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Luxembourg's draft 2018 budget law presented to parliament

The draft 2018 budget law presented to the Luxembourg parliament on 11 October 2017 includes measures that would affect the corporate income tax, the procedures for the exchange of information between tax authorities upon request and VAT. The main tax measures from the budget law are summarized below, along with a few other pertinent tax developments not covered in the budget law. Unless otherwise noted, the measures from the budget law would apply as from 1 January 2018.

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Corporate income tax

The reduction of the corporate income tax rate from 19% to 18%, introduced through the 2017 tax reform, will become effective as from 1 January 2018 (for prior coverage, see *World Tax Advisor*, 11 March 2016).
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160311_5.html

The draft law on the new intellectual property (IP) regime that was published on 7 August 2017 (for prior coverage, see *World Tax Advisor*, 18 August 2017), and which has not yet been voted on by parliament, is not covered in the 2018 budget law.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170818_1.html

The proposed draft budget law includes only a few changes for corporate entities. In addition to changes aimed at rectifying some ambiguities in the wording of Luxembourg law, the draft budget law would introduce two additional investment tax credits – one for investments in purchased software and the other for electric cars with zero emissions or hydrogen fuel cell cars.

Credit for investment in purchased software: The tax credit for investments in purchased software would be subject to certain limitations aimed at controlling the budgetary impact of the measure and at preventing the same software from benefiting from the regime more than once. The subsidies would be applicable only for purchases of software (*i.e.* they could not be used for software created by the company, which would be able to benefit from the IP regime still under discussion by the parliament). Within a single group, each software purchase could benefit from the credit regime only once, and no credit would be applicable for software purchased from another entity in the group. Once a taxpayer requests the tax credit for the purchase of software, it no longer would be allowed to request the application of the IP regime for the income generated by such software.

The amount of the tax credit granted would be calculated in two tranches – for the portion of purchases up to EUR 150,000, it would be 8% of the cost, and for the portion above EUR 150,000, it would be 2% of the cost. The tax benefit from the regime could not exceed 10% of the tax due for the year of the software acquisition.

Credit for zero-emission electric cars or hydrogen fuel cell cars: "Electromobility" is one of the main priorities of the Luxembourg government. In line with the EU goal to reduce greenhouse gas emissions by 60% by 2050, compared to the emissions in 1990, the government would introduce tax incentives.

The investment tax credit for companies would be applicable upon the purchase of new electric cars with zero emissions or hydrogen fuel cell cars, and would enter into force as from taxable year 2018 for all qualifying cars registered after 31 December 2017. Based on the draft budget law, at the time of calculating the overall investment, the acquisition price (after the deduction of possible subsidies) could be taken into account up to an amount of EUR 50,000 per eligible vehicle. There would be no limits on the level of additional investments in eligible vehicles, all of which could benefit from a 13% investment tax credit.

Exchange of information upon request

The draft law would amend the exchange of information on request procedures to comply with a decision of the Court of Justice of the European Union issued on 16 May 2017. (The case involved a company that challenged the imposition of a monetary penalty for its refusal to provide the tax authorities certain information to be exchanged with another EU member state, on the grounds that the information was not foreseeably relevant to the subject of the investigation.) The changes proposed under the draft law are as follows:

- The Luxembourg tax authorities would ensure that the information requested by the tax authorities of the other jurisdiction is relevant, taking into account the identity of the taxpayer, the holder of information and the requirements of the tax investigation itself; and
- An appeal before the administrative court against an exchange of information, made within the specified time limits, would suspend the Luxembourg tax authorities from reaching a decision on the matter (not only against imposing a fine, as is currently the case).

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VAT

Exemption for certain insurance funds: The VAT law would be modified to expand the list of funds that may benefit from the VAT exemption applicable to management services of investment funds to include collective internal insurance funds whose investment risks are borne by policyholders and that are subject to the supervision of the Luxembourg Insurance Commission.

This long-awaited change responds to requests of the Luxembourg insurance sector to align with the laws of some other EU member states (*e.g.* Italy) that, under specific conditions, already apply a similar exemption to insurance funds. It is worth noting that the exemption would not apply to services rendered to equivalent insurance funds established in other EU member states, while the list of funds and equivalents generally would include Luxembourg funds and their equivalents established in other EU member states that are subject to similar supervision.

Other VAT developments: In addition to the VAT measures in the 2018 budget law, it should be noted that, on 9 August 2017, the Luxembourg government presented a draft law that would introduce new rules related to the VAT treatment of vouchers. The law is expected to become effective on 1 January 2018 and to apply to vouchers issued as from that date; however, the draft law has not yet been voted on by parliament.

The same draft law would amend the VAT law to provide for the taxation of goods retained by a taxpayer (or its legal successors) after the termination of its economic activity, when the VAT incurred on the goods has been partly or fully deducted before the termination of the activity.

In addition, a draft decree to repeal the decree of 21 January 2004 related to the exemption of services rendered by independent groups of persons (IGPs) to their members with effect as from 31 December 2017 has been prepared by the government as a response to a decision issued by the CJEU on 4 May 2017, in which the court held that certain provisions of the existing 2004 decree were incompatible with the EU VAT directive (for prior coverage, see *World Tax Advisor*, 9 June 2017). The new decree has not yet been enacted.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170609_3.html

Moreover, it is worth noting that, on 21 September 2017, the CJEU issued two decisions limiting the benefit of the VAT exemption for IGPs to apply only to activities carried out in the public interest, thus excluding the financial and insurance sectors from the regime.

Next steps

The Luxembourg parliament will debate the proposed measures in the draft 2018 budget law, potentially amend them and vote on the final version before the end of the year.

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Azerbaijan:
Low-tax regime list approved

On 11 July 2017, the president of Azerbaijan approved a list of 40 countries and territories that are deemed to have low-tax regimes. Inclusion on the list has the following consequences:

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- Direct or indirect payments made by Azerbaijan residents to persons resident in a listed country are deemed to be Azerbaijan-source income and subject to an additional withholding tax of 10% (over and above the normal 10% or 14% rates that apply to dividends, interest and royalties);
- Transactions with low-tax jurisdictions are subject to Azerbaijan's transfer pricing rules; and
- A resident of Azerbaijan that directly or indirectly holds more than 20% of the charter capital or voting shares of a nonresident that receives income in a black list country must include such income in its taxable income on a current basis.

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European Union:
European Commission proposes comprehensive VAT reform

On 4 October 2017, the European Commission announced a legislative proposal to fundamentally reform the EU VAT rules. The announced measures propose comprehensive changes to how VAT is levied in the EU and, if adopted, would have a substantial impact on businesses. The most significant change under the new system is that cross-border sales of goods within the EU would be taxed in the same way as sales within a single EU member state, *i.e.* VAT would be imposed on cross-border sales between businesses (which currently are exempt from VAT) under a destination-based system.

The proposal aims to improve and modernize the VAT system for governments and businesses alike to take into account globalization and the digital economy, and to reduce cross-border VAT fraud, particularly fraud used to finance criminal activities and terrorism, in line with the 2016 EU VAT Action Plan. The commission estimates the reform would reduce the "VAT gap" (*i.e.* the difference between the VAT revenue expected and the amount actually collected) due to cross-border VAT fraud by 80%, as well as reduce compliance costs for businesses carrying on cross-border trade.

Fundamental principles

The commission intends to seek agreement on the following fundamental principles for the new system:

- The principle of "taxation at destination" for intra-EU supplies of goods;
- The general rule that the supplier is liable for charging and collecting VAT in the case of an intra-EU supply of goods; however, where the buyer is a "certified taxable person," the buyer would be liable for payment of the VAT directly to the destination member state; and
- The extension of the one-stop shop (OSS) online portal that currently exists for the provision of e-services. The OSS would allow businesses to take care of their cross-border VAT obligations in their home country and in their own language, with EU member states then paying the VAT to each other directly (as already is the case for some supplies of e-services). The OSS also would allow the deduction of input VAT outside a business' home country.

Certified taxable person

A new category of certified taxable person would be introduced that would allow qualifying businesses to benefit from simpler, time-saving rules for declaring and paying VAT and that would be mutually recognized by all EU member states. Businesses would apply for certified taxable person status with the tax authorities in their home country and be required to meet certain pre-defined criteria; once qualified, the business would obtain a certificate that considers the business to be a "reliable taxpayer" for VAT purposes. Non-EU-established traders would not qualify for this status.

Simplification proposals

The commission's proposal presents short-term measures to simplify and improve the day-to-day functioning of the current VAT system until the new regime is fully agreed and implemented (notably, the first three of the following measures would apply only to certified taxable persons):

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- Simplification of the VAT rules for companies moving goods from one member state to another member state where the goods are to be stored before being supplied to a customer whose identity is known in advance (*i.e.* "call-off stock arrangements");
- Simplification of chain transaction situations that do not involve the physical movement of goods (*e.g.* where goods are sold via several traders but only physically move from the original seller to the buyer);
- New rules that would allow traders to more easily demonstrate that goods have been transported from one member state to another, which is required for the application of the VAT exemption (*i.e.* zero rating) for intra-community supplies; and
- Clarification that, in addition to the proof of transport, the VAT number of the commercial partner, which must be recorded in the electronic EU VAT-number verification system (VIES), is needed to apply the cross-border VAT exemption under the current rules.

Comments

Following a consultation with the European Parliament and the European Economic and Social Committee, the European Commission will issue a detailed proposal in 2018 to amend the EU VAT directive to implement the reform. The proposal then must be unanimously approved by all member states in the European Council to enter into force. Affected businesses should begin considering the impact of the proposed reform on their VAT liabilities, VAT registrations and compliance processes, including with respect to the setup of their accounting and VAT reporting systems.

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Hong Kong: Policy address includes important tax measures

The Chief Executive of the Hong Kong SAR delivered her first policy address on 11 October 2017, which contains several proposals that will be of interest to the business community. (The policy address is a platform for the government to set out plans for future policy initiatives.)

In a move that would benefit small and medium-sized enterprises, the policy address reiterated a previous proposal to replace the current flat tax on corporate profits with a two-tier profits tax regime that would reduce the current 16.5% tax rate on profits not exceeding HKD 2 million to 8.25%. Profits exceeding HKD 2 million would remain subject to the 16.5% rate. However, measures would be introduced so that only one entity in a tax group would be able to benefit from the lower rate.

The policy address also includes proposals to promote innovation and R&D in Hong Kong, and to help Hong Kong to become a "Smart City." An additional tax deduction of 300% would be granted for qualifying R&D expenditure up to HKD 2 million, with an additional 200% deduction available on qualifying expenditure exceeding that amount.

The number of comprehensive double taxation agreements to be signed with other jurisdictions would be increased to 50 within the next few years. Hong Kong would further enhance bilateral ties by signing a free trade agreement and an investment promotion and protection agreement with ASEAN and the Hong Kong and Macao Closer Economic Partnership Arrangement before the end of 2017.

Comments

Formulation of detailed guidelines and consultation with businesses and professional bodies is required before the two-tier tax regime and/or the additional R&D deduction proposals can be implemented. The government is expected to submit draft legislation soon, with a view to implementing the proposals in 2018.

However, several items will need to be clarified before a legislative proposal can be presented, including: (i) whether the two-tier profits tax system would apply to unincorporated businesses; (ii) the types of R&D expenditure that would

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be eligible for the additional tax deduction; and (iii) the requirements and restrictions for claiming the additional R&D deduction. The government is expected to provide more details on the proposals at a later stage.

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Italy:
Notional interest deduction implementation rules amended

A decree issued by Italy's Ministry of Economy on 3 August 2017 and published on 11 August 2017 amends the implementation rules for the notional interest deduction (NID). The decree replaces the original implementation decree issued on 14 March 2012 (for prior coverage, see *World Tax Advisor*, 18 May 2012). It generally is applicable from the tax year starting after the date the decree was published in the official gazette (*i.e.* tax year 2018 for calendar year companies), except for the reduction of the NID rate, which is effective from 2017.
URL: http://newsletters.usdbriefs.com/2012/Tax/WTA/120518_2.html

The decree contains specific rules for the computation of the NID basis by companies that use Italian GAAP for financial reporting purposes. However, it also makes other changes to the NID implementation rules, including a reduction of the NID rate and a broadening of the anti-abuse provisions to prevent the double or multiple use of qualifying equity.

Overview of NID

The NID is a corporate income tax deduction computed as a percentage of the annual increase in a company's net equity from new cash contributions and retained earnings. Introduced in 2011, the NID is designed to encourage businesses to strengthen their capital structures and to level the tax treatment of companies that are funded with equity 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 the financial statements (net of distributions and other adjustments to avoid duplications of basis from intercompany transactions) for the periods ending after calendar year 2010.

Changes to NID implementation rules

In addition to the specific rules for the computation of the NID basis by companies that use the revised Italian GAAP for financial reporting purposes, the decree modifies the implementation rules, as follows:

- The NID rate is reduced to 1.6% for 2017 (for calendar year taxpayers) and 1.5% for 2018 and thereafter.
- Retained earnings derived from profits originating from a contribution of an active trade or business no longer are included in the NID base, regardless of which financial reporting standards (Italian GAAP, IAS/IFRS) the company uses.
- To prevent double or multiple use of the NID benefit within groups, specific anti-avoidance rules address various types of intercompany transactions. A new definition of "group" applies for these purposes, which includes all group entities, including nonresident entities and individuals. The following transactions are within the scope of the anti-abuse rules:

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- o Cash contributions to group companies (the NID base of the contributing company is permanently reduced by the amount of the cash contribution);
- o Acquisitions of participations or business going concerns from other group entities (the NID base of the purchasing company is permanently reduced by the amount of the purchase price); and
- o Intragroup financing (the NID base of the financing company is reduced temporarily by the increase in the loan receivables at the end of the year).

A specific anti-avoidance rule targets cash contributions received directly or indirectly from jurisdictions that do not allow the exchange of tax information with Italy (a "black-list" jurisdiction), even if the contributing entity does not belong to the group. Such contributions may not generate equity that qualifies for the NID. (A look-through approach is used to determine whether an ultimate shareholder (even one with a minority interest) is resident in a black-list jurisdiction, with certain exceptions).

A taxpayer can avoid the application of the anti-abuse rules if it is able to demonstrate that there is no double or multiple use of the NID in the specific case. The taxpayer can request a tax ruling (for cash contributions received from black-list jurisdictions, the taxpayer also must prove that all ultimate shareholders are not resident in black-list jurisdictions), or alternatively, it can disclose the existence of the intercompany transaction potentially subject to the anti-abuse provision in the tax return.

Comments

Since transactions implemented in prior years that potentially are captured by the new rules are not grandfathered, the NID computation of Italian subsidiaries should be carefully reviewed.

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Morocco:
Finance law for 2017 contains beneficial measures for companies

Morocco's finance law for 2017, published in the official gazette on 12 June 2017 and applicable as from that date, contains several beneficial measures affecting companies, including the following:

- A five-year tax holiday is granted to industrial companies starting from the day business operations commence. The government will issue a list of qualifying companies.
- Companies that register their shares for listing on the stock exchange (except for credit institutions, insurance and reinsurance companies, public-service concession companies and public companies) are entitled to a corporate tax reduction for the three consecutive years following the date of registration. The corporate tax rate is reduced by: (i) 25%, if the company enters the stock exchange by selling existing shares; and (ii) 50%, if the company enters the stock exchange by increasing its capital by at least 20%, accompanied by a waiver of preferential subscription rights.
- Tax incentives that are available to export enterprises (*i.e.* a five-year corporate tax exemption, followed by a reduced rate of 17.5%) are extended to apply to sales of manufactured goods to other export enterprises, as well as to enterprises located in export free zones.
- Companies that qualify as real estate collective investment vehicles (OPCIs) are exempt from tax on rental income derived from buildings constructed for professional use, as well as dividends and interest received. In addition, gains derived by persons that transfer real property to an OPCI in exchange for shares are entitled to a deferral of personal income tax until disposal of the shares, in addition to a 50% tax reduction on the sale.

The finance law also contains measures that provide favorable tax treatment for mergers and divisions, such as the following:

- Exemption from capital gains tax on gains derived by the acquiring company on the disposal of shares in the target company;

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- Deferral of tax on gains derived by shareholders of the target company when exchanging their shares for shares of the acquiring company until disposal of the shares; and
- Deferral of taxation of assets of the target company at the level of the acquiring company as follows:
  - In the case of nondepreciable assets (land, goodwill, etc.), until the assets are subsequently sold; and
  - In the case of depreciable assets, until the depreciation/amortization period ends or the assets otherwise are disposed of or withdrawn from the company's books.

In addition, an intragroup restructuring related to the transfer of assets will be subject to tax-neutral treatment.

Finally, the finance law introduces a general anti-avoidance rule that is based on the French concept of "abuse of law." The tax authorities will be able to invoke this provision to recharacterize transactions whose main purpose is to avoid or evade tax.

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Saudi Arabia:
Tax law revised

A royal decree dated 20 September 2017 includes a number of changes to Saudi Arabia's tax laws, including reduced tax rates for oil and gas companies and other measures to provide tax relief and clarify existing tax rules. Most of the amendments are effective from the beginning of the financial year following the issuance of the royal decree, although some of the new rules apply retroactively from 1 January 2017.

Saudi Arabia's tax bylaws also will be amended to reflect the tax law revisions to provide additional clarity on the changes.

The key measures affecting companies are discussed below.

Taxable person

The definition of a resident capital company that is subject to tax is amended to include shares owned directly or indirectly by persons engaged in the production of oil and hydrocarbon materials. As a result of this amendment, companies engaged in oil and hydrocarbon activities as well as their subsidiaries are subject to income tax, whereas previously they only were subject to Zakat (a religious levy).

A nonresident person that has Saudi Arabian-source taxable income is subject to tax, regardless of whether it has a permanent establishment (PE) in the kingdom (previously, nonresidents were taxed only on income arising from or related to a PE).

Tax rates

The flat tax rate of 85% for taxpayers engaged in the production of oil and hydrocarbon materials is reduced for taxpayers with capital investment exceeding USD 60 billion, with the new rate based on the level of capital investment. The reduced rates, which apply as from 1 January 2017, are as follows:

- 75% for companies with capital investment greater than USD 60 billion and up to 80 billion;
- 65% for companies with capital investment greater than USD 80 billion and up to USD 100 billion; and
- 50% for companies with capital investment greater than USD 100 billion.

A company's capital investment includes the total value of a company's assets (*i.e.* both tangible and intangible assets), as well as exploration, drilling and development expenses.

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Exempt income

Capital gains realized from the disposal of securities traded on a stock exchange outside Saudi Arabia will be exempt from tax, provided the securities also are traded on the Saudi stock exchange (Tadawul), irrespective of whether the disposal occurred through a stock exchange or through any other means. The tax bylaws will set out the specific requirements for the exemption.

Cash or in-kind dividends received by a Saudi-resident capital company from investments in a Saudi-resident or nonresident company will be exempt from tax, provided the Saudi recipient owns at least 10% of the capital of the payer company for a period of at least one year.

Contributions to pension funds

As from 1 January 2017, capital companies may deduct their contributions to a retirement, social insurance or any other fund established for the purpose of settling employees' end-of-service benefits or medical expenses, provided:

- The deduction does not exceed the fund's unfunded liabilities that are due at the beginning of the financial year for which a deduction is being claimed; and
- The fund has an independent legal status, regardless of whether it is established inside or outside Saudi Arabia.

Capital companies will have to provide certain information relating to the funds to the General Authority of Zakat & Tax (GAZT); the required information will be specified in the tax bylaws.

Intragroup asset transfers

Transfers of assets (cash, shares, securities, and tangible and intangible assets) between group companies will not be subject to tax, provided the companies are wholly owned (directly or indirectly) within the group and the assets remain within the group for at least two years from the date of transfer.

Other provisions

The decree also makes the following changes and clarifications:

- Capital companies will be allowed to carry forward losses indefinitely, irrespective of whether there has been a change in ownership or control, provided they continue to perform the same activity.
- The tax base of persons engaged in the production of oil and hydrocarbon materials will be their taxable income, less expenses allowed in accordance with the tax laws.
- The GAZT's right to receive information is extended to include information on rulings relating to the application of international treaties. The tax bylaws will specify the penalties for noncompliance.

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In brief

Chile: The House of Representatives approved a bill on 5 October 2017 that would implement measures under the OECD/G20 BEPS project (including country-by-country reporting rules) and the OECD common reporting standard. The bill also would extend the transition rules under the dual tax regime, abolish the investment platform regime and introduce incentives for donations (for prior coverage, see *World Tax Advisor*, 22 September 2017). The bill now must be considered by the Senate.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170922_2.html

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Cyprus: The tax authorities have announced that taxpayers may pay their VAT liabilities through online banking. The authorities have agreed with four major commercial banks to offer to their clients a facility to make VAT payments from their internet banking service, with other commercial banks expected to follow suit. This change is part of the modernization of processes and procedures in Cyprus' Department of Taxation and is expected to result in cost savings and administrative efficiency for businesses.

Ireland: Finance Bill 2017 was presented to parliament on 19 October 2017. In addition to implementing measures announced in Budget 2018 (for prior coverage, see *World Tax Advisor*, 13 October 2017), the bill would extend anti-avoidance rules for interest deductions to corporate groups; commence the legislative procedure required to give effect in Irish law to the MLI; clarify the tax rules for adopting a new accounting standard within an existing accounting framework and make other changes. The bill is expected to be signed into law in late December 2017.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171013_ib.html

United Arab Emirates: The Federal Tax Authority has opened registration on its portal for the domestic VAT (for prior coverage, see *World Tax Advisor*, 8 September 2017). UAE businesses with turnover of AED 375,000 or more in a 12-month period must register for VAT before the tax becomes effective on 1 January 2018, while businesses with annual turnover or annual expenses subject to VAT exceeding AED 187,500 may register voluntarily. Businesses without a UAE establishment are required to register for VAT if they are required to charge and collect UAE VAT on any value of local sales. Business groups will have the ability to register under a single group registration.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170908_ib.html

United Kingdom: The UK tax authorities (HMRC) issued draft guidance on 20 October 2017 on penalties to be imposed on any person that enables the use of abusive tax arrangements that are later defeated. The draft supports new legislation in the Finance Bill 2017, which will give HMRC the power to challenge all aspects of marketed avoidance supply chains. Comments are requested on the draft guidance by 30 November 2017.

On 9 October 2017, the UK government published two white papers on trade and customs that set forth policies to enable the development of legislation that will apply after the UK's exit from the EU (for prior coverage of Brexit, see *World Tax Advisor*, 12 May 2017), with an aim of preventing disruption to the UK's trading arrangements. The white paper on trade sets forth principles for establishing an independent international trade policy and practical steps to support those principles, which would include incorporating existing trade agreements with EU and non-EU countries into UK law. The white paper on customs sets forth plans to legislate for independent customs, VAT and excise regimes post-Brexit, and confirms the government's intent to have the new customs legislation replicate the effects of existing EU law to the extent possible.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_4.html

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BEPS corner

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

Chile: The House of Representatives approved a bill on 5 October 2017 that would implement BEPS measures. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171027_ib.html#Chile

Ireland: Finance Bill 2017, which was presented to parliament on 19 October 2017, would commence the legislative procedure required to give effect in Irish law to the MLI. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171027_ib.html#Ireland

Norway: The budget for 2018 does not contain new interest deduction restrictions previously proposed by the Minister of Finance or any other BEPS-type measures. See Norway alert, 13 October 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-norway-13-october-2017.pdf

OECD: The OECD will hold two public consultations on transfer pricing matters on 6-7 November 2017 that will focus on the issues covered in the discussion drafts published in June 2017 on revised guidance on profit splits (for prior

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coverage, see Global Transfer Pricing Alert 2017-026, 23 June 2017) and attribution of profits to permanent establishments (for prior coverage, see Global Transfer Pricing Alert 2017-027, 26 June 2017).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-026-23-june-2017.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-027-26-june-2017.pdf

The OECD issued new implementation guidance on 24 October 2017 to promote the effective collection of consumption taxes on cross-border sales, which will support the consistent implementation of internationally agreed standards for the VAT treatment of cross-border trade. The guidance is particularly relevant in the context of the digitalization of the economy and is one of the actions in the BEPS project (action 1).

The Forum on Tax Administration announced the publication of two handbooks intended to help tax administrations prepare for the first exchanges of CbC reports in June 2018. See Global Transfer Pricing Alert 2017-044, 18 October 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-044-18-october-2017.pdf

The OECD published a report on 16 October 2017 that sets out the results of peer reviews undertaken by the Forum on Harmful Tax Practices over the last 12 months. Of the 164 preferential tax regimes reviewed, 99 required action to conform to the new BEPS standards, 93 have been completed or the required changes have been initiated; 56 regimes do not pose a BEPS risk; and nine still are under review. The members of the Inclusive Framework have agreed on a target date of no later than October 2018 for jurisdictions whose regimes have harmful features to make the needed adjustments.

The Forum on Tax Administration has issued a communiqué on its 29 September 2017 meeting, announcing the launch of the International Compliance Assurance Program (ICAP), a pilot voluntary risk assessment program for multinational enterprise (MNE) groups. The ICAP is a joint initiative between the tax authorities of seven countries (Australia, Canada, Italy, Netherlands, Spain, the UK and the US) that is intended to foster open multilateral discussions between participating MNE groups and tax authorities, based on the use of country-by-country reports (provided in line with BEPS action 13) and other information. The ICAP aims to provide a simpler and faster way to obtain increased tax certainty on a multilateral basis, among other potential benefits. The pilot program officially will launch in January 2018, with an orientation for participating MNE groups and tax authorities that will be hosted by the US Internal Revenue Service.

An update to the OECD list of signatories and parties to the Multilateral Instrument (MLI) indicates that Austria deposited its instrument of ratification, acceptance or approval for the MLI on 22 September 2017 and includes a link to Austria's definitive list of reservations and notifications to the MLI (*i.e.* its MLI position). The MLI must be ratified by at least four more jurisdictions before it first enters into force.

Oman: Oman has become the 103rd country to join the inclusive framework on BEPS. Under the inclusive framework, all jurisdictions that commit to the BEPS project will participate as BEPS associates of the OECD's Committee on Fiscal Affairs. Joining the BEPS inclusive framework means that the countries must implement the four minimum standards: countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution.

United States: The US has signed separate bilateral competent authority arrangements (CAAs) providing for the automatic exchange of CbC reports with the Czech Republic, Finland, Greece, Italy and Sweden, bringing the total number of bilateral CbC report exchange arrangements concluded by the US to 27. The US currently is negotiating bilateral CAAs with 15 additional countries. The bilateral CAAs implement the US' commitment to exchange CbC reports under the BEPS action 13 minimum standard.

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Tax treaty round up

At the end of each month, *World Tax Advisor* provides an update on recent tax treaty developments, with a focus on items that directly affect the withholding tax rates of the key jurisdictions covered by the Deloitte International Tax Source (DITS). Additional coverage may include stated negotiating priorities and other important tax treaty trends.
URL: http://www.dits.deloitte.com?id=us:em:na:wta:eng:tax

Unless otherwise noted, the developments discussed below are not yet in force.

Austria: An update to the OECD list of signatories and parties to the Multilateral Instrument (MLI) indicates that Austria deposited its instrument of ratification, acceptance or approval for the MLI on 22 September 2017 and includes a link to Austria's definitive list of reservations and notifications to the MLI (*i.e.* its MLI position). The MLI must be ratified by at least four more jurisdictions before it first enters into force.

Denmark-Japan: When in effect, the treaty signed on 11 October 2017 to replace the 1968 treaty provides for a 0% withholding tax rate on dividends paid to (i) a company that has owned directly, for a six-month period ending on the date on which entitlement to the dividends is determined, at least 10% of the capital of the Danish payer company or at least 10% of the voting power of the Japanese payer company, or (ii) a pension fund, provided the dividends are derived from specified activities; otherwise, the rate will be 15%. The 0% rate will not apply, however, if the dividends are deductible in computing the taxable income of the payer company in its state of residence. A 10% rate will apply to certain contingent interest; otherwise, the rate will be 0%. Royalties will be taxable only in the state of residence of the recipient.

Ecuador-Belarus: The 2016 treaty entered into force on 16 August 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. A 10% rate will apply to interest and royalties.

India-Kenya: The 2016 treaty to replace the 1985 treaty entered into force on 30 August 2017 and will apply as from 1 April 2018 in India and as from 1 January 2018 for withholding tax purposes in Kenya. When in effect, the new treaty provides for a 10% withholding tax rate on dividends, interest and royalties.

Indonesia-Netherlands: The 2015 protocol to the 2002 treaty entered into force on 1 August 2017 and applies as from 1 October 2017. Under the protocol, a 5% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; a 10% rate applies to dividends paid to a qualifying pension fund; otherwise, the rate is 15%. A 5% rate applies to interest paid on a loan made for a period of more than two years or in connection with a sale of industrial, commercial or scientific equipment on credit; otherwise, the rate is 10%. The withholding tax rate on royalties is not affected by the protocol.

Italy-Romania: The 2015 treaty to replace the 1977 treaty entered into force on 25 September 2017 and will apply as from 1 January 2018. When in effect, the new treaty provides for a 0% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company and has done so, or will have done so, for an uninterrupted period of two years in which the date the dividends are paid falls; otherwise, the rate will be 5%. The rate on interest and royalties will be 5%.

Malta-Andorra: The 2016 treaty entered into force on 27 September 2017 and will apply as from 1 January 2018. When in effect, the treaty provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

Malta-Ukraine: The 2013 treaty entered into force on 28 August 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Mexico-Spain: The 2015 protocol to the 1992 treaty entered into force on 27 September 2017 and applies as from that date for withholding tax purposes. Under the protocol, a 0% rate applies to dividends paid to a company whose capital is wholly or partially divided into shares and that holds directly at least 10% of the capital of the payer

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company, or paid to a pension fund; otherwise, the rate is 10%. A 0% rate applies to interest paid to a pension fund; a 4.9% rate applies to interest paid on loans granted by a bank or other financial institution (including investment banks, savings banks and insurance companies) and to interest paid on bonds and other debt instruments that are regularly and substantially traded on a recognized stock exchange; otherwise, the rate is 10%. The withholding tax rate on royalties is not affected by the protocol.

United Kingdom-Belarus: When in effect, the treaty signed on 26 September 2017 to replace the 1985 treaty between the UK and the former USSR in relations between the UK and Belarus provides for a 15% withholding tax rate on dividends paid out of income (including gains) derived directly or indirectly from certain immovable property by an investment vehicle resident in a contracting state whose income from such property is exempt from tax and that distributes most of that income annually; otherwise, the rate will be 5%. A 0% rate will apply to interest paid to a bank; otherwise, the rate will be 5%. A 5% rate generally will apply to royalties, with special rules applying to royalties paid in respect of the use of or right to use industrial, commercial or scientific equipment.

Global tax alerts

Malta
Notional interest deduction rules introduced
Malta's government introduced a notional interest deduction regime on 5 October 2017 that will be effective as from the 2018 year of assessment.
Issue date: 16 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-malta-16-october-2017.pdf

Netherlands
New policy goals include corporate income tax rate reduction, abolition of dividend WHT
The agreement presented by the government coalition parties on 10 October 2017 proposes new interest deduction limitation rules and changes to the innovation box regime, and would reduce the loss carryforward period and introduce reporting for activities in "black list" jurisdictions.
Issue date: 13 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-netherlands-13-october-2017.pdf

Norway
Proposed interest expense limitations not included in budget 2018
The 2018 budget presented on 12 October 2017 would reduce the corporate tax rate, but does not contain previously proposed new interest deduction restrictions or any other BEPS-type measures.
Issue date: 13 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-norway-13-october-2017.pdf

OECD
OECD Forum on Tax Administration issues handbooks to address implementation and use of CbC reports
The OECD Forum on Tax Administration has announced the publication of two handbooks intended to help tax administrations prepare for the first exchanges of CbC reports in June 2018.
Issue date: 18 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-044-18-october-2017.pdf

United States
Transfer pricing: Deadlines to preserve taxpayer rights to request competent authority assistance to relieve double taxation
To obtain relief from double taxation, the US and other countries' competent authorities must be notified of proposed transfer pricing adjustments, or a request for MAP assistance must be filed, within specified deadlines under many US tax treaties.
Issue date: 18 October 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-045-18-october-2017.pdf

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