**In this issue:**



## South Africa's 2017 budget includes overall commitment to BEPS project

The South African Minister of Finance (MOF) presented the 2017 budget to parliament on 22 February 2017, proposing a number of changes to the tax rules for companies and individuals and reiterating South Africa's overall commitment to the OECD BEPS project. The budget now must be approved by parliament. Once approved, the tax proposals in the budget will enter into effect on various dates: some on the date the budget was presented, some from 1 March 2017 (or from years of assessment commencing on or after 1 March 2017) and some when further legislation is promulgated (certain proposals are still subject to further investigation and public consultation before being finalized).

The 2017 budget includes a provision that would increase the top individual marginal income tax rate to 45% (from 41%), effective from 1 March 2017. No changes are proposed to the corporate income tax rate. The tax proposals that would affect nonresident companies and multinational groups doing business in South Africa include the following:

**Withholding tax rate increases**

The rate of withholding tax on taxable dividends paid by South African companies to nonresidents would be increased from 15% to 20%, effective from 22 February 2017, and would result in an increased combined effective statutory tax rate on such dividends of 42.4% (up from 38.8%). The maximum rate on inbound foreign dividends also would be increased from 15% to 20%, effective from years of assessment commencing on or after 1 March 2017.

The rate of withholding tax imposed on the sale of immovable property in South Africa by nonresidents, which represents an advance payment of the capital gains tax, would be increased to 10% (from 7.5%) for companies and to 7.5% (from 5%) for individuals, in line with the increased capital gains tax rates that became effective on 1 March 2016. The increased rates would apply to disposals occurring on or after 22 February 2017.

**Expansion of dividend stripping rules**

The dividend stripping rules would be extended to apply to dividend stripping schemes where the loan funding is provided by a third party.

South Africa's tax rules target dividend stripping avoidance schemes where, just before the disposal of shares in a company, the controlling shareholder causes the company to declare a dividend that reduces the value of the shares for capital gains tax purposes. Consequently, under current law, if a company declares a dividend that is not subject to income or withholding tax and that is funded through a loan or guarantee from the acquirer of the shares (or a person related to the acquirer), the dividend will, in certain circumstances, be added to the share sale proceeds for purposes of calculating the capital gains tax due. A 2017 budget provision would apply the rules to situations where third-party loans are used to fund such dividend payments.

**Deductions for intellectual property (IP) royalties paid to certain nonresidents**

Current rules prohibit tax deductions for royalties incurred by South African taxpayers for the use of, or the right to use, "tainted IP" (*i.e.* locally developed IP assigned to a foreign entity located in a low-tax jurisdiction and licensed back to the South African taxpayer in exchange for royalty payments). The MOF has acknowledged that this anti-avoidance provision may dissuade South African-based groups from further local development of offshore IP for purely commercial reasons. Accordingly, the budget includes a proposal for the government to consider a relaxation of these rules under certain conditions still to be determined.

**Other income tax measures**

The following are some of the other income tax-related proposals included in the 2017 budget:

- A special tax dispensation would be introduced for foreign investors that invest in funds in South Africa for onward investment into the rest of Africa and the world, in particular, to encourage the establishment of financial hubs in the country.
- The qualifying criteria for "domestic treasury management companies," which are not required to recognize foreign exchange gains or losses for tax purposes, would be relaxed.
- Legislation would be proposed that would curb the use of offshore trusts and controlled foreign companies that reduce a taxpayer's liability for tax in South Africa.
- Legislation would be proposed that would prevent the avoidance of withholding tax and capital gains consequences on dividend distributions from "contributed tax capital" to foreign parent companies.
- Limited tax relief (available with respect to certain lending arrangements under current law) would be extended to include listed foreign government bonds.
- Foreign "donor funding organizations" would be exempt from withholding tax, in addition to income tax.

### Value added tax (VAT) measures

The standard rate of VAT would remain at 14%.

Current law requires foreign entities to register for, collect and remit VAT on supplies of electronic services to South African consumers. A budget proposal would broaden the scope of the definition of electronic services subject to VAT to include cloud computing and other services that are provided using online applications.

The definition of "resident" for VAT purposes would be amended to exclude certain foreign entities that currently are "effectively managed" from South Africa, in keeping with the spirit of the law being a destination-based tax.

### Exchange control measures

Budget proposals relating to exchange control include:

- The government's review of South Africa's exchange controls against best practices in other developing economies;
- The initiation of a consultation process with interested parties on new inward listings, "loop structures" and trusts, intended to discourage tax inversions where companies relocate their legal residence to lower-tax jurisdictions;
- The lifting of Reserve Bank approval requirements and certain other restrictions for standard IP transactions; and
- The permitted listing of exchange-traded funds referencing foreign assets on South African exchanges by collective investment scheme management companies.

### Commitment to BEPS

The MOF acknowledged in his budget speech the work being undertaken by South Africa with respect to its involvement in the OECD BEPS project. South Africa already has the legislation in place to address many of the BEPS areas of concern. The country's current positions on the OECD recommendations on the 15 BEPS actions are as follows:

- **Digital economy (action 1):** Foreign multinationals rendering electronic services to local customers are required to register as South African VAT vendors. The regulations are under further review.
- **Hybrid mismatches (action 2):** South Africa has detailed tax rules deeming dividends on certain shares to be income and deeming interest on hybrid debt instruments to be dividends where appropriate. Further refinements may be considered.
- **Controlled foreign company (CFC) rules (action 3):** South Africa has detailed CFC rules.
- **Interest deductions (action 4):** South Africa has implemented detailed legislation to prevent the erosion of the tax base through excessive interest deductions. The government will review the legislation in light of the OECD recommendations and continue its focus on curbing excessive debt financing.
- **Harmful tax practices (action 5):** South Africa took part in the Forum on Harmful Tax Practices and has completed a self-review of preferential regimes.
- **Treaty abuse (action 6):** New treaties will comply with the BEPS project's minimum standards, while the multilateral instrument will address existing treaties. South Africa has opted to apply the principal purpose test to deal with treaty shopping, where an entity may be denied the benefits of a tax treaty if it is reasonable to conclude that obtaining such benefits was one of the main purposes of entering into a transaction.
- **Permanent establishment (PE) status (action 7):** South Africa will follow the recommendations to prevent entities from artificially avoiding PE status by fragmenting a cohesive business into smaller operations. These preventative measures will be incorporated in future tax treaty negotiations.
- **Transfer pricing (actions 8-10):** The tax authorities are updating the transfer pricing practice note in line with the OECD transfer pricing guidelines and the BEPS project and, specifically, the agreed approach to ensure the appropriate pricing of intangibles.
- **Data analysis (measuring and monitoring) (action 11):** South Africa will continue to work with other countries to curb BEPS through improved statistics and evaluation.
- **Mandatory disclosure (action 12):** The South African reportable arrangement rules have been used as a benchmark in the BEPS action 12 recommendations.

- **Transfer pricing documentation (action 13):** The regulations on country-by-country reporting and mandatory transfer pricing documentation were gazetted in 2016 and are in effect.
- **Dispute resolution (action 14):** The South African model treaty will be updated to include the minimum standards. South Africa has not committed to mandatory binding mutual agreement procedure arbitration.
- **Multilateral instrument (action 15):** South Africa is among a multitude of countries that have reached consensus on the OECD multilateral instrument, with the aim of incorporating BEPS recommendations into the existing network of bilateral treaties.

**Comments**

While the overall aim of the proposed budget is to raise tax revenue by increasing tax rates and curbing certain perceived tax avoidance opportunities (including by addressing BEPS-related actions and recommendations), the government also has proposed certain relief measures that hopefully would aid South Africa in becoming a destination of choice for large multinational groups focused on expanding their international presence.

— Le Roux Roelofse (Cape Town)
Director
Deloitte South Africa
lroelofse@deloitte.co.za

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## Brazil:
## Guidance issued on exchange of information on rulings

Brazil's tax authorities published a normative ruling on 21 February 2017 that contains guidance on measures to implement the OECD recommendations under BEPS action 5 (harmful tax practices). This initiative had been subject to a recent public consultation (for prior coverage, see *World Tax Advisor*, 16 December 2016), and the NR is consistent with the wording of the draft document.
**URL:** http://newsletters.usdbriefs.com/2016/Tax/WTA/161216_3.html

The NR introduces a new article to a 2013 NR that regulates ruling procedures relating to the interpretation of the tax law.

Rulings on transfer pricing, permanent establishments and certain R&D incentives will be subject to the mandatory exchange of information with other tax authorities. Private letter rulings, resolution acts and interpretative acts also will fall within the scope of the exchange of information.

The new NR applies as from the date of publication.

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

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

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## Finland:
## Refund opportunities for portfolio dividends received by non-listed SICAVs limited

In a decision dated 19 December 2016, Finland's Supreme Administrative Court (SAC) confirmed that portfolio dividends paid by Finnish publicly listed companies to a Maltese non-listed SICAV (i.e. an open-ended collective investment scheme with variable capital) are subject to Finnish withholding tax.

**Background**

The case before the SAC involved a Maltese multi-fund investment company (fund) that was planning to invest in Finnish publicly traded companies and that sought an advance ruling from Finland's Central Tax Board (CTB) on whether it could be deemed comparable to a tax-exempt Finnish investment fund. If comparable to a Finnish investment fund, the Maltese fund could receive portfolio dividends from Finnish listed companies free from Finnish withholding tax. (Portfolio dividends are those earned on investments of less than 10% in the capital of the distributing company.)

The Maltese fund, established as a SICAV with variable capital, was a non-listed, public limited liability company and a separate legal person. The fund was not an investment company as defined under the EU undertakings for collective investment in transferable securities (UCITS) directive. The fund also was licensed and supervised by the Malta financial services authority. The fund had a separate management company, and the assets of its sub-fund were held by an appointed custodian or a prime broker.

The fund was entitled to benefits under Malta's tax treaties, including the treaty with Finland, based on a tax residence certificate issued by the Maltese tax authorities. Under Maltese tax rules, the fund was not required to pay Malta income tax (or other direct taxes) on the dividends derived from the investments in the Finnish publicly listed companies because of its status as a "non-prescribed fund" under the Maltese Collective Investment Schemes (Investment Income) Regulations, 2001. Thus, there was no tax in Malta against which the Finnish withholding tax could be credited.

The CTB took the position that the fund was comparable to a *Finnish limited liability company* and, as such, subject to Finnish withholding tax on portfolio dividends from Finnish publicly listed companies. The fund appealed this decision to the SAC, arguing that the Finnish rules violate the free movement of capital principle in EU law.

**SAC decision**

The SAC agreed with the CTB's findings and held that the fund was not objectively comparable to a tax-exempt Finnish investment fund, but instead was comparable to a Finnish limited liability company, which is taxable in Finland. In making its decision, the SAC reasoned that, unlike a Finnish investment fund, whose investments are collectively owned by its investors, the Maltese SICAV is a separate legal person that owns the investment assets it holds.

As a result, the SAC found that because the portfolio dividends from Finnish publicly listed companies would be fully taxable in Finland if received by a non-listed Finnish limited liability company, Finland's rules that tax portfolio dividends paid to a comparable nonresident fund cannot be deemed incompatible with the free movement of capital under EU law.

**Comments**

The SAC decision is final and cannot be appealed. In finding that the fund was comparable to a Finnish limited liability company, the SAC gave the legal characteristics of the fund (separate legal personality and ownership of the underlying investment assets) more weight than its functional features (investment fund/collective investment scheme activities and the setup through the management company, etc.), although the SAC also stated that the fund was not directly comparable to any Finnish entity.

As a result of this decision, non-listed SICAVs now have very limited (if any) opportunities to obtain a full exemption from Finnish withholding tax on portfolio dividends, unless a tax treaty applies to reduce or eliminate the tax. Although the decision concerned a non-UCITS SICAV, potential UCITS status is not expected to change the result of the decision, since the court gave weight to legal personality and not functional features. However, because the decision specifically concerned a non-listed SICAV, refund opportunities still may exist for listed SICAVs.

— Pia Stubb (Helsinki)
Partner
Deloitte Finland
pia.stubb@deloitte.fi

Salla Holma (Helsinki)
Senior Manager
Deloitte Finland
salla.holma@deloitte.fi

## Korea:
## Changes made to flat rate income tax regime for foreign employees

In December 2016, the Korean National Assembly approved changes to the income tax law that included revisions to the flat income tax rate regime for foreign employees working in Korea. The changes to the regime limit the period in which a foreign employee can qualify for the flat tax rate. Additional information is now available on how the limitation will be applied, and on an increase in the flat income tax rate. The changes are effective as from 1 January 2017.

Under the Tax Incentives Limitation Law, foreigners are allowed to elect a flat income tax rate as an alternative to the regular, progressive individual income tax rates (ranging from 6% to 40% (6.6.% to 44%, including a local income tax surcharge)) when calculating the individual income tax liability on earned income. If a flat tax rate is elected, it is applied as a withholding tax to all gross income earned in Korea, with no deductions, income exclusions or tax credits allowed.

In connection with numerous tax law revisions designed to achieve fair and equal taxation, the Ministry of Strategy and Finance approved increasing the flat income tax rate to 20.9% (including a local income tax surcharge of 1.9%) from 18.7%, to reduce the taxation disparity between Korean nationals and foreign taxpayers.

The application of the flat income tax rate election is limited to a maximum of five years from the start date of Korean employment for foreign employees arriving in Korea for the first time on any day between 1 January 2014 and 31 December 2018. For example, if a foreign employee started work in Korea on 1 March 2016, that employee is eligible to elect the flat income tax rate through the end of tax year 2020.

For cases in which a foreign employee began working in Korea before 1 January 2014, the flat income tax rate election will be allowed until the end of 2018, even if five years have elapsed from the date the employee began working in Korea.

Foreign employees starting work in Korea after 1 January 2019 are not eligible for the flat income tax rate, unless they work for “qualified regional headquarters” of foreign companies.

Companies should take into account their foreign employees’ eligibility period to qualify for the flat income tax rate, since this could have a significant impact on the overall tax costs for the deployment. Companies also should ensure that the relevant income tax is withheld.

— Min Soo Seo (Seoul)
Principal
Deloitte Korea
mseo@deloitte.com

Joe Choi (Seoul)
Senior Manager
Deloitte Korea
joechoi@deloitte.com

## Namibia:
## Tax amnesty program introduced

As part of Namibia’s ongoing efforts to improve tax collection, the Minister of Finance (MOF) announced the commencement of a temporary tax amnesty program on 26 January 2017. The program, which waives all penalties and 80% of accrued interest on overdue tax liabilities that are settled and paid under program guidelines, began on 1 February 2017 and will continue through 31 July 2017.

The amnesty is available to all Namibian taxpayers (*i.e.* companies, “close corporations” and other businesses and individuals) with outstanding liabilities for any of the following taxes for tax periods through 31 July 2017: income tax, value added tax (VAT) and import VAT, employee’s tax, stamp duty, nonresident shareholder’s tax and withholding tax on royalties. (The announcement did not specifically mention withholding tax on services or withholding tax on interest as being included within the scope of the amnesty program.)

The amnesty also is available to any person or company with overdue tax liabilities that previously was required to register, but has not yet registered, with the Namibian tax authorities for any of the types of taxes covered under the program.

To participate in the amnesty, taxpayers must complete the following actions before 31 July 2017:

- Submit the prescribed form to the MOF (the form is available at all regional tax authority offices and on the MOF website).
- Submit all outstanding tax returns, which will need to be processed for the correct amount of tax to be reflected in the tax system, before making the required settlement payment.
- Pay the full amount of tax and 20% of the outstanding accrued interest into a special bank account opened by the MOF to receive settlement payments under the amnesty program. Payments may be made in installments over a maximum period of six months, with the entire settlement required to be paid by 31 July.

Once these actions have been completed and the settlement payment has been received, the full penalty and 80% of the interest on the debt will be waived and written off by the MOF.

Penalties and interest payments made before 1 February 2017 do not qualify for the program and, therefore, will not be refunded.

**Comments**

Companies and individuals that wish to participate in the amnesty should obtain and review full statements of account from the MOF, investigate outstanding balances and resolve any open issues to ensure all overdue liabilities are accurately reported and settled under the amnesty program by the 31 July 2017 deadline.

— Gerda Brand (Windhoek)
Director
Deloitte Namibia
gbrand@deloitte.co.za

Olivia Nghaamwa (Windhoek)
Senior Manager
Deloitte Namibia
onghaamwa@deloitte.co.za

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## New Zealand:
## BEPS consultation papers issued

On 3 March 2017, New Zealand's Minister of Revenue and the Finance Minister released three BEPS consultation papers that address the following:

- Tackling concerns relating to transfer pricing and avoidance of permanent establishment (PE) status, regarding multinationals booking profits from their New Zealand sales offshore, even where the sales are driven by New Zealand-based staff;
- Preventing multinationals from using interest payments to shift profits offshore by strengthening the rules governing limits on the deductibility of interest expenses; and
- Implementing the multilateral instrument (MLI) to align New Zealand's tax treaties with the OECD recommendations.

In a media statement that accompanied the release of the consultation papers, the ministers acknowledged that, although New Zealand's broad-base, low-rate tax system operates well by global standards, it is important that the system continue to evolve, to ensure that all companies operating in the country are paying their fair share of tax.

Submissions on the consultation document on implementing the MLI are open until 7 April 2017; submissions on the other two consultations are open until 18 April 2017.

**Transfer pricing and avoidance of PE status**

This discussion document proposes to strengthen New Zealand's transfer pricing and source rules, prevent the abuse of tax treaties and limit the ability to avoid PE status.

**Transfer pricing:** The consultation paper contains the following proposed changes to the transfer pricing rules:

- The rules would be aligned with the OECD's guidelines and, to some extent, with Australia's newly implemented transfer pricing rules;
- The burden of proof would be shifted from the tax authorities to the taxpayer with respect to whether the actual conditions of an arrangement are aligned with arm's length conditions;
- The statute of limitations for transfer pricing issues would be increased from four years to seven years; and
- The scope of the transfer pricing rules would be extended to investors that "act together."

**Avoidance of PE status:** The government proposes to introduce a new anti-avoidance rule for large multinationals (*i.e.* those with consolidated global turnover exceeding EUR 750 million (approximately NZD 1.13 billion)) that are deliberately structured to avoid having a PE (and, therefore, a taxable presence) in New Zealand. This rule would deem a nonresident entity to have a PE in New Zealand if a related entity carries out sales-related activities for the nonresident entity in New Zealand, if some or all of the sales income is not attributed to a New Zealand PE of the nonresident and if the arrangement aims to defeat the purpose of the PE provision in the relevant tax treaty.

**Amendments to source rules:** The following are among the changes that would be made to New Zealand's source rules:

- An amount of income would be deemed to have a New Zealand source if New Zealand has a right to tax the income under the PE article of an applicable tax treaty. If a nonresident is not a party to an applicable treaty, New Zealand's model treaty PE article, which would be incorporated into domestic law, would apply as an additional source rule.
- A rule would be introduced to provide that a nonresident's income would have a source in New Zealand if it would have such a source if the nonresident's wholly owned group were treated as a single entity. This would prevent nonresidents from avoiding having New Zealand-source income by splitting their activities among members of a wholly owned group.

**Administrative rules and effective dates:** The administrative rules would be significantly strengthened to deal with uncooperative large multinationals. Tax in dispute would have to be paid earlier in the dispute process where the dispute relates to transfer pricing. The tax authorities would be allowed to collect tax payable by a large multinational from any wholly owned group member in New Zealand or, in a case where the new PE rule applies, from the related New Zealand entity.

The discussion document suggests that the above proposals would apply to income years beginning on or after the enactment of the relevant legislation.

**Interest deductibility limitation rules**

In the discussion document that addresses limits on the deductibility of interest expense, the government includes proposals to further strengthen New Zealand's thin capitalization regime, rather than to take the OECD approach of limiting interest deductions to a percentage of EBITDA. However, the EBITDA approach has not been definitively rejected and will be reconsidered if the proposed measures are not effective.

Broadly, it is proposed that there would be a limit on the deductible interest rate on related-party loans from a nonresident lender to a New Zealand borrower. The government is of the view that such a rule would ensure that the interest rate on such loans is roughly in line with the rate the borrower would agree to with a third-party lender. This is designed to reduce or eliminate costly disputes over an appropriate interest rate under the standard transfer pricing rules.

The discussion document includes other proposals relating to interest, including the introduction of a *de minimis* level for the inbound thin capitalization rules (provided the debt is not owner-linked), and proposals to reduce the ability for companies owned by a group of nonresidents to use related-party debt.

The discussion document suggests a delayed application date to allow businesses to arrange their affairs as required, with proposals applying to the income year beginning after the enactment of the relevant legislation.

**Multilateral instrument**

The third consultation document aims to explain what the MLI is, and how it would operate to amend New Zealand's tax treaty network.

The MLI can be viewed as a way to facilitate a large-scale, simultaneous negotiation to modify bilateral tax treaties to include treaty-related BEPS measures (otherwise known as the "substantive provisions," as outlined in the BEPS final reports on actions 2, 6, 7 and 14), and to enable jurisdictions to meet the OECD's minimum standards on treaty abuse and dispute resolution. Jurisdictions may not choose to apply different articles of the MLI to different treaties, and must decide which treaties they would like to include as part of a "covered tax agreement" (CTA) and their choice of articles. Following this step, jurisdictions must ascertain how the relevant treaty would be modified by the MLI (as governed by the substantive provisions).

The substantive provisions fall into two categories: minimum standards and optional provisions. These provisions address BEPS concerns in four key areas:

- *Preventing the granting of treaty benefits in inappropriate circumstances* through the insertion of a "principal purpose test," or an equivalent provision, into CTAs;
- *Preventing the artificial avoidance of PE status* by adding a requirement to clarify the carve-outs from the PE definition, to prevent entities from structuring to avoid paying tax on profits attributable to New Zealand;
- *Neutralizing the effects of hybrid mismatch entities* by adopting articles 3 and 4 of the MLI in relation to fiscally transparent entities and dual resident entities, respectively; and
- *Providing improved mechanisms for effective dispute resolution* so that taxpayers may request the application of a mutual agreement procedure (MAP) where they believe that taxation is not in accordance with the treaty (or where the treaty does not contain a MAP). If a MAP is included in the relevant treaty, the MLI will amend the treaty to allow taxpayers to approach the competent authorities in either jurisdiction to clarify any uncertainty as to how the treaty should apply.

The MLI will be signed by a number of participating jurisdictions in June 2017; after signature by New Zealand, the MLI will go through New Zealand's domestic treaty-making process. The MLI will enter into force generally (in its own right), and for the states that have ratified it, three to four months after the fifth jurisdiction has ratified the MLI. The MLI will enter into effect to modify each bilateral tax treaty, on a phased-in basis, once both treaty partners have signed and ratified the MLI. The precise dates on which New Zealand's treaties will begin to be modified are unknown, but it is likely that the earliest modifications will occur in 2019.

— Emma Marr (Auckland)
Associate Director
Deloitte New Zealand
emarr@deloitte.co.nz

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## Papua New Guinea: Tax changes aim to address issues in 2017 budget measures

Papua New Guinea's (PNG) parliament approved additional changes to the Income Tax Act 1959 (ITA) on 3 February 2017 that are designed to address some unintended outcomes and uncertainties related to the tax measures announced in the 2017 national budget in November 2016 and that generally became effective as from 1 January 2017, particularly with respect to the tax treatment of dividends, country-by-country (CbC) reporting, the foreign contractor tax and the Additional Profits Tax (for prior coverage, see *World Tax Advisor*, 25 November 2016).
**URL:** http://newsletters.usdbriefs.com/2016/Tax/WTA/161125_1.html

**Dividend withholding tax**

The 2017 budget announced the repeal of several provisions relating to the dividend withholding tax. Some of these have been revived by the recent amendments, but with some important changes.

A resident company will be required to withhold dividend tax if it pays or credits a dividend, or an amount that is deemed to be a dividend, to a resident individual, a resident trust estate or a nonresident person (including an overseas company). Dividends paid between resident companies are not subject to dividend withholding tax.

- **Impact on resident individuals, trust estates and nonresident companies:** The withholding tax on dividend payments to resident individuals, resident trust estates or nonresident persons (including overseas companies) is restored as a final tax. Therefore, where a dividend has been subject to withholding tax, there are no further obligations on the part of the recipients to declare and pay more tax on that dividend income in PNG.

- **Impact on resident companies:** As announced in the 2017 budget, dividend withholding tax no longer is applicable on a dividend paid by a resident company to another resident company. However, the recipient company must include the dividend in its assessable income (if it is not specifically exempt).

  Importantly, the dividend rebate previously applicable to dividends included in a resident company's assessable income has been repealed, effective 1 January 2017. Therefore, each resident company in the ownership chain will be required to account for the dividend as assessable income, without an offsetting rebate. As a result, dividends no longer can flow through to resident companies without further income tax applying at each stage in the ownership chain. Given the negative implications this change may have for companies that invest in the shares of other companies in PNG, taxing dividend flows in such a manner seemingly is either a significant tax policy shift or an unintended consequence of the legislative amendments.

- **Dividends received from foreign companies:** The changes clarify that dividends received by a PNG company from a foreign company are not subject to dividend withholding tax in PNG. However, the dividends must be included in the assessable income of the PNG company, with no dividend rebate available. These changes do not impact the ability of residents to claim a foreign tax credit, where available.

- **Refund of dividend withholding tax:** The provisions regarding the refund of dividend withholding tax have been reinstated, but only with respect to dividend income derived by resident companies before 1 January 2017. While this appears to be a transitional measure to retain access to unclaimed dividend withholding tax refunds existing as of 31 December 2016, some potential difficulties remain regarding the mechanism to achieve this objective.

- **Collection of dividend withholding tax:** A new section included in the ITA covers the collection of dividend withholding tax. This section, to some extent, duplicates existing rules, but it also raises some additional questions about legislative intent, including regarding the claiming of credits in respect of deductions made from dividends. The application of the new provisions will need to be monitored and discussed with the Internal Revenue Commission.

### CbC reporting

The 2017 budget included the introduction of a new section in the ITA to provide for CbC reporting. This section has been repealed and replaced, due to incorrect referencing to provisions of the ITA and to increase the minimum monetary threshold that will trigger the financial reporting requirement. The CbC reporting requirement now will not apply where a group of companies has total consolidated group revenue of less than PGK 2.3 billion as of January 2016 (increased from PGK 2 million, as announced in the budget).

### Foreign contractor withholding tax

The revised foreign contractor withholding tax rate of 15%, which applies to the prescribed contract value, remains effective from 1 January 2017. The withdrawal of the ability for foreign contractors to request to be taxed on a net income basis has not been reinstated. This measure seemingly is at odds with PNG's obligations under tax treaties with foreign countries.

### Resource industry

The definitions within the Additional Profits Tax (APT) regime in the income tax legislation have been amended to clarify that the APT applies to all resource projects, and not only to designated gas projects. While the intent of the

2017 national budget was clearly for all resource projects to fall within the APT regime, not all existing definitions in the legislation had been amended to achieve this result. No transitional rules protecting existing projects from the APT's immediate operation have been introduced.

It also has been clarified that the changes to division 10 of the ITA, including the APT regime, are subject to fiscal stability agreements. In the absence of such fiscal stability agreements, there are no transitional provisions otherwise affecting the introduction of the APT from 1 January 2017.

Finally, the budget announced that the standardization of the income tax rate at 30% for mining, petroleum and gas operations would be applicable starting with the 2017 income year. Taxpayers with a tax year other than 1 January to 31 December may apply the 30% rate to their entire 2017 tax year, even where their tax year started prior to 1 January 2017.

— Andrew Harris (Port Moresby)
Partner
Deloitte Papua New Guinea
andrewharris@deloitte.com.pg

Dick Nijdam (Port Moresby)
Principal
Deloitte Papua New Guinea
dnijdam@deloitte.com.pg

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## Taiwan:
## Foreign e-service providers required to register and pay VAT

Taiwan's Executive Yuan announced on 13 February 2017 that the new VAT rules requiring nonresident business entities providing electronic services (e-services) to domestic individuals to register with Taiwan's tax authorities for VAT purposes and pay a 5% VAT in Taiwan will apply as from 1 May 2017 (for prior coverage, see *World Tax Advisor*, 14 October 2016).
**URL:** http://newsletters.usdbriefs.com/2016/Tax/WTA/161014_6.html

The changes to the Value-Added and Non-Value-Added Business Tax Act were promulgated on 28 December 2016 to bring the VAT rules governing the provision of cross-border e-services in line with international standards (particularly those based on the OECD BEPS project).

The main changes to the VAT rules are as follows:

- A foreign enterprise, institution, group or organization that does not have a fixed place of business within Taiwan and that provides e-services to domestic individuals (a nonresident e-service provider) will be deemed to be the VAT payer in these cases.
- A nonresident e-service provider will be required to register with the competent tax authorities and file a VAT return or appoint a VAT filing agent to handle the compliance obligations. The Ministry of Finance (MOF) announced on 15 February 2017 that the proposed annual sales threshold for a nonresident e-services provider to be required to register for Taiwan VAT purposes will be NTD 480,000 (around USD 15,500).
- Penalties will be imposed on the VAT filing agent if the VAT return and payment on behalf of a nonresident e-service provider are not made in a timely manner.

The MOF is expected to issue implementing regulations and to create a dedicated website for simplified VAT registration and filing.

— Ping Gwo (Taipei)
Partner
Deloitte Taiwan
pinggwo@deloitte.com.tw

Amber Li (Taipei)
Senior Manager
Deloitte Taiwan
amberli@deloitte.com.tw

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## In brief

**European Union:** The Court of Justice of the European Union (CJEU) ruled on 9 February 2017 that a VAT exemption may not be denied for an intra-EU supply simply because the purchaser (who was registered for VAT in Spain) had not been registered in VIES (VAT Information Exchange System) or under specific Spanish registration rules on the intra-community acquisition of goods. The case involved the sale of tires by the Portuguese branch of a Dutch company to its Spanish distributor. The basic conditions for treating the sale as a cross-border dispatch and acquisition (transfer of title to a trading entity) had been fulfilled, and there was no evidence of fraudulent intent. In such circumstances, the CJEU concluded that failure to comply with a formal technical requirement, such as inclusion in VIES, should not be allowed to interfere with recognizing the underlying economic reality of the transaction. The decision not only emphasizes the importance of the underlying economic reality in determining intra-EC VAT accounting, but also is a reminder that proper observance of the rules may avoid a dispute with the tax authorities in the first place.

**Isle of Man:** The budget delivered on 21 February 2017 does not include any changes to company tax or VAT.

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## BEPS corner

In each issue that provides updates on developments in the OECD BEPS initiative, *World Tax Advisor* includes a "BEPS corner" covering these developments.

**Brazil:** A new ruling contains guidance on measures to implement BEPS action 5. See the article in this issue.
**URL:** http://newsletters.usdbriefs.com/2017/Tax/WTA/170310_2.html

**European Union:** On 21 February 2017, the EU Economic and Financial Affairs Council reached political agreement on the terms of a draft directive to expand the scope of the EU's anti-tax avoidance directive in respect of countering hybrid mismatches (see European Union tax alert, 24 February 2017).
**URL:** https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-24-february-2017.pdf

**Germany:** The Federal Ministry of Finance has published draft amendments to the transfer pricing documentation decree to implement BEPS action 13, as incorporated in the OECD transfer pricing guidelines (see Global Transfer Pricing Alert 2017-003, 6 March 2017).
**URL:** https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-003-6-march-2017.pdf

**New Zealand:** The government has released three consultation documents proposing measures to strengthen rules for taxing large multinationals, in line with the OECD BEPS recommendations. See the article in this issue.
**URL:** http://newsletters.usdbriefs.com/2017/Tax/WTA/170310_6.html

**Papua New Guinea:** Legislative amendments increase the minimum financial threshold that triggers the CbC reporting requirement. See the article in this issue.
**URL:** http://newsletters.usdbriefs.com/2017/Tax/WTA/170310_7.html

**South Africa:** The Minister of Finance addressed South Africa's work with respect to its involvement in the OECD BEPS project in his budget speech. See the article in this issue.
**URL:** http://newsletters.usdbriefs.com/2017/Tax/WTA/170310_1.html

**Taiwan:** Changes relating to cross-border supplies of electronic services to domestic individuals will bring the VAT rules in line with BEPS standards. See the article in this issue.
**URL:** http://newsletters.usdbriefs.com/2017/Tax/WTA/170310_8.html

**United Kingdom:** The Chancellor of the Exchequer addressed interest deductibility and hybrid mismatch arrangements in the spring budget delivered on 8 March 2017. See the article in this issue.
**URL:** http://newsletters.usdbriefs.com/2017/Tax/WTA/170310_alerts.html#UK

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## Global Tax Alerts

**European Union**
**ECOFIN agrees to extend rules on hybrid mismatches: Anti-tax avoidance directive 2**
On 21 February 2017, the EU Economic and Financial Affairs Council reached political agreement on the terms of a draft directive to expand the scope of the EU's anti-tax avoidance directive in respect of countering hybrid mismatches.
Issue date: 24 February 2017
**URL:** https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-european-union-24-february-2017.pdf

**Germany**
**Germany publishes new draft legislation on transfer pricing documentation**
The German Federal Ministry of Finance recently published draft amendments to the transfer pricing documentation decree that specifies what information must be included in a taxpayer's transfer pricing documentation report.
Issue date: 6 March 2017
**URL:** https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-003-6-march-2017.pdf

**United Kingdom**
**Impact of Spring Budget 2017 on foreign-owned groups**
The last-ever Spring Budget delivered by the Chancellor of the Exchequer on 8 March 2017, before the UK changes to an annual Autumn Budget later in 2017, reaffirms the government's commitment to the Business Tax Road Map announced in Budget 2016 and that the UK remains "open for business."
Issue date: 8 March 2017
**URL:** https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-8-march-2017.pdf