In this issue:

Measures in India's budget 2017 affect nonresidents

India's union budget 2017, presented by the finance minister on 1 February 2017, includes a number of proposals that would affect nonresidents. While the budget proposals do not contain any "big bang" reforms or paradigm shifts in policy, they do include a clarification on the applicability of the tax rules governing indirect transfers of shares in relation to foreign portfolio investors (FPIs), and generally do not include any changes to the tax treatment of long-

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term capital gains, which is a significant relief for such investors. India, as a member of the G20, is a strong supporter of the OECD's base erosion and profit shifting (BEPS) project, and the budget proposes the introduction of a limitation on the deductibility of interest pursuant to BEPS action 4. The concept of secondary adjustments in transfer pricing cases also is proposed to be introduced.

The key budget proposals that affect nonresidents are discussed below.

Indirect transfer provisions not to apply to FPIs

Following the India Supreme Court's 2012 decision in the *Vodafone* case, the government introduced a controversial and far-reaching amendment to India's tax law, which clarified that a nonresident would be subject to tax in India on a transfer of shares or an interest in a foreign entity if such shares/interest substantially derive their value from assets located in India.

The foreign investor community was surprised when India's Central Board of Direct Taxes (CBDT) issued a circular on 21 December 2016, in which it clarified that the scope of the indirect transfer rules also applies to FPIs. The circular would have had the effect that profits earned by FPIs would be taxable in India; however, on 20 January 2017, the CBDT announced it was temporarily suspending the application of the December circular.

The finance minister has allayed the fears of the foreign investor community by proposing that the indirect transfer provisions would *not* apply to investors in broad-based foreign portfolios registered with the Securities Exchange Board of India, with this measure proposed to apply retroactively as from 2012. However, the proposed exemption from the indirect transfer rule would not apply in the case of funds with fewer than 20 investors or to noninstitutional investors.

Limitation on interest deduction

Pursuant to BEPS action 4, the budget includes a measure that would restrict the deduction of interest expense on loans from associated enterprises to 30% of EBITDA where the interest payment exceeds INR 10 million in a financial year. The disallowed interest would be able to be carried forward for eight years. Banking and insurance companies would be excluded from the applicability of these provisions.

Notably, the Indian budget proposal differs from the action 4 recommendations in several respects; for example, the Indian rules would apply only to related party transactions (in contrast, action 4 focuses on the use of third-party, related party and intragroup debt) and gross interest expense (action 4 applies to net interest expense), and the proposals do not include a group ratio rule as recommended in the final report on action 4.

Concessional tax rate on interest payments and capital gains tax exemption

The budget includes a measure that would allow nonresidents to continue to enjoy the concessional tax rate of 5% (plus the applicable surcharge and cess) on interest payments in respect of borrowings in foreign currency made by Indian companies, up to 30 June 2020. This benefit also is proposed to be extended to investments by FPIs and qualified foreign investors, as well as to rupee-denominated bonds, the latter as announced by the government in 2015. Moreover, it is proposed that the transfer of rupee-denominated bonds issued outside India by one nonresident to another would not attract capital gains tax in India.

Secondary adjustments in transfer pricing cases

To bring India's transfer pricing rules in line with the OECD guidelines, the concept of a secondary adjustment in transfer pricing cases would be introduced. Under the proposed rules, an Indian taxpayer would be required to make a secondary adjustment to a transfer price where a primary adjustment exceeding INR 10 million has been made by the taxpayer, or is made by the tax authorities and accepted by the taxpayer, or results from an advance pricing agreement or a mutual agreement procedure under an applicable tax treaty. If not repatriated to India, the excess amount available as a result of the primary adjustment would be deemed to be an advance made by the taxpayer to the associated party on which arm's length interest would have to be charged.

Other key provisions

The other key budget measures that will be of interest to nonresidents are as follows:

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- The corporate tax rate is proposed to be reduced to 25% (plus the surcharge and cess) from 30% (plus the surcharge and cess) for companies whose turnover in financial year 2015-2016 is less than INR 500 million, with the 30% rate continuing to apply to other companies. According to the finance minister, this rate reduction should benefit 96% of companies.
- The general anti-avoidance rule is on track to be implemented as from 1 April 2017.
- It is proposed to provide certainty on a retroactive basis that transfers of shares of a closely-held Indian company will be eligible for the concessional tax rate of 10% (plus the applicable surcharge and cess).
- Following a demonetization exercise in November 2016, the government has proposed that any cash transactions exceeding INR 300,000 would attract a penalty equal to the amount involved.

Comments

The budget is a mixed bag for foreign investors, although there appear to be more positives than negatives, and it is heartening to note that retroactive amendments would be in favor of taxpayers. The overall budget focuses on long-term growth and development for India, which clearly is a step in the right direction.

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Israel's 2017-2018 budget includes IP regimes for tech companies

Measures in Israel's 2017-2018 budget that apply as from 1 January 2017 include the introduction of two new BEPS-compliant intellectual property (IP) regimes for technology companies. In addition, the corporate and certain withholding tax rates are reduced.

Incentives for technology companies

To promote foreign investment in companies with Israeli-based IP operations, the encouragement on capital investments law (which provides benefits for qualifying companies with "technological earnings") is amended to extend and expand the IP "innovation box" regime benefits available for qualifying technology companies. The new rules follow the OECD's recommendations under action 5 of the BEPS project.

Technological earnings are those derived by an enterprise in the ordinary course of business from intangible assets (i.e. patents, computer software, certain intellectual property developed in Israel and other approved rights) that are wholly or partially owned by the enterprise or that the enterprise has a right to use.

In addition, two additional technological earnings tax regimes are created: the "preferred technological enterprise" (PTE) and the "special preferred technological enterprise" (SPTE).

Preferred Technological Enterprise: A PTE is entitled to the following tax benefits:

- A reduced corporate income tax rate of 12% (instead of the standard 24% rate) on technological earnings (7.5% if the company's facilities are located in "development area A");
- A reduced withholding tax rate of 4% on dividends distributed to a nonresident company out of technological earnings, unless the rate is further reduced under an applicable tax treaty (the rate is 20% for other taxable distributions out of technological earnings; distributions between Israeli companies generally are tax- exempt); and
- A reduced capital gains tax rate of 12% on the sale of qualifying intangible assets to a related nonresident company, provided the assets previously were purchased from a nonresident company (related or unrelated) for at least NIS 200 million.

To qualify for benefits, (i) the PTE's R&D expenses in the three preceding tax years must have been at least 7% (on average) of the PTE's total income or at least NIS 75 million in each year; and (ii) the PTE must meet at least one of the following requirements:

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- In the current year, 20% or more of the employee salaries of the PTE are recorded in the enterprise's financial statements as R&D expenses, or the PTE employs at least 200 R&D employees;
- A venture capital fund has invested at least NIS 8 million in the PTE, and the nature of the PTE's business operations did not change after the investment (the law does not specify the time frame for the investment);
- The PTE's total income in the current and three preceding tax years increased by 25% (on average) year-over-year, and the annual turnover in each of the current and three preceding tax years is at least NIS 10 million; or
- The number of employees of the PTE in the current and three preceding tax years increased by 25% (on average) year-over-year, and the PTE employed at least 50 employees in each of the current and three preceding tax years.

Alternatively, the requirements under (i) and (ii) above will be deemed to be met if approval is obtained from the office of the chief scientist of the Israel Innovation Authority.

In addition, to qualify for benefits, the PTE must be a "competitive enterprise" as defined under Israeli law, and the PTE's total turnover (or, if the PTE is part of a group, the PTE group's total consolidated turnover) for the tax year must be less than NIS 10 billion.

Special Preferred Technological Enterprise: An SPTE is entitled to the following tax benefits:

- A reduced corporate income tax rate of 6% on technological earnings;
- A reduced withholding tax rate of 4% on dividends distributed to a nonresident company out of technological earnings, unless the rate is further reduced under an applicable tax treaty (the rate is 20% for other taxable distributions out of technological earnings; distributions between Israeli companies generally are tax-exempt); and
- A reduced capital gains tax rate of 6% on the sale of intangible assets to a related nonresident company, provided the SPTE is the first owner of the assets or the SPTE purchased the assets from a related or an unrelated nonresident company.

To qualify for benefits, an SPTE must meet the same requirements as apply to a PTE, except that the SPTE's total turnover (or, if part of a group, the SPTE group's total consolidated turnover) in the tax year must equal or exceed NIS 10 billion.

Special preferred enterprise regime changes

The new law extends the "special preferred enterprise" (SPE) tax regime for qualifying companies by reducing the SPE's required annual preferred income from NIS 1.5 billion to NIS 1 billion; and the SPE's required annual total income from NIS 20 billion to NIS 10 billion. In addition, a reduced withholding tax rate of 5% (or a lower treaty rate) applies to dividends paid by an SPE directly to its foreign parent company from 1 January 2017 until 31 December 2019, provided certain conditions are fulfilled.

Rate changes

The corporate income tax rate will be reduced in two phases: from 25% to 24% on 1 January 2017, and then to 23% as from 1 January 2018.

The standard withholding tax rates on interest and royalties paid to nonresident corporations also are reduced from 25% to 24% as from 1 January 2017, and will further reduce to 23% as from 1 January 2018.

The individual income surtax rate is increased to 3% (from 2%) on annual income exceeding NIS 640,000 (reduced from NIS 800,000).

Other measures

In certain cases, the income of a "small company" (i.e. a company under the control of five or fewer individual shareholders) will be deemed to be the income of any shareholder who individually, directly or indirectly, owns at least 10% of the company's share capital (i.e. a "substantial shareholder") where services are provided by the shareholder

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to the company. This measure targets a practice where certain professionals use a company for tax deferral purposes and/or to avoid social security contributions.

Another new rule deems withdrawals of funds by substantial shareholders of companies to be dividends, salary income or business income (depending on the specific case) of the shareholder in the tax year in which the withdrawal was made. The rule targets a practice used by substantial shareholders to avoid tax on undistributed earnings by obtaining "loans" from the company and using the funds for personal purposes without paying tax on the loan amount. The rule will not apply if the funds are returned to the company within 60 days from the withdrawal; however, any future withdrawal within two years of the return will be deemed to be income of the shareholder as from the date of the initial withdrawal.

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Australia:
ATO issues guidelines on offshore hubs

The Australian Taxation Office (ATO) released guidance on 16 January 2017 that sets out its compliance approach to transfer pricing issues related to existing and new centralized operating models involving procurement, marketing, and sales and distribution functions, referred to as "hubs."

The guidance, which generally applies as from 1 January 2017, provides a self-assessment risk framework that seeks to assist taxpayers:

- Assess the compliance risk of the transfer pricing outcomes of their hubs in accordance with the ATO's risk framework;
- Understand the compliance approach the ATO likely will take with respect to the risk profile of the hub;
- Work with the ATO to mitigate the transfer pricing risk in relation to the hub; and
- Understand the type of analysis and evidence the ATO would require when testing the outcomes of a hub.

The ATO states that its engagement with taxpayers will be tailored according to the hub's risk rating, such that if a hub is assessed as being in a low risk zone, the ATO generally will not apply compliance resources to test and assess the transfer pricing outcomes of the hub.
However, if a hub falls outside the low risk zones, the ATO will monitor, test and/or verify the transfer pricing outcomes of the hub. Hubs with a high risk rating will be reviewed as a matter of priority.

The guidance sets out the general indicators and principles of the hub risk framework that apply to both outbound and inbound goods and commodity flows. The remainder of the guidance provides detailed framing questions for preparing a transfer pricing analysis for taxpayers outside the low risk (green) zones, details of current compliance "hotspots" and schedules containing specific indicators relevant to particular types of hubs. There currently is only one schedule dealing specifically with offshore marketing hub arrangements but more schedules are expected.

The ATO intends to continue to review and improve the guidance over the next three years, and will seek to consult on any material changes.

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France: Constitutional court strikes down diverted profits tax

In a decision dated 29 December 2016, France's constitutional court ruled that the diverted profits tax (DPT) provision in the finance bill for 2017 is incompatible with the constitution; the court invalidated the provision so that it did not become effective with the other measures in the finance bill (for prior coverage of the finance bill, 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

The DPT would have subjected a nonresident company to corporate tax in France, in particular, where it controlled a French or foreign enterprise that conducted activities in France related to the sale of goods or the provision of services of the nonresident company. The wording of the DPT created a presumption of a diversion of profits outside France that could be used by the French tax authorities, in the course of an audit, to determine the nonresident's liability to tax in France (an area that is reserved exclusively to the legislature).

In addition to encroaching on the competence of the legislature, the language of the DPT was criticized as being unclear and "unintelligible."

The constitutional court held that the parliament exceeded its authorities by giving the tax authorities the power to determine whether or not a company would fall within France's corporate tax territoriality rules during the course of an audit. It is important to note that the judges based their decision on this argument and did not rule on whether the DPT rule was sufficiently clear to pass constitutional muster.

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

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Gulf Cooperation Council: VAT agreement signed by all GCC countries

Saudi Arabia provided its final approval to the Gulf Cooperation Council's (GCC) unified agreement to implement VAT on 30 January 2017, and this was followed by an announcement by the Bahrain minister of finance who confirmed Bahrain signed the agreement on 1 February 2017. It is now understood that all six GCC countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) have signed the agreement, paving the way for the introduction of VAT throughout the GCC in 2018 (for prior coverage, see *World Tax Advisor*, 26 February 2016). The next steps are for local implementing laws to be agreed in each country.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160226_5.html

Businesses with operations in the GCC countries will be impacted by the introduction of VAT, which will represent a fundamental change to business operations in a region with little history of taxation. Potentially affected companies should begin preparations to ensure compliance with the VAT law by 2018 if they have not done so already.

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Hungary:
Revised CFC regime and new tax amnesty rules introduced

Changes to Hungary's controlled foreign company (CFC) regime and the introduction of a tax amnesty were included in a bill approved by the parliament on 13 December 2016 and published on 19 December. This bill followed two packages of amendments to Hungarian tax law introduced in November and early December 2016 (including the package reducing the corporate tax rate to a flat 9%; for prior coverage, see *World Tax Advisor*, 16 December 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161216_ib.html

CFC regime

The new CFC regime is broadly in line with the provisions of the EU anti-tax avoidance directive, which sets forth rules against tax avoidance practices that directly affect the functioning of the internal market.

According to the CFC rules, as from 18 January 2017, the following entities may qualify as a CFC:

- A foreign entity, if a domestic taxpayer holds a direct or an indirect interest exceeding 50% of the voting rights or the share capital of the entity, or is entitled to more than 50% of the profits of the entity; or
- A foreign permanent establishment (PE) of a Hungarian taxpayer.

The foreign entity or PE may be treated as a CFC in a year in which the amount of tax paid in its country of residence is less than the difference between the tax it actually paid and the tax that would have been payable on the same income in Hungary.

The foreign entity or PE will not be treated as a CFC if it is clearly demonstrated that the entity/PE possesses sufficient assets, equipment, premises and employees with which it pursues substantial business activities. This condition will be deemed to be fulfilled where the income from certain specified activities pursued with the entity/PE's own assets and employees amounts to at least 50% of its total income. In determining this proportion, the data of all related-party entities located in the country of residence of the foreign entity or the PE should be considered.

Under a "listed-parent exemption," a foreign entity will not be treated as a CFC in a year in which it has a shareholder with an interest of at least 25% of the share capital on all days of the year and that shareholder (or its related party) has been listed on a recognized stock exchange for at least five years as of the first day of the year. This exemption does not apply to CFCs organized as a branch.

If a foreign entity or PE is treated as a CFC, the following corporate income tax restrictions apply:

- The participation exemption rules do not apply in relation to the CFC.
- Passive or related-party income of the CFC (calculated according to the relevant Hungarian rules) becomes taxable at the level of the Hungarian parent under certain conditions. In this case, the new rules allow a credit for the tax paid by the CFC.
- Impairment of the CFC and losses recognized on the disposal of CFC shares (in excess of the amount previously treated as taxable CFC income) are not deductible for tax purposes.
- Deemed transfer pricing deductions are not allowed on transactions relating to CFCs.

New tax amnesty rules

New tax amnesty rules apply as from 1 January 2017.

One measure allows Hungarian resident individuals to report certain previously undeclared income and pay a total charge comprising a 10% personal income tax (reduced from 15%) and a "self-revision" surcharge (calculated based on the prime rate published by the Hungarian National Bank), without incurring any further social security or health tax liabilities.

Taxation under the amnesty is allowed on certain foreign-source income earned up to 30 June 2016, and the reporting and payment may be carried out through designated banks up to 30 June 2017. The bank acts as a withholding agent and pays the total charge to the Hungarian tax authorities anonymously. The bank will not provide information on the

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person making the payment to the tax authorities, but will issue a tax certificate to the individual with respect to the amounts taxed under the regime.

Another measure allows Hungarian resident private individuals and companies to take ownership of foreign shares, or shares held by foreign entities in the past, up to 30 June 2017 without incurring any tax or other payment liabilities, subject to certain restrictions. The measure is intended to encourage residents to take direct ownership of interests that previously were held indirectly, and to report these interests to the Hungarian tax authorities. The direct acquisition of shares may be carried out for no consideration, or for consideration from previously undeclared income held abroad that is paid through a designated bank.

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Italy:
Concept of beneficial ownership clarified

Italy's Supreme Court issued four decisions on 28 December 2016 in which the court clarified the concept of "beneficial ownership" for purposes of obtaining a reduced rate of withholding tax under Italy's tax treaties or based on the application of the EU parent-subsidiary or interest and royalties directives. The decisions will be of interest to multinational groups owning participations in Italian subsidiaries through non-Italian holding companies.

Under Italian tax law, dividends, interest and royalties paid to nonresident entities are subject to withholding tax that can be reduced (or fully exempted) based on the provisions of an applicable tax treaty or an EU directive, but only if the foreign recipient of the payment qualifies as the beneficial owner (i.e. the ultimate owner) of the income.

The beneficial owner status of nonresident holding companies, for which neither Italian tax law nor the OECD provides explicit guidelines, is often challenged by the Italian tax authorities, usually based on the absence of economic substance at the level of the holding company.

Supreme Court decisions

The decisions of the Supreme Court clarify the main requirements for a foreign holding company to be considered the beneficial owner of income paid by an Italian resident.

In the cases before the court, an Italian company paid dividends to a French holding company that was ultimately held by a US corporation. In each case, the Italian tax authorities challenged the availability of the reduced withholding rate provided under the Italy-France tax treaty on the grounds that the holding company lacked economic substance and, therefore, was merely an interposed agent or trustee and not the beneficial owner of the income. The tax authorities determined that the beneficial owner of the income was the ultimate US parent of the group and denied the lower rate of withholding tax. The taxpayer appealed the decision of the tax authorities.

The Supreme Court held that, in the case of a pure holding company (an entity primarily owning and managing participations in subsidiaries), the absence of economic substance does not automatically mean that the recipient of income will not be considered the beneficial owner of income. In other words, the absence of certain factors like premises, personnel, operating expenses or the provision of managerial services to its subsidiaries may not be used to deny beneficial owner status to holding companies.

Instead, the court affirmed that the analysis of beneficial owner status for holding companies must exclusively take the following two key factors into account:

- Whether the recipient is the legal owner of the remittances; and
- The independence of the recipient, e.g. whether the recipient exercises control over how the income received from the Italian company is used.

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Comments

The Supreme Court decisions could significantly affect the determination of whether a nonresident holding company is the beneficial owner of income (and, thus, whether dividends, interest and royalty payments to a foreign holding company by an Italian resident may qualify for reduced rates), and potentially could affect existing structures, pending tax audits and litigation, tax refund claims and related financial statement reserves.

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Mexico:
Decrees on capital repatriation and immediate depreciation issued

Two tax decrees were published in Mexico's federal official gazette on 18 January 2017 – one offers a tax amnesty relating to deposits or investments repatriated to Mexico by 19 June 2017, while the other provides a two-year tax incentive for the immediate depreciation of a specified percentage of new fixed assets by micro and small companies. Both decrees became effective on 19 January 2017.

Capital repatriation

The decree on capital repatriation will remain in force for six months following the effective date of the decree. It applies to Mexican resident entities and individuals, as well as nonresidents with a permanent establishment in Mexico, that have earned income from previously unreported direct and indirect offshore investments that were held abroad until 31 December 2016. The decree offers qualifying taxpayers an opportunity to repatriate the investments, pay a specified tax and be deemed to have met their tax obligations in Mexico for the fiscal year in which the payment is made and for the previous fiscal years in which the investment was held, provided certain specified requirements are fulfilled.

"Indirect investments" are defined for purposes of the decree as investments carried out through legal acts or entities abroad in which the taxpayer directly or indirectly participates, in accordance with the proportion that corresponds to the participation, as well as those carried out through legal acts or entities considered transparent for tax purposes under Mexico's Income Tax Law.

The tax will be calculated by applying an 8% rate, with no offsetting deductions, to the total amount of the direct or indirect investments repatriated to Mexico that were held abroad before 1 January 2017. The applicable exchange rate in cases involving holdings in a foreign currency will be the rate for the day on which the 8% tax is paid.

Foreign tax paid on the income from investments held abroad before 1 January 2017 may be credited against the 8% tax paid on the repatriation of those investments, but the credit is limited to the amount of the 8% tax.

The 8% tax (as reduced by any foreign tax credit) must be paid within 15 days following the date on which the investments are repatriated to Mexico.

If the income tax associated with income from the investments held abroad already has been paid in Mexico, the investment need not be repatriated but supporting documentation of the tax payment is required. If Mexican income tax has not yet been paid on the income, the taxpayer will be able to choose to pay the tax upon repatriation by following the terms of the decree.

The decree does not apply to income derived from an illegal activity or to income that has resulted in a deduction for income tax purposes for a Mexican resident or a nonresident with a permanent establishment in Mexico.

The following requirements also apply to benefit from the decree:

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- Only income and investments repatriated to Mexico during the six months following 19 January 2017 and that are invested in Mexico during 2017 and remain invested in Mexico for at least two years from the date on which they are repatriated are eligible. The two-year requirement will be deemed to be met if a taxpayer has invested in one of the following:
  - The acquisition of fixed assets that are deductible for income tax purposes or the acquisition of land and buildings that are used for the taxpayer's business activities in Mexico;
  - Research and development activities that consist of investments directed to the development of products, materials or production processes;
  - The payment of liabilities that have been contracted with third parties before the capital repatriation decree became effective, provided the payment is made through a Mexican credit institution or brokerage house; or
  - Investments in Mexico through a credit institution or brokerage house formed under Mexican law.
- Taxpayers must demonstrate that the repatriated investments increased the amount of their total investments in Mexico, which must not be reduced for a period of two years.
- The repatriation of investments must be made through transactions carried out between credit institutions or brokerage houses incorporated in Mexico and entities incorporated abroad that provide financial services. The party initiating the repatriation of the investments from abroad must match the beneficiary of the resources in Mexico, or they must be related parties under Mexican tax legislation.
- If a taxpayer has initiated a legal proceeding in connection with the income or investments repatriated, the proceeding must be abandoned to apply for the amnesty under the decree.
- The "CUFIN" balance (i.e. previously taxed profits) may be increased by the amount of taxable profit calculated on the repatriated investments, reduced by the tax paid on such repatriation.
- The taxable profit calculated on the repatriated investments must be considered in determining the taxable profit for purposes of calculating employees' mandatory profit sharing.

Investments that are repatriated to Mexico will not be considered for tax audit purposes. The benefits established by the decree will not be considered taxable income for income tax purposes, and the decree's application will not give rise to any tax refund or offset.

The Mexican tax authorities may issue rules for implementing the decree.

Immediate depreciation

The decree on the immediate depreciation of new fixed assets for micro and small businesses is available for the 2017 and 2018 tax years. It applies to taxpayers whose taxable income in the previous fiscal year was MXN 100 million or less (a special rule applies for taxpayers that commenced activities in 2017, which may apply for the benefit based on their estimated income).

The incentive provides for the immediate depreciation of new fixed assets in the year in which they are acquired, based on the percentages established in the decree; for example, for 2017, the rates range from 63% for supply pumps of fuel to trains, to up to 96% for machinery for the assembly and transformation of magnetic components for hard disks and electronic cards for the computer industry. For 2018, the rates will range from 43% to 92%. The immediate depreciation is not available for office furniture and equipment, cars and car armor equipment, any fixed assets that cannot be individually identified or airplanes (other than those used for agricultural fumigation).

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Peru:
CbC reporting introduced

Peru's government published a decree on 31 December 2016 that introduces a requirement to submit a local and a master file, as well as a country-by-country (CbC) report, in accordance with action 13 of the OECD BEPS project. The decree also amends Peru's income tax law with respect to the use of the controlled comparable price method for

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transfer pricing purposes and makes it possible to use other methods when it is not possible to apply the methods set out in the law.

The rules governing the local file apply for fiscal year 2017, but the master file and CbC reporting rules will not apply until fiscal year 2018. The rules on the transfer pricing methods apply as from 1 January 2017.

The local file documentation requirement applies to taxpayers whose annual income for the fiscal year exceeds 2,300 tax units (a tax unit is PEN 4,050 for 2017). The report must include information on transactions that generate taxable income and/or deductible expenses, although the tax authorities can require the report even for transactions that generate exempt income or nondeductible expenses.

Taxpayers that are part of an economic group whose accrued income during the fiscal year exceeds 20,000 tax units must prepare a master file. The report, which will need to be filed annually, must include information on the organizational structure of the group, a description of the business activities and the transfer pricing policies relating to intangible assets and group financing, as well as the group's financial and tax positions.

The annual CbC report will be required by taxpayers that are part of a multinational group, and will need to include information on the annual income, taxes paid and business activities of each entity in the group.

The Peruvian tax authorities will be able to share the information contained in the reports with the tax authorities of other jurisdictions that have concluded automatic exchange of information arrangements with Peru.

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In brief

Albania: The tax package for 2017 includes a measure that amends the thin capitalization rules as from 1 January 2018. The rules currently limit the deduction for interest paid on a loan to the portion of interest paid that does not exceed four times the company's net assets. An additional limitation on the deductibility of interest will be added, i.e. where a loan is obtained from a related party, net interest exceeding 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) will be considered a nondeductible expense. The excess net interest will be able to be carried forward and deducted in subsequent years, until a transfer of more than 50% of the company's shares or voting rights occurs. As is currently the case, the rules will not apply to banks, finance leasing and insurance companies.

Austria: The federal government has announced its work plan for 2017 and 2018, which will focus on economic development, employment and legal security. Proposed tax measures include an increase in the R&D premium from 12% to 14% of qualifying expenditure as from 2018 and an accelerated depreciation allowance of 30% for investments in tangible assets (excluding real estate and automobiles) manufactured between 1 March 2017 and 31 December 2017 by enterprises with fewer than 250 employees. Other measures include improvements to the legal framework for corporate restructurings to facilitate restructuring of distressed companies. The Austrian financial market authority also would be reformed to provide greater transparency, a more efficient process and enhanced legal security for supervised companies. The Austrian government now will prepare a draft bill covering the above measures.

Greece: A law passed by the parliament on 21 December 2016 clarifies that foreign losses of a Greek permanent establishment (PE) generally may not be offset against domestic-source profits, unless the losses arise in an EU/EEA member state that has concluded a tax treaty with Greece that does not contain a provision for a foreign branch income exemption. Based on these amendments, it follows that companies now are able to offset against domestic-source profits any foreign-source losses from non-PE business activities (e.g. foreign-source losses arising on the sale of shares or bonds). The main rule that tax losses may be carried forward for five consecutive years remains unchanged. The new rules apply retroactively as from 1 January 2014.

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Italy: The corporate tax rate reduced from 27.5% to 24% as from 1 January 2017. For banks and other financial institutions, the corporate tax rate remains 27.5%. "Non-operating" entities are subject to a 34.5% corporate tax rate (reduced from 38%). Additionally, the final withholding tax on dividends distributed to EU-resident shareholders and to qualified shareholders resident in a European Economic Area country reduced from 1.375% to 1.20% as from fiscal year 2017.

Myanmar: The government issued a notification on 10 January 2017 announcing that, as from 1 April 2017, the withholding tax on royalties paid for the use of licenses, trademarks, patents, etc. will be reduced from 20% to 15% for payments made to nonresidents (and from 15% to 10% on royalty payments made to residents). The rate on amounts paid to a nonresident for the procurement of goods within Myanmar and services will be reduced from 3.5% to 2.5%. A lower rate under an applicable tax treaty will apply directly if the nonresident submits a certificate of residence. The notification also states that no tax needs to be withheld if the total amount of the payment is less than MMK 500,000 per year.

Norway: The standard corporate tax rate reduced from 25% to 24% as from the fiscal year ending in 2017. Enterprises engaged in financial activities are, as a main rule, subject to corporate tax at a rate of 25%, plus an additional tax calculated as 5% of compensation paid to employees (the same compensation as is used for purposes of calculating the employer's social security contribution).

Peru: The government issued a legislative decree on 7 January 2017, which states that the standard rate of VAT will be reduced from 18% to 17% on 1 July 2017, provided the annual VAT collection up to 31 May 2017 reaches 7.2% of the country's GDP.

United States: On 31 January 2017, the IRS Large Business and International (LB&I) division announced its selection of 13 areas of campaign (areas identified as having substantial noncompliance risk) in its move toward issue-based examinations. Among the areas chosen are related party transactions and tax-free repatriation structures in the mid-market segment; foreign company US Form 1120-F reporting compliance; and transfer pricing methodologies of US distributors of goods sourced from foreign-related parties. The campaign also extends the IRS offshore voluntary disclosure program to certain US taxpayers who were previously denied access to or who voluntarily withdrew from the program.

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: On 25 January 2017, the German government introduced a bill into the legislative process that would limit the deductibility of related party royalty payments in certain cases involving the application of an intellectual property regime not based on the OECD nexus approach. The bill generally is based on a draft law published by the federal ministry of finance on 19 December 2016 (for prior coverage, see Germany tax alert, 25 January 2017).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-germany-25-january-2017.pdf

Hungary: A new law makes changes to the controlled foreign company regime that are broadly in line with the EU anti-tax avoidance directive. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_6.html

India: 2017 budget proposals would introduced restrictions on the deductibility of interest generally in accordance with BEPS action 4. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_1.html

Israel: A new law introduces two BEPS-compliant intellectual property regimes for technology companies. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_2.html

Peru: New reporting requirements follow BEPS action 13 recommendations. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_9.html

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United States: The IRS has released guidance on voluntary filing of country-by-country reports for early reporting periods. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_alerts.html

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United States
IRS releases guidance on voluntary filing of CbC report for early reporting periods
On 19 January 2017, the US Internal Revenue Service released Revenue Procedure 2017-23, which provides that ultimate parent entities of US multinational enterprise groups may file Form 8975 (CbC report) and accompanying schedule A for reporting periods that are earlier than the applicability date set out in Treasury regulations and begin on or after 1 January 2016. The revenue procedure discusses the timing and manner of these early filings.
Issue date: 27 January 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-001-27-january-2017.pdf

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