In this issue:

French amended finance law and bill for 2017 contain measures affecting companies ... 1
Ecuador: Tax haven jurisdictions defined ... 4
Germany: Capital gains from sale of shares by non-treaty-protected shareholder are fully tax-exempt ... 5
Germany: Final decree issued on withholding tax on outbound payments for software and database usage ... 5
India: Tax authorities issue master file and CbC reporting rules ... 6
Papua New Guinea: Tax amnesty in effect until end of 2017 ... 8
Taiwan: Employment income tax exemption procedure under agreement with Japan clarified ... 9
In brief ... 9
BEPS corner ... 11
Tax treaty round up ... 11
Global tax alerts ... 13

French amended finance law and bill for 2017 contain measures affecting companies

An amended finance law and an amended finance bill for 2017 contain measures that will have a significant impact on companies doing business in France.

On 14 November 2017, the parliament approved the first amended finance law, which includes the anticipated exceptional one-time surtax on corporate income tax liabilities to be levied on very large companies (*i.e.* companies whose annual turnover exceeds EUR 1 billion). The proposal for the surtax was presented to parliament on 2 November 2017 (for prior coverage, see France alert, 3 November 2017).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-3-november-2017.pdf

The second amended finance bill for 2017, released on 15 November, contains measures that would abolish the requirement for French companies to obtain advance approval of cross-border mergers to qualify for benefits under the EU merger directive, disallow a deduction for withholding tax levied under a tax treaty and reduce the default interest rate.

This article summarizes the main provisions in the law and the bill.

Exceptional surtax on corporate income tax

The one-time surtax in the first amended finance law is designed to finance the portion of refunds of the unduly paid 3% surtax on profit distributions following the recent decision of the constitutional court, in which the court concluded that the 3% surtax violates the French constitution (for prior coverage, see France alert, 6 October 2017). Because of the decision, surtax reimbursements by the French Treasury for 2017 and 2018 are now expected to be close to EUR 10 billion (and as discussed below, the French government has proposed to reduce the default interest rate for this reason).
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-6-october-2017.pdf

The surtax will have the effect of increasing the corporate income tax due for one fiscal year (FY 2017 for companies having a closing date in line with the calendar year) and, for most affected companies, will give rise to a 95% surtax installment due by 20 December 2017. Companies with a non-calendar year fiscal year will pay the 95% installment in 2018.

Two surtax rates will apply, depending on the company's turnover:

- Companies with turnover above EUR 1 billion, but below EUR 3 billion, will be subject to a 15% surtax on the amount of their corporate income tax liability; and
- A higher rate of 30% will apply to companies whose turnover equals or exceeds EUR 3 billion, since these companies will be subject to an additional surtax equal to 15% of their corporate income tax liability, thus resulting in a 30% surtax.

The maximum effective tax rate, therefore, will be 39.4% and 44.4%, respectively.

Four amendments were added to the original surtax proposal during the parliamentary debates:

1. **Introduction of a mitigating mechanism:** A measure is included to mitigate the impact of the surtax for companies whose turnover just exceeds the relevant thresholds. The measure will benefit companies whose turnover is between EUR 1 billion and EUR 1.1 billion (*i.e.* for companies subject to the 15% rate) and between EUR 3 billion and EUR 3.1 billion (*i.e.* for companies subject to the 30% rate). The applicable rate for these companies will be lower and the amount of the surtax finally due will be substantially lower.
2. **Nondeductibility of the surtax:** The exceptional surtax may not be deducted in computing a company's corporate income tax liability.
3. **Extension of the payment period for all companies in the same situation:** Companies with a fiscal year-end up to 19 February 2018 (31 December 2017 in the proposal) will be required to make an advance payment corresponding to 95% of the surtax by 20 December 2017.
4. **Reduction of the penalty threshold:** The original proposal included late payment interest and a 5% penalty if the installment payment made by the company was underestimated by more than 20% and was at least EUR 1.6 billion. The finance law reduces the EUR 1.6 billion to EUR 1.2 billion.

Abolition of prior approval requirement for cross-border mergers

The most notable provision in the second amended finance bill would be the abolition of the requirement that taxpayers obtain advance approval from the French tax authorities to qualify for benefits under the EU merger directive where a merger involves a transfer of assets to a foreign legal entity. This provision, which is designed to prevent abuse of the directive, requires a French taxpayer to demonstrate the following to obtain benefits under the directive:

- The transaction can be justified on economic grounds;
- The principal purpose of the transaction, or one of its principal purposes, is not tax avoidance or evasion; and
- The terms of the transaction allow the future taxation of the relevant capital gains.

In contrast, tax deferral is granted in a purely domestic merger without the taxpayer having to meet any of the above requirements.

On 8 March 2017, the Court of Justice of the European Union (CJEU) ruled that France's domestic rules relating to the anti-avoidance provision in the merger directive were contrary to the directive and the freedom of establishment provision in the Treaty on the Functioning of the European Union (TFEU) (for prior coverage, see *World Tax Advisor*, 24 March 2017). France's Supreme Administrative Court (SAC) then followed the CJEU decision in a decision issued on 26 June 2017.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170324_4.html

The second amended finance bill for 2017 provides that, as from 1 January 2018, the advance approval requirement would no longer apply to mergers or divisions of a company or in the case of a partial contribution of assets, when the transferred assets are recorded in the balance sheet of a French permanent establishment of the foreign company. However, the French transferring company would be required to complete a specific declaration at the time it files its tax return, reporting the reasons for, and the consequences of, the transaction. A fine of EUR 10,000 would be imposed for failure to submit the declaration, but the applicability of the beneficial tax treatment would not be challenged.

The finance bill also contains a measure that would transpose the anti-abuse clause in the merger directive (which allows EU member states to refuse to grant the benefits of the directive to transactions motivated only by tax fraud or evasion) into domestic law. Companies engaging in cross-border mergers, etc. would be permitted to request confirmation from the French tax authorities that the economic reasons for the merger or contribution are valid, and confirmation would be deemed to be granted if the authorities do not respond within six months after the request was submitted.

The second amended finance bill also would abolish the requirement that, in the case of a partial contribution of assets, the contributing company undertake to keep the shares received in exchange for a minimum period of three years.

Nondeductibility of foreign tax levied in accordance with provisions of a tax treaty

In cases where a tax treaty allocates taxing rights to both France and the relevant treaty partner, double taxation is eliminated by the granting of a tax credit equal to the amount of tax withheld.

The amended finance bill contains a provision that would disallow a deduction of tax withheld abroad that was levied in accordance with the provisions of a treaty. Under existing jurisprudence of the French SAC, a deduction of such withholding tax is permitted in the following circumstances: (i) the treaty does not specifically disallow the deduction; or (ii) the treaty does not specifically disallow the deduction, but it provides for the taxation of the gross income.

As from 31 December 2017, regardless of the wording of a tax treaty, withholding tax paid abroad would not be deductible for corporate income tax purposes, even if the company is unable to use the tax credit granted under the treaty (*e.g.* because it is in a loss-making position).

Default interest rate to be reduced by 50%

Because of the large amounts that the French Treasury will be required to reimburse as a result of the constitutional court decision on the 3% surtax on dividends (see above) and the resulting amount of default interest the government will have to pay, the government intends to reduce the default interest rate. Under the amended finance bill, the default interest rate for both the government and taxpayers would be reduced from 4.8% to 2.4% per year (*i.e.* 0.2% per month), with the new rate applying to interest accruing as from 1 January 2018.

Comments

The first amended finance law for 2017 will become effective following a review of the law by the constitutional court, which is expected in the coming weeks, which will allow the 95% installment to be levied on 20 December 2017. Parliament is expected to vote on the second amended finance bill by the end of 2017.

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

— Nathalie Aymé (Paris)
Partner
Taj
nayme@taj.fr

Grégoire Madec (Paris)
Partner
Taj
gmadec@taj.fr

Thomas Perrin (Paris)
Partner
Taj
tperrin@taj.fr

Sophie Tardieu (Paris)
Partner
Taj
stardieu@taj.fr

Ecuador:
Tax haven jurisdictions defined

Legislation introduced on 17 August 2017 contains a definition of a "tax haven" for Ecuadorian tax purposes. Under the new rules, which apply as from 1 September 2017, a foreign jurisdiction will be deemed to be a tax haven if it operates a regime that fulfills two of the following three conditions:

1. Has an effective income tax rate of less than 60% of the Ecuadorian rate (*i.e.* a rate that is under 13.2%);
2. Allows for the undertaking of economic, financial, production or commercial activities that are not substantially performed within the foreign jurisdiction, where the taxpayer concerned avails itself of the tax benefits offered by that jurisdiction; and
3. Does not provide for the exchange of information in accordance with international standards on transparency.

The effects of inclusion on Ecuador's tax haven list, which is issued by the tax authorities and currently includes 88 jurisdictions, include the following:

- An income tax rate of 25% (rather than the standard rate of 22%) for an Ecuadorian company on taxable income corresponding to the shareholding of partners or shareholders resident in a tax haven (which may be applied to the entire entity if the shareholding exceeds 50%);
- A domestic withholding tax of 10% on dividends paid to a recipient in a tax haven (otherwise, dividends paid to a nonresident generally are not subject to withholding tax in Ecuador). The 5% special tax on the remittance of funds abroad also applies to the dividends; and
- A domestic withholding tax rate of 35% (normally 22%) on certain types of Ecuador-source income, including interest, royalties and technical service fees paid to a recipient in a tax haven.

— Juan Yupa (Quito)
Partner
Deloitte Ecuador
jyupa@deloitte.com

Luis Ponce (Quito)
Partner
Deloitte Ecuador
luponce@deloitte.com

Germany:
Capital gains from sale of shares by non-treaty-protected shareholder are fully tax-exempt

Germany's federal tax court (BFH) issued a decision on 31 May 2017 (published on 25 October 2017), in which it held that capital gains from the sale of shares by a foreign corporate shareholder with limited German tax liability are 100% exempt from German tax, regardless of the existence of (or provisions in) a tax treaty. In other words, the normal add-back of 5% deemed nondeductible business expenses does not apply to a limited liability taxpayer/non-treaty protected foreign shareholder. In reaching its decision, the BFH overruled the decision of the lower tax court of Hesse, which had ruled for the tax authorities. The BFH decision brings an end to a long-running dispute between tax practitioners and the tax authorities.

Under Germany's participation exemption and section 8b of the corporate income tax code, capital gains from the sale of shares generally are 100% tax exempt for corporate shareholders. However, 5% of the gains are deemed to be nondeductible business expenses and are added back to taxable income, which effectively limits the benefit of the participation exemption to 95%. Foreign shareholders are subject to limited German tax liability if they owned, directly or indirectly, at least 1% of the capital of a German corporation within the five-year period before the sale.

In the case decided by the BFH, a Bermuda corporation owned approximately 11% of the shares in a German corporation through a Bermuda partnership. The partnership sold the shares in the German corporation and the German tax authorities assessed a 5% taxable gain for the Bermuda corporate shareholder for corporate income tax purposes.

Since the Bermuda corporation indirectly owned more than 1% of the shares in the German corporation, it was treated as being subject to limited German tax liability (the Bermuda partnership is considered transparent for German tax purposes) in respect of the capital gains from the sale of the shares. Germany does not have a tax treaty with Bermuda that would provide protection to a Bermuda corporate shareholder. The German tax authorities assessed a 5% taxable gain and imposed corporate income tax and the solidarity surcharge at the general rate of 15.825%.

The commonly accepted view (also shared by the tax authorities) in the context of the trade tax is that capital gains derived by a foreign resident shareholder from the sale of shares should not be taxable in the absence of a German permanent establishment (PE). The BFH now has confirmed that the same rule should apply for corporate income tax purposes. That is, the 5% addback of deemed nondeductible expenses does not apply where the nonresident shareholder does not have a PE or dependent agent in Germany, and if the 5% does not apply, the gains should be fully exempt.

The consequences of the BFH decision should apply to the capital gains tax treatment of all non-treaty-protected foreign corporate shareholders that are subject to limited German tax liability. This includes corporate taxpayers that are resident in non-treaty countries or in countries where the relevant treaty allocates the taxing rights to Germany. In the latter case, this also should cover shareholdings in German real estate-rich companies, since Germany's treaties typically allocate the right to tax capital gains from the sale of shares to Germany in such cases.

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

Germany:
Final decree issued on withholding tax on outbound payments for software and database usage

Germany's Ministry of Finance (MOF) issued a final decree on 27 October 2017 regarding the withholding tax treatment of payments made to nonresidents under software, cloud and/or database licensing arrangements. The final decree is based on a draft decree published on 17 May 2017 (for prior coverage, see *World Tax Advisor*, 9 June 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170609_4.html

The final decree confirms that outbound payments for the use of software are royalties subject to German withholding tax only where the user obtains a comprehensive right to economically exploit the software under the licensing arrangement. No withholding tax should be triggered if the arrangement for which the payment is made focuses only on the designated or intended use of the software.

The final decree contains 16 examples that describe circumstances where payments for the use of software would and would not be subject to German withholding tax. The final decree includes three additional examples – one in a new section on payments for the use of databases by universities and public libraries – and some clarifications. No further significant changes have been made, compared to the draft version. The three new examples are as follows:

- New Example 1 involves a situation where a German company receives the right to distribute, copy, publish and modify graphics software from a Singapore entity. The German company adapts the software to the German market and distributes it as part of a graphic software package. The payments to the Singapore entity trigger withholding tax because the German company is exploiting the software and in a manner that goes beyond the mere use of the software.
- New Example 3 describes a situation where a German company receives standard software for internal company-wide use from a US software provider. There are certain interfaces to integrate the software into the company's ERP system, but alterations to the software's functionality are not permitted. The German company has the right to use 5,000 copies for internal use and to make changes to the software so that it can be integrated into the ERP system. The decree confirms that no withholding tax should apply in this situation because the payment is made solely for the intended use of the software and no comprehensive right to exploit the software is granted.
- New Example 16 involves a university that uses a database of a US service provider in return for the payment of license fees. The use of the database by students and employees of the university is free, but non-members have to pay a nominal, cost-based fee to the university. The decree confirms that, in this case, no withholding tax is due on the payments from the university because the university is not exploiting the right to use the database, since it grants access either free of charge or for a nominal fee.

Comments

The final decree provides welcome clarifications regarding the withholding tax treatment of outbound payments for the use of software and databases, and should help increase certainty in this area. The guidance should allow taxpayers to avoid the lengthy and burdensome process necessary to obtain a withholding tax exemption certificate where one is not required, by making clear the situations in which German withholding tax will apply to software and database usage payments.

However, the guidance does not apply to other forms of digital transactions, such as the streaming of content. Uncertainty relating to these types of transactions remains and, where there is any doubt, a royalty withholding tax exemption certificate should be obtained.

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

India:
Tax authorities issue master file and CbC reporting rules

India's Central Board of Direct Taxes (CBDT) issued a notification on 31 October 2017 that contains final rules on the master file and country-by-country (CbC) reporting requirements that apply as from the 2016-2017 financial year (FY) (for prior coverage, see *World Tax Advisor*, 25 March 2016), including certain master file requirements that are not included under BEPS action 13. The rules, which generally follow the draft rules issued earlier in October (aside from minor changes), aim to provide clarity to multinational corporations regarding certain filing procedures and the information required to be included.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160325_1.html

CbC reporting requirements

Reporting is required where the consolidated group revenue of an "international group" (a group that operates in two or more jurisdictions, including operation through a permanent establishment) for the accounting year preceding the reporting year (*i.e.* FY 2015-2016, for the first reports due for FY 2016-2017) exceeds INR 55 billion.

One of the following entities in an international group will be required to file the CbC report:

- An Indian resident ultimate parent entity;
- An Indian resident constituent entity designated by the group as an alternate reporting entity in place of the parent entity; or
- An Indian resident constituent entity in circumstances where the parent entity's country of residence has not signed an automatic exchange agreement for CbC reports with India or where that country systematically fails to share such information (in such a case, if there is more than one resident constituent entity, a form (Form 3CEAE) may be filed to designate the entity that will file the CbC report).

The CbC reporting form (Form 3CEAD) generally will be due to the tax authorities by 30 November following the reporting year, with the notification form (Form 3CEAC) for Indian resident constituent entities whose parent company is not resident in India to identify the entity that will file the CbC report due on 30 September. However, the CBDT issued a circular on 25 October 2017 extending the due date for filing the CbC reporting form for FY 2016-2017 to 31 March 2018, which will make the first notification forms due by 31 January 2018.

Master file requirements

A master file will have to be prepared and filed in India for an international group by an Indian resident parent company or other Indian resident constituent entity if the consolidated group revenue for the accounting year exceeds INR 5 billion and one of the following requirements is met:

- The aggregate value of cross-border transactions during the accounting year exceeds INR 500 million; or
- The aggregate value of intellectual property-related cross-border transactions (the purchase, sale, transfer, lease or use of intangible property) during the accounting year exceeds INR 100 million.

Even if these monetary thresholds are not met, an Indian resident constituent entity in an international group is required to prepare the first part of the master file form (Part A), which contains information on the overall group; the second part of the form (Part B) also must be completed if the above thresholds are met.

The due date for filing the master file form (Form 3CEAA) for FY 2016-2017 is 31 March 2018. A group with multiple resident constituent entities may designate one entity to file the form on its behalf by filing a notification form (Form 3CEAB) with the tax authorities by 1 March 2018. As from FY 2017-2018, the master file and notification will be due by 30 November and 30 October following the reporting year, respectively.

Differences between master file rules and BEPS recommendations

Even though the contents of the master file, as per the rules, are based on the recommendations under BEPS action 13, there are differences in the rules that merit attention, including the composite threshold for the applicability of the reporting requirements and additional requirements to report the following information:

- A list of all the entities of the international group, along with their addresses;
- A description of the functions, assets and risks of the constituent entities of the international group that contribute at least 10% of the revenue or assets or profits of the group;
- A list of all the entities of the international group engaged in development and management of intangible property, along with their addresses; and
- A detailed description of the financing arrangements of the international group, including the names and addresses of the top 10 unrelated lenders.

Comments

It would be helpful if the CBDT would issue detailed FAQs on the rules.

— Mehul Shah (Mumbai)
Director
Deloitte Haskins & Sells LLP
mehulshah@deloitte.com

Mehul Modi (Mumbai)
Manager
Deloitte Haskins & Sells LLP
modim@deloitte.com

Papua New Guinea:
Tax amnesty in effect until end of 2017

As part of the Papua New Guinea (PNG) government's "100 Day Plan," the Internal Revenue Commission (IRC) has released a public notice announcing an amnesty that runs from 1 November to 31 December 2017. The amnesty waives the imposition of penalties that otherwise would apply to the late filing of tax returns and to late payments of taxes, under certain conditions. The amnesty applies to all types of taxpayers and to most taxes, including income tax, withholding tax, salary and wage tax and goods and services tax.

According to the public notice, the IRC will not impose penalties on the following:

- A late-filed return, where the taxpayer files the outstanding return within the amnesty period; and
- A late payment of tax, provided all of the taxpayer's overdue tax liabilities are paid in full within the amnesty period.

In addition, for a taxpayer to qualify for the amnesty, all of its annual and monthly tax filings that are due as of 31 December 2017 must be filed by that date.

The IRC has clarified that, where payment arrangements already have been made for outstanding taxes, the amnesty will apply (and no penalties will be imposed with respect to such arrangements) only if the remaining outstanding tax balance due under the arrangement is paid in full during the amnesty period.

Comments

All taxes, including withholding taxes on dividends, interest, royalties, management fees and foreign contractors, fall within the scope of the amnesty. The amnesty also applies to amended returns filed during the amnesty period. Given the current uncertainty as to whether foreign contractors are able to continue to file annual income tax returns in lieu of participating in the foreign contractor withholding tax regime (the IRC recently had suggested that foreign contractors could opt to file returns on a net income basis) (for prior coverage, see *World Tax Advisor*, 25 November 2016), this amnesty may prove particularly important. In respect of whether there will be a reinstatement of the ability of foreign contractors to file returns for prescribed contract income, it is hoped the 2018 national budget, expected to be presented to parliament on 21 November 2017, will clarify this issue.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/161125_1.html

Given that late filing and late payment penalties can add up to significant amounts, this amnesty provides an opportunity for PNG taxpayers to ensure their tax affairs are up to date particularly because, while not explicitly stated in the announcement, the IRC may be less willing to grant penalty remissions after the amnesty period has expired.

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

Antonio Bernabe (Port Moresby)
Principal
Deloitte Papua New Guinea
abernabe@deloitte.com.pg

Taiwan:
Employment income tax exemption procedure under agreement with Japan clarified

Taiwan's tax authorities issued guidance on 25 September 2017 that clarifies the procedure for Japanese individuals working in Taiwan on short-term assignments to obtain benefits under the Japan-Taiwan tax treaty that entered into effect on 1 January 2017.

Article 15(2) of the agreement provides that remuneration derived by a resident of Japan from employment in Taiwan will be taxable only in Japan if:

- The individual was present in Taiwan for a period or periods not exceeding an aggregate of 183 days in any 12-month period commencing or ending in the calendar year concerned;
- The remuneration is paid by, or on behalf of, an employer that is not a resident of Taiwan; and
- The remuneration is not borne by a permanent establishment (PE) or a fixed place of business of the Japanese employer in Taiwan.

Based on article 15(2), a Japanese resident individual can obtain an exemption from Taiwan tax on his/her income by submitting an application to the Taiwan tax authorities, accompanied by the following documentation:

- Certificate of residence issued by the Japanese tax authorities;
- Passport;
- Employment agreement;
- Tax payment certificate;
- Description of employment activities carried out in Taiwan;
- Payer of remuneration;
- Remuneration amount; and
- Evidence that the remuneration is not paid by a PE or a fixed place of business in Taiwan.

Similar rules may apply for Taiwanese residents seconded to Japan, but the required documentation and application procedures may differ.

The guidance notes that the provisions in Taiwan's 32 tax agreements are not exactly the same, so the relevant agreement should be consulted in each case.

— Arthur Chen (Taipei)
Director
Deloitte Taiwan
arthurychen@deloitte.com.tw

Ray Huang (Taipei)
Manager
Deloitte Taiwan
rayhuang@deloitte.com.tw

In brief

Australia: It has been reported that the government will issue anti-hybrid measures exposure draft legislation and supporting explanatory material as soon as the week of 27 November 2017, with a consultation taking place thereafter. On 3 May 2016, the government announced its intention to legislate anti-hybrid measures with effect from the later of 1 January 2018 or six months from enactment of legislation (for prior coverage, see Australia tax alert, 5 May 2016). At this stage, it still is expected that the earliest start date will be six months from the enactment of legislation, but this will be subject to the draft proposals.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-5-may-2016.pdf

Brazil: The tax authorities published an executive declaratory act on 23 October 2017 that provides further guidance on the disclosure of ultimate beneficiaries in the national registry of legal entities (CNPJ). The disclosure requirements were introduced in 2016 and mandate that certain foreign legal entities and most Brazilian legal entities disclose to the Brazilian tax authorities their complete chain of ownership up to the ultimate beneficiaries, as well as the legal representatives of owners (for prior coverage, see *World Tax Advisor*, 13 May 2016). The declaratory act classifies

foreign legal entities into three categories depending on their activities in Brazil and confirms for each classification with which organization registration is required in addition to the CNPJ. Depending on the entity's activities, this may be the tax authorities, the Central Bank or the Securities Exchange Commission.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160513_2.html

Cambodia: The Ministry of Economy and Finance issued the country's first transfer pricing regulations on 10 October 2017. The regulations, which apply as from the date of issuance, adopt the arm's length principle in the OECD transfer pricing guidelines, and also cover other key issues such comparable transactions, transfer pricing methods, documentation and penalties for noncompliance. Specific rules apply to intangible property and intragroup services.

Cyprus: The House of Representatives voted an amendment to the VAT legislation into law on 3 November 2017 that is intended to help bring the legislation in line with the EU VAT directive. The amendment will impose VAT at the standard rate of 19% on certain transactions involving immovable property that are carried out for business purposes and that currently are exempt from VAT, including the transfer of undeveloped buildable land that is intended for the construction of one or more fixed structures and the leasing and/or letting of immovable property (with an exception for buildings used for private dwellings). The law will enter into effect on 2 January 2018, except for the provisions relating to the leasing and/or letting of immovable property, which will enter into effect as from the date the law is published in the Cyprus official gazette.

Malaysia: On 12 October 2017, the Inland Revenue Board released a public ruling that explains the tax treatment of income received by a nonresident public entertainer for services performed or rendered in Malaysia, the withholding tax requirements relating to that income and the consequences of any failure to comply with such requirements. Such individuals are subject to a 15% withholding tax. The ruling contains a number of useful examples.

Malta: New rules introduced on 3 November 2017 will allow certain start-up companies to deduct audit fees. A newly established company that meets certain requirements will be able to elect to be exempt from an audit of its financial statements for the first two accounting periods after establishment of the company, or have its financial statements audited and claim a deduction amounting to 120% of the audit fees incurred (up to a maximum of EUR 700 per accounting period). To qualify for the election, the company must have annual turnover of less than EUR 80,000, or a pro rata amount if the relevant accounting period is other than 12 months. The new rules will apply in respect of expenditure incurred as from the 2018 year of assessment.

Namibia: The Minister of Finance announced on 2 November 2017 (as part of the mid-year budget review) that the government will implement further tax policy and administration reforms that contribute to economic growth through revenue generation and efficiencies. Tax base protection measures will include the abolition of certain income tax and VAT exemptions mentioned in the March 2017 budget speech. Other reforms in the minister's mid-year budget announcements include the following: (i) the imposition of transfer duty on the sale of shares and membership interests in close corporations that own immovable property; (ii) the extension of the tax arrears recovery (tax amnesty) program until 31 March 2018 (the program provides for the waiver of all penalties and 70% of the interest due on certain overdue taxes); (iii) the introduction of a presumptive tax proposal in the next session of parliament; (iv) the establishment of the Namibia Revenue Agency in a phased, transitional approach with the goal of the agency's becoming operational by 1 April 2018; and (v) the possible renegotiation of all of Namibia's tax treaties to provide for terms that are more favorable to Namibia. No increases in tax rates are anticipated.

United States: The House of Representatives on 16 November 2017 approved its proposed version of the Tax Cuts and Jobs Act (TCJA), which provides for comprehensive US tax reform. On the same day, the Senate Finance Committee approved its own version of the TCJA, which varies from the House bill. Among other measures, the Finance Committee-approved bill would reduce the corporate tax rate to 20% as from 2019 (instead of from 2018 as under the House bill); reduce marginal tax rates for individuals but not follow the rate brackets proposed by the House; provide relief from the estate tax but not repeal the tax as would the House proposal; and make numerous modifications to the complex international tax provisions in the House bill. The Finance Committee bill would sunset certain provisions, including various individual and estate tax relief provisions, after 2025. The Finance Committee-approved bill is expected to go to the Senate floor the week of 28 November. For a detailed discussion of the House and Senate Finance Committee TCJA bills as approved on 16 November 2017, see *Tax News & Views*, 17 November 2017 and, for prior coverage, see *World Tax Advisor*, 10 November 2017.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171117_1.html
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171110_1.html

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.

India: The Central Board of Direct Taxes issued a notification on 31 October 2017 that contains final rules on the master file and CbC reporting requirements that apply as from the 2016-2017 financial year. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171124_5.html

OECD: The OECD announced on 17 November 2017 the publication of six new peer review reports relating to the implementation of the international standard of transparency and exchange of financial account information on request. These reports cover Curaçao, Denmark, India, Isle of Man, Italy and Jersey, and the results are as follows:

- **Compliant:** Isle of Man, Italy and Jersey;
- **Largely compliant:** Denmark and India; and
- **Partially compliant:** Curaçao.

The OECD announced on 14 November 2017 that Qatar and St. Kitts and Nevis have joined the inclusive framework for the global implementation of the BEPS project. Under the inclusive framework, all OECD state and non-state 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 Qatar and St. Kitts and Nevis must implement four minimum standards: countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution. There now are 106 countries participating in the inclusive framework.

On 10 November 2017, Qatar signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended), becoming the 115th jurisdiction to join the convention. The convention provides for the exchange of information on request, spontaneous exchanges, automatic exchanges, tax examinations abroad, simultaneous tax examinations and assistance in tax collection.

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.

Argentina-Brazil: When in effect, the protocol to the 1980 treaty signed on 21 July 2017 provides for a 10% withholding tax rate on dividends paid to a company that holds directly at least 25% of the capital of the payer company for a 365-day period that includes the day the dividends are paid; otherwise, the rate will be 15%. The reduced rates under the protocol will not apply to distributions of profits that have not been previously subject to tax at the company level. The rate on interest will be 15%. A 15% rate will apply to royalties arising from the use of, or the right to use, trademarks; otherwise, the rate will be 10%. However, the 10% rate will apply (i) to royalties paid under contracts relating to the transfer of technology only if the contracts are registered or authorized according to the requirements of the domestic law; and (ii) to payments for the use of, or the right to use, literary, dramatic, musical or other artistic work, including software, only if the recipient is the author or his/her heirs; otherwise, the rate will be 15%.

Belgium-Macedonia: The 2010 treaty to replace the 1980 treaty with the former Yugoslavia entered into force on 17 July 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 that holds directly or indirectly at least 25% of the capital of the payer company for an uninterrupted period of at least 12 months; a 5% rate will apply to dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. A 0% rate will apply to interest paid on loans granted or credit extended between enterprises; otherwise, the rate will be 10%. The rate on royalties will be 10%.

Brazil-Russia: The 2004 treaty entered into force on 16 June 2017 and will apply as from 1 January 2018. When in effect, the treaty provides for a 10% withholding tax rate on dividends paid to a company that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest, royalties and payments for technical services and technical assistance generally will be 15%, although payments relating to transactions with respect to computer software will be taxable in accordance with the domestic law of the relevant country.

China-Kenya: When in effect, the treaty signed on 21 September 2017 provides for a 5% withholding tax rate on dividends and a 10% rate on interest and royalties.

Cyprus-Ethiopia: The 2015 treaty entered into force on 19 October 2017 and will apply in Cyprus as from 1 January 2018 for withholding tax purposes and in Ethiopia as from 8 July 2018 for withholding tax purposes. When in effect, the treaty provides for a 5% withholding tax rate on dividends, interest and royalties.

Finland-Germany: The 2016 treaty to replace the 1979 treaty entered into force on 16 November 2017 and will apply as from 1 January 2018. When in effect, the new treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership or a German real estate investment trust company) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

Germany: The federal tax court has held that the normal add-back of 5% deemed nondeductible business expenses in the context of the participation exemption does not apply to a limited liability taxpayer/non-treaty protected foreign shareholder. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171124_4.html

Isle of Man: On 25 October 2017, the Isle of Man became the second jurisdiction to deposit its instrument of ratification for the multilateral instrument (MLI) with the OECD, following Austria. The MLI must be ratified by at least three more jurisdictions before it first enters into force.

Italy-Barbados: The 2015 treaty entered into force on 17 October 2017 and will apply as from 1 January 2018 for withholding tax purposes. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 5%.

Lithuania-Kuwait: The 2013 treaty entered into force on 8 September 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 10% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Norway-Zambia: The 2015 treaty to replace the 1971 treaty entered into force on 9 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 25% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Taiwan-Japan: Guidance issued by the Taiwan tax authorities clarifies the procedure for individuals on short-term assignments to obtain benefits under the Japan-Taiwan tax treaty. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171124_7.html

Ukraine-United Kingdom: When in effect, the protocol to the 1993 treaty signed on 9 October 2017 provides for a 0% withholding tax rate on dividends paid to a pension scheme; a 5% rate will apply to dividends paid to a company (other than a partnership) that holds, directly or indirectly, at least 20% of the capital of the payer company; otherwise, the rate will be 15%. The withholding tax rate on interest and royalties will be 5%.

Uruguay-Paraguay: When in effect, the treaty signed on 8 September 2017 provides for a 15% withholding tax rate on dividends, interest and royalties.

Global tax alerts

United States
IRS issues two advance pricing agreement international practice units
On 6 November 2017, the IRS released two international practice units (IPUs) that provide overviews of the APA process for tangible goods transactions – one IPU addresses inbound transactions and the other IPU addresses outbound transactions.
Issue date: 14 November 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-047-14-november-2017.pdf

The international tax provisions of the Tax Cuts and Jobs Act – latest developments
This alert provides a summary of select international provisions of the US Senate Finance Committee's proposed version of the Tax Cuts and Jobs Act (TCJA) as of 9 November 2017, along with the 9 November amendments to the House Ways and Means Committee bill and a comparison chart of the international tax provisions in the House and Senate versions.
Issue date: 13 November 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-13-november-2017.pdf