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China SAT issues guidance on Hong Kong tax residence under tax arrangement with Hong Kong

China's State Administration of Taxation (SAT) issued guidance on 13 September 2013 (Bulletin 53) that aims to simplify and streamline the process for Hong Kong resident companies and individuals to claim benefits under the Mainland China-Hong Kong tax arrangement. The provisions of Bulletin 53 take effect on 1 November 2013.

Tax residence certificate requirement

Bulletin 53 generally eliminates the need for a Hong Kong resident to present a tax residence certificate to obtain benefits under the Mainland China-Hong Kong tax arrangement. Instead, the Mainland China tax authorities can determine tax residence status based on the following documentation:

- For legal persons (companies, partnerships and trusts) – A Hong Kong certificate of incorporation or a Hong Kong business registration certificate; and
- For individuals – A Hong Kong identity card, along with the Mainland travel permit for Hong Kong residents and the Hong Kong tax assessment for the preceding tax year.

A Hong Kong tax residence certificate will continue to be required in the following cases:

- If the Mainland tax authorities have doubts about the Hong Kong tax residence status of the person and the documents submitted are insufficient to confirm Hong Kong tax residence. This may be the case, for example, where a company is incorporated outside Hong Kong, but claims to be managed and controlled in Hong Kong, or where a foreign national staying in Hong Kong claims to be a Hong Kong resident.

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- A company claiming "beneficial owner" status under the listed company safe harbor rule must ask the Hong Kong Inland Revenue Department (IRD) to determine its tax residence status and issue a tax residence certificate. In multi-tier structures, each company in the chain must have its own Hong Kong tax residence certificate.
- An individual claiming benefits under the capital gains article (article 13) of the tax arrangement must ask the Hong Kong IRD to determine his/her tax residence status and issue a tax residence certificate.

Applicants that are required to furnish a Hong Kong tax residence certificate must provide the following documents to the responsible Mainland China tax authorities:

- The original residence certificate (a copy may be submitted in special cases);
- A copy of the referral letter (described below); and
- Copies of the documents submitted to the Hong Kong IRD when applying for the Hong Kong tax residence certificate.

The tax authorities can make further inquiries to verify residence status if they have any doubts about the veracity of the documents.

Referral letter procedure

Bulletin 53 formalizes the existing procedure to obtain a tax residence certificate, under which a "referral letter" must be issued by the responsible Mainland China tax authorities and provided to the Hong Kong IRD in order to apply for the tax residence certificate. The sample referral letter and Hong Kong tax residence certificate attached to Bulletin 53 also provide applicants with more clarity in terms of the requirements to obtain these documents.

Comments

Overall, Bulletin 53 is welcome because it provides clarity and, in many cases, simplifies and streamlines – insofar as the Mainland China tax authorities are concerned – the process for determining the Hong Kong tax residence status of persons claiming benefits under the tax arrangement with Hong Kong. In particular, a company incorporated in Hong Kong will no longer be required to furnish a Hong Kong tax residence certificate unless it intends to claim benefits under the listed company safe harbor rule. This is a logical relaxation since the tax arrangement specifically defines "a company incorporated in Hong Kong" to be a resident of Hong Kong for purposes of the tax arrangement; a Hong Kong certificate of incorporation should suffice in this regard.

For individuals, reliance is placed on the Hong Kong identity card, along with the individual's Mainland travel permit and Hong Kong tax assessment for the preceding tax year. Again, this is logical because benefits claimed by individuals under the tax arrangement generally will be in respect of employment income from work performed in Mainland China. However, the following should be taken into account:

- Individuals who ordinarily reside in Hong Kong, but who do not possess a mainland travel permit for Hong Kong residents still must present a Hong Kong tax residence certificate. It is unclear whether the SAT intended this result or whether it was not aware of such cases. Clarification on this issue is awaited.
- The 5% reduced withholding tax rate on dividends under the tax arrangement is not available for individuals, and individuals who claim an exemption in respect of capital gains are specifically required to provide a Hong Kong tax residence certificate.

— Sarah Chan (Hong Kong)
Partner
Deloitte Hong Kong
sarahchan@deloitte.com.hk

Shanice Siu (Shenzhen)
Partner
Deloitte China
shsiu@deloitte.com.cn

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China:
New and improved tax treaty with Switzerland contains no surprises

China and Switzerland signed a new income tax treaty and protocol on 25 September 2013 to replace the existing treaty dating from 1990. The new treaty will become effective on the 30th day after both countries have notified each other that the necessary internal legal ratification procedures have been completed.

While the new treaty does not make any fundamental changes to the existing treaty, there are some differences. This article compares the provisions of the new and existing treaty and protocol from the perspective of foreign investment into China.

Permanent establishment

- Under the existing treaty, a building site, construction, assembly or installation project, or supervisory activities in connection therewith, will constitute a permanent establishment (PE) only if the project/activity lasts more than six months. The new treaty extends the six-month period to 12 months.
- Under the existing treaty, the furnishing of services by an enterprise through employees or other personnel engaged for such purpose will constitute a PE only if the relevant activities continue for a period or periods aggregating more than six months within any 12-month period. The new treaty replaces that test with a "183 days during any 12-month period" test.

The text in the new treaty is consistent with China's other recent tax treaties and arrangements, such as the 2007 treaty with Singapore and the 2006 tax arrangement with Hong Kong. The new 183 days during any 12-month period test should eliminate some of the uncertainties and unfairness caused by the old test. For instance, under the existing treaty, being present in China for one day within a month sometimes may be treated as being in China for an entire month for purposes of the six months within any 12-month period test.

Shipping and air transport

The provision dealing with profits from the operation of ships or aircraft in international traffic largely remains the same, although the protocol clarifies the scope of the tax exemption provided in article 8. The protocol provides that, for a Swiss resident, supplies of international transportation should be exempt from business tax or similar taxes imposed on gross receipts in China, or should be zero-rated for VAT purposes in China.

This is not the first time that China's treaties have included turnover tax in the articles dealing with international transportation by ships or aircraft (e.g. the protocol to the China-Singapore treaty includes an exemption from business tax), but the China-Switzerland treaty is the first treaty to reference VAT in such an article. This inclusion may be partly driven by the fact that China has begun its VAT reform that will result in the business tax being replaced with VAT over the next few years.

Dividends

The withholding tax rate on dividends under the existing treaty is 10%. The new treaty provides for a 5% rate if the beneficial owner is a company that holds directly at least 25% of the capital of the company paying the dividends. The rate in all other cases will be 10%.

Royalties

The existing treaty provides for a maximum 6% withholding tax on royalties paid for the use of industrial, commercial or scientific equipment, and a 10% rate in all other cases. The new treaty provides for a 9% withholding tax rate in all cases; there will be no reduced rate for the use of industrial, commercial or scientific equipment.

Capital gains

Under the existing treaty, the transfer of an equity interest in a Chinese entity by a Swiss resident is not subject to Chinese withholding tax on capital gains, provided the Chinese entity is not a land-rich entity. This exemption will not be available under the new treaty if, at any time during the 12-month period before the transfer, the transferor held directly or indirectly at least 25% of the capital of the Chinese entity.

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This change in the capital gains tax treatment (i.e. removing the blanket exemption for all capital gains from the sale of Chinese companies, and allowing the exemption only when the transferor owned less than 25% of the capital of the Chinese entity during the 12-month period before the transfer) is consistent with China's other recent treaties and amendments to treaties. For example, the same change occurred in 2006 when China signed a new protocol with Mauritius to amend the 1994 tax treaty, and again in 2010 when China signed a protocol with Barbados to amend the 2000 treaty. Companies in Barbados and Mauritius traditionally had been used by foreign investors as holding companies to make investments into China to avoid Chinese withholding tax on capital gains upon exit, but the amendments to the treaties made these companies much less attractive. This trend has continued, and now only a few of China's tax treaties contain a capital gains exemption for a transferor that owns 25% or more of the relevant Chinese company, the most notable being the China-Ireland treaty.

Other income

The new treaty adds an "other income" provision, which generally grants taxing rights to the residence country with respect to items of income not otherwise dealt with in the tax treaty. This provision is commonly seen in China's other treaties, but is not included in the existing China-Switzerland treaty.

General anti-avoidance rule (GAAR)

Again, following the trend in China's more recent treaties, the new treaty adds GAAR-related provisions in two areas:

- Article 23 has been added to allow each contracting state to "apply its domestic laws and measures concerning special adjustments of taxation, whether or not described as such, insofar as they do not give rise to taxation contrary to this Agreement." The reference to "special adjustments" is consistent with the terminology used in China's Enterprise Income Tax Law, which provides for the application of a GAAR in the "special adjustments" chapter.
- The articles on dividends, interest and royalties all include a paragraph to allow a contracting state to deny treaty benefits if the "main purpose" of an arrangement is to take advantage of the treaty provisions.

Comments

The new China-Switzerland tax treaty does not make any fundamental changes to the existing treaty (which is largely based on the OECD model treaty); the changes mostly bring the treaty in line with China's other recent treaties. The new treaty is not as favorable as certain treaties/arrangements with respect to interest and royalties, such as the Mainland China-Hong Kong tax arrangement or the China-Singapore tax treaty, but it is as favorable as most of China's other treaties/arrangements with respect to the dividends, capital gains and PE articles. Thus, unless substantial interest or royalty payments will be received from China, if it makes commercial sense to use a Swiss entity as a holding company to make investments into China, it likely will make sense from a Chinese tax perspective as well.

— Julie Zhang (Beijing)
Partner
Deloitte China
juliezhang@deloitte.com.cn

Colombia:
Tax haven list issued

The Colombian government issued a decree on 7 October 2013 that lists the countries that are considered to be tax havens for Colombian tax law purposes.

Forty-four countries are considered tax havens, including Antigua, Andorra, Angola, Cayman Islands, Granada, Hong Kong, Liberia, Liechtenstein, Macao, Isle of Man, Monaco and Trinidad and Tobago. Seven countries are in the process of being removed from the list because they are negotiating tax information exchange agreements with Colombia. These countries are Barbados, Bermuda, Guernsey, Kuwait, Panama, Qatar and the United Arab Emirates.

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The following rules apply to transactions between Colombian companies and companies located in a tax haven:

- A 33% withholding tax will be levied on all payments that are considered Colombian-source, except payments made to a financial institution registered with the Colombian central bank;
- If the appropriate tax is not withheld, the payment may not be deducted for corporate income tax purposes; and
- The Colombian entity must comply with Colombia's transfer pricing rules, even if the company located in a tax haven is not a related party, and a Colombian payer company must prepare a special report to be able to deduct costs and expenses paid to a company located in a tax haven.

The government plans to review and revise the tax haven list on an annual basis.

— Mario Andrade (Bogota)
Partner
Deloitte Colombia
maandrade@deloitte.com

Germany:
Guidance issued on application of subject-to-tax clauses

The Ministry of Finance issued guidance on the application of subject-to-tax clauses in Germany's tax treaties on 20 June 2013.

Subject-to-tax clauses are designed to prevent the nontaxation of income as a result of tax treaty abuse and are found in most of Germany's tax treaties, particularly recent treaties. Under a subject-to-tax clause, Germany will exempt foreign-source income from taxation only if the income is "effectively taxed" in the other contracting state.

According to the new guidance, effective taxation in the other contracting state will be presumed where the relevant income is taken into account in determining the taxable base. Effective taxation also will be presumed where income is not taxed as a result of tax allowances, loss relief rules (provided the losses are not used twice – once in the state of residence and once in the state of source), tax credits or the application of a participation exemption. Finally, effective taxation will be presumed where the nontaxation results from temporary or permanent differences between the German tax base and the foreign tax base (e.g. where the other contracting state allows a deduction of expenses that are nondeductible under German tax law).

Effective taxation will not be presumed, however, if the taxpayer itself is exempt from taxation or if, for other reasons, the income is not actually taxed. The decree contains two examples of "other reasons," both of which relate to the nontaxation of income in the US. The first example relates to the tax exemption for interest on US municipal bonds, and the second example relates to cross-border royalties earned by a foreign-owned US partnership that are regarded as unconnected with a US trade or business and, hence, are not taxable in the US.

The guidance requires that the taxpayer demonstrate that its income was or will be subject to foreign taxation. In principle, this evidence should be in the form of the assessment notice and the payment voucher. If the other contracting state uses a self-assessment process instead of issuing an assessment notice (e.g. the US), the presentation of the payment voucher and a copy of the tax return will be sufficient. In cases of withholding tax/PAYE, actual taxation in the other state may be evidenced by a tax certificate.

— Marc Schumann (Duesseldorf)
Director
Deloitte Germany
mschumann@deloitte.com

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Greece:
Tax treatment of gains on share sales clarified

Greece's Ministry of Finance issued a circular on 18 October 2013 that clarifies the tax treatment of gains derived from the sale of listed and unlisted shares.

According to the circular, gains derived from the sale of shares (whether or not listed) as from 1 January 2014 will be subject to tax in accordance with the provisions of the new Income Tax Code. That is, a final 15% tax will be levied on capital gains derived by an individual seller and a 26% tax (as ordinary business income) will be levied on capital gains derived by a legal entity seller that maintains double-entry books.

Gains arising from share sales through 31 December 2013 will be taxed under the existing Income Tax Code. Under these rules, gains from the sale of listed shares are exempt from tax, whereas a 5% tax is levied on gains from the sale of unlisted shares (payable by the seller). For individual sellers, the tax on the sale of unlisted shares is final, and for corporate entities, the gain is taxed at 26% as ordinary business income, with a credit for the 5% tax.

— Thomas Leventis (Athens)
Partner
Deloitte Greece
tleventis@deloitte.gr

Luxembourg:
Revised tax treaty signed with Singapore

The governments of Luxembourg and Singapore signed a revised tax treaty and a new protocol on 9 October 2013 to replace the existing treaty dating from 1993.

The most significant feature of the new treaty is that dividends and interest will be taxable only in the country of residence of the recipient and the treaty eliminates any withholding tax at source on such payments. The withholding tax on royalties will be reduced from 10% to 7%. The treaty also confirms that "collective investment vehicles" will qualify as a "resident" for treaty purposes and new definitions are provided for "construction" and "services" permanent establishments (PEs). Notably, the new treaty does not include a "real estate rich" clause for capital gains and the exclusion of treaty benefits for income derived by a branch in a third country has been removed.

The main features of the new treaty are detailed below.

Definition of "resident"

The protocol to the new treaty provides that a collective investment vehicle will be considered a resident for treaty purposes "*if under the domestic laws of that State it is liable to tax therein by reason of its domicile, residence, place of management or any other criterion of a similar nature. A collective investment vehicle is also considered liable to tax if it is subject to the tax laws of that Contracting State but is exempt from tax only if it meets all the requirements for exemption specified in the tax laws of that Contracting State."* For Luxembourg SICAVs/SICAFs, this further clarification may potentially confirm the position of the Luxembourg tax authorities that these entities may qualify as resident for treaty purposes.

Permanent establishment

The new treaty revises the definition of a "construction" PE, i.e. a PE arising from the existence of a building site, as well as a PE arising from the presence of employees of an enterprise of one contracting state in the other contracting state. The changes aim to narrow the PE definition by introducing or extending the timeframe for creating a PE (for a construction PE, the timeframe is 12 months (instead of six months within a 12-month period) and for a services PE (including consultancy services), it is 365 days within a 15-month period).

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Shipping and air transport

Under the new treaty, profits of an enterprise of one of the contracting states from the operation of ships or aircraft in international traffic will be taxable only in the state in which the enterprise is resident; there also is a more precise definition of "profits from the operation of ships or aircraft in international traffic."

Dividends, interest and royalties

- Dividends will be taxable only in the state of residence of the recipient, with the usual requirement that the recipient be the beneficial owner of the dividends. However, the tax treatment of cross-border dividend payments should be particularly beneficial where a Singapore recipient receives Luxembourg-source dividends (currently, this provision is irrelevant from a Singapore inbound investment context because Singapore does not levy withholding tax on dividends under its domestic tax law). No Luxembourg withholding tax will apply, irrespective of the percentage of the Singapore resident's shareholding in the Luxembourg company (under some Singapore treaties, a shareholding of between 10% and 25% is required) and irrespective of whether the recipient is a company, another type of entity or an individual. Under the existing treaty, dividends are subject to a 15% withholding tax that may be reduced to 10% or 5% under certain conditions, or to 0% if the requirements for the application of Luxembourg's participation exemption are satisfied.
- Similar to the new rule for dividends, interest will be taxable only in the state of residence of the recipient, provided the recipient is the beneficial owner. While the new dividend article will be particularly beneficial for Singapore outbound investment schemes, the new interest article is more beneficial in a Singapore inbound financing context, i.e. where a Luxembourg taxpayer receives interest from a Singapore source. Currently, interest is subject to a 15% withholding tax (potentially reduced to 10% under certain circumstances), but under the new treaty, interest will be able to be paid free from Singapore withholding tax, which will facilitate financing activities between the two jurisdictions.
- Royalties arising in a contracting state and paid to a resident of the other contracting state may be taxed in that other state and also may be taxed in the source state at a rate of 7% of the gross amount (reduced from the 10% rate in the existing treaty).
- The protocol clarifies that a trustee liable to tax in a contracting state in respect of dividends, interest or royalties will be deemed to be the beneficial owner of such income.

Entry into force

The new treaty and protocol will be effective in Luxembourg as from 1 January of the year following the year in which the treaty enters into force. In Singapore, the withholding tax provisions will apply to amounts paid as from 1 January of the year following the year during which the treaty enters into force. Provisions relating to all other taxes will be effective as from 1 January of the second calendar year following the year in which the treaty enters into force.

The provisions of the existing treaty will no longer apply when the new treaty enters into effect, although article 23(1)(c) of the existing treaty (which allows tax credits for certain types of financial income) will be grandfathered for five years.

— Raymond Krawczykowski (Luxembourg City)
Partner
Deloitte Luxembourg
rkrawczykowski@deloitte.lu

Yves Knel (Luxembourg City)
Partner
Deloitte Luxembourg
yknel@deloitte.lu

Hervé Plasman (Luxembourg City)
Senior Manager
Deloitte Luxembourg
hplasman@deloitte.lu

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Malta:
Treaty signed with Liechtenstein

Malta and Liechtenstein signed their first tax treaty and an accompanying protocol on 27 September 2013. The main features of the treaty/protocol are as follows:

Persons covered – The term "person" includes, *inter alia*, an investment fund, a pension fund, a trust, a partnership and a Liechtenstein dormant inheritance.

Residence – The treaty adopts a definition of the term "resident of a contracting state" that is in line with the OECD model treaty; additionally, the protocol provides that a person is considered "liable to tax" in a contracting state if it is subject to the tax laws of the state but is exempt from tax, provided the person satisfies all requirements for exemption. The protocol also provides that the residence of a trust will be determined as follows:

- If trustees are resident in only one of the contracting states, the trust will be considered resident in that contracting state; and
- If trustees are resident in both contracting states, the trust will be considered resident in the state in which decisions concerning the administration of the trust are made.

Withholding tax on dividends, interest and royalties – The treaty allocates the right to tax outbound dividend, interest and royalty payments exclusively to the state of residence of the recipient.

Capital gains – The source state may tax gains derived by a resident of the other contracting state from the sale of shares deriving more than 50% of their value, directly or indirectly, from immovable property located in the source state.

Directors' fees – The source state may tax directors' fees and other similar payments derived by a member of the board of directors (or a board set up for a similar purpose) of a company or a trust; the source is determined by reference to the residence of the company or trust.

Elimination of double taxation – Liechtenstein generally applies the exemption with progression method, but it will apply the ordinary credit method for certain items of income (income from employment, directors' fees, income of artistes and sportsmen and pensions). Malta generally applies the ordinary credit method.

Entry into force – The treaty will enter into force once both countries complete their ratification procedures. The treaty will apply as follows:

- In respect of taxes withheld at source, to income derived on or after 1 January of the calendar year following the year in which the treaty enters into force; and
- In respect of other taxes on income and taxes on capital, to taxes chargeable for any taxable year (any calendar year or accounting period) beginning on or after 1 January of the calendar year following the year in which the treaty enters into force.

— Conrad Cassar Torregiani (Malta)
Partner
Deloitte Malta
ctorregiani@deloitte.com.mt

Astrid Vroom (New York)
Senior Manager
Deloitte Tax LLP
asvroom@deloitte.com

Malta:
Treaty signed with Ukraine

On 4 September 2013, Malta and Ukraine signed their first tax treaty. The main features of the treaty are as follows:

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Withholding tax on dividends, interest and royalties

- Dividends – A 5% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the payer company; otherwise, the rate will be 15%.
- Interest – A 10% general withholding tax rate will apply to interest, with certain exemptions.
- Royalties – A 10% withholding tax rate will apply to royalties. The term “royalties” does not cover payments for the use of, or the right to use, industrial, commercial or scientific equipment, such as operating lease payments.

Malta, however, does not levy withholding tax on dividends, interest or royalties.

Capital gains – The source state may tax gains derived by a resident of the other state from the sale of shares deriving more than 50% of their value, directly or indirectly, from immovable property located in the source state. However, this provision does not cover gains derived from the sale of an interest in a partnership.

Limitation on benefits – The treaty contains a general limitation of benefits provision, which will not apply where a company is engaged in substantive business operations in its state of residence and the relief from taxation claimed from the other treaty partner is with respect to income connected with those operations.

Elimination of double taxation – The ordinary credit method generally will be used to eliminate double taxation.

Protocol – The protocol to the treaty specifies that the international transport article will not apply to persons entitled to an exemption or any other special benefit under the Maltese laws regulating merchant shipping, except for persons that are subject to the normal Malta income tax. The protocol also clarifies the computation of the gross amount of dividends and the availability of any underlying tax relief with respect to the limitation of a contracting state’s right to withhold tax that is imputed at the shareholders’ level.

Entry into force – The treaty will enter into force once both countries complete their ratification procedures. The treaty will apply as follows:

- Malta – To taxes on income derived during any calendar year or accounting period beginning on or after 1 January immediately following the date on which the treaty enters into force; and
- Ukraine – In respect of withholding taxes, to amounts paid on or after 1 January and in respect of all other taxes, for taxable years or periods beginning on or after 1 January of the calendar year following the year in which the treaty enters into force.

— Conrad Cassar Torregiani (Malta)
Partner
Deloitte Malta
ctorregiani@deloitte.com.mt

Astrid Vroom (New York)
Senior Manager
Deloitte Tax LLP
asvroom@deloitte.com

In brief

Bosnia & Herzegovina (FBiH) – Recent changes to the Company Act allow foreign entities to set up branch offices in FBiH as from 5 October 2013.

France – Due to the economic environment, the government has abandoned the new 1% tax on earnings before interest, tax depreciation and amortization (EBITDA) proposed in the draft finance bill for 2014. In its place, the government now proposes increasing the rate of the temporary surcharge on corporate income tax – introduced in 2011 – due from companies with gross revenue exceeding EUR 250 million (calculated on a consolidated basis when a French consolidated group is in place) from 5% to 10.7%. The rate increase would apply for corporate income tax due for fiscal years ending on or after 31 December 2013, through fiscal years ending on 30 December 2015.

India – In a decision issued on 7 October 2013, the Delhi High Court confirmed that a nonresident can claim the 10% concessional tax rate (rather than the normal 20% rate) for long-term capital gains derived from the sale of listed securities in an off-market transaction (*Cairn UK Holdings Limited*). It should be noted that the Reserve Bank of India recently

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liberalized its policy by allowing nonresidents to transact on the Indian stock exchange, and long-term capital gains arising from the sale of securities in these on-market transactions will be exempt from tax. However, where the sale takes place off market, the rationale of the Delhi High Court decision can be applied to compute tax at the 10% rate. Nonresidents that have engaged in an off-market transaction where tax has been levied at the full 20% rate should be aware of the decision and should assess the possibility of seeking a tax refund in India.

OECD – The OECD has published a brief memorandum on transfer pricing documentation in advance of the public meeting on intangibles and transfer pricing documentation to be held in Paris on 12-13 November 2013. The memorandum sets out a number of questions for business and covers what should appear in the high-level country-by-country documentation template. Other issues considered include how income should be shown (i.e. whether it should be accounting income or taxable income), whether the income of different entities should be combined and whether tax should be shown on the cash-paid basis or the accruals basis. The memorandum also raises the question of whether other information should be documented, such as sales revenue by customer location and details of employees.

Portugal – Portugal has introduced a temporary extraordinary tax credit regime aimed at promoting investment. The new regime, which applies as from 17 July 2013, allows a tax credit of up to 20% of qualifying investment (e.g. investment in new property, plant and equipment), up to a maximum investment of EUR 5 million. The credit may be used to offset taxable income for the 2013 tax year, but may not exceed 70% of the company's tax liability; any excess tax credit may be carried forward to the following five years. The credit is available for investments made between 1 June and 31 December 2013, but it cannot be used simultaneously with other incentives of a similar nature.

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

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

China-Hong Kong – See article in this issue.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/131025_1.html

China-Switzerland – See article in this issue.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/131025_2.html

Czech Republic-Switzerland – The 2012 protocol entered into force on 11 October 2013 and will apply as from 1 January 2014. When in effect, dividends will be exempt from withholding tax if paid to the central bank or a qualifying pension fund or similar institution, or if paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company for an uninterrupted period of at least one year; otherwise, the rate will be 15%. The protocol does not amend rates under the interest or royalties articles.

Estonia-Morocco – When in effect, the treaty signed on 25 September 2013 provides for a 6% 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%. The rate on interest and royalties will be 10%.

EU-Costa Rica-El Salvador – The EU Association Agreement with Central America became provisionally applicable for trade between Costa Rica, El Salvador and the EU as of 1 October 2013. The agreement will largely eliminate customs duties for manufactured and fishery products, with complete liberalization at the end of a transition period (10 years for most products and 15 years for others). All Central American countries except for Guatemala have now finalized their procedures to allow for a provisional application of the agreement.

EU-Singapore – The European Commission has published the draft text of the Free Trade Agreement (FTA) between the EU and Singapore. This is the first comprehensive trade deal between the EU and a Southeast Asian country, although the EU is negotiating similar agreements with other countries including Malaysia, Thailand and Vietnam. Among other items, the FTA

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would remove trade barriers in certain sectors, eliminate certain tariffs and import duties over a period of time and establish an advanced regulatory framework for many service sectors. The FTA must be formally approved and ratified by the European Council and Parliament before it enters into force.

Germany-Luxembourg – The 2012 treaty to replace the current treaty dating from 1958 and amended by protocols in 1978 and 2009 entered into force on 30 September 2013 and will apply as from 1 January 2014. When in effect, the new treaty provides for a 5% withholding tax on dividends paid to a company (other than a partnership or investment company) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 15%. The 15% rate also will apply if the distributing company is a real estate investment company whose profits are completely or partially tax exempt or if it is able to deduct the amount distributed when calculating its profit. Interest will be taxable only in the state of residence of the recipient. Royalties will be subject to a 5% withholding tax.

Hungary-United Arab Emirates – When in effect, the treaty signed on 30 April 2013 provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

Italy-San Marino – The 2002 treaty and 2012 amending protocol entered into force on 3 October 2013 and will apply as from 1 January 2014. When in effect, the treaty and amending protocol provide for a 0% rate on dividends if the beneficial owner is a company (other than a partnership) that held directly at least 10% of the capital of the distributing company for at least 12 months before the date of resolution for the dividend distribution; otherwise, the rate will be 15%. A 0% rate will apply on interest if the beneficial owner is a company (other than a partnership) that held at least 25% of the stock capital of the payer company for at least 12 months before the date the interest is paid; otherwise the rate will be 13%. A 0% rate will apply on royalties if the beneficial owner is a company (other than a partnership) that held at least 25% of the stock capital of the payer company for at least 12 months before the date the royalties are paid; otherwise, the rate will be 10%.

Japan – The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended by a 2010 protocol, which updated the convention in accordance with the OECD standards for the exchange of information), entered into force in Japan on 1 October and apples as from that date.

Japan-New Zealand – The 2012 treaty to replace the current treaty dating back to 1963 enters into force on 25 October 2013 and will apply as from 1 January 2014 for withholding taxes and income taxes in Japan and for withholding taxes in New Zealand, and as from 1 April 2014 for income taxes in New Zealand. When in effect, the new treaty provides for a 0% rate of withholding tax on dividends paid to a company that holds directly or indirectly at least 10% of the voting power of the payer company for the six-month period ending on the date entitlement to the dividends is determined if the company that is beneficial owner of the dividends (1) is a qualified person under the limitations on benefits (LOB) provision in the treaty; (2) has at least 50% of its voting power in the aggregate owned directly or indirectly by five or fewer companies referred to in (1); or (3) is granted benefits with respect to those dividends under a specific clause of the LOB. The rate in all other cases will be 15%. The rate on interest will be 10% and that on royalties, 5%.

Latvia-United Arab Emirates – The 2012 treaty entered into force on 11 June 2013 and will apply as from 1 January 2014. When in effect, the treaty provides that dividends will be exempt from taxation if paid to the government, a local authority or the central bank; otherwise the rate will be 5%. Interest on a loan granted by a bank that is a resident of the other contracting state will be exempt from taxation; otherwise, the rate will be 2.5%. The rate on royalties will be 5%.

Luxembourg-Singapore – See article in this issue.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/131025_6.html

Malta-Liechtenstein – See article in this issue.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/131025_7.html

Malta-Ukraine – See article in this issue.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/131025_8.html

Mauritius-Monaco – The 13 April 2013 treaty entered into force on 8 August 2013 and will apply as from 1 January 2014. When in effect, the treaty provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

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Slovenia-Kosovo – When in effect, the treaty signed on 26 June 2013 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 10%. The rate on interest and royalties will be 5%.

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Brazil
Tax amnesty programs re-opened and expanded
Brazil's president signed a law on 10 October 2013 that introduces a tax amnesty that will offer taxpayers an opportunity to pay off their Brazilian tax debts in installments and under less stringent conditions than otherwise would apply.
[Issue date: 11 October 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/995bffda348b1410VgnVCM2000003356f70aRCRD.htm?id=us:em:na:wta:eng:tax:102513
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Brazil_111013.pdf?id=us:em:na:wta:eng:tax:102513

Hungary
Changes to be proposed to participation exemption and company migration rules
The Hungarian government has announced proposed favorable changes to the participation exemption regime and the taxation of company migrations to Hungary which, if approved by parliament, would be effective as from 1 January 2014.
[Issue date: 11 October 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/9565ffda348b1410VgnVCM2000003356f70aRCRD.htm?id=us:em:na:wta:eng:tax:102513
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Hungary_111013.pdf?id=us:em:na:wta:eng:tax:102513

Mexico
Update on progress of tax reform
On 17 October 2013, Mexico's House of Representatives approved the tax reform presented on 8 September and sent the draft legislation to the Senate for review. Although the House accepted some of the original proposals, it modified some and rejected others outright; a number of changes, in particular, were made to the proposed measures that would affect the maquiladora regime.
[Issue date: 23 October 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/5b250265016e1410VgnVCM2000003356f70aRCRD.htm?id=us:em:na:wta:eng:tax:102513
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Mexico_231013.pdf?id=us:em:na:wta:eng:tax:102513

Norway
Budget for 2014 contains interest deduction limitation rule
Norway's budget for 2014, presented by the government on 14 October 2013, includes a limit on the deduction of interest on related party debt. The proposed rule is designed to restrict earnings stripping via intercompany debt financing in Norway. There is also a proposal to reduce the corporate income tax rate from 28% to 27% in 2014.
[Issue date: 15 October 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/c208792c860c1410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:wta:eng:tax:102513
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Norway_151013.pdf?id=us:em:na:wta:eng:tax:102513

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Portugal

Corporate tax reform proposed

Portugal's government has presented to parliament a draft law to reform the corporate tax code, together with the draft state budget for 2014. The draft reform law is based on the recommendations of the 10-member Commission on Corporate Tax Reform appointed by the Prime Minister in February 2013 and contains a number of measures that will affect companies doing business in the country. The attached alert was drafted by Carlos Loureiro in Lisbon.

[Issue date: 24 October 2013]

URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/122462c4a8ae1410VgnVCM2000003356f70aRCRD.htm?id=us:em:na:wta:eng:tax:102513

URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Portugal_241013.pdf?id=us:em:na:wta:eng:tax:102513

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