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Luxembourg parliament considering introduction of VAT group regime

On 16 April 2018, the Luxembourg government presented a draft bill to parliament that would introduce a VAT group regime into domestic law. The Minister of Finance had announced on 23 November 2017 that Luxembourg intended to introduce VAT grouping rules in response to two decisions of the Court of Justice of the European Union (CJEU):

- On 4 May 2017, the CJEU held that Luxembourg's independent group of persons (IGP) regime was not in line with EU law, specifically the article in the EU VAT directive that provides a VAT exemption for certain services provided by an IGP, as transposed into Luxembourg law (for prior coverage, see *World Tax Advisor*, 9 June

2017); and
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170609_3.html
- On 21 September 2017, the CJEU held that the benefit of the VAT exemption for services provided by an IGP must be reserved for activities that are in the "public interest" (*e.g.* health, education).

The latter decision, in particular, represented a significant shift for the financial industry, because the CJEU substantially narrowed the scope of the VAT exemption. Many IGPs have been established within the sector to share resources without incurring additional VAT costs, but as a result of the CJEU's decision, VAT will be due on services supplied by an IGP to its members, which will create additional costs for these companies.

If the draft law is approved, it would apply as from 31 July 2018, but since the rules still are subject to the advice of the Council of State, the legislative process may be delayed (even though it is likely that the broad framework of the draft bill will remain unchanged).

Advantages of VAT groups

Under article 11 of the EU VAT directive, EU member states may allow groups of closely-linked companies (including nontaxable entities) to be treated as a single taxable person for VAT purposes provided several conditions are fulfilled, including that the group companies are "closely bound to one another by financial, economic and organizational links."

A VAT group is treated the same way as a single VAT-registered company. The main advantage of a VAT group is that *all* supplies of goods or services between the group members are treated as internal transactions, so no invoices have to be issued because the transactions fall outside VAT. The scope of a VAT group regime is broader than Luxembourg's IGP regime, which applied only to "support" services (information technology, accounting, etc.) provided to group members that could not or could only partially recover VAT.

Like the IGP regime, a VAT group regime is beneficial for taxpayers that are unable to fully recover VAT on their costs (*e.g.* asset managers, banks, insurance companies, management companies of funds, etc.). However, for taxpayers that can fully recover VAT (*e.g.* those performing services or industrial or trading activities), the VAT group regime can be favorable because it avoids the need to "pre-pay" the recoverable VAT on transactions between the members, since the transactions are outside the scope of VAT.

Requirements for VAT groups

The draft bill would allow two or more Luxembourg entities that are closely connected by simultaneously existing financial, economic and organizational links to opt to be treated as a single taxpayer for Luxembourg VAT purposes. Only entities established in Luxembourg (including Luxembourg branches of foreign companies) would be able to be members of a Luxembourg VAT group. This is a major difference from the rules for IGPs, which were permitted to have members in different EU member states. An entity would be allowed to be a member of only one VAT group.

When a decision is made to set up a VAT group, all entities that meet the three linking categories would be required to opt in and they would have to remain in the group for at least two calendar years, with some exceptions (*e.g.* where a company is sold). An opt-out option would be available for closely linked entities if they are not interposed in the economic flow between two members of the group and their exclusion from the group does not result in a VAT savings.

A specific rule would apply for companies that have opted to be members of the group even though they are not usually integrated in a similar economic organization and are not part of the "core business" of the group. Where the inclusion of such companies results in the distortion of competition, they would have to be excluded from the group unless the companies also conduct activities that do not lead to distortion. Supplies of goods or services to the group that lead to the distortion of competition would be subject to VAT even though the companies remain group members. Supplies to third parties, however, would be subject to VAT under the normal rules.

Passive holding companies could be members of a VAT group, which may be of interest to private equity, real estate and international holding structures in Luxembourg.

The financial, economic and organizational link requirements would be as follows:

Financial links: Financial links are defined by reference to Luxembourg corporate law, which provides that a company must include in its consolidated financial statements (*i.e.* a company is closely linked financially with) other entities in which the company:

- Holds a majority of the shareholder or member voting rights;
- Is a shareholder or member and has the right to appoint or remove a majority of the members of the entity's administrative, management or supervisory body; or
- Is a shareholder or member and alone controls, pursuant to an agreement with other shareholders or members, a majority of the entity's shareholder or member voting rights.

Companies or undertakings in which a common shareholder directly or indirectly owns at least 50% of the voting rights, including companies or undertakings for which this threshold is not reached, but "*de facto*" control exists, also would be considered to be financially linked for purposes of the VAT group regime.

An auditor or chartered accountant would have to certify the existence of the financial links at the time the group is formed and registers for VAT, and on an annual basis thereafter.

Economic links: Economic links would exist among companies when the activities of companies are of the same nature or are complementary or combined for the achievement of a common economic objective, or where the activities of a company are performed in whole or in part for the benefit of the other companies.

Organizational links: Companies would be considered to be linked organizationally where they are under common management or partly or fully coordinate the organization of their activities, or are under the direct or indirect control of the same person. The management or control could be legal or "*de facto*."

VAT groups in the financial industry

For VAT groups active in the financial industry that can only partially recover VAT on their costs, the VAT deduction would be based on the direct link between the purchases and the relevant turnover. The VAT on costs that could be traced to turnover for which there is a right to recover input VAT would be fully deductible, while the VAT on costs traced to turnover for which no such right exits would not be recoverable. The VAT on general costs that could not be traced to specific turnover would be prorated based on total turnover.

Compliance for VAT groups

The draft bill also includes the following rules for VAT groups:

- The VAT group would be required to request a new VAT identification number and provide information to the tax authorities on the group members, activities and organization. The group's VAT number would be used for purposes of corresponding with the VAT authorities and filing VAT returns. (VAT numbers of individual members of the group that existed before the group was formed would remain active as "auxiliary" VAT numbers of the group and could be used for relationships with third parties.)
- The VAT group would file a single VAT return that combines all transactions with third parties. Group members no longer would be required to file separate VAT returns.
- One group member would be designated as the representative of the group with the VAT authorities, but all group members would be jointly liable to the VAT authorities for the VAT due by the group.
- Specific rules would apply to invoicing, accounting and reporting. The group would be required to provide the VAT administration with information on transactions between the members, even though these transactions would be disregarded for VAT purposes and, therefore, not included in the VAT returns filed by the group.

If the draft law is enacted, the VAT authorities will need to issue new forms for reporting by VAT groups.

Comments

The introduction of a VAT group regime would be a major change to Luxembourg VAT law. The advantages and importance of this regime are highlighted by the fact that 16 other EU member states already have implemented such a regime in their domestic laws. A company's decision on whether to form a VAT group should be considered from various perspectives, including VAT, accounting, legal and IT. Companies should monitor future developments and carefully consider this potential new opportunity.

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Argentina:
Decree clarifies VAT collection on services provided by nonresidents

New rules that apply as from 1 February 2018 bring the supply of digital content (*e.g.* music, videos, provisions of websites, etc.) by foreign suppliers within the scope of Argentine VAT, when the services are used in Argentina. On 24 April 2018, the government published a regulatory decree that clarifies the procedures to collect VAT when such services are provided to private customers in the country.

The main aspects of the decree are as follows:

- Where digital services are supplied by a nonresident supplier to a non-VAT-registered customer in Argentina, the customer will be required to account for VAT at the current standard rate of 21%. The nonresident will not be required to register and file VAT returns in Argentina. The customer will be responsible for paying the VAT to the local tax authorities according to procedures that will be further clarified by the tax authorities in upcoming regulations.
- If an Argentine entity acts as an intermediary in relation to the payment for the digital services, the intermediary will be required to collect and pay the VAT to the tax authorities.
- The tax authorities will issue a list of digital service providers that will be updated periodically. Intermediaries will be expected to collect VAT on payments made to service providers included on the list.
- Where sales are made in a foreign currency, the value of the sale must be converted into Argentine pesos using the relevant exchange rate published by the Argentine National Bank.

The rules in the decree apply as from 25 April 2018. However, where an intermediary is required to collect and pay the VAT, the rules are expected to apply only once the authorities publish the list of digital service providers.

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Austria:
Draft bill includes measures to transpose EU ATAD into domestic law

Austria's Ministry of Finance issued a draft bill on 9 April 2018 for the Annual Tax Act 2018 that contains measures that would make significant changes to the tax treatment of corporations, and includes new controlled foreign company (CFC) rules and amendments to the existing general anti-avoidance rule (GAAR) that would transpose the relevant provisions in the EU anti-tax avoidance directive into Austrian law. The draft bill still may be subject to changes as it progresses through the legislative process, and it is unclear when a final version will be announced.

The following are the key proposals in the draft bill:

- New CFC rules would be introduced to attribute all low-taxed passive income of CFCs and foreign permanent establishments to an Austrian parent company. Control would be deemed to exist if an Austrian parent entity holds directly or indirectly more than 50% of the voting rights or capital of the foreign company, or is entitled to more than 50% of its profits. Passive income would include dividends, interest, licensing income, income from the disposal of shares, income from finance leasing, income from activities of banks and insurance

companies (with certain exceptions), as well as income of settlement companies. Low taxation would exist for purposes of the CFC rules if the tax rate in the country of the CFC is not higher than 12.5%. The CFC rules would apply to tax years beginning on or after 1 October 2018.
- The switch-over clause in Austria's participation exemption regime would be amended to bring it in line with the new CFC rules, *i.e.* the credit method, rather than the exemption, would apply to distributions from international participations and qualified portfolio shareholdings that exceed 5% in situations where the foreign subsidiary derives low-taxed passive income. (Under the switch-over clause, dividends are taxed at the Austrian corporate income tax rate, with a credit granted for any foreign tax paid on the income.) These changes would apply to tax years beginning on or after 1 October 2018.
- As from 1 January 2019, the period for making tax installment payments under the exit tax rules would be reduced from seven to five years, and immediate payment would be triggered in the following situations: (i) there is a transfer of assets, businesses or permanent establishments or a change of the registered office or effective place of management of a corporation to a country outside the EU/EEA; (ii) the taxpayer declares insolvency or liquidation; or (iii) the taxpayer fails to make the full installment payment for more than three months.
- Changes would be made to the GAAR by including a specific definition of "abuse of law" to address concerns about the interpretation of the GAAR expressed by the Austrian Supreme Administrative Court. The bill clarifies that abuse of law includes "unusual and unreasonable legal structures" the main purpose of which is to save tax, except where sound business reasons that reflect economic reality exist for a particular structure.
- The scope of the advance ruling regime would be expanded to allow rulings on questions of international tax law and abuse of law (as from 1 January 2019) and VAT (as from 1 January 2020). Advance rulings currently are limited to issues relating to transfer pricing, tax groups and reorganizations.
- The concept of "horizontal monitoring" by the tax authorities would be introduced. Horizontal monitoring involves ongoing communications with the tax authorities to discuss and resolve issues rather than the standard tax audit, thus giving taxpayers more certainty. Taxpayers that fulfill certain conditions (including annual turnover exceeding EUR 40 million) would be able to request horizontal monitoring as from 1 January 2019.

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Caribbean and Bermuda countries:
First CRS reports due in 2018 for non-early adopter jurisdictions

2018 marks the first year in which reports under the Common Reporting Standard (CRS) are due in "non-early adopter" jurisdictions, and notification and filing deadlines are rapidly approaching. In the Caribbean and Bermuda region, the Bahamas and Barbados are among the jurisdictions in which reporting will be required for the first time. Reporting Financial Institutions (RFIs) in these jurisdictions should be in the process of completing their account holder due diligence activities, submitting CRS notifications and preparing the reportable account information for submission to their tax authorities.

Meanwhile, RFIs in early-adopter Caribbean jurisdictions, where the first CRS reports were due in 2017, are turning their attention to completing the second year of reporting to local authorities, as well as documenting policies and procedures and preparing for future CRS compliance reviews (the specific compliance review process likely will not be published in early adopter jurisdictions until later in 2018).

Background

The CRS is the global standard for the automatic exchange of financial account information (AEOI) developed by the OECD. Modeled on the intergovernmental agreement approach taken under the US Foreign Account Tax Compliance Act (FATCA), the CRS requires all RFIs resident in a participating jurisdiction to identify and report any reportable accounts to their local tax authorities, which will exchange the information on an annual basis with the tax authorities of other reportable jurisdictions in which the account holders are tax resident. To date, over 100 jurisdictions have signed or committed to sign the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA).

The first year of reporting under the CRS was completed in 2017 by RFIs in 49 countries known as "early adopters," including three countries in the Caribbean and Bermuda region (Bermuda, British Virgin Islands and Cayman Islands). An additional 53 jurisdictions are due to start exchanging information in 2018. Tax authorities in each of these jurisdictions have been working to finalize local regulations, guidance notes and reporting portals to facilitate CRS.

CRS status across the Caribbean

The following table summarizes the current status of the CRS implementation and deadlines across selected countries in the Caribbean and Bermuda region.

Jurisdiction	Current CRS status	2018 CRS deadlines
Bahamas	• Non-early adopter (first reporting due in 2018) • Local CRS regulations in effect	Notification: 30 June 2018 Reporting: 31 July 2018
Barbados	• Non-early adopter (first reporting due in 2018) • Local CRS regulations in effect	Notification and reporting: 31 July 2018
Bermuda	• Early adopter (first reporting was completed in 2017)	Notification: 30 April 2018 Reporting: 31 May 2018
British Virgin Islands	• Early adopter (first reporting was completed in 2017)	Notification: 30 April 2018 Reporting: 31 May 2018
Cayman Islands	• Early adopter (first reporting was completed in 2017)	Notification: 30 April 2018 Reporting: 31 May 2018
Jamaica	• Has not yet committed to the CRS	N/A
Trinidad & Tobago	• Has committed to signing on to the CRS • Local CRS regulations not yet released	TBD

Implications for RFIs

Any entity that meets the definition of an RFI under the CRS must submit a notification to the local tax authorities, implement due diligence procedures, document and identify reportable accounts and establish a comprehensive reporting process. The CRS definition of an FI is broad, and includes the following types of entities:

- Depository institutions (*i.e.* banks);
- Custodial institutions;
- Specified insurance companies; and
- Investment entities (this can include trusts, funds or companies carrying out certain investment activities).

An entity that meets the definition of an FI will be considered an RFI if is resident in a CRS participating jurisdiction and does not qualify as a "non-reporting FI." The following types of entities generally are considered non-reporting FIs:

- Governmental entities, international organizations and central banks;
- Narrow and broad participation retirement funds; pension funds of a government entity, international organization or central bank; or a qualified credit card issuer;

- Exempt collective investment vehicles; and
- Trusts where the trustee is an RFI and completes all reporting on behalf of the trust.

Each RFI must develop and implement account holder due diligence procedures to identify reportable accounts, which must be aligned with the requirements stated in the CRS. If reportable accounts are identified in a particular reporting year, the RFI must submit a CRS report that includes information on each reportable account, such as the account holder's name, address, tax residence, account balance, any payments or disbursements made to the account holder, and, in some cases, information on controlling persons of certain entity account holders.

Reportable accounts include any account held by an individual or entity that is resident in a reportable jurisdiction, or by a passive non-financial entity (NFE) with one or more controlling persons that are resident in a reportable jurisdiction.

Differences in implementation across the Caribbean

While the Standard for Automatic Exchange of Financial Information in Tax Matters sets out a common list of definitions and guidelines for the implementation of the CRS, local regulations and guidance notes may contain variations in rules and filing mechanisms that must be evaluated on a jurisdiction-by-jurisdiction basis. Common areas of variation observed across the Caribbean jurisdictions include:

- **Nil reporting:** Some jurisdictions, including Barbados, require RFIs to file a nil return if they do not have any reportable accounts, whereas others have made nil reporting optional. Most jurisdictions still require an RFI to submit a CRS notification, regardless of whether it has reportable accounts.
- **Reportable jurisdictions list:** Each country has established its own list of reportable jurisdictions, which will determine which account holders are required to be reported to the local tax authorities, with information then to be exchanged with the tax authorities of the reportable jurisdictions. The lists vary across the region, since they depend on a number of factors, including confidentiality requirements and bilateral agreements or negotiations.
- **"Wider approach" to due diligence:** A jurisdiction can choose whether to require due diligence on all non-domestic account holders, or only on those located in reportable jurisdictions.
- **Controlling person ownership threshold:** When identifying controlling persons of a passive NFE account holder, the ownership threshold used to determine "control" must be aligned with the local anti-money laundering regulations and the domestic definition of beneficial owner. This means that jurisdictions have different thresholds for identifying controlling persons for purposes of the CRS.
- **Filing mechanism:** Some jurisdictions provide for multiple options for reporting, such as manual entry and XML uploads, whereas others allow filings to be submitted only in XML format.

Next steps

Entities across the Caribbean will need to consider taking the following steps immediately, if they have not already done so:

1. **Confirm CRS entity classification:** An entity will need to assess itself against the CRS definitions to determine if it is an RFI. It should be noted that an entity's classification for FATCA reporting purposes may not necessarily be the same under the CRS, so it is advisable to revisit and confirm the classification.
2. **Complete due diligence:** RFIs must ensure CRS self-certifications are collected from all new account holders. The definition of a "new" account differs by jurisdiction, depending on when the local CRS regulations became effective. Each entity also must complete reviews of pre-existing account holders, in line with the timelines set out in the CRS.
3. **Identify reportable accounts:** Based on the information gathered via self-certifications and the results of pre-existing account holder due diligence activities, the RFI must assess its account base against the local reportable jurisdiction list and determine which accounts must be reported.
4. **Submit the required notifications:** RFIs will need to submit CRS notifications to the local tax authorities, in line with local regulatory requirements.
5. **Prepare for reporting:** RFIs should review the reporting guidance released and determine the options for report submission, and the next steps required to compile the report in the required format.
6. **Develop and implement a CRS compliance framework:** The compliance framework for RFIs may include written policies and procedures outlining the onboarding and due diligence processes, an overview of CRS roles

and responsibilities, an internal training plan and periodic internal review procedures. An assessment of this framework may be included as part of future CRS compliance reviews conducted by the tax authorities.

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Costa Rica:
Tax reform proposal would replace GST with VAT and tax capital income

Prompted by a financial crisis, the outgoing Costa Rican congress on 28 February 2018 approved a special fast-track procedure to discuss and try to approve a tax reform bill that includes changes to the general sales tax (GST) and income tax rules. A special commission approved the first draft on 9 April 2018 and presented it to the congress on 17 April 2018, where several proposed additions were submitted for discussion. A new government took office on 8 May 2018, and the new president and congress have committed to a reform and are likely to continue to move forward with the main changes that are proposed in the current bill.

The key proposals affecting GST and income tax are outlined below. If approved, the law normally would apply from the date of publication in the official gazette, but it could include a transition period. Notably, the tax reform bill would not apply to companies operating under a free trade zone regime.

GST

GST currently is imposed on the sale of certain goods and the provision of a few services at a standard rate of 13%. Under the proposals, GST would be eliminated and replaced with a value added tax (VAT) on the sale of goods and the supply of *all* types of services in Costa Rica. The introduction of VAT would represent a substantial change for both resident and nonresident companies, since very few services currently are subject to GST.

The standard VAT rate would be 13%, with two new reduced rates: 2% for basic consumables and 4% for education services, medical services, construction services and tourism-related services. The 4% rate also would apply to airplane tickets (up to an amount equal to 10% of the ticket price). The VAT rates for construction services and tourism services eventually would reach 13%, and the 4% VAT on medical services would be refunded if the services were paid for by electronic means.

Interest on credit transactions and interest charged on intercompany loans would not be subject to VAT.

"Netflix" tax

The bill also would allow credit and debit card institutions to be appointed as VAT withholding agents for the purchase of services over the internet (sometimes referred to as the "Netflix tax"). This change would affect nonresident suppliers of e-services in Costa Rica.

The latest version of the bill also proposes the addition of a new article to the tax code to penalize businesses that do not accept debit and credit card payments and to discourage companies from accepting only cash.

Income tax proposals

The bill would introduce a new 15% tax on income from movable capital (*e.g.* dividends, interest, cooperative and "solidarity surplus", royalties, key rights (such as brand)) and real estate capital (*e.g.* rent or rights of use of real estate) and capital gains from the disposal of assets.

The proposed measure would represent a significant change to the taxation of dividends (which currently are exempt from tax), especially for holding companies, since the taxable base for income tax purposes would include foreign-source income. A Costa Rican holding company that receives dividends from foreign subsidiaries would be required to include the foreign income when distributing dividends to its shareholder(s).

With respect to rental income, the 15% tax would apply to the gross income received, less a lump sum deduction of 15% of the income for deductible expenses. A taxpayer that has hired at least one employee could apply to the General Directorate of Taxation (DGT) to be taxed on the rental profits under the standard corporate income tax regime at a rate of 30%, in which case the 15% limit on deductible expenses would not apply.

The income tax law currently does not include any provisions on the taxation of capital gains and losses. Under the proposal, a 15% tax would be imposed on the difference between the sales proceeds from the disposal of an asset and the acquisition value, based on the consumer price index. When an asset is disposed of other than via a sale (*e.g.* by donation), the market value would be used to determine the gain or loss. The tax due would be withheld by the purchaser and accounted for to the DGT.

The contribution of assets to a trust or the acquisition of assets by a trust, together with refunds of capital or reductions of capital, would not be considered changes in ownership for purposes of the tax, provided there is no evidence of a tax avoidance motive for the transaction. The capital gains tax would not apply to business reorganizations. Gains derived from the sale of the taxpayer's main residence and occasional sales of personal chattels, national lottery winnings and inheritances also would be exempt from the tax.

Other proposals

The reform bill also would introduce limits on the deductibility of payments made to tax havens or noncooperative jurisdictions, defined as jurisdictions whose corporate income tax rate is less than 40% of the Costa Rican corporate income tax rate (currently 30%), or with which Costa Rica does not have a tax treaty or tax information exchange agreement in force providing for the exchange of information.

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Luxembourg:
Tax authorities to examine transactions with jurisdictions on EU list of noncooperative countries

On 8 May 2018, Luxembourg's direct tax authorities published a circular (available only in French) that sets out "defensive measures" that Luxembourg is taking with respect to the EU noncooperative jurisdiction list (for prior coverage of the list, see *World Tax Advisor*, 23 March 2018). The Luxembourg tax authorities intend to closely examine transactions between Luxembourg companies and related entities situated in any of the listed jurisdictions, which means that the Luxembourg direct tax authorities will engage in enhanced monitoring of such transactions. The circular is applicable as from the 2018 financial year for Luxembourg companies, which will be required to report relevant transactions in their tax returns.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_3.html

The EU list of non-cooperative jurisdictions is a by-product of the EU's external taxation strategy, which promotes tax good governance on a global level through tax transparency, fair taxation and the implementation of new standards. In December 2017, the Council of the European Union approved and published conclusions containing the list of jurisdictions that are considered not to have taken effective measures in response to the EU concerns, and further updated the list on 16 March 2018. The list now contains nine jurisdictions: American Samoa, Bahamas, Guam, Namibia, Palau, Saint Kitts and Nevis, Samoa, Trinidad and Tobago and the US Virgin Islands.

Based on the new circular, the Luxembourg tax authorities will require companies to list in their Luxembourg tax returns all transactions with related entities located in listed jurisdictions. The applicable version of the EU list to be taken into account is the one available at the time of the financial year-end of the Luxembourg company. The reporting requirement will apply for the first time in the tax returns to be filed in 2019 covering fiscal year 2018.

Additionally, as part of the review of tax returns and/or any subsequent investigation, the Luxembourg tax authorities can request the taxpayer company to provide details of relevant transactions, including the total amount involved, a statement of income and expenses and a statement of claims and debts owed to enterprises located in listed jurisdictions.

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Panama:
Transfer pricing information reporting form modified

Panama's tax authorities announced on 9 April 2018 that the transfer pricing information form (Form 930) that must be submitted by taxpayers carrying out transactions with foreign related parties has been reformatted and updated. A resolution published in the official gazette on the same date modifies the format for filing the return and contains a new version of the form (Form 930 V2.0) that requires additional information. The new resolution repeals previous resolutions dating from 2012.

Form 930 V2.0 is effective from 9 April (the date the resolution entered into effect), and will be required for fiscal years beginning on or after 1 January 2018. The form must be filed within six months after the end of the fiscal year. For fiscal years beginning prior to 1 January 2018, the former version of Form 930 remains applicable.

Overview of changes

The new version of the form was issued as a result of a 2016 decree that amended Panama's transfer pricing rules to bring them in line with the local file recommendations under action 13 of the OECD/G20 BEPS project. The new decree requires more information to be included in the transfer pricing study (*i.e.* the local file), and aligns the template for the presentation of the transfer pricing report with these changes.

The new version of the form also seeks to streamline administrative processes and taxpayer supervision by the tax authorities, since it requests information on the comparable transactions selected for the transfer pricing study.

With the new format of the transfer pricing report, the tax authorities will have access to the economic information included as part of the transfer pricing study without having to make a specific request and wait for up to 45 business days (the period provided by law for taxpayers to respond to a request for the study). The additional economic information on the taxpayer and the selected comparable transactions will allow the authorities to make preliminary calculations of potential adjustments to the taxpayer's income tax base, and focus their audit efforts on taxpayers that are most likely to be in noncompliance with the arm's length principle.

Taxpayers should note that, due to the detailed information that must be reported on comparable transactions (see below), it will be necessary to prepare the transfer pricing study (or at least a draft) before filing Form 930 V2.0.

Accompanying the new resolution are instructions for taxpayers regarding the information that must be included in the form. It is not possible to amend Form 930 V2.0. If a taxpayer submits a form containing an error, its only option is to request a cancellation of the form from the General Director of Income, which has the discretion to grant or deny the request. If granted, the taxpayer may submit a new report before the deadline for filing the form. The tax authorities are expected to issue additional guidance to clarify certain issues relating to the filing rules (*e.g.* whether a taxpayer that discovers an error after the deadline for filing the form has any way of correcting the inaccurate information).

Specific changes to transfer pricing report

The following information now must be included in the transfer pricing reporting form:

- An economic analysis of each transaction carried out with foreign related parties (transactions may be grouped together in certain cases);
- The selected profitability ratio for each analysis;

- The taxpayer's profit or loss without adjustments, along with the value of the profitability ratio (expressed as a percentage); and
- If adjustments have been made to the profitability ratio, the taxpayer's adjusted profit or loss, as well as the value of the adjusted ratio.

The form also includes two annexes: one for reporting specific information on intangible asset transactions (including the number of transactions, type of transaction and type of intangible); and one for reporting on comparables, which must include information related to the companies selected as comparable, in cases where this is required under the selected method. The information to be disclosed includes the following:

- Company name, location (domestic or foreign) and country of residence;
- Fiscal year (start and end date);
- Type of comparable (internal or external);
- Profitability ratio used, with the options being gross margin on costs or sales, operating margin on costs and expenses, operating margin on sales, return on assets, return on capital employed or Berry ratio;
- Sales and cost of sales used to calculate the profit ratio, and the profit or loss resulting from the net of these two items;
- Operating expenses used to calculate the profit ratio; and
- Operating profit or loss resulting from the difference between operating expenses and gross profit.

In addition, the taxpayer must answer questions regarding itself and its business group on the following:

Regarding the taxpayer:

- Whether it is benefitting from a special tax regime in Panama;
- Whether it has been part of a corporate restructuring during the year that is the subject of the report;
- Details of transfers of intangibles (if any);
- Whether comparability adjustments were applied; and
- Whether any companies selected as comparable had operating losses and/or were involved in certain business transactions (*e.g.* a restructuring or merger).

Regarding the business group:

- Whether the group has been part of a corporate restructuring during the year that is the subject of the report;
- Whether a foreign related party is the subject of a transfer pricing inspection or an audit;
- The country of tax residence of the parent company;
- The consolidated income of the group in the currency of the country where the parent is resident and the year to which this income corresponds;
- The currency in which the group's income is consolidated; and
- Consolidated group income in US dollars, and the date of the exchange rate used for the conversion.

As in the previous version of the report, the name of the taxpayer's legal representative and his/her personal identification number must be indicated.

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United States: Administration delays tariffs on steel and aluminum

The US President issued two proclamations on 30 April 2018 that postpone imposing tariffs on steel and aluminum imports from Canada, Mexico and the EU until 1 June. The tariffs, which were originally in effect from 23 March to 1 May 2018, are 25% and 10% on certain steel and aluminum imports (for prior coverage, see *World Tax Advisor*, 23 March 2018). From 23 March through 30 April 2018, Argentina, Australia, Brazil, Canada, Korea (ROK), Mexico and the

28 EU member states benefited from temporary blanket exemptions from these tariffs pending broader trade negotiations with each jurisdiction.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_6.html

The new proclamations indefinitely extend the blanket exemptions on steel and aluminum articles imported from Argentina, Australia and Brazil because the US has agreed in principle with these countries on alternative means to address the national security concerns arising from steel and aluminum imports. One of the proclamations permanently excludes Korea (ROK) from the steel tariffs because the two countries have agreed on measures to address excess steel capacity and transshipment, including the introduction of quotas. However, the exemption on imports of aluminum products from Korea was not extended, so as from 1 May 2018, affected aluminum products became subject to an additional duty of 10%.

The proclamations also clarify that articles of steel and aluminum entering into US commerce from a foreign trade zone (FTZ) will not be subject to the tariffs merely because they were manufactured in such a zone. However, steel and aluminum products that are subject to the tariffs and imported into an FTZ will remain subject to the tariffs upon withdrawal of goods from the zone.

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In brief

(**Note to our readers:** Beginning with the 27 April 2018 issue, *World Tax Advisor*'s column "BEPS corner" has been discontinued. *World Tax Advisor* will continue to cover relevant news and developments relating to the OECD BEPS project in news articles, the "In brief" and/or the "Tax treaty round-up" columns.)

Australia: On 8 May 2018, the Treasurer presented Budget 2018-19, which includes some proposed tax measures affecting multinationals. The proposals would require entities to align the value of their assets for thin capitalization purposes with the value included in their financial statements for income years beginning on or after 1 July 2019, and would broaden the definition of a "significant global entity" as from income years beginning on or after 1 July 2018 to include members of groups headed by private companies, trusts, partnerships and investment entities. Effective from 1 January 2019, the list of countries whose residents are eligible for a reduced 15% withholding tax rate on certain distributions from Australian-managed investment trusts would be updated to add the 56 jurisdictions that have entered into information sharing agreements with Australia since 2012. The Treasurer also announced a commitment to work with the OECD to redesign the way the digital economy is taxed in Australia, and has confirmed that a discussion paper will be released that will explore various options.

China: The State Administration of Taxation (SAT) issued guidance on 23 and 25 April 2018 that addresses some consequences of the VAT rate reductions that took effect on 1 May 2018. The VAT rate for taxpayers originally subject to the 17% and 11% rates reduced to 16% and 10%, respectively (no rate changes apply to taxpayers that are subject to the 6% rate). One of the circulars confirms that even after 1 May, a general VAT payer will be able to issue a "red-letter VAT invoice" (which functions as an amendment to an original VAT invoice) that contains the 17% or 11% rate for sales allowances or returns that were taxable before 1 May. If the original VAT invoice was issued incorrectly, the general VAT payer may issue a red-letter VAT invoice to effectively cancel the original invoice and then issue a new VAT invoice at the applicable 17% or 11% rate. Similarly, a general VAT payer will be able to issue a VAT invoice at the old rate for transactions that were taxable before 1 May but for which a VAT invoice had not yet been issued.

Colombia: Effective 1 January 2019, companies that are subject to VAT and consumption tax in Colombia will be required to issue electronic invoices for all transactions for which a paper invoice currently is issued. However, the electronic invoicing requirement will kick in for companies that are considered "large taxpayers" by the Colombian tax authorities (DIAN) on 1 September 2018, unless the taxpayer has requested an extension due to specific technical issues (*e.g.* issues with the functionality of the software). In that case, e-invoicing will be mandatory as from 1 December 2018. Companies that applied to invoice electronically under the previous regulation must implement the new e-invoicing rules by 30 June 2018. Specific requirements will need to be met regarding when an invoice must be issued and the format for submitting the invoice to the tax authorities. For all companies that are required to move to e-invoicing, the DIAN will allow a three-month “test period” for the implementation of the new system before it becomes mandatory.

Hong Kong: An amendment to the Inland Revenue Ordinance published on 27 April 2018 will expand the types of transactions that qualify for a profits tax exemption and revise definitions under the existing offshore funds tax exemption regime, under which nonresident funds can enjoy the profits tax exemption on “specified transactions” in Hong Kong (for prior coverage, see *World Tax Advisor*, 18 August 2017). In particular, transactions in shares in an investee company under the Innovation and Technology Venture Fund Scheme will be added to the list of specified transactions, so that offshore funds will not be deprived of the exemption because of their investment in local start-ups in Hong Kong under the scheme, subject to meeting specific requirements. The new rules should become effective on 22 June 2018.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170818_ib.html

Ireland: The European Commission confirmed on 24 April 2018 that Ireland’s sugar tax does not constitute state aid, so the tax became effective as planned on 1 May 2018. The sugar tax is part of an initiative to tackle childhood and adult obesity, encourage the population to make healthier choices and encourage businesses to reformulate drinks so that they have a lower added sugar content. The commission concluded that the scope of the tax and its overall design are consistent with the health objectives pursued and does not unduly distort competition.

Italy: On 30 April 2018, the tax authorities published a measure on the new electronic invoicing (e-invoicing) obligation, which provides rules for the generation, transmission, receipt and storage of electronic invoices and the related credit/debit notes. The e-invoicing obligation (introduced by the 2018 budget law) will apply as from 1 July 2018 for sales of fuel and for subcontractors of public bodies, and will broadly apply to all transactions (business-to-consumer and business-to-business transactions) as from 1 January 2019 (for prior coverage of Italy’s 2018 budget law, see *World Tax Advisor*, 12 January 2018). A new “report of data on cross-border transactions” also will be required as from 1 January 2019 for taxpayers carrying out such transactions. Further clarifications are expected due to the impact of the changes.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180112_4.html

Malaysia: The Inland Revenue Board (IRB) has issued the Tax Audit Framework 2018, which is effective from 1 April 2018 and supersedes the Tax Audit Framework 2017 (for prior coverage, see *World Tax Advisor*, 23 June 2017). The key changes include that the letter notifying taxpayers of an audit may request information (previously, the letter would request only documents) and that the IRB may request records for time-barred years of assessment (however, the taxpayer cannot be penalized for failure to have these records). In addition, certain timeframes during an audit are shortened for taxpayers and the tax authorities (*e.g.* the deadline for taxpayers to submit the documents and information requested in the letter notifying them of an audit is reduced from 21 to 14 days from the date of receipt of the letter).
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170623_ib.html

Malta: The Budget Measures Implementation Act, 2018 was enacted on 29 March 2018, implementing the proposals announced by the Minister of Finance during his budget speech for the 2018 financial year on 9 October 2017. The key measures include a change to the definition of a “participating holding” for the purposes of Malta’s participation exemption, which grants qualifying companies registered in Malta a full tax exemption on certain income or gains derived from qualifying equity investments that constitute a participating holding. The minimum equity holding required to qualify as a participating holding is reduced from 10% to 5%. Qualifying investments now also include equity holdings in partnerships or “European economic interest groupings” that have not elected to be treated as companies for purposes of Malta’s Income Tax Act. The amendment applies retroactively as from 1 January 2018.

New Zealand: A bill that is expected to be enacted by 30 June 2018 contains proposed tax measures that would impact multinationals and is motivated by BEPS concerns (for prior coverage, see *World Tax Advisor*, 18 August 2017). The proposals would introduce changes to the methods for determining the appropriate interest rate on inbound related party loans, which would apply to income years commencing on or after 1 July 2018 and would have the most impact on taxpayers with loans exceeding NZD 10 million where there is considered to be a high “BEPS risk” (*i.e.* typically where the taxpayer has a debt percentage exceeding 40% or the lender is located in a jurisdiction with a tax rate of less than 15%). The proposals also would modify the rules for establishing and defending arm’s length amounts

for non-debt cross-border related party transactions, by adopting the revised 2017 OECD transfer pricing guidelines into domestic law.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170818_bc.html

On 19 April 2018, the government released a discussion paper seeking public feedback on proposals for implementing an R&D tax incentive to encourage businesses to invest more into R&D. The key proposals include a 12.5% nonrefundable tax credit on eligible expenditure (up to a maximum of NZD 120 million of R&D expenditure each year) for businesses that spend a minimum of NZD 100,000 on eligible expenditure within one year, which would be available for eligible expenditure incurred as from 1 April 2019. The consultation on the proposals is open until 1 June 2018.

OECD: On 9 May 2018, the OECD invited public comments on two new projects it is considering that would revise chapters IV and VII of the transfer pricing guidelines, *i.e.* "Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes" and "Special Considerations for Intra-Group Services," respectively. Comments from interested parties are requested by 20 June 2018.

The OECD announced on 9 May 2018 that Saint Lucia has 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 114 jurisdictions participating in the inclusive framework.

Spain: The bill for the fiscal year 2018 state budget published on 5 April 2018 proposes amendments to the patent box regime, under which 60% of qualifying income derived from the licensing or transfer of qualifying intangible assets is not subject to corporate income tax. Under the proposals, which would apply for tax periods beginning on or after 1 January 2018, qualifying intangible assets would be restricted to patents, utility models, supplementary protection certificates for medical purposes, models and designs and registered software that is the product of research and development projects. The bill also sets forth that the tax reduction applies to qualifying positive income (profits) derived from the intangible assets (as defined in the bill) and denies the deductibility of 60% of any negative income (losses) derived from these intangible assets in subsequent tax years, up to the amount of the tax reduction generated in previous tax years. The bill also allows venture capital entities to exclude tax-exempt income from the prior year turnover used to calculate the minimum advance corporate income tax payable by installments. The bill is being debated by the chamber of deputies before being sent to the senate for final approval.

United Kingdom: The tax authorities (HMRC) have issued guidance, which confirms the 2017 decision of the Court of Justice of the European Union (CJEU) that restricts the VAT cost-sharing exemption to certain public interest sectors, such as education and health and welfare. Financial services businesses and organizations in other sectors that no longer qualify for exemption will need to stop applying the exemption by 31 May 2018, with an apportionment required for supplies that straddle this deadline. In addition, HMRC no longer will accept cross-border VAT cost-sharing groups.

Global tax alerts

OECD
Additional guidance released on attribution of profits to permanent establishments
On 22 March 2018, the OECD released additional guidance on the attribution of profits to a permanent establishment under action 7 of the BEPS project, which sets out high-level general principles based on comments received on two earlier discussion drafts but does not resolve how to apply both articles 7 and 9 of the OECD model tax treaty to the same legal structure.
Issue date: 1 May 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-012-1-may-2018.pdf