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Australian government wins landmark transfer pricing case on debt financing

On 21 April 2017, the Australian Full Federal Court (Full Court) unanimously decided in favor of the Australian Taxation Office (ATO) in the most significant transfer pricing case, and the first transfer pricing case on the issue of related party loans, ever litigated in Australia, rejecting an appeal by the taxpayer. The case concerns interest payments

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made under a credit facility extended to Chevron Australia Holdings Pty Ltd (CAHPL) by a US resident subsidiary of CAHPL, and involves assessments of approximately AUD 340 million in tax and penalties covering the 2004-08 period.

The US subsidiary borrowed funds (USD 2.5 billion) from an unrelated bank at an interest rate of around 1.2%, with the benefit of a guarantee from the ultimate parent company, Chevron Corporation. It then on-lent the funds (in AUD) to CAHPL at an interest rate of approximately 9% in the period under review. This interest rate was based on the stand-alone credit rating of CAHPL and a transfer pricing analysis using the actual terms and conditions of the facility.

On examination, the ATO issued assessments to CAHPL on the grounds that the related parties were not acting at arm's length; specifically, that the interest rate on the loans was in excess of an arm's length rate. The assessments were raised under two separate transfer pricing provisions, i.e. Division 13 of Income Tax Assessment Act 1936 (ITAA 1936) and Subdivision 815-A of Income Tax Assessment Act 1997 (ITAA 1997).

The taxpayer appealed the assessments to the Federal Court, which in 2015 held that CAHPL failed to demonstrate that the interest paid under the credit facility agreement was equal to or less than arm's length and, therefore, did not prove that the assessments were excessive. This latter point is important, since under the Taxation Administration Act 1953, the burden of proof was on CAHPL and, as such, the government was not obliged to argue every technical aspect of the assessments before the court. The taxpayer subsequently appealed the decision of the lower court to the Full Court.

Decision of the Full Federal Court

The Full Court upheld the earlier decision of the lower court that CAHPL had failed to prove that the assessments under Division 13 and Subdivision 815-A were excessive.

The Full Court ruled that:

- The transfer pricing law should be applied taking into account both the intent of the legislation and real world commercial considerations, and should not be interpreted in a restrictive manner. The transfer pricing provisions give the tax authorities broad powers to substitute a more commercially realistic transaction where the actual transaction is considered to be, in whole or part, one that could not occur in the open market.
- The transfer pricing rules do not mean the fact that CAHPL is part of a global group should be ignored. The Full Court found that there was no reason to depart from the lower court judge's view that an independent borrower like CAHPL, dealing at arm's length, could have given security and operational and financial covenants to acquire the loan, which would have resulted in a lower interest rate. This is particularly relevant for situations where no senior secured debt is in place in addition to related party debt arrangements.
- Consideration should be given to the availability of an explicit guarantee by a parent company in a related party financing transaction. Where such a guarantee may be available, the interest rate would be expected to be lower; where the guarantee is not available, the taxpayer should be in a position to explain why not. The court pointed out that even if CAHPL was unable to pledge security or agree to any financial and/or operational covenants, it would have been of "no relevant consequence" if there was a reasonable expectation that Chevron (or a company in Chevron's position) would provide a guarantee.

Comments

The decision provides the first substantive judicial guidance in Australia on the difficult territory of establishing arm's length financing arrangements between related parties. Notably, the Full Court rejected an approach to transfer pricing that involved determining accurate pricing for the transaction that actually occurred, and instead suggested that the law allowed the tax authorities to determine pricing based on a transaction that reflected how a company in the taxpayer's position would achieve the same commercial aims on arm's length terms.

This reasoning applied by the Full Court is consistent with the current OECD BEPS principles, and may be indicative of how future courts will rule where the OECD guidelines have relevance in local transfer pricing legislation (i.e. considering whether an independent party, acting in its own best interests, would have entered into a transaction under similar terms and conditions). In addition, consistent with the OECD guidance in the BEPS actions 8-10 report, a subsidiary should be viewed as having its credit characteristics potentially influenced by its association with its larger affiliated group.

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Because the Full Court did not seek to compute an appropriate arm's length interest rate for the loan, but only concluded that the taxpayer had not discharged its burden of proof that the assessments were excessive, some uncertainty still exists on the practicalities of pricing related party loans in the absence of a fully comparable pricing analysis undertaken by an independent lender.

Given the significant amount of tax involved and the importance of the issue for their other related party loans, CAHPL may decide to seek special leave to appeal the Full Court's decision to the High Court of Australia. Affected taxpayers should monitor the outcome of any potential High Court appeal in the coming months.

— Geoff Gill (Sydney)
Partner
Deloitte Australia
gegill@deloitte.com.au

Colin Little (Sydney)
Partner
Deloitte Australia
colittle@deloitte.com.au

Albania:
New law provides amnesty for certain tax liabilities

A law approved by the Albanian parliament on 30 March 2017 and that applies as from 6 May 2017 provides that certain unpaid tax liabilities and customs duties, as well as certain penalties and interest, may be cancelled if certain conditions are fulfilled. The relief depends on the type of liability and the period to which it relates. The amnesty is available to legal entities and individuals for the period from 6 May 2017 through 31 December 2017, and applies to both national and local taxes (with certain exceptions).

There are two main conditions to benefit from the new law:

- The taxpayer must withdraw from any ongoing administrative appeal or court proceedings related to the tax liabilities, penalties and interest that it wishes to have cancelled; and
- The VAT credit balance available to the taxpayer, if any, must be automatically used to offset its unpaid tax liabilities (except for social and health contribution liabilities), for the related penalties and interest, as well as any portion of the tax liabilities not offset, to be cancelled based on the law.

If these conditions are fulfilled, certain tax liabilities relating to pre-2011 tax periods will automatically be cancelled. For other types of liabilities, the procedure to claim the benefits of the amnesty will be clarified by implementation rules to be issued by the Minister of Finance (expected by 21 May 2017).

Tax liabilities, penalties and interest previously assessed by the tax administration that may be cancelled based on the new law may be divided into the categories described below. In addition, customs duties, penalties and interest assessed by the customs administration may be cancelled based on the new law.

Tax liabilities related to periods through 2010

The following tax liabilities, penalties and interest that relate to tax periods ending no later than 31 December 2010 may be cancelled:

- Unpaid national tax liabilities (except for social and health contribution liabilities) reflected in the taxpayer's account with the tax authorities by 31 December 2016;
- Unpaid local taxes and tariffs; and
- Unpaid interest and penalties on social and health contributions reflected in the taxpayer's account with the tax authorities by 31 December 2016.

Interest and penalties related to periods from 2011 to 2014

Unpaid interest and penalties reflected in the taxpayer's account with the tax authorities by 31 December 2016 may be cancelled in the following cases:

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- The relevant tax liability (including social and health contributions and local taxes and tariffs) relates to a tax period between 1 January 2011 and 31 December 2014; and
- The taxpayer settled the principal part of the tax liability before 6 May 2017, or it will be paid in full by 31 December 2017.

Other tax liabilities and penalties

Certain other tax liabilities and penalties may be cancelled regardless of the tax period to which they relate, including the following:

- Unpaid taxes, interest and penalties of entrepreneurs and commercial companies already de-registered in Albania as of 6 May 2017;
- Automatically generated penalties for the delayed submission of tax declarations;
- Penalties for the failure to submit tax declarations, provided the taxpayer submits the declarations by 30 June 2017; and
- Penalties for the late submission to the tax administration of the annual financial statements and decisions relating to the use of annual profits (e.g. dividend distributions, capital increases, etc.), which must be submitted to the tax authorities.

— Olindo Shehu (Tirana)
Partner
Deloitte Albania
oshehu@deloittece.com

Xheni Kakariqi (Tirana)
Senior Manager
Deloitte Albania
xkakariqi@deloittece.com

Brazil:
Reporting obligation for cross-border transactions clarified

The Brazilian tax authorities published guidance on 19 April 2017, clarifying that interest arising from loans and financing transactions between resident and nonresident companies (inbound and outbound) does not need to be reported in the SISCOSERV system (the integrated system of foreign trade in services, intangibles and other transactions).

The SISCOSERV is an online return introduced in 2011, in which Brazilian individuals and legal entities are required to report information on cross-border transactions involving services and intangibles, including intellectual property rights, to the government. The Brazilian service/intangible provider or acquirer is the party responsible for submitting the return, which includes information about the client/supplier, the value of the transaction, the currency, etc. Penalties apply for noncompliance.

In September 2016, the tax authorities issued a private letter ruling in response to questions from a taxpayer concerning SISCOSERV reporting, concluding that interest arising from loans and financing transactions between resident and nonresident companies needed to be reported in the SISCOSERV system. According to the ruling, such transactions would fall under the Service and Intangible Code Registry (NEBS) classification for "Credit Concession Services." (The NEBS provides codes for each specific activity subject to SISCOSERV reporting.)

Since all inbound cross-border loans must be registered in the online Brazilian Central Bank system, where information on the principal amount, interest rates, maturity terms, etc. is disclosed, the conclusions in the 2016 ruling came as a surprise to most taxpayers.

The new guidance, which applies as from the date of its publication, clarifies the reporting treatment for interest arising from cross-border loans – such interest need not be reported in the SISCOSERV system, and no penalties for noncompliance will apply in cases where the information on such interest was not reported in previous calendar years.

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

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

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European Union:
Council endorses framework for Brexit negotiations

The European Council issued a press release on 29 April 2017 following a special summit of leaders of the EU member states other than the UK, in which they unanimously agreed to the framework for negotiating the withdrawal of the UK from the EU over the next two years. The UK prime minister triggered article 50 of the 2009 Lisbon treaty on 29 March 2017 and formally notified the European Council of the UK's intention to leave the union (for prior coverage, see *World Tax Advisor*, 14 April 2017). The notification was followed by a resolution adopted by the European Parliament on 5 April that sets out the parliament's key principles and conditions for approval of the negotiated withdrawal agreement.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170414_7.html

The guidelines emphasize an orderly and transparent two-phase approach to the withdrawal negotiations, to minimize uncertainty and disruption. The first phase will focus on providing certainty to citizens, businesses, stakeholders and international partners as to the immediate implications of the UK's withdrawal, and on settling the UK's financial and other commitments to the EU. The future relationship between the EU and the UK will be the focus of the second phase. The guidelines make it clear, however, that before discussions can commence with the UK on a post-Brexit trade agreement, progress must be made on the status and rights of citizens and businesses affected by the UK's withdrawal from the bloc, and agreement must be reached on a financial settlement.

The two-year timeframe set out in article 50 ends on 29 March 2019.

Negotiations will commence after the UK election on 8 June 2017.

— Susan Lyons (Washington, DC)

Managing Director
Deloitte Tax LLP
slyons@deloitte.com

France:
List of countries not requiring VAT representative revised

A decree that applies as from 25 March 2017 revises the list of countries for which it is not necessary to appoint a VAT representative in France for VAT purposes.

Under French tax law, non-EU companies that carry out VAT taxable transactions in France (i.e. transactions for which VAT is collected by the supplier or exempt transactions that require compliance formalities) are required to appoint a VAT representative to deal with all tax and administrative formalities. Argentina has been removed from the list, and Japan, South Africa and Tunisia have been added.

In theory, countries that have concluded a treaty with France that includes a provision for assistance in the recovery of tax/VAT debts will be on the list.

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

— Michel Guichard (Paris)
Partner
Taj
mguichard@taj.fr

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Germany:
Lower house approves bill that would limit deductibility of royalty payments

On 27 April 2017, the German lower house of parliament passed a bill that would limit the deductibility of certain related party royalty payments. The bill (which would introduce a new section 4j in the Income Tax Code) 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

The draft law targets royalty payments made to a nonresident that result in the "low taxation" of the income at the level of the recipient due to the application of an intellectual property (IP) regime (i.e. IP box, patent box, license box, etc.), where the IP regime is not based on the "nexus approach," as described in action 5 of the OECD's BEPS project.

The bill passed by the lower house largely is identical to the December 2016 draft law, but includes the following updates:

- Clarification that if the direct recipient of the royalty payment is a transparent entity for local tax purposes, the rule would be applied at the level of the shareholders that are finally subject to tax. This clarification has been introduced to ensure that the rule would apply in such cases.
- Introduction of a reference to chapter 4 of the BEPS action 5 report with respect to the definition of the nexus approach, including the formula in paragraph 30 and all other criteria described in chapter 4, II. ("Substantial activity requirement in the context of IP regimes"). The "grandfathering" rules in paragraphs 62-66, however, are excluded.
- When determining whether a preferential tax regime exists when there are several creditors and different tax regimes, the lowest tax rate would be the relevant rate.
- As described in the initial draft, the rule limiting the deduction of royalty payments would apply to payments made after 31 December 2017.

The upper house of parliament is expected to vote on the draft law on 2 June 2017, and is likely to approve the bill.

— Andreas Maywald (New York)
Client Service Executive
Deloitte Tax LLP
anmaywald@deloitte.com

Italy:
New law decree includes measures on the NID, patent box and transfer pricing

A law decree published by the Italian government on 24 April 2017 contains a number of tax rules that are designed to help reduce the budget deficit. The decree entered into force on 25 April 2017, although it still must be converted into law by the parliament within 60 days to be final. The changes that are most relevant for foreign investors are the following:

- Amendment to the basis of computation of the notional interest deduction (NID);
- Exclusion of trademarks from the scope of the patent box regime;
- Introduction of a new downward adjustment mechanism for transfer pricing purposes; and
- Change in the tax treatment of carried interests.

Notional interest deduction

Introduced in 2011, the NID is designed to encourage businesses to strengthen their capital structures and to equate the tax treatment of companies that are funded with equity more closely to that of companies that are funded with debt. To this end, the NID grants Italian companies (and branches of foreign companies) a tax deduction that corresponds to a notional yield return on qualifying equity increases. The NID is computed on the amount of qualifying equity, and is determined by applying the notional yield to the increase in the qualifying book net equity as recorded in

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the financial statements (net of distributions and other adjustments to avoid duplications of basis from intercompany transactions) for the period ending on or after calendar year 2010. If any notional interest exceeds the net taxable income of the relevant year, the excess is carried forward and may be used to offset the net taxable income of a subsequent tax period. The NID rate is set periodically by the Minister of Finance (the rate is 2.3% for fiscal year 2017, increasing to 2.7% for fiscal year 2018).

The 2017 budget law added another limit to the NID base, i.e. the NID may be reduced based on the increase in investments in securities and financial assets (other than participations), as compared to the amount shown in the financial statements for 2010 (for prior coverage, see Italy tax alert, 23 December 2016).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-italy-23-december-2016.pdf

The law decree adds another limitation to the computation of the NID base. The computation will be based on the equity increases and retained earnings of the prior five years, rather than those received/accrued from fiscal year 2010 as provided in the original legislation. As a result, when a taxpayer is computing its NID for 2017, it will need to take into account the relevant net equity increases during the period 2013-2017.

The new rule applies from the beginning of the taxpayer's 2017 fiscal year and must be taken into account for 2017 advance payments by recalculating the corporate tax due for 2016 (i.e. in determining the 2017 advance payment, the 2016 corporate tax must be recalculated by applying the new timing limitation rule).

Patent box

The patent box regime, introduced by the 2015 budget law, is designed to encourage the development of intellectual property (IP) in Italy. The patent box grants a partial exemption from corporate income tax (50% as from 2017) and the local tax on productive activities on income derived from certain intangible assets. Income derived from the following types of IP is eligible for the patent box regime:

- Industrial patents that have been granted or that are in the process of being granted;
- Software protected by copyright;
- Trademarks (including collective brands) that have been registered or that are in the process of being registered;
- Models and designs capable of being legally protected; and
- Business and technical-industrial know-how.

Once a taxpayer opts into the patent box regime, the election is irrevocable for a five-year period, which may be renewed.

To bring the patent box regime in line with the OECD's recommendations in action 5 of the BEPS project, the law decree excludes trademarks from the types of IP that can benefit from the regime (know-how, however, will continue to benefit). The exclusion applies as follows:

- For taxpayers with a calendar fiscal year, to requests to apply the patent box submitted after 31 December 2016; and
- For taxpayers with a fiscal year other than the calendar year that make a request to apply the patent box after 31 December 2016, with effect from the third fiscal year following the fiscal year that includes 31 December 2014.

Taxpayers that exercised their option to benefit from the regime in tax years in progress on 31 December 2015 or on 31 December 2016 still can benefit from the patent box with respect to trademarks until 30 June 2021.

Transfer pricing

The decree eliminates the definition of the arm's length standard (ALS) in the Italian tax code as it applies to intercompany cross-border transactions, and introduces a new definition that is in line with that in the OECD model treaty. Under the new definition, income arising from intercompany transactions carried out with nonresident related entities will be determined according to the conditions and prices that would have been applied between unrelated parties, operating in free competition and in comparable circumstances.

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Although the change is somewhat academic since both businesses and the tax authorities use the OECD definition of the ALS in practice, it still may be relevant in certain cases where reference to arm's length "pricing" rather than to arm's length "conditions" could result in different conclusions as to whether a transaction complies with the standard (an issue that recently has been addressed by the Italian Supreme Court).

The decree also introduces additional procedures that will allow Italian companies to avoid economic double taxation resulting from transfer pricing adjustments made by foreign tax authorities under the arm's length principle. In particular, if a decrease in Italian taxable income is necessary to avoid double taxation, a downward adjustment in the Italian tax return now will be possible not only by means of the mutual agreement procedure provided under the EU arbitration convention and the relevant tax treaty, but also through:

- Joint audits carried out in the context of international cooperation activities whose outcomes are shared by the participating countries; and
- A specific request by the Italian taxpayer with the Italian competent authority for a correlative (i.e. compensating) adjustment in Italy. This option, which would allow the taxpayer to recover the higher tax paid in Italy, may be used only where transfer pricing adjustments are made by the tax authorities of a country that allows an appropriate exchange of information with Italy.

Italy's Ministry of Finance and the head of the tax authorities are expected to issue detailed guidelines on the application of the new definition of the ALS and the implementation of the new correlative adjustment procedure.

Carried interests

The law decree also contains provisions addressing the tax treatment of carried interests. The decree provides that income from a direct or an indirect participation (if related to certain shares or other financial instruments granting economic rights) in companies, entities or undertakings for collective investment derived by (i) their employees or directors, or (ii) the employees or directors of other entities that (directly or indirectly) control, are controlled by or are in charge of the management of the entities, will be treated as capital income or capital gains (rather than employment income) if the following conditions are fulfilled:

- The actual cash investment made by the employees and directors is at least 1% of the entire investment made in the undertaking for collective investment or in the net equity of the company or other entity;
- The income is attributed only after all the shareholders or unit holders have earned an amount equal to the equity invested in the company, increased by the minimum surplus provided in the company's bylaws; and
- The investment is held for at least five years, or if less than five years, the disposal was due to a change in control or a change of management of the company.

This new rule allows a significant reduction in the level of taxation for employees and directors on the capital income attributable to the carried interest (from a marginal tax rate of up to 45% to a fixed 26% rate) and the exclusion of the income from social security contributions. The rule applies to companies, entities and undertakings for collective investments resident in Italy and in any other countries that allow an appropriate information exchange with Italy, on income realized as from 25 April 2017.

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

Aldo Castoldi (Milan)
Partner
Deloitte Italy
acastoldi@sts.deloitte.it

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

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New Zealand:
Changes made to offshore and onshore branch exemptions

A law enacted on 30 March 2017 (and applicable as from that date) introduced changes to New Zealand's withholding tax rules for interest payments made to nonresidents and, on 11 April 2017, New Zealand's Inland Revenue Department released a special report on the new rules. The rules address both offshore and onshore branch structures, specifically, the withholding tax treatment of interest paid to a nonresident by an offshore branch of a New Zealand company and certain interest paid by a New Zealand resident to a foreign lender with a New Zealand branch. These interest payments now will be subject to nonresident withholding tax (NRWT) or the approved issuer levy (AIL) (for prior coverage, see *World Tax Advisor*, 27 May 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160527_5.html

Under New Zealand law, a 15% NRWT is imposed on interest paid by a New Zealand borrower to a foreign lender, with the rate usually reduced to 10% under New Zealand's tax treaties. However, where the lender is not related to the New Zealand borrower (e.g. a foreign bank lender), an election can be made to pay the 2% AIL instead of the higher NRWT. The lender typically will be able to obtain a credit for the NRWT withheld against the tax it pays on the interest in its country of residence; in contrast, foreign lenders are not entitled to a credit for the AIL. This disparity has meant that it may have been more tax-efficient for NRWT to be paid, rather than the AIL, leading to government concerns about potential abuse of the rules and, ultimately, to the recent changes to the offshore and onshore branch exemptions.

Offshore branch exemption

The first change removes the offshore branch exemption that allowed interest payments by an offshore branch of a New Zealand entity to a foreign lender to escape withholding tax. For example, a New Zealand resident bank with an offshore branch may raise funds on the wholesale market via its offshore branch, with the funds "on-lent" to nonresident or resident borrowers. Under the old rules, interest payments to the foreign wholesale lender did not attract New Zealand withholding tax because the interest payments were considered to be related to a business carried on outside New Zealand. Such interest payments now are deemed to have a New Zealand source and are subject to the NRWT or AIL to the extent the loan proceeds are on-lent to New Zealand residents. As such, if the offshore branch of a New Zealand company referred to in the above example borrows NZD 100 from a nonresident lender and on-lends NZD 50 to New Zealand residents and NZD 50 to nonresidents, 50% of the interest paid to the foreign lender will be treated as New Zealand-source income and will be subject to NRWT (generally paid on related party lending) or the AIL (available only for unrelated party lending, or lending to a New Zealand-registered bank).

The rules apply to interest paid on arrangements entered into after 30 March 2017, and are deferred for a period of five years for arrangements existing on that date.

Onshore branch exemption

Changes also are made to the rules governing nonresident lenders operating in New Zealand via a branch. Under the old rules, interest paid on a loan from a nonresident lender to a New Zealand resident was exempt from NRWT and AIL if the nonresident lender operated in New Zealand through an onshore branch, regardless of whether the interest was paid to the branch.

The amendments remove this exemption and impose NRWT or AIL on such interest payments, unless the interest is deemed to be derived by the New Zealand branch. The exemption will remain available for banks (i.e. if the lender's New Zealand branch has a banking license), provided the lender is not related to the borrower; if the lender and the borrower are related, the interest payment is subject to AIL.

The rules for onshore branches apply as from 30 March 2017 for loans between related parties other than banks, and to all new arrangements entered into after that date. Application of the rules is deferred for five years for arrangements existing on 30 March 2017 where either a New Zealand resident is borrowing from an unrelated nonresident with a New Zealand branch, or the borrower is a bank.

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

United Nations: Transfer pricing manual on developing countries updated

On 7 April 2017, the UN Committee of Experts on International Cooperation in Tax Matters issued a second edition of its *Practical Manual on Transfer Pricing for Developing Countries*. Similar to the 2013 edition, the revised manual is designed to respond to developing countries' needs for guidance on the policy and administrative aspects of applying a transfer pricing analysis to intercompany transactions of multinational enterprises (i.e. applying the arm's length principle to such transactions).

Salient features of the revised version of the manual are as follows:

- It closely reflects the content of the OECD BEPS report on actions 8-10 (now included in the OECD's transfer pricing guidelines).
- It includes updated guidance on transfer pricing documentation, as well as a discussion of the three-tiered approach to documentation, i.e. the master file, local file and country-by-country reporting.
- A new section on transfer pricing methods describes the use of the "sixth method" (sometimes called the "commodity rule") that relies on quoted prices of the commodities market to price commodity transactions between associated enterprises. The sixth method has been used in certain Latin American countries.
- New chapters are added on intragroup services, cost contribution arrangements and intangibles.
- The final section of the manual contains an outline of country-specific transfer pricing rules and experience (Brazil, China, India and South Africa (covered in the 2013 edition) and Mexico (newly added)).

— Susan Lyons (Washington, DC)
Managing Director
Deloitte Tax LLP
slyons@deloitte.com

In brief

Australia: The 2017-18 federal budget was handed down on 9 May 2017. A "major bank levy" that would be imposed on Australia's largest banks as from 1 July 2017 is the most significant tax announcement. As expected, the government also announced that it remains committed to extending the recent corporate tax cuts, which were passed by the House of Representatives on budget day, to cover all companies (for prior coverage, see *World Tax Advisor*, 14 April 2017). Other measures that would affect multinationals include BEPS-related amendments in respect of banks and financial institutions and cross-border transactions relating to "Additional Tier 1" capital. Additionally, amendments to the multinational anti-avoidance law that would apply retroactively as from 1 January 2016 would target certain arrangements using foreign trusts and partnerships, to address concerns previously raised by the tax authorities (for prior coverage see *World Tax Advisor*, 14 October 2016).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170414_2.html
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161014_2.html

Malta: On 24 April 2017, Malta's Inland Revenue announced that the deadline for the submission of the 2016 reporting required under the OECD common reporting standard and the 2011 EU Mutual Assistance Directive on the mandatory automatic exchange of information in tax matters has been extended from 30 April 2017 to 30 June 2017.

Qatar: On 3 May 2017, the cabinet approved draft laws on VAT, and income tax and their draft executive regulations. The draft law on VAT is in line with the unified Gulf Cooperation Council (GCC) VAT agreement, which functions as the basis for the domestic VAT legislation in each GCC member state by stipulating certain principles that must be followed by all members, but also allowing the countries to opt for different VAT treatment in relation to certain supplies (for prior coverage, see *World Tax Advisor*, 10 February 2017). The draft legislation on income tax is intended to replace

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the current Income Tax Law, which exempts the shares of non-Qatari investors in the profits of some companies and investment funds from income tax.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_5.html

United Kingdom: Finance Act 2017 received Royal Assent on 27 April 2017 and was enacted. Extensive omissions were made from the legislation originally introduced (for prior coverage, see United Kingdom tax alert, 8 March 2017), including the following: corporate loss carryforward rules; corporate interest restriction rules; changes to the substantial shareholdings exemption; non-domicile changes; and changes on "Making Tax Digital" and the associated changes regarding trading and property allowances. Some of these omitted provisions (including the corporate interest restriction rules) had been expected to apply as from 1 April 2017. The outgoing government confirmed that, if re-elected, it would reintroduce the measures with the same effective date.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-kingdom-8-march-2017.pdf

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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.

Australia: The Full Federal Court has issued a landmark transfer pricing decision that is in line with the current OECD BEPS principles. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_1.html

Australia: The 2017-18 federal budget includes BEPS-related amendments in respect of cross-border transactions relating to "Additional Tier 1" capital. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_ib.html#Australia

Germany: The lower house of parliament has approved a bill that would limit the deductibility of related party royalty payments that result in low-taxed income to the recipient due to the application of intellectual property regimes that do not follow the BEPS action 5 "nexus approach." See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_6.html

Italy: A law decree includes measures to bring the patent box regime in line with action 5 of the BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_7.html

Norway: The Ministry of Finance has released a consultation paper that contains proposed amendments that would bring the rules restricting the deductibility of interest in line with the OECD's recommendations in the BEPS action 4 final report. See Norway tax alert, 4 May 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-norway-4-may-2017.pdf

OECD: The OECD has updated its guidance on requirements for local country filing of CbC reports. See Global Transfer Pricing Alert 2017-016, 5 May 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-016-5-may-2017.pdf

OECD: The OECD has announced that the proposed guidance on the transfer pricing of intragroup financing, which was originally due to be released in 2017, will be delayed until "early in 2018."

OECD: On 4 May 2017, the OECD released a full list of the various relationships that have been put in place for the automatic exchange of CbC reports between different jurisdictions, including relationships between the signatories of the Multilateral Competent Authority Agreement on the Exchange of CbC Reports.

United Nations: The updated transfer pricing manual on developing countries reflects BEPS actions 8-10 and covers the three-tiered approach to transfer pricing documentation. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_9.html

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Global Tax Alerts

Norway
Consultation document released on potential changes to interest deduction limitation rules
Norway's Ministry of Finance released a consultation paper on 4 May 2017 that contains proposed amendments to the rules restricting the deductibility of interest expense that would bring them in line with the OECD's recommendations in the BEPS action 4 final report.
Issue date: 4 May 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-norway-4-may-2017.pdf

OECD
Guidance updated on requirements for local country filing of country-by-country reports
On 4 May 2017, the OECD, as a continuation of its BEPS initiative, updated its guidance on requirements for local filing of country-by-country reports to provide rules on when local filing should apply and the conditions that must be satisfied when it is required.
Issue date: 5 May 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-016-5-may-2017.pdf

United States
IRS files notice of appeal in *Medtronic* case
On 21 April 2017, the US Internal Revenue Service filed a notice of appeal in *Medtronic Inc. v. Commissioner* to the Eighth Circuit Court of Appeals, which will decide, among other issues, the appropriate method for determining the royalty rate between Medtronic US and its Puerto Rican subsidiary.
Issue date: 2 May 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-015-2-may-2017.pdf

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