In this issue:

Practical aspects of tax registration by digital services providers under Russia's new VAT rules

New VAT rules in Russia that apply to foreign businesses providing electronically supplied services (e-services) and foreign intermediaries involved in supplying e-services became effective on 1 January 2017 (for prior coverage, see *World Tax Advisor*, 19 August 2016). The rules are in line with the global trends in the taxation of e-services and aim

to address the rise of the digital economy and level the playing field between Russian companies that provide e-services to Russian customers and foreign companies that provide the same services.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160819_ib.html

The rules shift the focus of taxation from the place where the supplier is located to that where the customer is located for supplies of e-services to private and business consumers. VAT will be levied at a rate of 15.25% on VAT-inclusive fees of digital services provided by foreign companies to Russian consumers. The standard VAT payment mechanism continues to apply to e-services supplied by foreign providers to business (B2B) customers where VAT is payable by Russian business customers via the reverse-charge mechanism. Where the e-services are provided to private consumers (B2C), nonresident providers of e-services will need to calculate, apply, collect and report VAT based on the location of the consumer.

To comply with the new rules, foreign businesses supplying B2C e-services in Russia and their intermediaries are required to register in Russia via a taxpayer portal on the Federal Tax Service's website. There is no tax registration threshold, and no VAT grouping is available; i.e. each foreign entity that is subject to tax registration must apply for a separate tax registration, irrespective of the value of the e-services supplied. (There will be no separate VAT registration; the final version of the law requires "tax registration" by foreign businesses rather than a specific "VAT registration.") However, the foreign e-services supplier can avoid tax registration if the e-services are supplied via a qualified foreign or Russian intermediary that meets specific requirements set out in the tax law.

Once registered, the foreign e-services provider and any intermediaries will be required to submit quarterly Russian VAT returns and pay VAT due by the 25th day of the month following the reporting quarter; for example, the first VAT return and payment will be due for the first quarter of 2017 by 25 April 2017. The amount of VAT due will be calculated by multiplying a 15.25% tax rate by the VAT-inclusive price of the e-services (e-services are not subject to a reduced rate).

Affected businesses should consider the potential implications and practical aspects of the new rules, as outlined below.

E-services treatment

"E-services" are defined as services delivered over the internet or similar electronic networks that are automated and that rely on information technologies. Although the law contains an exhaustive list of services that are treated as e-services, there still are discussions about the scope of services falling under the new rules. One example, in particular, is the treatment of e-booking/ticketing/reservation services.

According to a clarification issued by Russia's Ministry of Finance on 21 November 2016, foreign businesses supplying e-services in connection with taxi services (which typically are provided by drivers registered as individual entrepreneurs) and settlement processing services provided via the internet to Russian legal entities and individual entrepreneurs are not required to register under the new VAT legislation, since Russian VAT should be accounted for and remitted to the tax authorities by the Russian legal entities and individual entrepreneurs that are named as tax agents for this purpose in the law.

It would seem logical that similar treatment should apply to providers of booking/ticketing/reservation services if these services are provided under the same (or similar) business model as the above-described taxi services and settlement processing services, i.e. contracting with Russian legal entities and individual entrepreneurs.

The list of e-services also includes certain services (e.g. hosting) that previously were deemed to be supplied at the place of the services provider, and thus were not taxable in Russia where supplied by a foreign services provider. Such e-services now are deemed to be supplied at the place where they are received, i.e. where the customer is located. If provided in Russia, the reverse-charge should apply to B2B supplies of such services from 1 January 2017 and the foreign services providers may suffer the VAT withholding unless the service agreements are amended to include the VAT in the service fees.

Tax registration and permanent establishments (PEs)

The provision of e-services deemed to be supplied in Russia does not create a PE for the foreign services provider. Therefore, tax registration should not result in any tax liability other than the Russian VAT related to the provision of the e-services.

However, once the foreign company meets the general criteria established in the Russian tax law and the relevant tax treaties with respect to the creation of a PE, the company would be subject to all applicable taxes and tax compliance obligations related to a PE. The potential risk of creating a PE should be monitored where the services provider leases or uses the office of a third party in Russia, places its servers in leased premises in Russia, sends its employees for extended business trips to work in Russia that cumulatively exceed 30 days during the calendar year and/or carries out other activities that do not fall within the exempted activities under domestic law or an applicable tax treaty.

Tax registration and impact of Data Localization Law

According to the new rules, the supply of e-services to an individual will be treated as a VAT-able transaction in Russia if the services are used within Russia. This would be the case if one of the following conditions is fulfilled:

- The individual is a Russian resident, based on his/her home address;
- A bank or e-payment operator through which payment is made for e-services is located in Russia;
- The customer's IP address that is used for the purchase of e-services is registered in Russia; or
- The country code for a telephone number used for the purchase of e-services is assigned to Russia.

Therefore, the obligations of a foreign entity to register in Russia for VAT purposes, submit VAT returns and account for and pay Russian VAT do not depend on whether the foreign entity targets the Russian market and Russian consumers or exceeds a threshold relating to overall supplies in Russia.

Meanwhile, as from 1 September 2015, Russia's Data Localization Law requires foreign companies collecting personal data to process the data of Russian citizens using databases physically located in Russia. The Russian Ministry of Communications and Mass Media issued a clarification that any company collecting personal data on Russian citizens through websites targeting Russia falls within the scope of the Data Localization Law.

According to the clarification, a foreign company's website will be deemed to be "targeting Russia" if its domain name is registered in a zone associated with the Russian Federation (.ru, .рф, .su, .москва, .moscow, etc.) or the website has a Russian version. As a result, a foreign company must comply with the Russian Data Localization Law when its website targets Russian citizens.

It would appear that registration for VAT purposes per se does not entail a risk of application of the Data Localization Law, provided the foreign digital services provider does not specifically target the Russian market and Russian customers. However, if the Russian version of the company's website automatically redirects customers to the global website or a website of another entity of the group, this will be viewed as targeting the Russian customers in accordance with the clarification issued by the Ministry of Communications and Mass Media and result in an obligation to process Russian citizens' personal data using databases physically located in Russia.

Comments

Foreign companies supplying or selling e-services in Russia should assess the potential impact of the new VAT rules and the Data Localization Law on their businesses, adjust their business models and documentation framework as needed to mitigate potential tax risks and prepare to register with the Russian tax authorities, unless the registration obligation is imposed on foreign or Russian intermediaries involved in the supply chain.

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Argentina:
Changes made to various tax rules

Law 27346, published in Argentina's official gazette on 27 December 2016, makes changes to the corporate and personal income tax rules, the simplified taxpayer regime and the VAT reverse-charge mechanism and introduces new taxes on speculative derivative instruments and gambling activities.

The following measures apply as from 1 January 2017 (unless otherwise noted):

- A 41.5% corporate income tax rate applies to gambling income derived by casinos and similar businesses, instead of the normal 35% rate (applicable to fiscal years that begin on or after the date of enactment of the law).
- The nontaxable income and tax brackets for personal income tax purposes are increased, and a new exemption is introduced for overtime wages.
- The bracket amounts under the simplified tax system are adjusted, as is the tax payable for each bracket.
- The application of the reverse-charge mechanism is expanded and clarified. Until now, services rendered abroad and economically used in Argentina were subject to VAT under the reverse charge, but services provided in Argentina by nonresidents, and rentals/leases of goods located in Argentina but owned by nonresidents, did not strictly fall within the scope of the reverse charge. In theory, nonresidents should have registered for VAT, but in practice, they generally did not and, to mitigate risks, local recipients of services and lessees applied the reverse charge. The new law specifically provides that the reverse charge applies where the Argentine service recipient or lessee, as well as any intermediaries or representatives involved in the transaction, acting in their own names but on behalf of the nonresident, must pay the VAT and will receive a tax credit for the VAT paid.
- An extraordinary, one-time 15% tax on income obtained from foreign currency derivatives transactions will be imposed in addition to the income tax that may be applicable to the transaction. The new tax applies retroactively for calendar year 2016 in the case of individuals and to open fiscal years for companies.
- A 0.75% gambling tax generally is imposed on each bet, while a 2% tax is imposed on each bet for online gambling. The taxpayer in the former case is the casino, while in the latter it is the gambler; credit card companies and other payment intermediaries must act as withholding agents.

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Brazil:
Grey list status of Austrian holding companies clarified

Brazil's tax authorities published a normative ruling (NR) on 29 December 2016 that clarifies the conditions under which certain Austrian entities will be deemed to fall within the scope of a privileged tax regime and, therefore, be included on Brazil's grey list (which has transfer pricing and thin capitalization consequences). Austrian entities incorporated as holding companies have been included on Brazil's grey list since September 2016, following the issuance of NR 1,658/16.

The new NR clarifies that only Austrian entities incorporated as holding companies and that do not engage in "substantial economic activities" (for prior coverage, see Brazil tax alert, 15 September 2016) will be considered to be subject to a privileged tax regime. According to NR 1,658/16, a foreign holding company will be deemed to carry out substantial economic activities if it has the operating capacity to appropriately meet its corporate purposes, as

evidenced by certain factors, including having a sufficient number of its own qualified employees and adequate physical premises to enable the company to manage and effectively make decisions regarding the following:
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-15-september-2016.pdf

- The carrying on of activities for the purpose of generating income from its own assets; or
- The administration of equity interests with a view to generating income from profit distributions and capital gains.

This interpretation also has been applied to holding companies located in Denmark and the Netherlands, which are grey-listed for Brazilian tax purposes.

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Germany:
Deductibility of royalty payments proposed to be restricted

Germany's Ministry of Finance (MOF) published a first draft of a law on 19 December 2016 that would limit the deductibility of certain related party royalty payments. Specifically, the draft law would apply to royalty payments that result in the "low taxation" of the royalty income at the level of the recipient due to the application of an intellectual property (IP) regime (IP box, patent box, license box, etc.), in situations where the IP regime is not based on the "nexus approach" described in action 5 of the OECD's BEPS project. If approved, the proposed rule would apply to royalty payments that become due after 31 December 2017.

The draft law targets beneficial "non-nexus"-based IP regimes – low taxation (or nontaxation) of royalty income based on the general taxation of the recipient would not be within the scope of the proposed rules. The restriction on deductibility would apply only to royalty payments between related parties; payments made to unrelated parties would not be affected.

The draft law also targets payments to indirect recipients that benefit from a non-nexus-based IP regime resulting in low taxation. This measure would disallow deductions in back-to-back royalty structures where only an indirect recipient benefits from such a regime.

"Low taxation" for purposes of the draft law generally would mean an effective tax rate of less than 25%. However, low taxation would not automatically result in a full disallowance of the deduction for the royalty payment. The percentage of the disallowed royalty payment would be calculated based on the applicable tax benefit at the level of the recipient (i.e. the difference between the applicable tax rate and a 25% tax rate).

"Nexus-based" preferential tax regimes that would fall outside the scope of the proposed rule include those regimes whose benefits depend on a substantial economic activity. The draft law provides that a substantial economic activity would not exist where the recipient of the royalty payment did not fully or predominantly develop the underlying IP in its own business operations (e.g. if the IP was developed by related parties or acquired).

The draft law provides an exception from the restrictions for payments regarding trademark rights.

The government is expected to decide whether to move forward with this initiative on 25 January 2017.

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Germany:
CbC reporting, relief from change-in-ownership rules and anti-double dip rule introduced

The tax bills containing measures that introduce country-by-country (CbC) reporting, amendments to the change-in-ownership rules and the introduction of an "anti-double dip" rule were published in Germany's federal gazette on 23 December 2016, following approval by the upper house of parliament on 16 December 2016. The CbC reporting rules apply as from 1 January 2017 and the measures relating to the change-in-ownership rules apply retroactively to ownership changes taking place after 31 December 2015 (for prior coverage, see *World Tax Advisor*, 10 June 2016 and *World Tax Advisor*, 9 September 2016). The anti-double dip rule applies to interest payments made after 31 December 2016.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160610_4.html
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160909_ib.html

CbC reporting: The law introducing CbC reporting is based on the recommendations in the OECD's BEPS final reports and the amendments to the EU administrative cooperation directive. The CbC reporting rules apply for fiscal years beginning after 31 December 2015 (except for the "secondary mechanism," which will apply only for fiscal years beginning after 31 December 2016). An obligation to prepare a master file for transfer pricing documentation purposes also is introduced.

Change-in-ownership rules: Also introduced is additional relief from the onerous change-in-ownership rules. (The change-in-ownership rules can result in the forfeiture of net operating loss (NOL) carryforwards, interest carryforwards and current-year losses in cases involving a direct or an indirect transfer of 50% or more of the shares in a company to one new acquirer, related parties or parties acting in concert.) Based on a new section in the Corporate Income Tax Code, the rules will not apply where the business operations of a loss corporation continue and are unchanged from the earlier of the company's date of incorporation or the three previous calendar years before the change in ownership took place. If these conditions are fulfilled and the taxpayer submits an application to the tax authorities to apply the relief, the regular NOL carryforward will be converted into a "business continuance NOL carryforward" that will be available for use under the general rules for NOL carryforwards. However, the carryforward will be forfeited if one of the following occurs:

- The business operations are discontinued, either temporarily or permanently;
- The purpose of the business operations changes;
- Additional business operations are taken over;
- The company becomes a partner in a partnership;
- The company becomes a controlling parent entity in a tax-consolidated group; or
- Assets are transferred to the loss company at a value below fair market value for tax purposes.

The relief also does not apply if one these events occurred in the previous three calendar years before the ownership change.

Unlike the original proposal for the business continuance NOL carryforwards rule, the final version of the rule will not apply to NOL carryforwards that result from discontinued or dormant business operations of the company. The rule also will not apply if the company was a controlling entity in a tax group or a partner in a partnership during the three-year monitoring period before the "harmful" ownership change.

As noted above, the new relief measure applies retroactively for ownership transfers taking place after 31 December 2015, and applies for both corporate income tax and trade tax purposes.

Anti-double dip rule: The law also includes an anti-double dip rule for partnership structures. Under German tax law, interest expense incurred at the level of a partner of a partnership that is linked to the partnership business (e.g. interest expense related to the acquisition of the partnership interest) is treated as a "special business expense" and is deductible for tax purposes at the level of the partnership. If the partner is a nonresident, the partner becomes subject to limited German tax liability on its income from the partnership (a partnership is transparent for German corporate income tax purposes). The interest expense that qualifies as a special business expense, therefore, is deductible for German tax purposes, but also may be simultaneously deductible for foreign tax purposes at the level of the partner. The deduction of such special business expenses of a partner in a partnership is disallowed to the extent such expenses also are tax deductible in a foreign jurisdiction. To the extent the expenses relate to income that also is taxed in a foreign jurisdiction, the expenses remain deductible.

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Greece:
Voluntary disclosure program introduced

The Greek parliament passed the long-awaited bill on the voluntary disclosure program (VDP) on 21 December 2016.

The VDP sets out the mechanism under which Greek taxpayers (apparently, both individuals and legal entities) can report previously undeclared income (irrespective of the nature, origin or year of realization of the income) by filing a new or an amended tax return. Significantly reduced additional taxes will be levied on taxpayers participating in the VDP, as compared to the additional taxes levied in the absence of the VDP (which can be 60% or even 120% of the "main" tax due in certain cases). Additionally, the taxpayer will not be subject to further tax, administrative or criminal penalties or other measures (e.g. prosecution for money laundering or tax evasion, etc.).

Taxpayers can participate in the VDP by filing the relevant tax returns or statements starting from the date of publication of the VDP law (22 December 2016) until 31 May 2017.

The key features of the VDP are as follows:

- The VDP will apply where a taxpayer failed to file or made a late or inaccurate filing of a tax return or statement, provided the original filing deadline was before 30 September 2016. The return or statement can relate to income tax, VAT, gift tax, inheritance tax, real estate tax, special solidarity tax, etc., as well as information reporting returns.
- Where a taxpayer discloses previously unreported income and files the relevant tax returns, the main tax due will be calculated based on the tax rate that applied in the year in which the income should have been declared.
- For income declared and tax returns filed by 31 March 2017, an additional tax will be calculated at a rate of 8% on the amount of the main tax due. For income declared and tax returns filed during the period from 1 April 2017 through 31 May 2017, the additional tax will be calculated at a rate of 10% on the amount of the main tax due.
- Depending on the year in which the original tax obligation arose, late filing penalties will be readjusted at rates ranging from 0% to 25%.
- Taxpayers that are under tax audit may participate in the VDP, but the additional taxes due will be assessed on the basis of increased rates that could range from 13% to 30%, instead of the 8% and 10% rates.

Comments

When deciding whether to participate in the VDP, a taxpayer should consider the introduction of the automatic exchange of information between the Greek tax authorities and the tax authorities in other countries, as well as the possibility that a wealth registry may be introduced in Greece.

The Ministry of Finance is expected to issue interpretation guidelines that address procedural and other issues relating to the implementation of the VDP.

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Uruguay:
Tax incentives for shared services centers expanded

A decree that applies as from 24 October 2016 modifies and broadens the scope of the tax incentive regime applicable to new shared services centers (SSCs) established in Uruguay that provide services to nonresident related parties (for prior coverage, see *World Tax Advisor*, 10 October 2014). The decree expands the list of services eligible for the SSC regime and introduces a new category of tax incentives available for SSCs.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/141010_8.html

Eligible services: To qualify for the tax incentive regime, an SSC generally must provide services only to foreign related parties, and the services must be exclusively used abroad (however, the incentives may apply where less than 5% of total services are provided to resident related parties). Previously, the services eligible for the regime were limited to advice and data processing relating to activities developed, goods located or rights economically used abroad. The decree expands the list of eligible services to include the following:

- Management and administration (including strategic planning, business development, publicity, administration and training);
- Logistics and storage;
- Financial administration; and
- Research and development support.

New tax incentives: An SSC carrying out eligible services also must meet certain thresholds relating to the number of new employees it hires and the amount it invests in training to qualify for the tax incentive regime. The decree reduces the thresholds to qualify for a new category of incentives, but the benefits available also are reduced in some cases (the original incentives remain available for entities that meet the higher thresholds):

- At least 100 new employees (reduced from 150) must be hired during the first three years of the SSC, and maintained until the end of the fifth year. The employees' remuneration must be equivalent to a "qualified direct work position" (defined in terms of remuneration) and at least 75% of the workforce must be Uruguayan citizens; and
- A minimum investment of approximately USD 550,000 (reduced from about USD 1.1 million) must be made in training the workforce of Uruguayan citizens during the first three years of the SSC.

An SSC that meets the relevant thresholds will be granted the following tax benefits:

- A corporate income tax exemption for 70% of the income derived from the activities of the SSC during its first five years of operations (compared to the original incentives that offer a 90% exemption for five years, or for 10 years if 300 new employees are hired by the end of the fifth year, a minimum of approximately USD 2.2 million is invested in training and certain other conditions are fulfilled);
- A net worth tax exemption for assets allocated to the SSC activities for the same exemption period that applies for corporate income tax purposes (the same benefit that is available under the original incentives); and
- Only dividends derived from income that is not covered by the corporate income tax exemption and that are paid to a nonresident are subject to withholding tax, at a 7% rate, during the corporate income tax exemption period (the same benefit that is available under the original incentives).

The new category of tax incentives does not include a reduced withholding tax rate on technical service fees paid to a nonresident during the corporate income tax exemption period (compared to the 0.6% rate that is available under the original incentives); the normal 12% rate will apply unless the higher thresholds under the original incentives are met.

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2017 rate changes

The following chart summarizes some of the corporate, withholding tax and VAT tax rate changes that are effective as of 1 January 2017 (unless otherwise noted):

Country	Type of tax		
	Corporate income tax	**WHT on dividends, interest and royalties paid to a nonresident company**	**VAT**
Belgium		Default rate on dividends, interest and royalties increased from 27% to 30%	
Colombia	New rate of 34% introduced. Income tax for equality (CREE) and CREE surtax abolished	Rate on interest and royalties reduced from 33% to 15%	Standard rate increased from 16% to 19%
Croatia	Standard rate reduced from 20% to 18%; a 12% rate applies to taxpayers with annual income under HRK 3 million		
Greece		Rate on dividends increased from 10% to 15%	
Hungary	Rate reduced to a flat 9% (from progressive rates of 10% and 19%)		
Israel	Rate reduced from 25% to 24%		
Peru	Rate increased from 28% to 29.5%	Rate on dividends reduced from 6.8% to 5%	
Poland	Rate reduced to 15% for certain taxpayers with sales revenues (including VAT due) not exceeding EUR 1,200,000 in the previous year, and for taxpayers in their first year of business activity		
Slovakia	Rate reduced from 22% to 21%	Rate is 35% on dividends paid to residents of jurisdictions that have not concluded a tax treaty or an exchange of information agreement with Slovakia (previously, no tax was withheld)	
United Kingdom	Rate reduced from 20% to 19% as from 1 April 2017		

In brief

Belgium: The bill to implement the amended EU parent-subsidiary directive into Belgian law was approved and published in the official gazette on 1 December 2016 (for prior coverage, see *World Tax Advisor*, 28 October 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161028_3.html

Bulgaria: On 21 December 2016, the Ministry of Finance published an updated list of countries that are deemed to be tax havens. The following countries are included on the list: Antigua and Barbuda, Bahamas, Brunei, Christmas Island, Cook Islands, Dominican Republic, Fiji, Grenada, Guam, Guyana, Hong Kong, Labuan, Liberia, Macau, Maldives, Marshall Islands, New Caledonia, Oman, Palau, Panama, Pitcairn Islands, St. Lucia, Sark, United Arab Emirates, US Virgin Islands and Vanuatu. Inclusion on Bulgaria's tax haven list means that persons resident in the listed jurisdictions (both legal entities and individuals) may not carry out certain activities in Bulgaria and may not obtain certain licenses or permits. The updated list applies as from 29 December 2016.

China: The General Administration of Customs has issued guidance, effective as from 1 November 2016, which updates implementation measures relating to the rules governing customs audits and provides additional clarifications on revised customs audit regulations that became effective on 1 October 2016. The measures clarify provisions under China's new customs voluntary disclosure program, standardize certain customs audit procedures and allow the customs authorities and audited parties to engage third-party accounting or tax firms to issue professional opinions as reference material or to support investigations of the facts of a case.

Colombia: The government approved a structural tax reform on 29 December 2016 that contains extensive changes affecting companies, individuals and nonprofit entities, as well as VAT and other indirect taxes (for prior coverage, see *World Tax Advisor*, 11 November 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161111_3.html

European Union: As from 1 January 2017, the national tax authorities of EU member states are required to automatically exchange information with each other on all new cross-border tax rulings issued, by sending a listing of the tax rulings to a central repository every six months (for prior coverage, see *World Tax Advisor*, 8 January 2016). Other member states will be able to ask the issuing member state for more information on any particular ruling. The first exchanges should take place by no later than 1 September 2017, and EU member states also will have to provide information on all cross-border rulings issued since the beginning of 2012 by 1 January 2018. The EU rules follow similar G20/OECD guidelines, which have been effective as from 1 April 2016.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160108_6.html

European Union: The European Commission VAT Committee has released a new guideline suggesting that the 2014 decision of the Court of Justice of the European Union in the *Skandia* case should be interpreted strictly and that transactions between a VAT-grouped branch and its head office in another country should not be disregarded (for prior coverage, see *World Tax Advisor*, 26 September 2014). VAT Committee guidelines are not legally binding on EU member states, do not constitute an official interpretation of EU law and do not necessarily have the agreement of the European Commission. As it currently stands, a number of member states have not adopted this approach and do not always treat a branch as separate from its head office if it belongs to a VAT group.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140926_2.html

European Union: The EU Council adopted a directive on 6 December 2016 granting tax authorities access to information held by authorities responsible for the prevention of money laundering (for prior coverage, see *World Tax Advisor*, 11 November 2016). The directive will require member states to provide access to information on the beneficial ownership of companies and will enable tax authorities to access that information in monitoring the proper application of rules on the automatic exchange of tax information. EU member states have until 31 December 2017 to transpose the directive into national laws and regulations. The directive will apply as from 1 January 2018.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161111_ib.html

France: On 29 December 2016, the Constitutional Court issued its decision on certain provisions of the Finance Bill for 2017 and the Amending Finance Bill for 2016. The court concluded that the diverted profits tax was incompatible with the French constitution and invalidated the provision so it will not become effective (for prior coverage, see France tax alert, 23 December 2016).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-23-december-2016.pdf

Ireland: The Finance Bill 2016 was passed by both houses of parliament and signed into law on 25 December 2016 (for prior coverage, see *World Tax Advisor*, 11 November 2016), with many of the measures effective as from 1 January 2017.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161111_2.html

Nigeria: As from 1 January 2017, taxpayers in Nigeria are required to use updated transfer pricing declaration and disclosure forms. The revised forms are aimed at improving transfer pricing disclosures and transparency by taxpayers, as well as providing the Federal Inland Revenue Service (FIRS) with better information when conducting transfer pricing risk identification and assessments. The updated disclosure forms require taxpayers to specify the year of assessment and basis period to which the forms relate, as well as the comparative values for each item of income or expense received or paid to connected and independent sources. In an effort to minimize the cost of compliance for taxpayers, the FIRS has indicated on the forms that taxpayers may submit their transfer pricing returns along with their income tax returns, either at the FIRS office where their tax file is located or directly at the FIRS International Tax Department in Lagos.

Ukraine: The National Bank issued a decree on 13 December 2016 that extends previously applicable currency restrictions (for prior coverage, see *World Tax Advisor*, 26 June 2015). The decree, which took effect on 16 December 2016, includes the following restrictions: (i) payments made in foreign currency for the import and export of goods must be made within 120 days; (ii) dividends may not be paid to a nonresident in a foreign currency, except for dividends on equity rights/shares arising out of 2014 and 2015 profits, subject to the terms and conditions in the decree; and (iii) the purchase and/or transfer of foreign currency to foreign investors is prohibited following the sale of securities of Ukrainian issuers, the sale of equity rights of legal entities, the reduction of authorized share capital of legal entities, the exit of foreign investors from business companies, etc. The decree will apply until the bank issues further guidance, except for item (i), which will expire on 16 June 2017.
URL: http://newsletters.usdbriefs.com/2015/Tax/WTA/150626_8.html

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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.

Germany: The government has issued a draft law that would limit the deductibility of certain royalty payments in cases involving the application of an intellectual property regime not based on the BEPS action 5 nexus approach. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170113_4.html

Germany: The government has introduced CbC reporting requirements based on the final BEPS recommendations and the EU administrative cooperation directive amendments. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170113_5.html

Indonesia: Regulations that apply as from 30 December 2016 effectively introduce the three-tiered approach to transfer pricing documentation under action 13 of the BEPS project. The first year of coverage is fiscal year 2016 and the CbC, master and local file reports will have to be filed with the annual corporate income tax return for the subsequent tax year (i.e. fiscal year 2017).

OECD: The OECD issued a press release on 6 January 2017, announcing that Bermuda, the Ivory Coast and Kazakhstan have joined the inclusive framework for the global implementation of the BEPS project. 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.

OECD: On 22 December 2016, the OECD released an updated version of the BEPS action 4 report that sets out a common approach to addressing BEPS involving interest and payments economically equivalent to interest. The update includes further guidance on two areas included in the 2015 version of the report: (i) the design and operation of the "group ratio rule," which allows an entity to claim higher net interest deductions based on a relevant financial ratio of its worldwide group, and (ii) approaches to dealing with risks posed by the banking and insurance sector – the update examines regulatory and commercial requirements that constrain the ability of groups to use interest for BEPS purposes and limits on these constraints. The OECD previously published a discussion draft on approaches to addressing BEPS involving interest in the banking and insurance sectors on 28 July 2016.

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European Union

CJEU rules on Spanish state aid cases involving amortization of goodwill

On 21 December 2016, the Court of Justice of the European Union (CJEU) issued its decision in the Spanish financial goodwill amortization state aid cases and set aside the 2014 decisions of the EU General Court (EGC), which held the goodwill amortization regime did not constitute unlawful state aid under EU law and annulled two decisions of the European Commission (EC). The cases have been referred back to the EGC for reassessment; the two EC decisions, which considered the regime to be state aid, are reinstated and Spain must recover the aid granted.

Issue date: 2 January 2017

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-2-january-2017.pdf

France

Finance bill 2017 and amended finance bill 2016 passed

On 20 and 22 December 2016, the French parliament adopted the amending finance bill for 2016 and the finance bill for 2017, which include tax reduction measures benefitting both enterprises and individuals and measures to ensure provisions in the French tax code are in line with the French constitution and EU law and to introduce a new PAYE system.

Issue date: 23 December 2016

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

Italy

Budget law for 2017 passed

Italy's 2017 budget law, published in the official gazette on 22 December 2016, revises the notional interest deduction rules, extends and increases the R&D tax credit, extends the extra 40% depreciation for certain tangible assets and introduces extra 150% depreciation for high-tech assets and other tax benefits for Italian companies.

Issue date: 23 December 2016

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

United States

Final PFIC regulations clarify indirect ownership issue, address Form 8621 annual reporting requirements

On 27 December 2016, the US Department of the Treasury and the Internal Revenue Service (IRS) issued final regulations providing guidance on determining ownership of a passive foreign investment company (PFIC) and the requirement that PFIC and qualified electing fund shareholders file an annual information return. The final regulations modify temporary and proposed regulations and adopt previously-announced and new exceptions from the annual reporting requirements.

Issue date: 9 January 2016

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-9-january-2017.pdf

Final section 367(a)/(d) regulations retroactively prevent tax-free outbound transfers of foreign goodwill and going concern value

On 15 December 2016, the US Department of the Treasury and the IRS issued final regulations under Internal Revenue Code (IRC) section 367(a) and (d). Among other things, the final regulations (which generally mirror the proposed regulations and apply retroactively to outbound transfers that occur on or after 14 September 2015) prevent certain property, including foreign goodwill and going concern value, from being transferred by a US person to a foreign corporation on a tax-free basis. (For additional coverage on the transfer pricing aspects of the regulations, see Global Transfer Pricing Alert 2016-040, 21 December 2016.)

Issue date: 20 December 2016

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-367-20-december-2016.pdf

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-040-21-december-2016.pdf

Final regulations address new reporting obligations for foreign-owned domestic disregarded entities

On 13 December 2016, the US Department of the Treasury and the IRS issued final regulations that require wholly foreign-owned domestic disregarded entities to comply with reporting and recordkeeping obligations under IRC section 6038A.

Issue date: 20 December 2016

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