchanges of financial account information in 2018, regarding data relating to fiscal year 2017.

— Marcelo Natale (Sao Paulo)
Partner
Deloitte Brazil
mnatale@deloitte.com

Daniel Yamamoto (Sao Paulo)
Partner
Deloitte Brazil
danielyamamoto@deloitte.com

Ireland:
Tax authorities issue more updated guidance on CbC reporting

Ireland's tax authorities (Irish Revenue) updated their guidance on country-by-country (CbC) reporting on 9 December 2016. The update includes some technical amendments and clarifications to assist companies in understanding their CbC reporting obligations in Ireland. It also is a reminder for Irish resident constituent entities of a multinational group within the remit of CbC reporting that notification must be made to Irish Revenue *before 31 December 2016* if the accounting year-end for CbC reporting purposes is 31 December 2016.

The main changes from the last update on 13 October 2016 are as follows:

- Clarification that where there is more than one Irish resident constituent entity in a group, one entity may be nominated to notify on behalf of other Irish resident constituent entities. This nomination option is available only where the secondary reporting mechanism does not take place, i.e. local filing of a CbC report. In effect, the nomination option can be used only where the CbC report for the group is filed by an ultimate parent or appointed surrogate parent.
- Irish Revenue acknowledges that at the time the Irish constituent entity of a group provides notification, the identity of the group company that is the reporting entity may not be known. This can occur for a number of reasons, including where a jurisdiction has not yet formally introduced CbC reporting or the relevant competent authority agreement is not yet in place. As a transitional arrangement, Irish Revenue will allow Irish resident constituent entities to provide notification based upon a preliminary assessment of the identity and tax residence of the reporting entity for the group. To the extent this identity subsequently changes, a corrected notification can be made.
- Some minor amendments are included in Appendix III of the guidance notes, which contain the step-by-step guide to providing notification by companies or their agents on the ROS platform including a new email contact for queries relating to the CbC reporting notification procedure.

— Gerard Feeney (Dublin)
Director
Deloitte Ireland
gfeeney@deloitte.ie

Richard Lombard (Dublin)
Senior Manager
Deloitte Ireland
rlombard@deloitte.ie

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

Italy:
Tax court decisions cast doubt on compatibility of participation exemption regime with EU law

Nonresident companies that recently have sold (or are considering selling) a participation in an Italian company should be aware of two 2015 Italian tax court decisions that address the compatibility of Italy's domestic participation exemption regime for capital gains with EU law. In the decisions, tax courts at the provincial and regional levels (i.e. the first and second-tier tax courts) concluded that the regime is incompatible with the Treaty on the Functioning of the European Union (TFEU) because it treats gains realized by Italian companies on the sale of an Italian participation more favorably than those realized by foreign companies. The courts found this treatment to be an unjustifiable restriction of the free movement of capital and/or establishment.

Background

Under Italian tax law, capital gains realized by Italian companies on the sale of participations in Italian subsidiaries are 95% exempt from corporate tax if certain conditions are satisfied, which – given the current corporate income tax rate of 27.5% – results in a final tax rate of 1.375%. In contrast, capital gains on the sale of Italian participations realized by a foreign entity without a permanent establishment in Italy are taxed as follows:

- Sales of qualified participations (i.e. holdings of more than 20% of the voting rights or 25% of the share capital of private companies, or more than 2% of the voting rights or 5% of the share capital of public companies) are subject to a 13.67% final withholding tax (i.e. 49.72% of the gains is taxed at a 27.5% rate).
- Sales of nonqualified participations are subject to a flat 26% final withholding tax. However, sales of nonqualified participations in Italian public companies are tax exempt if the seller is resident in a "white-listed country" that allows an effective exchange of information with Italy (an updated version of the white list recently was issued by the Italian government (for prior coverage, see *World Tax Advisor*, 9 September 2016)).
  URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_6.html

The higher tax burden on capital gains realized by nonresident companies raises the question of whether the Italian participation exemption regime is in breach of the fundamental freedoms guaranteed by the TFEU. In particular, the issue has practical implications when the relevant participation is held by a company resident in a country with which Italy has concluded a tax treaty that allows the source state to tax the capital gains derived from the sale of the Italian participation.

Court decisions

The case before the Provincial Tax Court of Pescara and, subsequently, the Regional Tax Court of Pescara involved a French company that sold its shares in an Italian subsidiary. The French company paid a tax rate of 11% on the capital gains from the sale of the shares; as noted above, had the gains been derived by an Italian company, the effective tax rate would have been 1.375%. Under the provisions of the Italy-France tax treaty, such capital gains are taxable in Italy where the French seller holds at least 25% of the voting rights of the Italian company.

Both Italian tax courts held that the Italian domestic tax rules violate the freedom of establishment and the free movement of capital principles in the TFEU, and that the restriction could not be justified. The courts' decisions are particularly relevant in cases where the legislation of the residence state does not provide for a full exemption for the gains or a foreign tax credit that would prevent the (partial) double taxation.

The courts supported their conclusions by referring to a 2009 decision of the Court of Justice of the European Union (CJEU) – also involving Italy – in which the CJEU held that the previous Italian tax legislation on dividends paid to a recipient in the EU/European Economic Area (EEA) was incompatible with the EU treaty. Italy's legislation that applied until 2007 provided for a domestic withholding tax on dividends paid to such recipients that was higher than the final tax rate applicable on dividends paid to another Italian tax resident company. According to the Italian tax courts, the same principle could be applied to conclude that the current Italian participation exemption regime for capital gains realized by EU/EEA recipients infringes EU law.

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

Comments

Based on the free movement of capital principle, the reasoning of the Italian tax courts could also be applied to capital gains on the sale of an Italian participation realized by non-EU/EEA companies where the gains are taxable in Italy under a tax treaty that allows source-country taxation (e.g. Italy's tax treaties with Brazil, China and Israel). However, the free movement of capital principle does not extend to situations where the seller is resident in a country with which Italy does not have an agreement for the exchange of tax information.

The two decisions bolster the position of EU/EEA companies that have filed protective claims for refunds of the Italian capital gains tax, and should encourage other EU/EEA companies (and, potentially, non-EU/EEA companies resident in countries with an exchange of tax information agreement with Italy) also to file claims (such claims must be filed within 48 months from the date the Italian tax is paid).

— Luca Bosco (Turin)
Partner
Deloitte Italy
lubosco@sts.deloitte.it

Stefano Schiavello (New York)
Partner/Client Service Executive
Deloitte Tax LLP
stschiavello@deloitte.com

Poland:
Changes to corporate income tax rules target tax avoidance/evasion

Amendments to Poland's Corporate Income Tax Act that will apply as from 1 January 2017 include changes to the taxation of in-kind equity contributions, the introduction of a share-for-share transaction anti-avoidance rule and the introduction of a beneficial ownership requirement for interest and royalties paid to EU and European Economic Area (EEA) companies to qualify for an exemption from withholding tax.

Taxation of in-kind equity contributions

Under current rules, the taxable gain recognized on an in-kind equity contribution of assets (other than assets comprising an enterprise or an organized part thereof) in exchange for shares is equal to the nominal value of the shares received. The value of the in-kind contribution that exceeds the nominal value of the shares that is allocated to the company's reserve capital generally is not taxable. Under the amended rules, the taxable gain on an in-kind equity contribution will be equal to the greater of (i) the value of the contribution, as stated in the company's articles of association, or (ii) the fair market value of the contributed assets on the contribution date.

Anti-avoidance rule for share-for-share transactions

A share-for-share transaction (i.e. an in-kind contribution of shares in exchange for shares) must be carried out for valid business reasons and without tax evasion or tax avoidance as its principal objective (or one of its principal objectives), to benefit from preferential tax treatment. The revised rules include a presumption of a tax avoidance/evasion motive if a transaction is not carried out for valid business reasons. Notably, a similar anti-avoidance rule already exists for mergers and divisions of companies.

Beneficial ownership requirement for withholding tax exemption

The amended corporate income tax act includes a definition of "beneficial owner" for purposes of the withholding tax exemption for interest and royalty payments made to EU/EEA companies. A beneficial owner is defined as an entity that receives value for its own benefit and that is not an intermediary, agent, trustee or other entity obliged to transfer the value it receives (or part thereof) to another entity. The exemption will be denied if the income recipient does not qualify as the beneficial owner.

Taxation of real estate income of nonresidents

The amended corporate income tax act includes certain income of nonresidents that will be deemed to be derived from Polish sources and, thus, subject to Polish taxation. In particular, income derived by nonresidents from the transfer of shares in a company, an interest in a partnership or participation units in an investment fund where at least 50% of

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

the assets of the company, partnership or investment fund consist of direct or indirect investments in real estate or rights to real estate located in Poland, will trigger taxation.

Corporate income tax rate reduction

The 19% corporate income tax rate will be reduced to 15% for small enterprises (i.e. companies with gross sales revenue for the preceding year of EUR 1.2 million or less) and for the first year of operations of taxpayers commencing new businesses.

Comments

The changes to the corporate income tax law will impact a broad range of taxpayers. Specifically, the changes could negatively affect intragroup reorganizations that, but for the amendments, would have been based on share-for-share exchange transactions or in-kind contributions of assets. Consequently, taxpayers should analyze all currently contemplated transactions in the light of the new rules.

Taxpayers also should ensure that there are sound business reasons and economic rationales for share-for-share transactions; otherwise, the Polish tax authorities can deny the preferential tax treatment of such transactions.

Taxpayers should monitor the practical application of the amendments by the Polish tax authorities and courts, in particular, the potential interaction of the new share-for-share transaction anti-avoidance rule and the general anti-avoidance rule (GAAR) that was introduced in July 2016 (for prior coverage, see *World Tax Advisor*, 19 August 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160819_2.html

Finally, it is worth noting that the parliament is considering (i) amending the GAAR to limit the use of tax benefits achieved as a result of transactions covered by tax rulings issued before its introduction, and (ii) limiting the corporate income tax exemption applicable to closed-end investment funds, so potentially affected taxpayers should monitor developments.

— Ewa Grzejszczyk (Warsaw)
Partner
Deloitte Poland
egrzejszczyk@deloitteCE.com

Dorota Kacprzak (Warsaw)
Senior Manager
Deloitte Poland
dkacprzak@deloitteCE.com

Saudi Arabia:
Changes made to taxation of listed companies

Saudi Arabia's General Authority of Zakat and Tax (GAZT) issued a circular on 4 December 2016 that introduces a new approach to the tax/zakat treatment of Saudi companies listed on the Saudi stock exchange (*Tadawul*). Such companies will be subject to tax/zakat based on their actual shareholdings as at their financial year-ends.

The circular is applicable to listed companies for financial years ending after 4 December 2016; as a result, it will apply to all listed companies with a financial year-end of 31 December 2016. The circular specifically states that prior years will not be impacted by the change.

Background

Previously, listed companies were subject to tax/zakat according to the shareholding per their articles of association, provided not all of the company's shares were publicly traded on the *Tadawul*. Where all of the shares were traded on the *Tadawul*, companies were subject to tax/zakat based on the shareholders' records with the Capital Market Authority at the end of the year, without regard to any changes in shareholdings that may have taken place during the year through share trading activities.

Under the new circular, a listed company will be required to submit a statement showing the company's actual shareholding (i.e. percentage of shares held by Saudi, Gulf Cooperation Council (GCC) citizens and non-GCC persons), along with its annual tax and zakat return. Additionally, an advance payment of tax may be required.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

The circular also provides that listed companies that currently file a consolidated zakat return (where the founding shareholders are all Saudi/GCC residents) no longer will be able to file a consolidated return (along with their 100% subsidiaries) if the shareholding of these companies as at financial year-end comprises any non-GCC shareholders.

Comments

The GAZT's new approach for listed companies is similar to its approach for unlisted companies where there is a change in shareholding during the financial year, as the GAZT online ERAD system will compute the tax and zakat liability based on the shareholding at year-end rather than through an allocation based on the number of days from the change in shareholding during the financial year.

The new rules will affect most listed companies because such companies typically do not have all of their shares traded on the *Tadawul* and, therefore, are subject to tax/zakat according to the shareholding as per the articles of association.

Listed companies should update their shareholding structures in the GAZT online ERAD system at the end of each year so they can correctly file their tax/zakat returns based on their shareholdings.

— Nauman Ahmed (Al Khobar)
Senior Director
Deloitte Saudi Arabia
nahmed@deloitte.com

Nasser Sagga (Al Khobar)
Partner
Deloitte Saudi Arabia
nsagga@deloitte.com

Spain:
New VAT reporting requirements introduced

On 2 December 2016, Spain's council of ministers approved a royal decree that introduces a new system (SII), under which taxpayers will be required to upload information about their VAT invoices to the tax authorities' website. The key aim of the SII is to prevent VAT fraud and improve tax controls by the authorities (for prior coverage, see Spain tax alert, 5 December 2016). The SII will become effective on 1 July 2017. However, taxpayers subject to the SII also will be required to submit invoices relating to the first six months of 2017 (up to 30 June), although the deadline to submit this data will be extended to 1 January 2018.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-spain-5-december-2016.pdf

Overview of SII

The SII will be mandatory for all taxpayers that are registered in the monthly VAT refund register, are part of a VAT group or whose transactions in the previous year exceeded EUR 6,010,121.04. Other taxpayers may opt to use the system.

Affected taxpayers will have to upload to the online platform of the Spanish tax authorities all billing documents that form part of the VAT registry books (issued and received invoices, and details of certain intra-community transactions). New information, such as brief descriptions of transactions, the type of invoice, etc., also will need to be filed.

The data will need to be uploaded effectively on a real-time basis. Taxpayers generally will be required to submit data within four business days from the date an invoice is issued/received (extended to eight days as a temporary measure for the period from 1 July 2017 to 31 December 2017).

Companies that are required to apply the SII (as well as those that elect to use the system) will be required to file their VAT returns on a monthly basis by the 30th day of the month following the reporting period (extending the deadline for filing the return by an additional 10 days).

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

Comments

In general terms, the content requirements of the billing registries will be increased for taxpayers using the SII system, and the SII overall will result in a significant change in the management of VAT. Further, because the taxpayer's information will have to be submitted on a near real-time basis, taxpayers will need to take particular care to ensure that relevant transactions have been properly treated from a VAT perspective. The tax authorities will "match" the information provided by suppliers and customers, and if there are any discrepancies, the authorities may initiate further investigation or open an audit, etc. Significantly, the information collected for VAT purposes will be shared with the tax authorities responsible for corporate income tax and transfer pricing.

— Isabel López-Bustamante (Madrid)
Partner
Deloitte Spain
ilopezbustamante@deloitte.es

United Kingdom:
Draft legislation released on reform to substantial shareholder exemption

On 5 December 2016, the UK government released draft legislation aimed at reforming the substantial shareholding exemption (SSE) to make it simpler, more coherent and more internationally competitive (for prior coverage, see United Kingdom tax alert, 23 November 2016).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-23-november-2016.pdf

The proposed changes to the SSE legislation are as follows:

- The requirement that the corporate shareholder (the investing company) be a trading company or a member of a trading group would be removed.
- The company being sold (the investee company) still would have to be a trading company or holding company of a trading group. The only change to the investee company test would be the removal of the post-disposal trading requirement for disposals to non-connected parties. This change would eliminate uncertainty as to whether any post-disposal restructuring undertaken by the purchaser could affect a vendor's ability to claim the SSE.
- The substantial shareholding test would be extended from 12 months in the two years prior to disposal, to 12 months in the previous six years.
- There would be a broader exemption for qualifying institutional investors that would apply to the disposal of shares held by a UK company owned by institutional investors, such as pension schemes, investment trusts, persons that have sovereign immunity and charities (but not REITs). The "company invested in" test would be removed and the substantial shareholding could be met if the investing company's shareholding is less than 10%, but the cost of acquisition of that shareholding was at least GBP 50 million.

  If 80% or more of the ordinary share capital of the investing company is held directly or indirectly by qualifying institutional investors, the gains and losses arising from the disposal of a substantial shareholding by the investing company would qualify for full exemption; there would be a partial exemption, representing the interests of the qualifying institutional investors, where their interest is 25% or more, but less than 80%. Ordinary share capital could not be owned through a body corporate that is not a qualifying institutional investor and that has any of its ordinary share capital listed on a recognized stock exchange.

Comments

The SSE is a key element in ensuring that the UK is an attractive place to do business. The regime is relatively broad in scope and generally works as intended; however, there are areas of complexity and uncertainty. Particular complexities were noted with respect to the challenge in obtaining and interpreting information for the worldwide group when looking at the investing company test.

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

The removal of the investing company requirement would be a significant step forward in reducing the administrative burden and complexity facing businesses. The removal of this condition also would address the issue of nontrading group activities tainting the availability of the SSE on the disposal of active trading companies.

Simplifying the rules should reduce the number of instances of companies needing to clear their SSE position with the UK tax authorities in advance. In addition, it no longer would be necessary for groups to consider liquidating holding companies after the sale of all, or a substantial proportion, of their trading subsidiaries to claim the subsidiary exemption.

One area where clarification would have been particularly welcomed is in the area of partnerships; however, neither the consultation response document nor the legislative changes make clear whether the tax authorities have changed their general view about the treatment of partnerships when determining whether there is a group.

— Bill Dodwell (London)
Partner
Deloitte United Kingdom
bdodwell@deloitte.co.uk

Simon Cooper (London)
Director
Deloitte United Kingdom
sjcooper@deloitte.co.uk

Lisa Shipley (London)
Associate Director
Deloitte United Kingdom
lshipley@deloitte.co.uk

In brief

Germany: Proposed legislation would change the German tax treatment of severance payments in an effort to prevent cases of double taxation or double nontaxation, as part of Germany's BEPS agenda. Under the legislation, for purposes of the application of Germany's tax treaties, severance payments would be deemed to relate to services performed in the past (rather than as compensation for termination and the loss of future earnings) and, accordingly, taxing rights would be allocated to the country in which the services were performed (rather than to the former employee's state of residence at the time of payment), unless the relevant treaty explicitly provides otherwise. The legislation is in line with the approach taken in the commentary to the OECD model treaty and by many other countries, and thus should reduce the risk of double taxation or double nontaxation. The new law is likely to be passed by the end of 2016, and it would apply to severance payments made as from 1 January 2017.

Hungary: The parliament passed the 2017 tax bill in two stages on 22 November and 12 December 2016, with the new measures generally applying as from 1 January 2017. The most important changes include the reduction of the current progressive corporate income tax rates (10% and 19%) to a flat 9% and the reduction of the rate of the social tax and the health tax from 27% to 22% (with a further reduction to 20% as from 2018). Other corporate tax measures include the introduction of deductions (to be taken in arriving at the tax base) for investments in start-up companies if certain conditions are satisfied; clarification of the rules governing the amortization of goodwill; the introduction of a new tax incentive for the commissioning and operation of energy-efficient facilities; and changes and clarifications regarding the corporate income tax obligations of taxpayers transitioning to IFRS financial statements.

Malaysia: Bank Negara Malaysia (BNM) has issued a supplementary notice that applies as from 5 December 2016 and that sets out measures in respect of the foreign exchange administration rules to further facilitate foreign exchange risk management; promote the settlement of trade and investment in ringgit (MYR); and enhance the depth and liquidity of the onshore financial market. One measure requires all settlement of domestic trade in goods or services between residents to be made only in MYR. To provide more time for residents to renegotiate existing contractual agreements and observe the new measures, BNM announced on 9 December that, for contractual agreements entered into prior to 5 December 2016, residents may continue to make or receive payment in foreign currency until 31 March 2017, provided the payment is made by an exporter using export proceeds or the payment is approved by the BNM.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

Mexico: The 2017 tax package was signed by the president and published in the official gazette on 30 November 2016. The tax measures, which generally will apply as from 1 January 2017, reflect some additions and modifications to the package originally submitted by the president (for prior coverage, see *World Tax Advisor*, 11 November 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161111_6.html

Panama: A decree published on 25 October 2016 amends the transfer pricing rules in the tax code (in particular, the provisions relating to the arm's length principle), to bring the rules in line with the internationally agreed standards generally reflected in Panama's tax treaties. The decree also includes measures that clarify the requirements for a comparability analysis and sets out detailed rules on transfer pricing documentation. The decree applies to fiscal years beginning on or after 1 January 2017.

Slovenia: The corporate income tax rate will increase from 17% to 19% on 1 January 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.

Austria: The government has implemented CbC reporting notification requirements. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161216_2.html

Brazil: The government has launched consultations on the automatic exchange of information on rulings in line with BEPS action 5. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161216_3.html

Germany: Proposed legislation would change the tax treatment of severance payments, as part of Germany's BEPS agenda. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161216_ib.html#Germany

Ireland: The tax authorities have updated their guidance on CbC reporting. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161216_4.html

OECD: Macau, Mauritius and Ukraine joined the inclusive framework for the global implementation of the BEPS project on 24 November 2016, bringing the total number of countries in the inclusive framework to 90. Under the inclusive framework, all OECD state and non-state jurisdictions that commit to the BEPS project will participate as BEPS associates of the OECD's committee on fiscal affairs. Joining the inclusive framework means that Macau, Mauritius and Ukraine must implement four minimum standards: countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution.

OECD: The OECD has issued additional guidance on the implementation of the CbC reporting requirement introduced in the BEPS action 13 final report. See Global Transfer Pricing Alert 2016-038, 6 December 2016.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-038-6-december-2016.pdf

OECD: The OECD has released the text of the multilateral instrument to implement tax treaty-related measures under BEPS action 15. See OECD alert, 30 November 2016.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-30-november-2016.pdf

Switzerland: On 23 November 2016, the Federal Council adopted the multilateral competent authority agreement on the exchange of CbC reports (signed by Switzerland on 27 January 2016) and its implementing federal act. If approved by parliament, the agreement could enter into force at the end of 2017, thereby requiring Swiss multinationals to prepare CbC reports for the first time for the 2018 tax year. The exchange of CbC reports between Switzerland and its partner states would begin in 2020.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

United Kingdom: The government has released draft legislation on rules restricting the deductibility of corporate interest expense, in line with BEPS action 4 recommendations. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161216_1.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-United Arab Emirates: When in effect, the treaty and protocol signed on 3 November 2016 provide for a 5% withholding tax rate on dividends paid to the government, the central bank and certain other financial institutions wholly owned by the government; a 10% 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%. The rate on interest will be 12%. The rate on royalties will be 10%; however, the 10% rate will apply (i) to royalties paid under transfer of technology contracts only if the contracts are registered or authorized according to the requirements of their domestic law; and (ii) for the use of or the right to use a copyright of literary, dramatic, musical or other artistic work only if the recipient is the author or his/her heirs.

Australia-Germany: The 2015 treaty to replace the 1972 treaty entered into force on 7 December 2016 and will apply as from 1 January 2017 for withholding tax purposes. When in effect, the treaty provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership) that holds at least 80% of the voting power of the payer company for a 12-month period ending on the date the dividends are declared, provided additional specified conditions are fulfilled; a 5% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 10% of the voting power of the payer company throughout a six-month period including the date the dividends are paid; otherwise, the rate will be 15%. A 0% rate will apply to interest paid to unrelated financial institutions dealing wholly independently with the payer (other than as part of an arrangement involving back-to-back loans or the equivalent); otherwise, the rate will be 10%. A 5% rate will apply to royalties.

Canada-Madagascar: When in effect, the treaty signed on 24 November 2016 provides for a 5% withholding tax rate on dividends paid to a company that controls, directly or indirectly, at least 25% of the voting power in the payer company; otherwise, the rate will be 15%. A 0% rate will apply to interest paid to a person operated exclusively to administer or provide benefits under one or more pension, retirement or employee benefits plans, provided (i) that person generally is exempt from tax in the other contracting state, and (ii) the interest is not derived from carrying on a trade or business or from a related person; otherwise, the rate will be 10%. A 5% rate will apply to copyright royalties and similar payments for literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films and television) and royalties for computer software, patents and information concerning industrial, commercial or scientific experience (but not including royalties provided in connection with a rental or franchise agreement); otherwise, the rate will be 10%.

Cyprus-India: When in effect, the treaty signed on 18 November 2016 to replace the 1994 treaty provides for a 10% withholding tax rate on dividends, interest and royalties, as well as on technical service fees. The new treaty also provides for source-based taxation of capital gains arising from the alienation of a company's shares (irrespective of its asset base); however, investments undertaken before 1 April 2017 will be "grandfathered," with taxation rights over gains on the disposal of such shares remaining solely with the alienator's state of residence. Notably, once the treaty enters into force, the Indian government will rescind the classification of Cyprus as a "notified jurisdictional area" (a status that results in onerous tax consequences), with retroactive effect from 1 November 2013 (the date Cyprus was included on the relevant list).

Greece: A law that applies as from 28 November 2016 introduces the mutual agreement procedure (MAP) into the Tax Procedures Code. The Greek tax authorities will have the power to carry out the MAP with the relevant foreign tax authorities, and the results of a MAP will be effective upon issuance of a mutual agreement decision. The taxpayer will

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

be notified of the results of a MAP, and will have 60 days to accept; if the taxpayer accepts the results, a non-appealable mutual agreement decision will be issued. The General Secretary of Public Revenue is expected to issue guidance that sets out the specific procedure for invoking the MAP.

Hong Kong-Romania: The 2015 agreement entered into force on 21 November 2016 and will apply as from 1 January 2017. When in effect, the agreement provides for a 3% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 15% of the capital of the payer company; otherwise, the rate will be 5%. A 0% rate will apply to interest if, and as long as, Hong Kong levies no withholding tax on interest under its domestic legislation; otherwise, the rate will be 3%. The rate on royalties will be 3%.

Hungary-Turkmenistan: The 2016 treaty entered into force on 19 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 is not liable to tax) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. A 10% rate will apply to interest and royalties.

Iceland-Liechtenstein: The 2016 treaty entered into force on 14 December 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 0% 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 for at least one year before the payment of the dividends, or paid to a pension fund or qualified charitable entity; otherwise, the rate will be 15%. Interest will be taxable only in the state of residence of the recipient. A 5% 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; other royalties will be taxable only in the state of residence of the recipient.

Korea-Ethiopia: When in effect, the treaty signed on 26 May 2016 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 8%. The rate on interest will be 7.5%, and that on royalties, 5%.

Korea-Georgia: 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 10% 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 merchandise or industrial, commercial or scientific equipment on credit, and to interest paid to a pension fund, provided the interest is not derived from a business carried on, directly or indirectly, by the fund; otherwise, the rate will be 10%. A 10% rate will apply to royalties.

Korea-Turkmenistan: The 2015 treaty entered into force on 26 November 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 10% withholding tax rate on dividends. 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%.

Poland-Taiwan: When in effect, the agreement and protocol signed on 21 October 2016 provide for a 10% withholding tax rate on dividends and interest. A 3% rate will apply to royalties paid for the use of, or the right to use, commercial, scientific or industrial equipment; otherwise, the rate will be 10%.

Portugal-Montenegro: When in effect, the treaty signed on 12 July 2016 provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds, directly or indirectly, at least 5% of the capital of the payer company; otherwise, the rate will be 10%. A 10% rate will apply to interest. 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 cinematographic films and recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission, or computer software; 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 information concerning industrial, commercial or scientific experience.

Romania-United Arab Emirates: The 2015 treaty to replace the 1993 treaty entered into force on 11 December 2016 and will apply as from 1 January 2017. When in effect, a 0% rate will apply to dividends paid to a company at least 25% of whose capital is owned, directly or indirectly, by the government or a government institution; otherwise, the rate will be 3%. A 3% rate will apply to interest and royalties.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

Russia-Singapore: The 2015 protocol to the 2002 treaty entered into force on 25 November 2016 and will apply as from 1 January 2017. When in effect, the protocol provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 15% of the capital of the payer company (other than dividends paid by a real estate investment fund); otherwise, the rate will be 10%. A 0% rate will apply to interest and a 5% rate will apply to royalties.

Switzerland-Liechtenstein: The 2015 treaty to replace the 1995 treaty enters into force on 22 December 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 0% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company for at least one year before the dividends are paid, or on dividends paid to a pension fund; otherwise, the rate will be 15%. A 0% rate will apply to interest and royalties.

Switzerland-Oman: The 2015 treaty entered into force on 13 October 2016 and will apply as from 1 January 2017. When in effect, the treaty provides for a 0% withholding tax rate on dividends paid to a pension scheme or fund; a 5% rate will apply to 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%. A 0% rate will apply to interest paid on a loan granted by a bank, to a pension scheme or pension fund or on intercompany loans; otherwise, the rate will be 5%. An 8% rate will apply to royalties.

United Kingdom-Uruguay: The 2016 treaty entered into force on 14 November 2016 and will apply as from 1 January 2017 for withholding tax purposes. When in effect, the treaty provides for a 0% withholding tax rate on dividends paid to a pension scheme; a 5% rate will apply to 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%. A 0% rate will apply to interest paid to a financial institution on a loan of at least three years for the financing of investment projects or to a pension scheme; otherwise, the rate will be 10%. A 10% rate will apply to royalties.

United States: An intergovernmental agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) dated 17 October 2016 has been signed with Grenada.

Are You Getting Your Global Tax Alerts?

Regularly, Deloitte provides commentary and analysis on developments affecting cross-border transactions on a free subscription basis delivered straight to your email. Read the recent alerts below or visit the archive.

Australia
Draft legislation issued on diverted profits tax
On 29 November 2016, the Australian government released exposure draft legislation and an explanatory memorandum for the proposed diverted profits tax that targets schemes shifting profits out of Australia and that will allow the tax authorities to impose a penalty rate of tax at 40% of the relevant diverted profit.
Issue date: 2 December 2016
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-2-december-2016.pdf

OECD
OECD issues additional guidance on CbC reporting
On 5 December 2016, the OECD issued additional guidance on the implementation of the CbC reporting requirement introduced in the BEPS action 13 final report.
Issue date: 6 December 2016
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-038-6-december-2016.pdf

BEPS action 15: Final text of multilateral instrument released
On 24 November 2016, the OECD released the text of the *Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting*, along with an explanatory statement.
Issue date: 30 November 2016
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-30-november-2016.pdf

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.

Spain

Measures introduced to raise corporate income tax revenue and tackle VAT fraud

A tax package approved by Spain's council of ministers on 2 December 2016 aims to achieve deficit reduction goals by raising tax revenue through measures to increase the corporate income tax liability of taxpayers operating in Spain. The council also approved a royal decree that includes measures to modernize the administration of VAT and prevent VAT fraud by introducing a new electronic VAT reporting system.

Issue date: 5 December 2016

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-spain-5-december-2016.pdf

United Kingdom

Autumn Statement 2016 delivered

The UK Chancellor of the Exchequer delivered the new government's first Autumn Statement on 23 November 2016, reiterating the message that Britain is "open for business." Several key measures will be relevant for foreign-owned groups.

Issue date: 23 November 2016

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-23-november-2016.pdf

United States: New section 987 regulations: Key considerations and observations

On 7 December 2016, the US Department of the Treasury and the IRS issued a comprehensive package of final and temporary regulations that provide long-awaited guidance under Internal Revenue Code section 987 and amend related existing rules under sections 861, 985, 988, and 989.

Issue date: 14 December 2016

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

Temporary and proposed regulations address covered asset acquisitions under section 901(m)

On 7 December 2016, the US Department of the Treasury and the IRS published temporary and proposed regulations under section 901(m) of the Internal Revenue Code, with respect to transactions that may give rise to a basis increase under US law, but not under foreign law.

Issue date: 12 December 2016

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-12-december-2016.pdf

Triangular reorganizations involving foreign corporations and inbound nonrecognition transactions

On 2 December 2016, the US Department of the Treasury and the IRS issued Notice 2016-73 to target transactions purportedly designed to repatriate earnings and basis of foreign corporations without incurring US tax.

Issue date: 6 December 2016

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-6-december-2016.pdf

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

© 2016. For information,
contact Deloitte Touche Tohmatsu Limited.