World Tax Advisor
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25 May 2018

In this issue:

Chilean tax authorities issue guidance on application of MFN clause in various tax treaties

On 19 April 2018, the Chilean Internal Revenue Service (IRS) issued General Ruling No. 22 of 2018 regarding the application of the most-favored nation (MFN) clause in articles 11 (interest) and 12 (royalties) of Chile's existing tax treaties with the Czech Republic, Denmark, Ireland, Korea (ROK), Poland and the UK. The ruling was issued following the IRS obtaining agreement to the revised wording for the relevant articles from the relevant treaty partner tax administrations.

The MFN clause(s) in each of the treaties were triggered by Chile's treaty with Japan, which provides for more favorable withholding tax rates on certain interest and royalty payments. The Chile-Japan treaty entered into force on 28 December 2016, and applies as from 1 January 2017. The effect of the MFN clauses is, broadly, that the rates under the Chile-Japan treaty, where they are more favorable, are substituted for the rates in the other treaties, as from 1 January 2017.

Chile-Japan treaty withholding tax rates on interest and royalties

Article 11 of the Chile-Japan treaty provides for a 4% withholding tax rate on interest paid, credited, made available or recorded as an expense as from 1 January 2017, if the beneficial owner of the interest is either:

- A bank, an insurance company or other qualifying enterprise primarily engaged in a lending or finance business;
- An enterprise that sold machinery or equipment, where the interest is paid with respect to trade receivables arising as part of the sale on credit of such machinery or equipment; or
- Any other enterprise, provided that, in the three taxable years preceding the taxable year in which the interest is paid, the enterprise derives more than 50% of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and more than 50% of the assets of the enterprise consist of debt claims against unrelated persons.

Otherwise, the rate is 15% for the first two years the treaty is in effect (*i.e.* as from 1 January 2017 until 31 December 2018), reducing to 10% on 1 January 2019. A 10% rate also applies as from 1 January 2017 to interest that otherwise would be subject to the 4% rate, but that is paid as part of an arrangement involving back-to-back loans or an arrangement that is economically equivalent and intended to have an effect similar to an arrangement involving back-to-back loans.

Article 12 of the treaty provides for a 2% withholding tax rate on royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate is 10%. These rates apply to amounts paid, credited, made available or recorded as an expense as from 1 January 2017.

Application of MFN clauses in Chile's treaties

Chile's treaties with Denmark, Ireland, Korea, Poland and the UK each contain MFN clauses relating to both the interest article and the royalties article, while in the Chile-Czech Republic treaty, only the interest article is subject to an MFN clause.

As a result, the more favorable withholding tax rates on certain types of interest, as provided in the Chile-Japan treaty, also apply to equivalent interest payments under Chile's treaties with the Czech Republic, Denmark, Ireland, Korea, Poland and the UK, with retroactive effect as from 1 January 2017. The 15% default interest withholding tax rate will reduce to 10% as from 1 January 2019.

The agreed text of the revised interest article of each treaty, as specified in the ruling, should be carefully reviewed since the withholding tax rates on certain other types of interest payments are not affected by the MFN clause. In some cases, the existing treaty provides for a more favorable rate than the Chile-Japan treaty, or a relevant domestic rate may be lower. For example, under the Chile-UK treaty, a 5% rate applies to (i) interest paid to a bank or insurance company, and on interest on trade receivables for machinery and equipment, if the interest is paid as part of an arrangement involving back-to-back loans or a similar arrangement; and (ii) interest paid on bonds or securities that are regularly and substantially traded on a recognized securities market (however, a 4% withholding tax rate applies on such payments under Chile's domestic legislation).

With regard to royalties, the 5% withholding tax rate on royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment under the treaties with Denmark, Ireland, Korea, Poland and the UK is reduced to 2% as from 1 January 2017. For all other royalties, the withholding tax rate under the treaties with Denmark, Korea and Poland is reduced to 10% as from the same date. Chile's treaties with Ireland and the UK provide for a 10% withholding tax rate on other royalties, which remains unaffected by the application of the MFN clause.

Comment

The retroactive application of the reduced treaty withholding tax rates triggered by the Chile-Japan treaty may result in a refund opportunity where payments of interest and royalties were made on or after 1 January 2017 and subject to a higher treaty withholding tax rate. Potentially affected taxpayers may wish to consider reviewing the nature and timing of relevant payments to determine whether there is a possibility of a tax refund.

Significantly, the treaties addressed in General Ruling No. 22 are not the only Chilean treaties that include MFN clauses that should be activated automatically by the entry into effect of the Chile-Japan treaty. The IRS has indicated informally that it has included in the ruling only those treaties for which it has specifically agreed with the treaty partner tax administration on revised wording for articles 11 and 12 of the relevant treaty. The IRS may issue additional rulings in the future confirming the application of the triggering of the MFN clauses and reduced withholding tax rates under other treaties, as from 1 January 2017 or 1 January 2019, as appropriate. In the meantime, taxpayers should review the wording of interest and royalties articles of other relevant treaties subject to MFN clauses to determine whether the clauses would operate automatically and, if so, take appropriate steps to obtain the reduced rate(s).

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Brazil:
New tax treaties with Singapore and Switzerland contain BEPS-related measures

Brazil recently signed two new tax treaties that contain measures from the OECD multilateral instrument (MLI) to implement the BEPS minimum standards, even though Brazil has not yet signed the MLI. A treaty with Switzerland was signed on 3 May 2018 and a treaty was signed with Singapore on 7 May.

The treaties include the new preamble, a principal purpose test and a limitation on benefits clause, as well as an article establishing that income derived by or through fiscally transparent entities under the tax law of either contracting state will be considered income of a resident of a contracting state. The treaties also contain a specific article on the taxation of technical services, clarifying that the source state may impose withholding tax on such payments (most of Brazil's existing treaties expand the definition of royalties to include such services).

The two treaties provide for the following withholding tax rates for source-country taxation on various types of income:

- **Dividends:** The treaty with Switzerland provides for a 10% rate on dividends paid to company (other than a partnership) that holds directly at least 10% of the capital of the payer company for a 365-day period that includes the date the dividends are paid; otherwise, the rate will be 15%. The treaty with Singapore requires a 25% direct participation to benefit from the 10% rate.
- **Interest:** A 10% rate will apply to interest paid to a bank on a loan that was granted for at least a five-year period to finance the purchase of equipment or for an investment project; otherwise, the rate will be 15%.
- **Royalties:** A 15% rate will apply to royalties paid to use a trademark; otherwise, the rate will be 10%.
- **Technical services fees:** A 10% rate will apply to payments made for managerial, technical or consultancy services.

It should be noted that both Switzerland and Singapore are included on Brazil's grey list because Brazil considers that they have tax-privileged regimes (Switzerland was removed from Brazil's black list in 2014, and Singapore in 2018; for prior coverage, see *World Tax Advisor*, 27 June 2014 and *World Tax Advisor*, 12 January 2018). Inclusion on these lists has various tax consequences, such as immediate application of the transfer pricing rules, a reduced debt-to-equity ratio under the thin capitalization rules and an increase in the normal 15% withholding tax rate to 25% where

remittances are made to a tax haven jurisdiction. It is expected that once the treaties enter into force, the normative instruction that contains the grey list will be revised.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140627_2.html
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180112_ib.html#Brazil

Brazil's Chamber of Deputies and Senate must approve both treaties and the president must sign them before they can enter into force.

The new tax treaties with Switzerland and Singapore represent an important expansion in Brazil's limited treaty network, bringing the number of treaties to 35.

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Brazil:
Rulings issued on tax treatment of cross-border payments related to travel

Brazil's tax authorities issued three private letter rulings (PLRs) between December 2017 and May 2018, concluding that certain cross-border payments related to travel may fall under the business profits article of a relevant tax treaty and, therefore, would not be subject to Brazilian source-country tax in the absence of a Brazilian permanent establishment (PE) of the nonresident recipient of the payments.

Background

In March 2016, the government temporarily reduced the 25% withholding tax rate to 6% (until 31 December 2019) on payments remitted abroad by Brazilian resident individuals to cover personal expenses incurred during overseas travel, regardless of the existence of an applicable tax treaty. (These payments were exempt from withholding tax from 2011 to the end of 2015; a normative ruling issued in January 2016 reintroduced the 25% withholding tax as from 1 January 2016.)

The three rulings consider whether the reduced 6% withholding tax applies to tourist-related remittances – *i.e.* cross-border payments made by Brazilian travel agencies to cover personal expenses incurred by Brazilian resident individuals for overseas travel (*e.g.* for hotels, auto rentals, insurance, cruises) – in a case where a tax treaty exists between Brazil and the country to which the payment is made. The first two rulings discussed below may be relied on as precedent by other taxpayers; the third was issued by a different division of the tax authorities that does not issue binding rulings.

Ruling 598/2017

On 21 December 2017, the tax authorities issued a PLR (598/2017) addressing Brazil's tax treaties with Denmark, Finland and Sweden. The ruling provides that cross-border payments related to travel would fall under the business profits article of such treaties and, therefore, would not be subject to Brazilian withholding tax but potentially could be subject to Brazilian corporate income tax if the recipient has a PE in Brazil, unless the income can be classified under the independent personal services article of the relevant treaty (see below). (Under the Denmark treaty, fees for services that fall within the definition of "professional services" in the independent personal services article are covered by that article, rather than the business profits article, even if the recipient of the fees is an enterprise; the Finland and Sweden treaties do not contain such a provision.)

The tax authorities also examined, in the context of the Brazil-Denmark treaty, whether cross-border payments related to travel could be considered royalties, since the protocol to that treaty expands the definition of royalties to include income from technical services and technical assistance. The tax authorities concluded that tourist-related remittances are not "technical services" under the treaty. The authorities also considered the Brazilian definition of technical services and concluded that, although persons working for travel agencies require certain knowledge to perform the services the agency offers, these services cannot be strictly considered as "technical services." This issue was irrelevant for Brazil’s tax treaties with Finland and Sweden, which do not expand the definition of royalties to comprise technical services.

Regarding the possibility of classifying tourist-related remittances under the independent personal services article of the treaties, the tax authorities noted that, for example, hotel bookings do not fall under the definition of “professional services” and, therefore, they would fall within the scope of the business profits article of all three treaties under consideration.

Ruling 56/2018

PLR 56/2018, issued on 28 March 2018, states that the tax treatment of tourist-related remittances should be based on the text of the relevant tax treaty (the ruling does not address a specific treaty). The taxpayer should evaluate whether the relevant remittances would fall under the definition of technical services (if such a definition is included in the royalties article) or under the relevant definitions in the independent professions/independent personal services article of the treaty. If it is not possible to classify the remittances under one of these two articles, such income should be classified under the business profits article and, therefore, Brazil would not impose the 6% withholding tax on the remittances.

Ruling 6009/2018

On 9 May 2018, PLR 6009/2018 was published on the same issues considered in the two previous rulings. The tax authorities carried out the same analysis and reached the same conclusions. Although this ruling cannot be relied upon by other taxpayers as precedent, it confirms the tax authorities’ position on the issues.

Comments

Given the rulings, Brazilian travel agencies making cross-border payments related to travel should reevaluate such payments, to assess the possibility of enjoying tax treaty benefits and avoiding the 6% withholding tax.

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Indonesia:
Tax holiday regime enhanced

Indonesia’s Ministry of Finance (MOF) issued new regulations (PMK-35) on 3 April 2018 that revoke regulations (PMK-159) dating from 2015 concerning corporate income tax reductions or tax holidays. The new regulations, which apply as from 4 April 2018, aim to increase domestic investment and make the tax holiday regime accessible to more taxpayers.

PMK 35 expands the definition of a pioneer industry to cover 17 industries. A pioneer industry is one that provides high added value, new technologies and strategic value for the Indonesian economy. The newly added industries include basic inorganic chemicals, raw materials for pharmaceutical products and semi-conductor manufacturing.

Key features of the new regime include:

- A tax reduction of 100% of the corporate income tax payable is available for the tax holiday period, plus a 50% reduction of the corporate income tax payable for two years following the expiration of that period.
- The tax holiday period may be from five to 20 years, depending on the amount of the planned investment, which may be adjusted as a result of a site visit.
- Eligible investments are planned new investments by an Indonesian legal entity of at least IDR 500 billion (reduced from IDR 1 trillion under the previous regime) in one of the 17 pioneer industries, provided the 4:1 debt-to-equity ratio specified by the MOF is met and the MOF has not previously granted or denied a tax

holiday in respect of the investment. Applications may be submitted in respect of investments in industries not included on the MOF list, but additional requirements apply.

- Applications must be supported by specific documentation (*e.g.* a photocopy of the tax identification card and principal permit for the new investment and the taxpayer's tax certificate). If the shareholders are taxpayers, the applicant must provide tax certificates issued by the Director General of Tax (DGT) to demonstrate that all shareholders have fulfilled their tax obligations.
- A simplified and accelerated application process is available, under which the application may be submitted to the Investment Coordinating Board (BKPM) either at the time the investment is registered or within one year following the issuance of the registration of the investment, and the MOF must issue a decision on whether to grant a tax holiday within five business days of receiving the BKPM's recommendation.

Reporting requirements

Taxpayers that have been granted a tax holiday/tax reduction must submit annual reports to the DGT (within 30 days of the end of the relevant tax year) on investment realized up to the time commercial production commences, and on commercial production realized up to the expiration of the tax holiday period.

PMK-35 does not address the consequences for taxpayers that fail to comply with the reporting requirements, although the DGT is expected to issue further guidelines on the reporting procedures and requirements.

Transitional provisions

A taxpayer that has received and/or utilized a tax holiday or tax reduction period under the previous rules may continue to do so until the end of the prescribed period. However, any proposals that were submitted by the BKPM to the MOF between 16 August 2015 and 3 April 2018 for which a decision has not been made will be processed in accordance with PMK-35. In addition, a taxpayer that obtained its principal license, investment license or investment registration from the BKPM between 16 August 2015 and 3 April 2018 may submit a request for a corporate income tax reduction and the full tax holiday pursuant to PMK-35, provided the following requirements are met: (i) the taxpayer meets all eligibility criteria; (ii) the application is submitted before the taxpayer starts commercial production; and (iii) the application is submitted within one year after the effective date of PMK-35 (*i.e.* within one year of 4 April 2018).

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Ireland:
Planning for Brexit

On 23 June 2016, the UK electorate voted to leave the EU, a decision that can be expected to have a profound effect on the Irish economy and the businesses operating within it (for prior coverage, see *World Tax Advisor*, 12 May 2017). Two years after this "Brexit" vote, there still is no clear picture of the UK's post-Brexit relationship with the EU or how the border on the island of Ireland will operate. A transition period until 31 December 2020 has been agreed during recent negotiations, and the draft withdrawal agreement proposes "an area without internal borders in which the free movement of goods is ensured" between Ireland and Northern Ireland. This "backstop" solution will continue until an alternative solution can be negotiated between the EU and the UK. However, this solution will cover only trade on the island of Ireland, and does not provide certainty regarding Ireland's future trading relationship with the rest of the UK.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170512_4.html

The impact of Brexit on individual businesses will vary depending on a range of factors, including the business' level of trade with the UK and its customers, suppliers and competitors. There are indications that many businesses have put investment and development plans on hold until there is further certainty around the future trading relationship with the UK post-Brexit.

The likely impact of Brexit on the Irish economy was explored in a recent Department of Business, Enterprise and Innovation report, "Ireland and the Impacts of Brexit." The report concludes that Ireland's trade with the UK will be adversely affected in all exit scenarios and, if there is a "hard border," Ireland's exports to the UK could fall by more than 50%.

One possible scenario is that on 29 March 2019, the UK will leave the EU without an agreement on the terms of exit. As a consequence, customs duties payable on goods going from Ireland to the UK and vice versa could be based on current World Trade Organization rates and border checks would be unavoidable, resulting in a potentially significant increase in the cost of goods and a barrier to trade. The full impact of Brexit is likely to be more far-reaching, and businesses should begin planning for Brexit as soon as possible.

When undertaking Brexit planning, businesses trading with the UK should assess topics such as supply chain implications; the potential impact from legal, logistical and pricing perspectives; customs documentation requirements; information technology system changes; and increased administration and compliance costs. Although the extent of the impact in each of these areas will vary depending on the particular business, despite the uncertainty, there are certain steps that all businesses can take when planning for Brexit:

- Analyze outbound and inbound supply chains;
- Quantify the cost of tariffs on products using data analytics;
- Consider applying for authorized economic operator (AEO or "trusted trader") accreditation (taking into account that this can take up to one year to obtain); and
- Consider available customs relief regimes, such as warehousing or processing, to potentially improve cash flow and mitigate duty costs.

Government bodies both north and south of the Irish border recognize the importance of Brexit planning, and grants may be available to businesses that wish to engage advisors to assist them with preparing a Brexit plan. Businesses that have prepared such a plan will be in a better position to manage the impact of Brexit and succeed in the post-Brexit era.

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Italy:
Implementation decree issued on VAT groups

Italy's Ministry of Finance issued an implementation decree on 6 April 2018 that will enable Italian companies to elect to form a VAT group. Although the 2017 budget law introduced the option to elect into a VAT group regime as from 1 January 2018 (for prior coverage, see *World Tax Advisor*, 27 January 2017), the elections must be made in the year before the year in which the regime will first apply, so the first VAT groups will be effective as from 1 January 2019.
URL: http://newsletters.usdbriefs.com/2017/Tax/WTA/170127_ib.html#Italy

The most significant provisions of the decree include the following:

- As an exception for the first year of implementation only, it will be possible to opt into a VAT group (effective from 2019) by 15 November 2018 (the ordinary deadline for the election will be 30 September of the previous year);
- The financial, economic and organizational links between the taxable members joining the VAT group must exist at the time the election is made and, in any case, the links must be in place from 1 July of the year preceding the year in which the VAT group will become effective (*i.e.* from 1 July 2018, for VAT groups effective from 2019); and
- A VAT number will be assigned to the group, but group members must maintain their own VAT numbers. A supply made by a member of the VAT group to a company outside the VAT group will be documented by an invoice reporting the Italian VAT number of the supplier, along with the group VAT number.

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Korea:
Supreme Court rules on applicability of tax sparing credit

The Korea (ROK) Supreme Court issued a decision on 13 March 2018, concluding that the amount of tax that is deemed to have been paid in China on the profits out of which dividends are paid by Chinese subsidiaries to their Korean parent companies is 10% of the gross amount of the dividends, based on the 2006 protocol to the Korea-China tax treaty.

Background

The case before the Supreme Court involved a Korean company that was engaged in the production and distribution of processed products made from petrochemicals. The company established wholly owned subsidiaries in Beijing and Shanghai in 2003 and 2005, respectively, and received dividends from the Chinese subsidiaries. The Korean company paid tax in China on the dividends by applying the reduced withholding tax rate of 5% prescribed under article 10(2) of the Korea-China tax treaty, and calculated and paid its Korean national corporate income tax by applying a foreign tax credit for the tax it paid in China.

On 21 January 2015, the company requested a reassessment of its tax liability from the Korean tax authorities, arguing that the amount of tax it paid in China should be deemed to be 10% of the gross amount of the dividends it received from the Chinese subsidiaries, in accordance with article 5(1) of the 2006 protocol to the treaty. This article provides for a “tax sparing credit” that deems the tax paid in the source country to include the amount of tax that would have been payable in that country in the absence of tax incentives, and sets a rate of 10% for the tax deemed to be paid on dividends. Therefore, the company claimed it was entitled to an additional tax credit of 5% for the difference between the 10% tax sparing credit and the 5% direct tax credit the company received.

The Korean tax authorities originally accepted the company’s claims and granted a refund to the company on 24 March 2015. However, the authorities assessed corporate income tax on the company on 18 May 2015, on the basis that a tax sparing credit was not available because China had not been offering tax incentives since 2008 that provided for a lower tax rate than the reduced withholding tax rate of 5% under the Korea-China treaty. The taxpayer appealed this assessment.

Decision of the Supreme Court

The Supreme Court held that the 10% deemed foreign tax credit under article 5(1) of the 2006 protocol is applicable in all cases, to help achieve the goal of attracting foreign investment. Therefore, the court concluded it is reasonable to consider that the amount of tax that is deemed to have been paid in a source country on dividend income is 10% of the gross amount, even if tax was withheld in the source country at a reduced rate of 5%. Accordingly, a tax credit should be available to the company for the 5% deemed foreign tax amount.

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Mexico:
New rules to create presumption of harmful transfer of NOLs

A bill awaiting the signature of Mexico’s president and publication in the official gazette contains amendments to the Federal Fiscal Code that are designed to prevent taxpayers from engaging in practices that reduce their corporate income tax liability through the transfer of net operating losses (NOLs). The anticipated effective date of the rules currently is not known.

The new rules will allow the Mexican tax authorities (SAT) to presume the existence of a "harmful" transfer of NOLs when a taxpayer generates tax losses in six specific situations and subsequently is involved in a group restructuring, spinoff or merger, or if there is a change in ownership that results in the taxpayer ceasing to be part of the group to which it belonged when the tax losses were incurred.

The following situations will trigger the presumption of a harmful transfer of NOLs:

1. The taxpayer generates NOLs in the first three fiscal years following the year in which it is established that are higher than the value of the taxpayer's assets, and more than 50% of the taxpayer's deductible expenses arise from related party transactions.
2. The taxpayer generates NOLs after the first three fiscal years following the year in which it is established because more than 50% of its deductible expenses arise from related party transactions, and the deductions increased by more than 50% as compared to the previous fiscal year.
3. The taxpayer's ability to carry out its primary business activities decreases by more than 50% in the fiscal year following the year in which the NOLs were generated, due to the transfer of all or part of the taxpayer's assets through a restructuring, spinoff or merger or because the assets were transferred to a related party.
4. The taxpayer generates NOLs and the SAT determines that the NOLs resulted from a transfer of assets in which the segregation of the rights to property that the taxpayer retains (for example, in the case of a usufruct) were not taken into account when ascertaining the acquisition cost of the assets.
5. The taxpayer generates NOLs and the SAT determines that the taxpayer took an "investment deduction" of less than the authorized amount under the Income Tax Law and subsequently modified that amount.
6. The taxpayer generates NOLs when it claimed deductions for subscription to a debt instrument, and the obligations under the instrument were subsequently extinguished through a payment method other than the methods permitted under the Income Tax Law.

The effect of a finding of a harmful transfer of NOLs is that the taxpayer will not be allowed to use the NOLs, the SAT can impose a penalty and criminal charges may even be triggered. In these cases, the SAT will notify the taxpayer and explain the reasons for presuming the existence of a harmful transfer of NOLs. The taxpayer will have 20 business days to produce evidence that no harmful transfer took place, and the SAT then will have six months to review the taxpayer's documentation and notify the taxpayer of its final decision. A SAT decision may be challenged through an administrative appeal.

The SAT will publish a (likely monthly) list in the federal gazette of the names of taxpayers that were unable to demonstrate the absence of a harmful transfer of NOLs or that unsuccessfully appealed a SAT determination that a harmful transfer existed. Publication of the identity of taxpayers aims to flag offending taxpayers and prevent the use of NOL balances against future taxable income.

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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: The anti-hybrid legislation was introduced into parliament on 24 May 2018, which is largely consistent with the exposure draft legislation issued on 7 March 2018 (for prior coverage, see *World Tax Advisor*, 23 March 2018). The measures largely follow those recommended by the OECD (including measures addressing hybrid financial instruments, hybrid entities and imported mismatches); and are not limited to financing arrangements. The bill also contains a specific targeted integrity rule that may disallow deductions incurred on debt in Australia if the

corresponding income is not subject to foreign income tax at a rate of more than 10%. The proposed start dates are as follows (with no transitional or grandfathering arrangements): (i) income years starting on or after 1 January 2019 for the targeted integrity rule and anti-hybrid rules other than the imported mismatches; and (ii) income years starting on or after 1 January 2020 for imported mismatches other that those arising under a structured arrangement.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180323_2.html

Costa Rica: The tax authorities published an administrative resolution on 3 May 2018 that formally establishes a project to implement international tax standards and fulfill other tax commitments Costa Rica has undertaken as part of its accession to the OECD, including implementation of the OECD BEPS actions. OECD membership discussions with Costa Rica were agreed to in 2015, and the country's tax authorities set up a BEPS commission in 2016 to develop the regulatory framework for implementing the BEPS actions. A team of international tax specialists will be created under the new project to develop recommendations for legislative changes and identify best practices relating to the negotiation and application of tax treaties and transfer pricing matters. It should be noted that Costa Rica already has signed the OECD multilateral instrument.

Germany: In a decision dated 25 April 2018 and published on 14 May 2018, the Federal Tax Court (BFH) expressed doubts about the constitutionality of the annual 6% interest rate on tax payments. The BFH held that the annual 6% interest rate is unrealistic and inequitable because of structural and solidified low interest market rates during the period from 2015-2017 and the rate appears to be an unsubstantiated surcharge on tax payments. The BFH granted a suspension of the execution of a tax assessment notice concerning interest in the amount of EUR 240,000 on additional tax payments calculated for the years 2015-2017, until the constitutional court rules on the issue.

Kuwait: The Parliament Budget Committee confirmed at a meeting on 15 May 2018 that the introduction of VAT, which was expected during 2018, will not take place until 2021. Instead, the government intends to focus its efforts on bringing excise tax into effect on selected products (*e.g.* tobacco, energy drinks and carbonated drinks).

Malaysia: The new government has committed to repeal the goods and services tax (GST), and the prime minister has issued an order to change the existing GST rate of 6% to 0% as from 1 June 2018, in preparation for a formal repeal through the parliamentary process. The customs department released a list of frequently asked questions in support of the order on 22 May 2018 (which supersedes a previous list issued on 17 May).

New Zealand: The Minister of Finance delivered Budget 2018 on 17 May 2018. The tax-related announcements in the budget include that more funding is being given to Inland Revenue to enable the tax authorities to tackle tax avoidance and evasion over the next four years. The government also will invest in the R&D tax incentive to encourage businesses to innovate, including implementing and administering the recently announced R&D tax credit (for prior coverage, see *World Tax Advisor*, 11 May 2018).
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180511_ib.html#NZ

OECD: On 17 May 2018, the OECD announced updates to the results of the preferential regime reviews of BEPS inclusive framework members carried out by the Forum on Harmful Tax Practices (FHTP), in relation to BEPS action 5. The updates reflect progress in bringing such regimes in line with the BEPS standards. A total of 175 regimes have been considered by the FHTP since the inclusive framework's creation: 31 have been changed, 81 have legislative changes in progress, 47 do not pose a BEPS risk, four have features that are harmful or potentially harmful and 12 are still under review.

The OECD announced on 11 and 16 May 2018 that Bahrain and United Arab Emirates, respectively, have joined the inclusive framework for the global implementation of the BEPS project.

On 3 May 2018, the OECD announced that the OECD member countries have agreed to formally invite Lithuania to become the 36th OECD member. An accession agreement is expected to be signed at a 30-31 May 2018 ministerial meeting of the OECD Council. Lithuania must take the appropriate steps at a domestic level to accede to the OECD Convention and deposit its instrument of accession with the depository of the convention before its membership will take effect.

Spain: The Stability Program and Budgetary Plan Update 2018 (2018-2021) passed by the government on 28 April 2018 and submitted to the European Commission on 30 April 2018 includes the introduction of a digital services tax that would be aligned with the European Commission's proposed directive that would impose a digital services tax on revenue from the provision of certain services (for prior coverage, see *World Tax Advisor*, 13 April 2018). The Spanish

tax would be levied only on large multinational enterprises engaged in the business of providing certain digital services; it would not be imposed on small or medium-sized companies or on digital users. It is unclear when the legislative process for introducing the Spanish digital services tax will commence, although, since the budgetary plan anticipates that revenue will be generated from the tax in 2018, the legislation may be enacted before the end of the year.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180413_1.html

Taiwan: On 30 April 2018, the Ministry of Finance (MOF) published a list of countries that are not, as of that date, automatically exchanging country-by-country (CbC) reports with Taiwan in accordance with action 13 of the OECD BEPS project. CbC reporting is required under Taiwan's transfer pricing rules for fiscal years beginning on or after 1 January 2017. The list includes the following 31 countries that have concluded tax treaties with Taiwan as of 31 December 2017, but that have not yet signed a competent authority agreement for the exchange of CbC reports: Australia, Austria, Belgium, Canada, Denmark, France, Gambia, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Kiribati, Luxembourg, Macedonia, Malaysia, Netherlands, Paraguay, Poland, Senegal, Singapore, Slovakia, South Africa, Swaziland, Sweden, Switzerland, Thailand, the UK and Vietnam. As of 30 April 2018, New Zealand is the only country automatically exchanging CbC reports with Taiwan. The MOF is negotiating agreements with other countries to exchange CbC report information, and the list will be updated as these are finalized.

Tax treaty round up

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

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

Belgium: The tax authorities recently confirmed that Belgium has decided to waive its objections to the changes to the agency permanent establishment (PE) definition made as part of the OECD BEPS project. When Belgium signed the multilateral instrument on 7 June 2017, the country included reservations to several proposed BEPS measures, including the changes to the definition of an agency PE. Belgium now fully agrees with the modifications to article 5(5) in its existing tax treaties, to the extent its treaty partner also is a party to the MLI and does not have any reservations regarding this provision.

Belgium-Norway: The 2014 treaty to replace the 1988 treaty entered into force on 26 April 2018 and will apply as from 1 January 2019 for withholding tax purposes. When in effect, the treaty provides for an exemption from withholding tax on dividends paid to a company that holds directly, for an uninterrupted period of at least 12 months, at least 10% of the capital of the payer company, and a 5% withholding tax rate on dividends paid to a qualified pension fund; otherwise, the rate will be 15%. The rate on interest will be 10%, with an exemption for interest paid: in connection with a commercial credit resulting from deferred payments for goods, merchandise, equipment or services; on bank loans (other than loans represented by bearer instruments); for a credit or loan granted or extended by one enterprise to another; or to qualified pension funds. Royalties will be taxable only in the state of residence of the recipient.

Brazil: Certain cross-border payments related to travel may be treated as business profits under an applicable tax treaty. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180525_3.html

Brazil-Singapore: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180525_2.html

Brazil-Switzerland: See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180525_2.html

Chile: The tax authorities have issued guidance on the application of the most-favored nation clause in the tax treaties with the Czech Republic, Denmark, Ireland, Korea, Poland and the UK. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180525_1.html

China-Cambodia: The 2016 treaty entered into force on 26 January 2018 and will apply as from 1 January 2019. When in effect, the treaty provides for a 10% withholding tax rate on dividends, interest and royalties.

Finland-Spain: The 2015 treaty to replace the 1967 treaty (as amended by the 1970, 1973 and 1990 exchanges of notes) will enter into force on 30 July 2018 and will apply as from 1 January 2019 for withholding tax purposes. When in effect, the treaty provides for a 0% withholding tax rate on dividends paid to a pension fund; a 5% rate will apply on dividends paid to a company (other than a partnership) that holds directly at least 10% of the voting power of the payer company; otherwise, the rate will be 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

Korea: The Supreme Court has issued a decision on the applicability of the tax sparing credit, in relation to the Korea-China tax treaty. See the article in this issue.
URL: http://newsletters.usdbriefs.com/2018/Tax/WTA/180525_7.html

Philippines-Sri Lanka: The 2000 treaty entered into force on 14 March 2018 and will apply as from 1 January 2019 in the Philippines for withholding tax purposes and as from 1 April 2019 in Sri Lanka. The treaty provides for a 15% withholding tax rate on dividends paid to a company (other than a partnership); otherwise, the rate will be 25%. A 0% rate will apply to interest paid to lending institutions, as specified and agreed between the competent authorities of the contracting states; otherwise, the rate will be 15%. A 15% rate will apply to royalties paid by an enterprise registered with and engaged in preferred areas of activity in the contracting state; otherwise, the rate will be 25%.

Philippines-Thailand: The 2013 treaty to replace the 1982 treaty entered into force on 5 March 2018 and will apply as from 1 January 2019 for withholding tax purposes. When in effect, the treaty provides for a 10% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. A 10% rate will apply to interest paid to a financial institution (including an insurance company); otherwise, the rate will be 15%. The rate on royalties will be 15%.

Romania-Bosnia and Herzegovina: The 2016 treaty to replace the 1986 treaty between Romania and the former Yugoslavia entered into force on 18 May 2018 and will apply as from 1 January 2019. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. A 7% rate will apply to interest, and a 5% rate to royalties.

Saudi Arabia-Georgia: When in effect, the treaty signed on 14 March 2018 provides for a 5% withholding tax rate on dividends and interest. A 5% rate will apply to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment; otherwise, the rate will be 8%.

Slovakia-Ethiopia: The 2016 treaty entered into force on 26 February 2018 and will apply as from 1 January 2019 for withholding tax purposes. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. A 5% rate will apply to interest and royalties.

Slovakia-Iran: The 2016 treaty entered into force on 1 May 2018 and will apply in Slovakia as from 1 January 2019 for withholding tax purposes, and in Iran as from 21 March 2019 for withholding tax purposes. When in effect, the treaty provides for a 5% withholding tax rate on dividends and interest. A 7.5% rate will apply to royalties.

Turkey-Gambia: The 2014 treaty entered into force on 26 January 2018 and will apply as from 1 January 2019 for withholding tax purposes. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. A 5% rate will apply to interest and royalties.

United Nations: The text of the 2017 United Nations Model Double Taxation Convention between Developed and Developing Countries (the UN model treaty) was released during a meeting of the Committee of Experts on International Cooperation in Tax Matters held from 14-17 May 2018. The changes to the 2011 update of the UN model treaty aim to take relevant developments in international tax policy into account. New articles on fees for technical services and entitlement to treaty benefits are included in the model, among other changes. The update also addresses issues relating to the OECD/G20 BEPS project, as well as BEPS issues relating specifically to the UN model treaty.

Global tax alerts

OECD
Comments invited on revisions to transfer pricing guidelines for intragroup services and dispute resolution
The OECD is scoping a new project to revise aspects of the transfer pricing guidelines with respect to administrative approaches to avoiding and resolving transfer pricing disputes and intragroup services. Comments are invited by 20 June 2018.
Issue date: 11 May 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-013-11-may-2018.pdf

Poland
MOF discusses simplified APA procedure during first Transfer Pricing Forum
Poland’s first Transfer Pricing Forum, a platform for discussion of issues for both the tax administration and business representatives, took place on 12 April 2018. Benchmarking analyses were the principal subject of the meeting; the Ministry of Finance’s work regarding a simplified advance pricing agreement procedure also was presented.
Issue date: 23 May 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-015-23-may-2018.pdf

Zambia
Amended transfer pricing regulations issued
Following extensive consultations with various stakeholders in 2017, the government has issued amended transfer pricing regulations through a government gazette dated 6 April 2018. The rules contain detailed guidance on the application of the arm’s length principle and documentation requirements.
Issue date: 22 May 2018
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-18-014-22-may-2018.pdf