In this issue:

Changes to Vietnam's transfer pricing rules bring the rules in line with BEPS actions

A final decree issued by the Vietnamese government on 24 February 2017 (Decree 20) makes comprehensive changes to the country's transfer pricing rules to better align them with the OECD BEPS actions (for prior coverage, see *World Tax Advisor*, 14 October 2016). Decree 20 replaces Circular 66 (which previously regulated the tax treatment of related party transactions) and will apply as from 1 May 2017. A new circular that will include detailed guidelines for implementing the provisions of Decree 20 is expected by July 2017.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161014_8.html

The decree revises the definition of a "related party," provides a safe-harbor limitation for the deduction of interest expense and sets out the types of related party expenses that may be considered nondeductible based on a newly introduced "substance-over-form" analysis. In addition, the decree introduces new reporting requirements in line with the BEPS action 13 three-tiered approach, *i.e.* master file, local file and country-by-country (CbC) report. These and some of the other significant changes provided in the decree are summarized below.

Definition of related party

Decree 20 increases the direct or indirect ownership threshold for purposes of classifying enterprises as related parties from 20% to 25%, and extends the definition relating to borrowings to include loans from third parties that are guaranteed by a related party and similar financial arrangements.

Decree 20 abolishes the following categories of related parties included under Circular 66:

- Parties directly or indirectly owned by the same third party;
- Parties to certain contractual business cooperation agreements; and
- Parties to transactions where:
  - Over 50% of the products (calculated for each kind of product) sold by one party are directly or indirectly controlled by the other party;
  - Payments by one party for the use of intangible assets or intellectual property of the other party account for over 50% of the payer's production costs; or
  - Over 50% of the value of raw materials, supplies or other input products used by one party in the manufacturing process are supplied by the other party.

The decree introduces the following two new categories of related parties:

- Parties controlled by the same individual through his/her personal capital contribution or direct business management; and
- Parties effectively managed or controlled through the decisions or activities of another party (*i.e.* when applying the substance-over-form principle).

Interest expense safe-harbor limitation

Decree 20 limits interest expense deductions to 20% of net profit before tax, loan interest and depreciation and amortization expenses (EBITDA), except for credit organizations and insurance businesses. (The forthcoming circular is expected to clarify whether this 20% of EBITDA safe harbor applies to third-party interest.) There are no carryforward or carryback provisions for excess interest expense.

Nondeductible related party expenses

Under the new decree, certain related party expenses and payments (*e.g.* payments for the use of tangible or intangible assets or for services) may be treated as nondeductible for corporate income tax purposes based on the substance-over-form principle, even where the payments are made at an arm's length price. Specifically, payments made to a related party may be treated as nondeductible where any of the following conditions exist:

- The related party does not conduct any business activities relevant to the taxpayer's business;
- The related party conducts business activities, but the related party's assets, number of employees and functions are not commensurate with the value of the business it transacts;
- The related party does not have any rights and responsibilities associated with the assets, goods or services it provides to the taxpayer; or
- The related party is established in a country or territory in which it is not subject to corporate income tax and/or the payment does not create revenue or add value to the taxpayer's business activities.

Additionally, payments made to a related party for intragroup services may be treated as nondeductible where:

- The services provided by the related party only serve the interests of, or create added value for, other related parties;
- The services are provided for the benefit of the related party's shareholder;

- The services provided are duplicative in nature;
- The services provided to the taxpayer benefit other group members; or
- The benefits received by the taxpayer are only incidental in nature.

Payments to a related party relating to the mark-up on third-party costs are nondeductible where the intermediary related party did not contribute additional value.

Hierarchy of comparables

Decree 20 provides detailed guidance on comparability analysis factors and establishes the following hierarchy of independent comparables to be used by taxpayers when selecting data for making arm's length determinations and adjustments:

1. Internal comparables of the taxpayer;
2. Comparables located in the same country and territory as the taxpayer; and
3. Comparables located in regions having similar industries and levels of economic development as the taxpayer's.

Currently, taxpayers are free to use data from any legal source that could be verified by the tax authorities to assess the arm's length nature of related party transactions.

Documentation and reporting

Decree 20 introduces new reporting requirements and forms that require information to be provided in line with the OECD BEPS recommendations. These reporting requirements include a local file, a group (master) file and a CbC report. Currently, only a local file is required.

A CbC report will be required only where:

- The taxpayer is the ultimate parent company incorporated in Vietnam and its group consolidated revenue exceeds VND 18,000 billion; or
- The taxpayer's ultimate parent company is incorporated outside Vietnam and must submit a CbC report for the entire group to its country of incorporation (in this case, a copy of the CbC report submitted to the foreign jurisdiction must be submitted to Vietnam).

If unable to provide the CbC report, the taxpayer must provide the tax authorities with a written explanation of the legal basis for its inability to comply, including specific provisions of the law of the foreign jurisdiction that prohibit the taxpayer from supplying the report.

The new rules exempt taxpayers fulfilling any of the following conditions from the requirement to prepare transfer pricing documentation and reports:

- The taxpayer has sales revenue of less than VND 50 billion, and the total value of its related party transactions does not exceed VND 30 billion;
- The taxpayer is a party to an advance pricing agreement with respect to its related party transactions; or
- The taxpayer performs simple business functions; creates no revenue or expenses from the use or exploitation of intangible assets; has sales revenue of less than VND 200 billion; and has operating margins of at least 5%, 10% and 15% for its distribution, manufacturing and processing activities, respectively.

The local file, group file and CbC report and related documentation must be prepared before the submission date of the corporate income tax return (which is due 90 days after the taxpayer's year-end) and must be submitted to the tax authorities no later than 15 business days (reduced from 30 days) after the tax authorities' request for the information during a tax audit (or no later than 30 business days after a request during the consultation period before a tax audit).

Additionally, Decree 20 introduces a new, revised declaration form, which reports detailed information on related party transactions and related party relationships and must be submitted with the taxpayer's corporate income tax return. Taxpayers that transact only with related parties subject to corporate income tax in Vietnam are exempt from certain of the reporting requirements in the declaration form, provided both parties are subject to the same tax rates and neither company is entitled to tax incentives during the tax period.

Comments

Decree 20 makes wide-ranging changes to Vietnam's transfer pricing regime and provides detailed guidance on the determination of arm's length principles for related party transactions in line with the OECD BEPS action points, which also makes the existing regulations more comprehensive. Decree 20 will require coordinated efforts between taxpayers and their parent companies to obtain and prepare documentation to be provided to tax offices in Vietnam within a statutory timeline, since certain data might not be available to taxpayers at the local level.

Taxpayers should review their related party business structures, agreements and compliance practices to ensure they are aligned with the new rules. From a compliance perspective, in addition to being a mandatory requirement, the preparation of a contemporaneous transfer pricing report in accordance with the Vietnamese regulations should help to minimize the chance of an adjustment by the tax authorities.

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Australia:
Corporate tax rate reduction scaled back

On 31 March 2017, Australia's senate passed the relevant legislation to reduce the corporate tax rate; the approval comes almost a year after the 2016-17 federal budget announcement. The original proposal would have reduced the corporate tax rate to 25% for all companies over a 10-year period, with the reduced rates initially applied to smaller companies (for prior coverage, see Australia tax alert, 5 May 2016). However, the final amendments provide for a scaled-back outcome: a staged reduction in the rate for companies with an annual turnover of less than AUD 50 million.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-5-may-2016.pdf

The corporate tax rate currently is 28.5% for companies with turnover of less than AUD 2 million, and 30% for all other companies. The amended legislation finally agreed in the senate would make the following changes:

- The small company tax rate would be reduced to 27.5% for the current year (2016-17).
- The small company turnover threshold would be progressively increased for these purposes to:
  - AUD 10 million for the year ended 30 June 2017;
  - AUD 25 million for the year ended 30 June 2018; and
  - AUD 50 million for the year ended 30 June 2019.
- The corporate tax rate would be lowered to 25% for small companies over a 10-year period. The 25% rate would be first effective for the year ended 30 June 2027.
- The corporate tax rate would be 30% for all other companies.

To access the reduced rates, the company would have to carry on a business. Turnover for these purposes would be based on worldwide income, including that of affiliates and entities connected with the company (irrespective of their residence).

The bill must return to the House of Representatives when parliament resumes in May, to be passed by the house and become law.

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Australia:
Diverted profits tax becomes law

Legislation that introduces a diverted profits tax (DPT) became enacted law on 4 April 2017, and will be effective for income years starting on or after 1 July 2017 (for prior coverage, see Australia tax alert, 2 December 2016). The legislation also includes measures significantly increasing penalties for taxpayers taking insufficient care in calculating their tax liability or failing to file certain documents on time, as well as an updating of the transfer pricing rules.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-2-december-2016.pdf

The DPT aims to prevent multinational corporations from "shifting profits" made in Australia offshore to reduce the Australian tax on those profits, by imposing a 40% tax charge on such profits. This also should help to ensure that the Australian tax payable by significant global entities properly reflects the economic substance of the activities that those entities carry on in Australia. The DPT also enhances the power of the Australian Taxation Office (ATO) to combat "artificial" or "contrived" tax avoidance arrangements.

The 40% DPT will be imposed on tax benefits obtained from cross-border arrangements that:

- Result in profits being diverted from Australia and taxed at a rate of less than 80% of Australia's corporate tax rate of 30% (the "sufficient foreign tax test");
- Lack economic substance (the "sufficient economic substance test"); and
- Were entered into for a principal purpose of obtaining the relevant benefit.

Where the ATO imposes the DPT, the taxpayer will have to pay the full amount of the assessed tax within 21 days, irrespective of whether the taxpayer intends to challenge the assessment. The taxpayer then will be required to enter a review process with the ATO to be able to have the assessed tax reduced. If the taxpayer is not satisfied with the review outcome, it can further challenge the assessment through the court process; the legislation also includes some constraints on the manner in which this can occur.

While the DPT is very broad in scope, there is an exception for financial arrangements – for these arrangements, the effect of the DPT should be limited to adjusting the interest rate, but not the amount of debt (in line with current rules dealing with the interaction of the thin capitalization rules and the transfer pricing rules). In addition, the DPT should not apply if the relevant Australian taxpayer:

- Is not a member of a group with annual global turnover of more than AUD 1 billion;
- Does not, as a separate entity, have turnover exceeding AUD 25 million; or
- Is a pension fund, collective investment vehicle or similar entity, as specified in the law.

Other measures

The legislation also includes the following measures:

- Significantly increased penalties will be imposed for failure to timely file tax documents (including tax returns and country-by-country reports) and for making false and misleading statements (*e.g.* a tax return filed one week late could result in a failure-to-file penalty of over AUD 100,000); and
- Australia's transfer pricing rules will be updated to include the new OECD transfer pricing guidelines released as part of the BEPS process, effective for income years starting on or after 1 July 2016.

Comments

Given the broad scope and punitive nature of the DPT rules, taxpayers should (i) ensure proper documentation is in place to support existing arrangements; (ii) assess potential risk exposures; (iii) consider how to document and implement future transactions; and (iv) consider how best to engage with the ATO to manage future inquiries and disputes.

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Canada:
Innovation support included in 2017-18 federal budget

Canada's federal budget for its 2017-18 fiscal year, which was presented in the House of Commons on 22 March 2017, highlights the government's aim to realize its full potential as a global leader in innovation. To this end, the government has announced its intention to review the programs available to fund innovation and to deliver simpler, more efficient and more coordinated support to Canadian innovators.

In addition, budget 2017 proposes more than CAD 8.2 billion of gross spending over the next five years related to the budget's "innovation and skills plan." This ambitious plan focuses on enhancing skills, closing the commercialization gap, simplifying programs and funding businesses.

Enhancing skills

Recognizing that people are at the core of successful innovative companies, the budget proposals address the challenge of acquiring skilled resources. Generally, the budget's skills-related recommendations center on:

- Training;
- Work-integrated learning;
- Accelerated processing of foreign talent; and
- The promotion of science and technology in society.

As an example, the budget proposes to renew and expand federal funding for "Mitacs" by CAD 221 million over five years. (Mitacs is the not-for-profit organization that builds partnerships between industry and educational institutions, and its goal is to provide 10,000 work-integrated learning placements for post-secondary students and graduates.)

Closing the commercialization gap

Budget 2017's initiatives aim to encourage businesses to commercialize their innovation and discoveries in Canada. The budget proposes to implement a new procurement program that would allow the government to act as a first customer to test and validate new products and solutions: up to CAD 50 million would be provided to launch Innovation Solutions Canada, whose role would be to test and validate early-stage R&D, late-stage prototypes and other innovative products and services.

A significant proposal is the investment of CAD 950 million over five years to support a small number of business-led "superclusters" in highly innovative industries, such as advanced manufacturing, agri-food, "cleantech," digital technology, health/bio-sciences and clean resources, in addition to infrastructure and transportation. This investment would be funded with CAD 800 million from the 2016 budget provisions for innovation networks and clusters, and CAD 150 million from the provisions in the 2016 Fall Economic Statement for public transit and "green" infrastructure.

Based on best practices from around the world and in Canada, these superclusters would be designed to encourage knowledge sharing, drive business specialization and help attract investment from significant innovators from abroad.

Simplifying programs

The budget proposes the creation of Innovation Canada, a new platform that would be led by Innovation, Science and Economic Development Canada, whose role would include the coordination and simplification of the federal support available to Canada's innovators. This was one of the recommendations of the recently created Advisory Council on Economic Growth.

No changes to simplify the innovation programs have been announced in this budget, as the government plans to wait for the recommendations from Innovation Canada. Consequently, a review of the programs (including the scientific research and experimental development (SR&ED) tax incentive program) is expected to be undertaken shortly.

Funding businesses

Innovative start-ups and small businesses have a need to find equity funding in Canada to ensure their growth and job-creation capability. The budget proposes to make available, through the Business Development Bank of Canada, CAD 400 million over three years for a new "venture capital catalyst initiative" that would increase late-stage venture capital availability.

Other funding proposals include:

- CAD 400 million over five years for the promotion of cleantech technologies' demonstration;
- CAD 229 million over four years for investment in R&D for clean energy and transportation;
- CAD 207 million over five years for cleantech firms' access to additional financing;
- CAD 200 million over four years for cleantech in the natural resources sectors;
- CAD 200 million for the new Strategic Innovation Fund that consolidates a number of programs, including the Strategic Aerospace Defense Initiative and the Automotive Innovation Fund (CAD 100 million is new funding and the other CAD 100 million will be drawn from the funding announced in the 2016 budget); and
- CAD 125 million for growing Canada's position in artificial intelligence.

Comments

Canada not only has a strong resources sector but also is strong in research and innovation, and the growth in global competition requires Canadian businesses to continue innovating. The focus of the 2017 budget on innovation sends a strong signal of support to industry and to post-secondary and research institutions. For Canada to benchmark well relative to other countries in respect of key performance indicators (such as business expenditure on R&D), the government will need to continue to enhance its support of industrial R&D (including through the SR&ED tax incentive program), since this should stimulate increased business investment in innovation.

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India:
ITAT upholds taxation of capital gains on transfer of shares of a foreign company

In a decision issued on 9 March 2017, the Delhi Income Tax Appellate Tribunal (ITAT) upheld a tax assessment made by India's tax authorities on capital gains arising from a transfer by a nonresident of shares of a foreign company that derived its value solely from assets located in India. Under India's income tax law, which allows the taxation of indirect transfers of Indian assets by foreign companies, capital gains on such sales of foreign company shares are subject to Indian capital gains tax if the foreign company whose shares were sold derives 50% or more of its value from Indian assets. The indirect transfer rules introduced in 2012 (and that apply retroactively as from 1 April 1961) have generated considerable controversy and criticism.

Facts of the case

The taxpayer in the case was a UK company that, through a series of complex transactions during 2006, transferred its entire shareholding in its wholly owned subsidiary (Sub 1) to a new wholly owned Indian subsidiary (Sub 2). Sub 1, which was incorporated outside of India, was the sole owner of companies that had as their only significant assets oil and gas interests located in India. Subsequent to the transfer, Sub 2 undertook an initial public offering (IPO) whereby its shares became listed on various Indian stock exchanges. In return for the shares of Sub 1, Sub 2 transferred consideration to the taxpayer partly in the form of cash (from the proceeds it received in the IPO) and partly by issuing its own shares.

Upon examination, the Indian tax authorities determined that the taxpayer's transfer of the shares of Sub 1 to Sub 2 was a sale that yielded capital gain income that was chargeable to tax in India under the indirect transfer rules, because Sub 1 derived its value substantially from assets located in India. The tax authorities issued an assessment order to the taxpayer, and the taxpayer appealed the assessment order to the ITAT.

Ruling of the ITAT

The ITAT ruled in favor of the tax authorities and upheld the authorities' determination that the transfer of the shares of Sub 1 to Sub 2 resulted in capital gains that were subject to Indian tax. The ITAT rejected a series of arguments advanced by the taxpayer, including the following:

- The transfer of the shares was not a sale but an internal reorganization of the group, and that the reorganization did not provide an increase in wealth to the taxpayer since the controlling interest of the group was held by the taxpayer both before and after the transaction;
- No "real" income had accrued to the taxpayer as a result of the transfer of the shares to its subsidiary (however, upon reviewing the taxpayer's financial statements, the ITAT found that the taxpayer did earn substantial gain from the transfer, including real value earned as a result of the gains not being chargeable to tax in its country of residence); and
- India's domestic law should be applied as it existed on the date the relevant tax treaty between India and the taxpayer's country of residence was notified (*i.e.* the law that applied before the indirect transfer rules were enacted), so the capital gains tax should not apply.
- Since there were series of transfers, the earlier transfers within the group also should be taxable. Taking this into account, the cost basis of the shares transferred by the taxpayer should be stepped up to their fair value at the time the shares were acquired, resulting in no capital gains in the hands of the taxpayer since the sale consideration should be equal to the cost of acquisition of the shares. (With respect to this argument, the ITAT held that Indian tax law does not address this situation.)

The taxpayer also challenged the tax authorities' levy of interest on the resulting underpayment of advance tax for 2006. On this point, the ITAT agreed with the taxpayer and held that in the case of retroactive amendments, the taxpayer could not be expected to visualize its liability for payment of advance tax in the year of the transaction and, therefore, no interest should be payable.

Comments

The ITAT upheld the taxability of capital gains arising on indirect transfers of Indian assets and concluded that any income arising "through or from" a transfer of any property in India will be chargeable to tax as income deemed to accrue or arise in India. Notably in this case, the ITAT rejected the taxpayer's argument that the transaction was an internal business reorganization that did not create any wealth for the taxpayer (since there was no third party involved), relying on the fact that part of the sale consideration was paid from funds received from shares offered under an IPO.

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Taiwan:
VAT rules governing nonresident suppliers of e-services announced

Amended VAT registration rules were promulgated in Taiwan on 29 March 2017 and, on 22 March, the Ministry of Finance (MOF) published an official ruling that sets the annual sales threshold for a nonresident electronic services (e-services) provider to be required to register for Taiwan VAT purposes at NTD 480,000. The MOF ruling follows the announcement by the Executive Yuan on 13 February 2017 that the new VAT rules requiring nonresident business

entities providing 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*, 10 March 2017). A public consultation was held from 11-17 March 2017 on draft amended enforcement rules.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170310_8.html

An online VAT registration website is expected to be open for testing purposes sometime in the near future.

Once a foreign e-service provider is registered, it will be required to file bimonthly VAT returns and pay the VAT due before the 15th day of the following "odd month" (*i.e.* the first VAT return for a registered foreign e-service provider for the VAT period from May-June 2017 will have to be submitted by 15 July 2017).

Definition of e-services

According to the draft amended enforcement rules, e-services would be defined as the following:

1. Services that can be downloaded from the internet and stored in a computer or mobile device;
2. Services that can be used via the internet without downloading or storing; and
3. Other services that can be used through the internet or another electronic environment.

The scope of services in the third bullet is very broad, and it is expected that affected foreign service providers will be allowed to request clarification from the Taiwan tax authorities as to whether their services fall within the scope of the definition of e-services before 1 July 2017.

Registration requirements

The amended VAT registration rules require nonresident e-service providers to submit the following information and documents at the time they register for VAT:

- Company name (the certificate of incorporation of the nonresident e-service provider must be notarized and authenticated by the Taiwan consulate);
- Name of the company representative;
- Operating information, including the domain name, IP address, commencement date of services, country of registration and registered name in that country and the company's registered identification number in that country;
- Contact information, including the phone number, mailing address and email address;
- Information about the entity's Taiwanese tax agent (the power of attorney issued to the tax agent is required); and
- Bank account information (domestic and/or foreign bank account).

The draft enforcement rules do not specify which party would be required to register for VAT when various parties are involved in a supply of e-services. In particular, it is unclear which party would be required to register when sales are made via a foreign online platform (*i.e.* the online platform or a local supplier), but the MOF is aware of the issue and is working to clarify the requirements.

VAT invoicing obligations

Unlike domestic sellers that are required to issue VAT invoices to buyers, based on a ruling issued by the MOF, registered nonresident e-service providers are not required to issue invoices for supplies made to Taiwanese individuals during the period from 1 May 2017 to 31 December 2018.

Taiwan has a unique system of invoicing for VAT purposes. The invoice, which is called a Government Uniform Invoice (GUI), is regulated by the tax law as to its format, content and submission. The government assigns GUI numbers to VAT payers every two months. In addition, the tax authorities are encouraging businesses to issue electronic VAT invoices (eGUI) in lieu of "paper computerized" invoices to comply with the "green policy." As part of this initiative, the tax authorities no longer grant new approvals to use paper computerized GUI applications, and encourage business entities that were approved to use such GUIs before 2017 to upgrade their systems to issue eGUIs.

Registered nonresident e-service providers should begin to assess the potential impact of eGUIs once the invoice exemption period has expired.

VAT payment/input VAT

Since VAT can be paid only with New Taiwan dollars, the draft enforcement rules address the exchange rate for a nonresident e-service provider to determine its VAT sales. The spot rate quoted by the Bank of Taiwan on the last day of a VAT period will have to be used.

The draft enforcement rules allow input VAT on local purchases that are used solely for the foreign e-service provider's further sales to individuals in Taiwan to be credited against the provider's output VAT. However, the rules do not explain how to determine whether a domestic purchase is "solely" for e-services sold to individuals in Taiwan.

Comments

Foreign e-service providers should assess the potential impact of the amended VAT rules so that they can adjust their business models as needed and prepare to register with the Taiwan tax authorities, if necessary.

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United Kingdom:
Prime Minister notifies European Council of intent to withdraw from EU

On 29 March 2017, the UK Prime Minister triggered article 50 of the 2009 Lisbon Treaty and formally notified the European Council of the UK's intention to withdraw from the EU (for prior coverage, see *World Tax Advisor*, 24 March 2017). A white paper on the "Great Repeal Bill" was published on 30 March 2017.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170324_ib.html

According to article 50, the UK has two years from the date it formally initiates the procedure to negotiate a withdrawal agreement with the other EU member states. An exit agreement must be approved by a "qualified majority" of the remaining 27 EU member states (*i.e.* 72% of those member states, representing 65% of the population). The EU treaties will cease to apply to the UK once a withdrawal agreement enters into effect, or if no new agreement is concluded within the two-year period (unless, in the latter case, there is unanimous agreement among the EU member states to extend the negotiating period).

According to the white paper, the repeal bill will do three things:

1. Repeal the European Communities Act 1972, the primary vehicle that gives EU law effect as national law in the UK;
2. Convert EU law as it stands at the time of exit into domestic law, to provide certainty to businesses operating in the UK and fairness to individuals until the UK parliament decides otherwise (the white paper confirms that case law precedent from the Court of Justice of the European Union will continue to be relevant); and
3. Create the power to make secondary legislation, which will enable the UK parliament to make corrections to laws that otherwise would no longer operate appropriately once the UK leaves the EU.

The white paper also states that the UK will introduce a customs bill for implementing a UK customs regime.

The Great Repeal Bill is expected to be included in the next Queen's Speech, to be held in May or June 2017.

The UK remains a full member of the EU, with all the rights and obligations of EU membership continuing to apply, until its formal exit from the EU is complete.

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In brief

Australia: On 24 March 2017, Australia's Treasury released a consultation paper seeking views on potential policy options on the tax treatment of stapled structures (which typically involve the ownership interests in an asset-owning trust and a trading company being "stapled" together), as well as the taxation of real property investments and the recharacterization of trading income. The government is concerned that there has been an increasing use of stapled structures to recharacterize trading income into more favorably taxed passive income. The paper questions whether Australian arrangements are in line with international experience and whether the regime could distort investment decisions and lead to reduced economic efficiency. The consultation also will examine policy options for specific sectors, such as real estate and investment in critical infrastructure assets, if the tax advantages for stapled entities were removed. Submissions for this consultation close on 20 April 2017.

Brazil: The government published a law on 31 March 2017 that reopens a tax amnesty regime that encourages Brazilian tax residents to voluntarily disclose undeclared assets maintained abroad. The rules apply to legal entities and individuals that were Brazilian residents as of 30 June 2016 and that wish to declare assets, income or rights held abroad before that date. The value of the assets to be included in the amnesty program must be converted into Brazilian currency based on the exchange rate as of 30 June 2016. Taxpayers that wish to participate must pay a 15% capital gains tax and a penalty of 135% of the tax paid. A specific form must be submitted electronically to participate in the regime, and the tax and penalties must be paid by 31 July 2017.

Nigeria: The National Executive Council has, in principle, granted approval for a new voluntary asset and income declaration scheme (VAIDS), subject to finalization of the scheme's broader framework. The VAIDS is expected to start on 1 May 2017, and to be available to all taxpayers and cover all taxes collectible by the state and federal governments for all prior periods of assessment. Taxpayers that sign up for the scheme would be allowed to pay their outstanding liabilities over a maximum period of three years, and it is expected that any interest and penalties would be waived.

Romania: As from 6 January 2017, taxpayers exclusively engaged in innovation activities and R&D (as defined under the relevant legislation) are exempt from corporate income tax for the first 10 years of activity. Taxpayers already registered with the tax authorities will be exempt from corporate income tax for 10 years starting from 6 January 2017 provided they are exclusively engaged in innovation and R&D activities.

Ukraine: Measures announced by the National Bank further ease foreign currency restrictions in the country (for prior coverage, see *World Tax Advisor*, 13 January 2017). The new rules, which apply as from 5 April 2017, reduce the percentage of foreign exchange earnings of legal entities that is subject to mandatory exchange from 65% to 50% and increase the amount of foreign currency that can be sold to the general population from UAH 12,000 per day to UAH 150,000 per day.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170113_ib.html

United Arab Emirates: On 15 March 2017, the Federal National Council approved the draft law that will regulate the implementation of VAT in the UAE. Once enacted, this law will provide the framework for the interaction between the federal tax authority (FTA) and taxable persons in the UAE. The VAT is scheduled to come into effect on 1 January 2018. The Ministry of Finance recently published details on VAT registration and compliance requirements on its website and announced that businesses will be able to submit applications online three months before the implementation of VAT (*i.e.* from October 2017). Registered businesses will be expected to submit VAT returns on a regular basis, with most businesses required to file quarterly.

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.

Australia: Legislation that also introduces a diverted profits tax provides that Australia's transfer pricing rules will be updated to include the new OECD transfer pricing guidelines released as part of the BEPS process, effective for income years starting on or after 1 July 2016. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170414_3.html

China: The State Administration of Taxation has issued new regulations to improve the administration of special tax investigation adjustments and mutual agreement procedures, which incorporate changes arising from the OECD's BEPS actions. See Global Transfer Pricing Alert 2017-012, 6 April 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-012-6-april-2017.pdf

Korea: The Ministry of Strategy and Finance published detailed guidance on CbC reporting on 21 March 2017. The guidance is aligned with the OECD's revised transfer pricing guidelines.

OECD: On 6 April 2017, the OECD's inclusive framework on BEPS released additional guidance on the implementation of CbC reporting under BEPS action 13, to assist jurisdictions with the introduction of consistent domestic rules. The guidance updates the CbC reporting guidance issued in June 2016 and in December 2016 (for prior coverage, see Global Transfer Pricing Alert 2016-038, 6 December 2016) and addresses five specific issues: (i) definition of revenue; (ii) accounting principles/standards for determining the existence of, and membership in, a group; (iii) definition of total consolidated group revenue; (iv) treatment of major shareholdings; and (v) definition of related party for purposes of completing table 1 of the CbC report.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-038-6-december-2016.pdf

United Kingdom: A UK statutory instrument amends the regulations that give effect in the UK to the G20/OECD's minimum standard for reporting CbC information to tax authorities, effective from 20 April 2017. See Global Transfer Pricing Alert 2017-009, 3 April 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-009-3-april-2017.pdf

United States: The Internal Revenue Service has released draft instructions for the draft country-by-country reporting form and the accompanying draft schedule. The draft forms and instructions are based on action 13 of the OECD BEPS project. See Global Transfer Pricing Alert 2017-007, 24 March 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-007-24-march-2017.pdf

Vietnam: The government has issued a decree that makes comprehensive changes to the country's transfer pricing rules to better align them with the OECD BEPS actions. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170414_1.html

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Global Tax Alerts

China
SAT issues rules to improve administration of special tax investigations and mutual agreement procedure
On 17 March 2017, China's State Administration of Taxation issued new regulations to improve the administration of special tax investigation adjustments and mutual agreement procedures. These regulations incorporate changes arising from the OECD's BEPS actions and add to the transfer pricing framework that is now spread across a number of regulations.
Issue date: 6 April 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-012-6-april-2017.pdf

Denmark
Courts rule on penalties for missing transfer pricing documentation
The Danish tax authority has published the first two court rulings on penalties for missing or inadequate transfer pricing documentation.
Issue date: 3 April 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-010-3-april-2017.pdf

United Kingdom
Country-by-country reporting rules amended
A statutory instrument published on 30 March 2017 amends the regulations that give effect in the UK to the G20/OECD's minimum standard for reporting country-by-country information to tax authorities. The amendments follow additional guidance released by the G20/OECD in 2016, and enter into force on 20 April 2017.
Issue date: 3 April 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-009-3-april-2017.pdf

United States
2016 US APA report shows strong interest in agreements with India, Italy
On 27 March 2017, the Internal Revenue Service released the advance pricing agreement annual report covering the activities of the US advance pricing and mutual agreement program during calendar year 2016.
Issue date: 4 April 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-011-4-april-2017.pdf

Tax Court sides with Amazon in intangibles transfer case
In its 23 March 2017 opinion in *Amazon.com, Inc. v. Commissioner*, the US Tax Court has found the Internal Revenue Service's approach to valuing a cost sharing buy-in payment to be arbitrary, capricious and unreasonable.
Issue date: 27 March 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-008-27-march-2017.pdf

IRS issues draft instructions for Form 8975
The US Internal Revenue Service (IRS) released draft instructions for draft Form 8975, Country-by-Country Report, and accompanying draft Schedule A, Tax Jurisdiction and Constituent Entity Information, on 24 February 2017. The IRS is accepting comments on the drafts and plans to finalize them by June 2017.
Issue date: 24 March 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-007-24-march-2017.pdf