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Belgium enacts corporate tax reform measures in phased approach

A corporate tax reform law enacted in Belgium on 25 December 2017 and published in the official gazette on 29 December includes measures that will reduce the corporate tax rate to 25% by taxable years that begin in 2020, increase the dividends received deduction (DRD) to 100%, revise the domestic permanent establishment (PE) rules, introduce group taxation and implement the EU anti-tax avoidance directive (ATAD) into Belgian law.

The reform will be phased in over a three-year period, with changes taking effect as from one of the following tax years:

- 2019 tax years starting on or after 1 January 2018 (tax year 2019). (Tax year 2019 includes 2018 calendar year fiscal years, and fiscal years other than the calendar year that start on or after 1 January 2018 and end in 2019 (on or before 30 December 2019);
- 2020 tax years starting on or after 1 January 2019 (tax year 2020); or
- 2021 tax years starting on or after 1 January 2020 (tax year 2021).

Unless otherwise noted, the measures discussed in this article are effective as from tax year 2019.

Corporate tax rate

The corporate income tax rate (before applying the surtax) is reduced from 33% to 29%, and will be further reduced to 25% as from tax year 2021. The surcharge imposed on the adjusted corporate income tax liability also is reduced from 3% to 2%, and will be abolished as from tax year 2021.

Participation exemption

Dividends: The new law grants a 100% DRD for dividends received by a Belgian company from a domestic or foreign company (previously, 95% of such dividends was exempt from tax, with the remaining 5% subject to corporate tax at the normal rate). However, dividends qualifying for the DRD may not be (fully) deductible if the recipient company is in a loss position or if its available profits are insufficient. Excess DRD may be carried forward with no time limitation, but the amount of the carryforward that can be deducted in a given year may be limited under the new minimum tax base calculation (discussed below).

Capital gains: Before 1 January 2018, net gains derived from the disposal of shareholdings in other companies were exempt from Belgian tax if: (1) the "subject-to-tax" requirement for application of the DRD was met; and (2) the shares were held (with full ownership) for an uninterrupted period of at least one year. The new law introduces a third requirement for taxpayers to benefit from the exemption: shareholders now also must hold a participation of at least 10% or with an acquisition value of at least EUR 2.5 million (i.e. the same minimum holding requirement that already applies for the DRD). In addition, the 0.412% separate tax (including the relevant surcharge) that previously applied to the net amount of fully exempt capital gains on shares realized by large enterprises is abolished.

Withholding tax on dividends

An exemption applies to dividends paid to qualifying shareholders established in a European Economic Area (EEA) member state or a country with which Belgium has concluded a tax treaty containing an information exchange clause, if the shareholder holds a participation in the Belgian payer company of less than 10% but with an acquisition value of at least EUR 2.5 million for an uninterrupted period of at least one year (previously, such dividends were subject to a reduced withholding tax of 1.6995%). This change is in response to the increase in the DRD from 95% to 100%.

Group taxation regime

As from tax year 2020, an optional, limited form of group taxation will be introduced in Belgium that will allow the transfer of tax losses within a "Belgian" group.

Under the new rules, tax losses may be contributed between related Belgian companies (or between a Belgian company and a PE of a related company in the EEA) that are members of a qualifying group to offset taxable profits of the group. The companies need to have been affiliated for at least a five-year period and must have at least 90% common direct ownership (i.e. parent companies and their 90% first-tier subsidiaries, and sister companies with a common 90% direct parent, are eligible). Certain types of companies (mainly companies benefitting from a special tax regime) are excluded from the regime.

PE rules

New rules on the recapture of PE losses will apply as from tax year 2021. Currently, tax losses of a PE located in a tax treaty country may be deducted from the Belgian taxable base, subject to recapture when the loss is deducted in the foreign country. Under the new rules, losses of a foreign PE will be deductible in Belgium only if the losses are considered "final" and are incurred by the Belgian company through a PE located in the EEA.

Foreign losses generally will be considered final when the Belgian company definitively terminates its activities carried out abroad through the foreign PE without having obtained any deduction for the losses in the EEA member state where the PE is located. An anti-abuse rule will apply where the company resumes its activities in the EEA member state within a three-year period.

Also effective as from tax year 2021, the Belgian definition of a PE will be revised to modify the exception for “independent agents” to bring it in line with the 2017 version of the OECD model tax convention and the OECD BEPS recommendations.

EU ATAD

The law will implement the EU ATAD 1 and 2 into Belgian tax law as from tax year 2020, i.e. the EBITDA interest limitation rules, the controlled foreign company rules, the exit tax and the anti-hybrid measures.

Other measures

The law includes various other measures aimed at broadening the taxable base and increasing compliance of corporations, including:

- Revisions to the notional interest deduction rules that limit the calculation of the deduction to incremental equity (instead of total qualifying equity);
- The introduction of a minimum corporate income tax charge for companies with taxable income over EUR 1 million after certain deductions. For these companies, certain deductions and carryforwards, including the tax loss carryforward, the notional interest deduction and the DRD carryforward, may be deducted only up to 70% of taxable income exceeding EUR 1 million, with tax due on the remaining 30% (the minimum taxable base);
- The limitation of deductions of provisions for risks and charges;
- Increased disallowed expenses as from tax year 2021; and
- The imposition of higher monetary penalties for companies that do not make sufficient advance tax payments.

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Brazil:
CbC reporting requirements for exchange relationships activated after 2017

A Brazilian constituent entity (BCE) that designated its foreign ultimate parent entity (UPE) as the country-by-country (CbC) reporting entity when filing its 2016 income tax return may be required to amend the return to file a CbC report within 60 days of 31 December 2017, in cases where the relevant bilateral exchange relationship with the UPE’s country of residence was not activated by 31 December 2017 (or is not effective for taxable periods beginning on or after 1 January 2016).

Background

The Brazilian tax authorities introduced CbC reporting obligations in Brazil effective from FY 2016 (the 2016 calendar year) through Normative Ruling (NR) 1,681/2016, issued on 29 December 2016. The rules provided that a BCE would be required to file a CbC report with its 2016 corporate income tax return (as a surrogate entity) if a competent authority agreement for the exchange of CbC reports (CAA) had not been concluded between Brazil and the country where the UPE is resident by the due date for the 2016 tax return (31 July 2017).

NR 1,681/2016 was amended on 25 May 2017 to allow a BCE to designate its foreign UPE as the reporting entity for FY 2016 on a conditional basis in cases where, for FY 2016, the UPE jurisdiction does not have a CAA in force with Brazil but the UPE jurisdiction allows for the voluntary filing of CbC reports (for prior coverage, see Global Transfer Pricing Alert 2017-023, 29 May 2017).

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-023-29-may-2017.pdf

In addition, Brazil's tax authorities issued further guidance on 26 July 2017, providing that if a foreign UPE is designated as the reporting entity for FY 16, but the relevant CAA is not signed between the UPE jurisdiction and Brazil by 31 December 2017, the BCE is required to amend its 2016 corporate income tax return (which would have been due by 31 July 2017) within 60 days of 31 December 2017, to file the CbC report on behalf of the entire group (or designate an adequate surrogate entity).

The July 2017 guidance introduced an additional requirement that, for a designated UPE to be considered the reporting entity for FY 2016, the CAA between the UPE jurisdiction and Brazil that must be activated by 31 December 2017 also must be effective from 1 January 2016. CAAs in force that applied to fiscal periods beginning in 2017 would have had to be made retroactive to 1 January 2016 by 31 December 2017 to meet this requirement.

The BCE could be required to file the CbC report within 60 days of 31 December 2017 if the CAA that was activated by 31 December 2017 is not retroactive to 1 January 2016 and the UPE jurisdiction applies a "reciprocal" rule, i.e. the UPE jurisdiction requires a local constituent entity that is part of a multinational group controlled by a Brazilian UPE to file a CbC report in that jurisdiction for FY 2016 if no CAA is in force with Brazil for 2016 by 31 December 2017.

Current status of exchange relationships

Of the 67 jurisdictions (in addition to Brazil) that had signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports as of 19 December 2017, 50 jurisdictions appear on the OECD's list of CbC exchange relationships as having activated exchange relationships with Brazil as of December 2017.

In addition, Brazil and the US entered into a bilateral CAA on the automatic exchange of CbC reports on 20 July 2017, which is effective as from 1 January 2016.

Summary of reporting rules

The rules for determining whether a BCE that designated a foreign UPE as the CbC reporting entity when filing its 2016 income tax return may be required to amend the return to file a CbC report within 60 days of 31 December 2017 can be summarized as follows:

Did the UPE country sign a CAA with Brazil by 31 December 2017? (68 jurisdictions)	Was the CAA in force/activated by 31 December 2017? (51 jurisdictions)	Was the CAA effective for taxable periods beginning on or after 1 January 2016 by 31 December 2017?	CbC reporting outcome
Yes	Yes	Yes	BCE that designated UPE as reporting entity with return is not required to file CbC report
Yes	Yes	No	BCE that designated UPE as reporting entity with return may be required to file CbC report within 60 days of 31 December 2017 if UPE jurisdiction applies reciprocal rule
Yes	No	N/A	BCE that designated UPE as reporting entity with return is required to file CbC report within 60 days of 31 December 2017

Did the UPE country sign a CAA with Brazil by 31 December 2017? (68 jurisdictions)	Was the CAA in force/activated by 31 December 2017? (51 jurisdictions)	Was the CAA effective for taxable periods beginning on or after 1 January 2016 by 31 December 2017?	CbC reporting outcome
No	N/A	N/A	BCE that designated UPE as reporting entity with return is required to file CbC report within 60 days of 31 December 2017

Comments

Multinational groups with BCEs should review the FY 16 CbC reporting requirements in Brazil, bearing in mind that the BCE may be required to file a CbC report within 60 days of 31 December 2017 (by amending the FY 16 income tax return filed) if the UPE jurisdiction applies a reciprocal rule (in cases where the CAA was active by 31 December 2017, but not effective for taxable periods beginning on or after 1 January 2016). In cases where no CAA was in force/activated by 31 December 2017, the FY 16 income tax return must be amended accordingly.

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France:
Amended finance bill for 2017 and finance bill for 2018 enacted

On 21 December 2017, the French parliament adopted the second amended finance bill for 2017 and the finance bill for 2018. The French constitutional court approved the laws on 29 December 2017, so they are effective according to the relevant entry into force dates.

These finance laws – the first of President Macron – are intended to reduce the tax burden on companies and individuals, further the government's objective to orient savings toward supporting the financing of companies and ensure that provisions of the French tax code are in line with EU law, while also ensuring that France meets its commitment to the EU to reduce its public deficit below 3% of GDP. Measures also are included to attract companies leaving London following Brexit.

The key provisions affecting companies are discussed below (for prior coverage of the finance bills, see *World Tax Advisor*, 24 November 2017 and France Alert, 28 September 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171124_1.html
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-france-28-september-2017.pdf

Corporate income tax rate reduction

The finance law for 2018 gradually reduces the corporate income tax rate over four years, to 25% by 2022, but – contrary to measures in the 2017 finance law – each annual reduction to achieve the 25% rate will apply to all companies and to all taxable profits.

The corporate income tax rate reduction adopted under the 2017 finance law will be maintained for 2018, i.e. a 28% rate applies to the first EUR 500,000 of profits for all companies, with the remaining profits subject to the 33.33% standard rate. In 2019, the standard rate will drop to 31% (but the 28% rate will continue to apply on profits up to EUR 500,000). The rate will be reduced to 28% in 2020, 26.5% in 2021 and finally 25% in 2022; the rate reductions in 2020-2022 will apply to the entire amount of taxable profits.

In addition, the 3.3% social surcharge that applies in certain circumstances will continue to apply to the corporate income tax in each year, bringing the 25% standard rate in 2022 to an effective rate of 25.8%.

Elimination of 3% surtax on dividends and related measures

The government initially had announced that the 3% surtax on dividends could be abolished within the framework of the finance law for 2018. However, following the decision of the constitutional court on 6 October 2017, in which the court declared the surtax unconstitutional, the surtax cannot be levied as from 8 October 2017 (the date the decision was published) (for prior coverage, see *World Tax Advisor*, 13 October 2017). As a formality, the finance law for 2018 officially removed the surtax provisions from the French legal system as from 1 January 2018.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171013_1.html

To offset the significant amounts that the French treasury will be required to reimburse due to the constitutional court decision (expected to be around EUR 10 billion), a new exceptional and one-time surtax on corporate income tax is introduced on very large companies (i.e. companies whose annual turnover exceeds EUR 1 billion), part of which may have had to been paid in December 2017 by some companies, and for other companies, will need to be paid in 2018.

There are two surtax rates, depending on a company's turnover: (i) companies with turnover exceeding EUR 1 billion, but below EUR 3 billion, are subject to a 15% surtax on the amount of their corporate income tax liability; and (ii) companies whose turnover equals or exceeds EUR 3 billion are subject to a higher rate of 30%. Measures are included in the law to mitigate the impact of the surtax for companies whose turnover slightly exceeds the relevant thresholds, so that the applicable rate will be lower and the amount of the surtax finally due will be substantially lower. The penalty threshold for failure to make an incorrect installment payment of the surtax has been reduced from the original proposal. The exceptional surtax may not be deducted in computing a company's corporate income tax liability.

In addition, because of the significant amounts that the French treasury will have to reimburse due to the constitutional court decision and the resulting amount of default interest the government will have to pay, the second amended finance law for 2017 reduces the default interest rate payable by the French treasury and taxpayers from 4.8% to 2.4% per year (i.e. 0.2% per month). The new rate applies to interest accruing from 1 January 2018 until 31 December 2020. The default interest rate will be reviewed again in 2020.

Scope of Carrez rule reduced

The Carrez rule is an anti-abuse rule that limits the deductibility of interest expense relating to the acquisition by a French company of a controlling interest in another company. Under the rule, the deduction of related financing costs is disallowed for an eight-year period if the French acquiring company is unable to demonstrate that it (or a company that is a member of the same group and established in France) effectively made the decisions relating to the participation and that it effectively exercises control over the acquired company.

In the initial finance bill for 2018, the Carrez anti-abuse rule was proposed to be abolished. However, representatives of the national assembly instead opted – against the government's wishes – to modify the rule to bring it in line with EU law (there were some questions as to whether the Carrez rule was compatible with the freedom of establishment principle). Companies established in the EU or the European Economic Area (EEA) will be treated the same as French companies for purposes of the Carrez rule. The anti-abuse rule thus will apply only if the effective controlling company is established outside the EU/EEA.

Revisions to rules on cross-border mergers

The second amended finance law for 2017 revises the rules relating to benefits under the EU merger directive:

- Because the Court of Justice of the European Union ruled on 8 March 2017 that France's domestic rules relating to the anti-avoidance provision in the EU merger directive were contrary to the directive and the freedom of establishment provision in the Treaty on the Functioning of the European Union, the French rules had to be revised. (According to the French rules, a French taxpayer had to obtain advance approval from the French tax authorities to qualify for benefits under the directive where the merger involved a transfer of assets to a foreign legal entity, and the French taxpayer had to show that the transaction could be economically justified, that its principal purpose was not tax avoidance/evasion and that the terms of the transaction allowed future taxation of the relevant capital gains.)

As from 1 January 2018, the advance approval requirement is abolished for mergers or divisions involving a foreign company or in the case of a partial asset transfer of a complete branch of activity, provided the transferred assets are recorded in the balance sheet of a French permanent establishment of the foreign company. The French transferring company must submit a specific declaration at the time it files its tax return (failure to comply with this requirement would entail the payment of a EUR 10,000 fine).

- 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) is transposed into domestic law (and is applicable to both French and cross-border reorganizations). As a result, the only way for the tax authorities to deny the tax deferral benefit to a transaction will be through the anti-abuse clause. The tax authorities generally will presume the existence of fraud if there are no economic reasons to justify the transaction, with the burden of proof then shifting to the taxpayer to demonstrate otherwise. Companies engaged in cross-border mergers, etc. can request confirmation from the French tax authorities that the economic reasons for the merger or contribution are valid.

- In a partial transfer of assets, the requirement that the contributing company undertake to retain the shares it receives in exchange for at least three years is abolished, as is the requirement for the transferring company to calculate the future capital gains based on the taxable cost price of the transferred assets (the latter is now simply a method of calculation for future capital gains derived from the sale of shares, rather than a requirement to benefit from the directive.

Transfer pricing documentation

When an audit is initiated by the French tax authorities, French companies must provide documentation that justifies the transfer pricing policy implemented (i.e. local file, master file) if the company:

- Has turnover or gross assets exceeding EUR 400 million;
- Holds 50% or more of the share capital or voting rights of subsidiaries that meet either threshold;
- Is 50% or more owned, directly or indirectly, by an entity meeting either threshold; or
- Is part of a French consolidated tax group that includes one or more companies meeting either threshold.

For tax audits that start on or after 1 January 2018, the 2018 finance law requires companies to maintain at the disposal of the tax authorities all information indicated in action 13 of the OECD BEPS project. The conditions for the application of this measure will be determined by decree.

Automatic exchange of information

To address the recent commitments taken by the French authorities relating to the automatic exchange of information under the OECD common reporting standard, the amended finance law for 2017 sets out the obligations on account holders and financial institutions (FIs), as well as the applicable procedures and sanctions, including the following:

- Account holders are required to provide FIs with information concerning their tax residence and their tax identification numbers, with a penalty of EUR 1,500 imposed for failure to comply.
- FIs may not contract with customers that refuse to provide the relevant information, and they will be required to submit to the French tax authorities a list of account holders who did not provide their information. A penalty of EUR 200 will apply for each account holder that is not included on the list, and failure to submit this list in a timely manner will be subject to a EUR 200 fine per account holder omitted from the list.
- FIs must put an internal control mechanism in place to ensure compliance with their new obligations.

The amended finance law also designates the administrative authorities in charge of FI due diligence to implement the new rules.

Other measures

- As from 31 December 2017, regardless of the language in a tax treaty, withholding tax paid abroad in accordance with a tax treaty provision will not be deductible for corporate income tax purposes, even if the company is unable to use the tax credit granted under the treaty.
- The tax credit for competitiveness and employment (CICE) is reduced from 7% to 6% as from 1 January 2018; the credit will be abolished as from 1 January 2019 and replaced with a reduction of the employer's share of social security contributions.
- The extension of the scope of the financial transaction tax under the 2017 finance law to apply to intraday transactions as from 1 January 2018 has been abolished before becoming effective.
- The top payroll tax bracket of 20% for corporations that are not subject to VAT (or where at least 90% of an entity's annual turnover was exempt from VAT in the previous year) is abolished for salaries paid as from 1 January 2018. The highest rate now is 13.60% on salaries exceeding EUR 15,417. (The payroll tax is a tax that mainly affects banks and insurance companies.)

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Italy:
2018 budget law includes new equalization tax on digital services

Italy's budget law for 2018, which was published in the official gazette on 29 December 2017 and generally applies as from 1 January 2018, makes a number of noteworthy changes to the country's tax rules (for prior coverage, see *World Tax Advisor*, 15 December 2017). Among other provisions that affect corporations, the new law introduces an equalization tax on digital/web-based services; revises the definition of permanent establishment (PE); amends the rules for interest and depreciation deductions; and provides for a substitute tax on income from qualifying participations. Some of the new rules are effective immediately, while others do not apply until 2019.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171215_5.html

Equalization tax on digital / web-based services

A new 3% equalization tax must be withheld from payments for "digital services" made by Italian companies to both resident and nonresident providers as from 1 January 2019, where the same provider engages in more than 3,000 transactions during a calendar year. Based on the language in the new provision, the payer will have to withhold the tax unless the provider notifies the service recipient (either in the invoice or an equivalent document) that the annual threshold has not been exceeded. The consequences of subsequently exceeding the threshold are unclear, but hopefully the implementation rules that are expected in 2018 will provide clarification.

The equalization tax will apply to services provided over the internet or electronic networks and that are characterized by a high degree of automation and minimal human intervention. The tax will apply only to business-to-business transactions.

The final language of the equalization tax as enacted in the budget law is significantly different from the initial version approved by the Senate, *e.g.* the Senate version provided for a 6% tax rate and included tax credit provisions that have been withdrawn. Based on the budget law provision, online sales of goods should not be subject to the new tax.

The Ministry of Finance will issue guidance by 30 April 2018 that will identify the services subject to the equalization tax and provide implementation rules.

Definition of PE

The budget law expands the domestic definition of a PE to bring it in line with the revised definition in the 2017 version of the OECD model tax treaty, which was released on 18 December 2017. The changes to the PE rules also adopt the recommendations in the final report on BEPS action 7.

According to the new rules:

- A continuous and significant economic presence of a foreign company in Italy, regardless of whether it has a substantial Italian physical presence, will trigger the existence of a fixed base that could give rise to an Italian PE.
- The "negative list," which includes the situations where a fixed base will not constitute a PE, is modified to reflect the OECD language, and to provide that the exceptions to PE status will apply only where the activities carried out by the foreign company are preparatory or auxiliary in relation to the business as a whole. Anti-fragmentation rules are included to prevent the foreign company from splitting up the business into smaller units or using other related businesses to benefit from the preparatory or auxiliary exception (*e.g.* if the foreign company also has a PE in Italy or the fixed base is used by a related company that has a PE in Italy, the negative list exceptions will not apply where the activities carried out by the fixed base are complementary or connected to such PEs, unless the activities independently qualify as preparatory or auxiliary in nature). All activities of the related parties are aggregated in determining whether they are preparatory or auxiliary.
- The "dependent agent" concept is broadened to provide that a PE will be deemed to exist if the agent: (i) habitually concludes or is involved in the conclusion of contracts on behalf of the foreign company that are routinely approved by the foreign company without material changes; and (ii) the contracts are in the name of the foreign company and involve the sale or the transfer of the right to use goods owned by the foreign company, or the provision of services by the foreign company.
- For purposes of determining whether a PE exists, the independent agent exclusion is amended to clarify that it will not apply where the agent acts exclusively or almost exclusively for one or more related parties. A foreign company and the independent agent are considered related parties for these purposes if one controls the other or if both are under the common (direct or indirect) control of a third entity based on the specific facts and circumstances. Control is deemed to exist where one party owns more than 50% of the voting or economic rights in the other.

Under Italian rules, a taxpayer can apply either the domestic law definition of a PE or the relevant tax treaty PE definition, whichever is more beneficial. As a result, taxpayers will need to review the applicability of the new rules on a case-by-case basis, taking into consideration the treaty with the country of residence of the foreign enterprise, and the extent to which the treaty partner has adopted the new PE provisions in the OECD multilateral instrument (MLI). Italy did not opt to include the dependent agent/commissionaire changes to the definition of a PE in the MLI.

Interest deductions

Under Italian rules, deductions of net interest expense (*i.e.* the amount of interest expense exceeding interest income) are limited to 30% of annual EBITDA, with any excess interest expense carried forward to subsequent years (and subject to the same limitation). The 2018 budget law changes the computation of EBITDA for purposes of determining the 30% threshold to exclude dividends received from nonresident subsidiaries. The new provision, which could reduce the interest deduction for groups with foreign subsidiaries, applies retroactively from 2017.

Extra depreciation deductions

The budget law makes several changes to the extra depreciation allowances for certain assets:

- The extra 150% hyper depreciation deduction for new assets acquired for the technological transformation of enterprises under the "Industry 4.0" plan, which results in total tax depreciation of up to 250% of the cost of the asset, is extended to assets purchased by 31 December 2018 (or 31 December 2019, provided the relevant purchase order is made and at least 20% of the purchase price is paid by 31 December 2018). The Industry 4.0 plan includes investments in plant, equipment and machinery whose operations are digitally controlled and/or operated by smart sensors and drives that are interconnected with a factory's computer systems. A list of the assets qualifying for hyper depreciation was provided in the 2017 budget law.

- The extra depreciation deduction for tangible assets whose depreciation rate for tax purposes exceeds 6.5% is reduced from 40% to 30%, and is extended to new assets that are purchased (or leased under a finance lease agreement) by 31 December 2018 (or 30 June 2019, provided the relevant purchase order is made and at least 20% of the purchase price is paid by 31 December 2018).
- The extra 40% depreciation deduction for new intangible assets (*i.e.* software, systems, platforms, etc.) related to the technological transformation under the Industry 4.0 plan is extended to new assets purchased by 31 December 2018 (or 30 June 2019 under transition rules similar to those in the bullet above).

Substitute tax on capital gains

As from 1 January 2019, the budget law extends the 26% "substitute tax" to dividends and capital gains earned by nonresident entities on qualifying participations (*i.e.* participations of at least 20% of the voting rights or 25% of the capital or profit rights) in Italian companies. Currently, the substitute tax applies only to such income earned with respect to non-qualifying participations (*i.e.* participations falling below these thresholds).

Since tax treaty provisions that are more favorable to a taxpayer take precedence over domestic rules, the new rule generally will apply where a capital gain is not exempted from Italian tax by an applicable tax treaty (*i.e.* for shareholders resident in countries without a treaty with Italy, or where the relevant requirements in the treaty are not met).

Step-up of tax basis of participations

The budget law opens a new window for nonresident entities to elect to step up the tax basis of participations in unlisted Italian companies held as of 1 January 2018 to up to their fair market value, through the payment of an 8% substitute tax. This provision may be of interest to foreign entities that potentially could realize a capital gain on the disposal of such participations that would be subject to tax in Italy (*e.g.* if no exemption applies under an applicable tax treaty).

The substitute tax is calculated on the fair market value of the participation as of 1 January 2018, which must be certified by a sworn appraisal completed by 30 June 2018. The substitute tax must be paid in full by 30 June 2018, or paid in three annual installments starting from that date (in the latter case, 3% annual interest is due on the second and third installments).

Registration tax

The Registration Tax Law is revised to provide that the qualification of an agreement for registration tax purposes must be based exclusively on its provisions, regardless of any reference to the economic goal of the parties or other agreements between the parties. The new rule is designed to prevent the tax authorities from reclassifying certain transactions that are subject to an immaterial registration tax to be a sale of a business (which would be subject to registration tax at a rate of 3%, or higher if certain real estate assets are included), *e.g.*:

- The contribution of a business into a "Newco," followed by the sale of the Newco's shares; or
- The straight sale of 100% of a company's shares.

The new provision applies as from 1 January 2018, although it is not clear if it will apply to transactions carried out before that date or to ongoing tax litigation.

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Russia:
Foreign providers of e-services to pay VAT on B2B supplies

A law published in Russia on 27 November 2017 revises the procedure for accounting for and paying VAT on electronic services (e-services) that are deemed to be supplied in Russia by foreign suppliers to legal entities or individual entrepreneurs (B2B supplies) that are registered with the Russian tax authorities. The new rules require foreign entities that make supplies of e-services to such businesses to account for and pay Russian VAT on B2B supplies of e-services, unless the obligation is imposed by law on a tax agent.

The new rules relating to B2B supplies of e-services will become effective on 1 January 2019. Foreign entities that make B2B supplies of e-services and that are not yet registered with the tax authorities will have to apply for tax registration by 15 February 2019. Foreign suppliers that already are tax registered in Russia and pay VAT on business-to-consumer (B2C) supplies of e-services (for prior coverage, see *World Tax Advisor*, 19 August 2016) also will be required to account for and pay VAT on B2B supplies of e-services as from 1 January 2019.
URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160819_ib.html

National payment system operators will not be treated as tax agents (intermediaries) with respect to activities involving cash transfers for e-services. National payment system operators include money transfer operators, bank payment agents, payment agents, federal postal operators rendering cash transfer services, payment system operators, and payment infrastructure service operators. This provision applies as from 1 January 2018.

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In brief

Brazil: On 21 December 2017, Brazil's tax authorities published guidance effective 1 January 2018 that removes Costa Rica, Madeira and Singapore from the list of tax haven jurisdictions (black list), and includes certain tax regimes in those jurisdictions on the grey list. The grey list currently comprises regimes in Austria, Costa Rica, Denmark, Iceland, Malta, Netherlands, Portugal, Singapore, Switzerland, the US and Uruguay (for prior coverage, see *World Tax Advisor*, 13 January 2017). Inclusion on Brazil's black and grey lists triggers various tax consequences, such as immediate application of the transfer pricing rules and a reduced debt-to-equity ratio under the thin capitalization rules. In addition, the normal 15% withholding tax rate is increased to 25% where payments are made to a tax haven jurisdiction.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170113_3.html

The tax authorities published guidance on 21 December 2017 that clarifies that outbound remittances made as remuneration for the right to distribute or commercialize software are considered royalties and, therefore, are subject to a 15% withholding tax (25% if the beneficiary is located in a tax haven (black list) jurisdiction). The new guidance is in line with a previous ruling issued by the tax authorities, which provides that the tax treatment of payments made abroad for the remuneration of the right to distribute software (*i.e.* as royalties) should not be affected by the characterization of software (as customized or off-the-shelf) that is intended to be on-distributed and licensed to a final customer in Brazil.

Luxembourg: The 2018 budget law was approved by the parliament and officially published on 21 December 2017, with the tax measures applying as from 1 January 2018. The final law contains provisions affecting corporate and individual income tax and VAT, and generally follows the draft law presented to parliament in October (for prior coverage, see *World Tax Advisor*, 27 October 2017). However, the provisions relating to the exchange of information on request procedures were removed from the budget law and, on 19 December 2017, a separate draft law that would amend these procedures was submitted to parliament and is expected to be voted on during 2018.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/171027_1.html

A decree enacted on 23 November 2017 repeals Luxembourg's VAT exemption for services rendered by independent groups of persons to their members with effect from 31 December 2017 (for prior coverage, see *World Tax Advisor*, 9

June 2017). The new decree is in response to a 4 May 2017 decision of the Court of Justice of the European Union, in which the court held that certain provisions of the existing decree are incompatible with the EU VAT directive.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170609_3.html

Saudi Arabia: The General Authority for Zakat and Tax has launched a VAT taxpayer registry allowing taxpayers to verify that their business suppliers have registered for VAT (for prior coverage, see *World Tax Advisor*, 10 February 2017).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170210_5.html

United Arab Emirates: The Federal Tax Authority has launched a VAT registration number look-up facility on its website, allowing taxpayers to verify that their business suppliers have registered for VAT.

United States: On 22 December 2017, the president signed a bill into law that provides for comprehensive US tax reform. The law reduces the general corporate tax rate to a flat 21% (instead of 20% as originally proposed) effective in 2018, eliminating the brackets that have a maximum tax rate of 35%, and repeals the corporate alternative minimum tax. The law also lowers tax rates on pass-through entities, individuals and estates, and moves the US toward a participation exemption-style system for taxing foreign-source income of domestic multinational corporations, with some of the cost of the tax relief offset by provisions that scale back or eliminate many longstanding deductions, credits, and incentives for businesses and individuals. For a detailed discussion of the new law, see Deloitte Tax LLP's report *Reshaping the code: Understanding the new tax reform law*.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/understanding-the-tax-reform-law.html?id=us:2em:3na:wta:awa:tax:011218

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.

Belgium: A corporate tax reform law published on 29 December 2017 provides that, as from tax years starting on or after 1 January 2020, the Belgian definition of a PE will be revised to make the exception for independent agents compliant with the 2017 version of the OECD model tax convention and the OECD BEPS recommendations. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180112_1.html

Brazil: A Brazilian constituent entity that designated its foreign ultimate parent entity (UPE) as the CbC reporting entity when filing its 2016 income tax return may be required to amend the return to file a CbC report within 60 days of 31 December 2017, in cases where the relevant bilateral exchange relationship with the UPE's country of residence was not activated by 31 December 2017 (or is not effective for taxable periods beginning on or after 1 January 2016). See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180112_2.html

Cyprus: The tax authorities have announced the extension of certain deadlines related to CbC reporting. See Global Transfer Pricing Alert 2017-055, 14 December 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-055-14-december-2017.pdf

France: The 2018 finance law requires companies to keep at the disposal of the tax authorities all information indicated in action 13 of the OECD BEPS project. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180112_3.html

Guernsey: A bulletin issued on 19 December 2017 provides a one-time CbC reporting deadline extension (the regular deadline for submitting the CbC report is no later than 12 months after the last day of the reporting fiscal year of the MNE group, for fiscal years commencing on or after 1 January 2016). For ultimate parent entities (UPEs) or surrogate parent entities with a first reporting deadline before 31 March 2018, the deadline is postponed to 31 March 2018. For resident constituent entities (CEs) with a first reporting fiscal year ending before 31 March 2018 and for which the CE is required to submit a CbC report for the MNE group, the deadline for submitting the report is postponed to 31 March

2018; if the CE no longer meets the relevant criteria resulting in the reporting requirement by 30 March 2018, the tax authorities will accept that the CE no longer has a CbC reporting obligation for that reporting fiscal year. The bulletin does not extend the CbC notification deadline.

Italy: The tax authorities issued an order on 18 November 2017 that provides instructions on the preparation and filing of the CbC report and, on 11 December, extended the due date for filing the report to 9 February 2018. See Global Transfer Pricing Alert 2017-054, 14 December 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-054-14-december-2017.pdf

Italy's budget law for 2018 revises the definition of permanent establishment to bring it in line with the 2017 OECD model treaty and to adopt the recommendations under BEPS action 7. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180112_4.html

OECD: On 21 December 2017, the OECD announced additional activations of automatic exchange relationships under the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA). Over 1,400 automatic exchange relationships have been established among jurisdictions committed to exchanging CbC reports in accordance with the BEPS action 13 minimum standard as from mid-2018, including those between EU member states under the EU directive on the mandatory automatic exchange of information in the field of taxation. In addition, the US has signed 31 bilateral competent authority agreements for the exchange of CbC reports under tax treaties or tax information exchange agreements. Qatar signed the CbC MCAA on 19 December 2017.

The OECD announced on 21 December 2017 that there currently are more than 2,600 bilateral relationships for the automatic exchange of information under the common reporting standard (CRS) worldwide, and that it has issued additional CRS-related frequently asked questions to further support the implementation of the CRS.

The Bahamas, Mongolia and Zambia 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 project will participate as BEPS associates of the OECD's Committee on Fiscal Affairs. Countries joining the inclusive framework must implement four minimum standards: countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution. There now are 111 countries participating in the inclusive framework.

The Bahamas signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 15 December 2017. 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. The Bahamas also has signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA), with the first information exchanges to take place in September 2018.

The OECD has released the second round of analyses of individual countries' efforts to improve dispute resolution mechanisms under the BEPS action 14 minimum standard. The reports, which include over 170 recommendations, relate to implementation by Austria, France, Germany, Italy, Liechtenstein, Luxembourg and Sweden. Each jurisdiction's efforts to address any shortcomings identified in its stage 1 peer review report will be monitored in stage 2 of the peer review process.

Global tax alerts

Cambodia
Cambodia introduces transfer pricing rules
The Ministry of Economy and Finance issued the country's first transfer pricing rules on 10 October 2017, covering key issues such as the application of the arm's length principle, comparable transactions, transfer pricing methods, documentation and penalties for noncompliance.
Issue date: 15 December 2017
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-056-15-december-2017.pdf

Cyprus

Cyprus extends CbC reporting deadlines

On 11 December 2017, the Cyprus Tax Department announced the extension of certain deadlines related to CbC reporting.

Issue date: 14 December 2017

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-055-14-december-2017.pdf

Italy

Italian tax authorities publish guidance on implementation of CbC reporting rules, delay filing due date

Italy's tax authorities issued an order on 28 November 2017 that provides instructions on the preparation and filing of the CbC report and, on 11 December, the authorities extended the due date for filing the CbC report from 31 December 2017 to 9 February 2018.

Issue date: 14 December 2017

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-054-14-december-2017.pdf

United States

Notice 2018-08 suspends withholding under section 1446(f) on sales or dispositions of publicly traded partnership interests pending further guidance

On 29 December 2017, the US Department of the Treasury and the Internal Revenue Service issued guidance that, until future guidance is issued, suspends all withholding on the sale or disposition of publicly traded partnership interests that otherwise would be imposed under newly enacted subsection 1446(f) in the tax law signed on 22 December 2017.

Issue date: 2 January 2018

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-2-january-2018.pdf

The international tax provisions of the Tax Cuts and Jobs Act – conference agreement

The conference committee on the Tax Cuts and Jobs Act released its report, including its agreement on the provisions that differed in the House and Senate versions of the bill, on 15 December 2017.

Issue date: 17 December 2017

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-17-december-2017.pdf