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New Curaçao export regime targets financial sector

A recent amendment to Curaçao's profit tax regulation introduces a beneficial export regime for companies engaged primarily in transactions with foreign clients. The new regime, which applies as from 1 January 2014, is designed as an alternative incentive for the international financial sector, since the old offshore regime was abolished in 2000 and the transition rules will expire in 2019. The new regime also is expected to enhance Curaçao's reputation as a place to do business.

Under the export regime, the profits of a qualifying company will be taxed at an effective tax rate (ETR) of approximately 4% (3.9875%). The ETR, which is slightly higher than the old offshore tax rate of 2.4%-3%, is calculated by treating 95% of the profit as foreign profit that is taxed at 1/10 of the general tax rate of 27.5%. The remaining profit of 5% is taxed at the general tax rate of 27.5%, resulting in an ETR of 3.9875% for the total profit. If the general profit tax rate decreases, the applicable export regime rate also will automatically decrease.

The export regime is available to Curaçao or foreign entities that generate at least 90% of their profits from "international activities," and it can be used by international banks and trading and service companies. International holding and finance companies also can benefit from the regime, provided they have sufficient substance in Cura ao, which will depend on the nature of their activities.

International activities for purposes of the export regime include the following:

- Exports of goods;
- International trade and services;
- Repair and maintenance services carried out in Curaçao for the benefit of foreign clients, where the goods are to be exported abroad;

- Repair and maintenance services carried out abroad;
- International warehousing services;
- Provision of loans and licenses;
- Granting of the use of, or the right to use, intellectual property;
- Holding company activities or membership in a cooperative; and
- Other international services provided to foreign clients.

The following services provided to foreign clients, however, are specifically excluded from the benefits of the regime:

- Acting as a director of a company that is registered in or whose place of effective management is in Curaçao, including other similar services provided by a trust company; and
- Services carried out by a notary public, lawyer, accountant or tax adviser and similar services.

This new export regime will provide more transparency and assurance for qualifying domestic and foreign investors. The regime is an alternative, in particular, for entities that currently have a ruling and that would not qualify for "exempt status" or "economic zone (e-zone) status" (which provides a 2% profit tax rate). Exempt status is granted only to private limited liability companies established in Cura ao that satisfy specific conditions, and the activities of an exempt company are restricted entirely (or almost entirely) to investments. Although e-zones have been expanded in recent years and new areas have been designated as e-zones, these areas are limited to specific locations where certain activities may be performed and e-zone status is granted only to companies whose business is almost entirely with foreign clients.

In addition to the new export regime, the Curaçao parliament approved a draft bill on the same day that aims to make Curaçao a more attractive location for insurance companies that operate internationally, including "captive" insurance companies. These companies will be able to opt, for a renewable period of five years, to pay profit tax (27.5%) on 5% of the premiums and capital received with respect to insurance of risks outside of Curaçao. The ETR in those cases will be 1.375% of the gross premiums and capital received. Companies that apply for this regime will not be entitled to benefit from the export regime.

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Belgium:
New treaty with China in effect

The new tax treaty and protocol signed by Belgium and China on 7 October 2009 to replace the 1985 treaty (as amended in 1996) entered into force on 29 December 2013 (rather than on 4 January 2014, as previously announced) and apply to income arising as from 1 January 2014 and for income relating to fiscal years beginning as from that date.

Background

The new treaty basically is on par with the tax treaties of other important trading partners of China (such as Hong Kong and Singapore) and can be viewed as a confirmation of Belgium's favorable position in the Asia Pacific region. (Belgium was the first European country to sign a tax treaty with Hong Kong (in effect since 2004) and it also concluded a new treaty with Singapore (in effect since 2008).)

The new Belgium-China treaty generally follows the OECD model treaty, and the relevant differences from the 1985 treaty include the following:

- New definitions of construction and services permanent establishments (PEs);
- Lower withholding tax rates on dividends and royalties;
- A new exemption rule for capital gains on shares; and
- Changes relating to the elimination of double taxation.

In addition, the revised treaty specifically states that nothing in the treaty affects the rights of each country to apply its domestic laws and measures concerning the prevention of tax avoidance and evasion (whether or not described as such), provided doing so does not give rise to taxation contrary to the treaty.

Changes to definition of PE

The new treaty provides that a building site, construction, assembly or installation project, or the related supervision thereof, will constitute a PE if such site, project or supervision lasts for more than 12 months (six months under the 1985 treaty). Further, the time period for creating a services PE has been changed from "more than six months within any 12-month period" to "more than 183 days within any 12-month period."

Changes to withholding taxes

Dividends, interest and royalties – The treaty withholding tax rate is reduced from 10% to 5% for dividends paid by a Chinese company to a Belgian resident company (other than a partnership), provided the latter qualifies as the beneficial owner of the dividends and has held directly 25% or more of the Chinese company's capital for an uninterrupted period of at least 12 months before the payment. In all other cases, the maximum withholding tax remains at 10%. It should be noted that the extended parent-subsidiary exemption under Belgian domestic law may provide for a full withholding tax exemption for dividend distributions where the Chinese recipient is a company that has held or will hold 10% or more of the capital of the Belgian company for an uninterrupted period of at least one year.

The maximum withholding tax rate for interest remains at 10%, while the rate for royalties is reduced from 10% to 7% of the gross amount.

Anti-avoidance rule – The new treaty includes a specific anti-avoidance rule in the dividends, interest and royalties articles that denies treaty benefits under such articles if the underlying income-generating assets (shares, debts, rights, etc.) have been created or assigned with the main purpose, or one of the main purposes, of taking advantage of the relevant treaty articles.

Capital gains

The new treaty retains most of the capital gains provisions in the 1985 treaty, but two changes have been made. As under the 1985 treaty, capital gains from the sale of shares may be taxed in the residence state of the company whose shares are sold, provided the seller held at least 25% of the shares of that company. However, the new treaty requires the 25% participation to be held, directly or indirectly, "at any time during the 12-month period" before the sale. The new treaty also provides that capital gains on shares cannot be taxed in the source state if the shares are substantially and regularly traded on a recognized stock exchange and the total shares sold by the seller during the fiscal year in which the sale takes place do not exceed 5% of the quoted shares.

Elimination of double taxation

The provisions relating to the elimination of double taxation in Belgium include some important changes. Among other things, these changes affect the application of the Belgian participation exemption.

Profits of a Chinese branch – Under the new treaty, the Belgian exemption for foreign branch profits does not apply where such profits are derived by a PE in China that exclusively or mainly carries out specific passive income activities, such as a finance or royalty branch. (For regulatory reasons, it generally is not possible for foreign investors to operate finance or royalty branches in China.)

Hybrid entities – The new treaty provides relief in situations in which double taxation could arise as a result of an investment by a Belgian resident in a Chinese transparent entity (e.g. a Chinese business trust) that is treated as nontransparent for Belgian income tax purposes. Dividends received by a Belgian investor from such an entity are exempt from tax in Belgium, provided the Belgian resident has been taxed in China on the income (in proportion to its participation in the entity) that is treated as dividends under Belgian law.

Dividends of a Chinese company not meeting the subject-to-tax test – Dividends received from a Chinese resident company that are not exempt from corporate income tax in Belgium still may be exempt from corporate income tax if the

Chinese resident company is engaged in the "active conduct of a business in China." In that case, such dividends are exempt under the conditions and within the limits provided for under Belgian law other than the subject-to-tax condition.

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Germany:
BFH refers treaty override provision issue to Federal Constitutional Court

The Federal Tax Court (BFH) has referred a case involving a tax treaty override provision to the Federal Constitutional Court, asking the court to determine whether the provision is in line with German constitutional law. A conclusion by the Constitutional Court that the provision is unconstitutional likely would have a significant impact on the German legislature's practice of introducing treaty override provisions that aim to secure German taxation rights, despite tax treaty provisions to the contrary.

For a tax treaty to become applicable in Germany, the treaty must be transposed into German domestic law (that is, a treaty is not "self-executing"), which requires the consent of both the upper and lower houses of parliament. Once transposed, a tax treaty has equal status with "ordinary" domestic tax law – a treaty will not supersede ordinary domestic law, or vice versa. Because of this equality of status, the prevailing opinion has been that the German legislature subsequently can enact rules that override the provisions in Germany's existing tax treaties.

The BFH is of the opinion that the interaction between tax treaty law and German domestic tax law needs to be refined. According to the court, although a tax treaty and German domestic law are ranked equally, the negotiated provisions in a treaty limit the legislature's latitude to introduce measures that deviate from the treaty.

The case referred to the Federal Constitutional Court involves a situation where a German trading partnership with a permanent establishment (PE) in Germany paid interest to one of its individual partners who was a tax resident of Italy.

According to German domestic tax principles, a partnership is treated as transparent and its partners are taxed on their share of the business profits of the partnership. A PE of a German partnership is considered a PE of the partners. In addition, interest paid by a partnership to its partners is considered to be a part of the partners' business income allocated to the partnership PE and, therefore, taxable in Germany under domestic income tax principles.

By contrast, under a tax treaty, such interest income typically will not qualify as business income allocable to a PE of a partnership; instead, it will be considered ordinary interest income of the partners. Under a treaty, the primary right to tax ordinary interest income is allocated to the state in which the recipient of the interest is resident (in this case, Italy).

The BFH confirmed this understanding of the treaty provision in previous cases that prompted the German legislature to amend the tax law to secure German taxation rights, even where provisions of an applicable tax treaty allocate the taxing rights differently. Broadly speaking, the treaty override introduced a few years ago provides that such interest income is deemed to be business income allocable to the German PE that is taxable in the hands of the relevant partner, even where a tax treaty applies.

In the current case, on the basis of the treaty override, the German tax authorities applied the business profits article of the Germany-Italy tax treaty, which allocated the right to tax the partner's share of the business income realized by/through the partnership to the state where the PE was located (i.e. Germany). The application of the treaty override triggered double taxation of the interest income: it was taxed in Italy as interest income and in Germany as business income allocable to the German PE.

The BFH not only acknowledged the potential risk of double taxation under the treaty override provision, but went so far as to question whether the provision was constitutional. Since the BFH lacks the authority to rule on the constitutionality of a law, it referred the case to the Federal Constitutional Court.

The case could result in the Constitutional Court handing down a landmark decision redefining the interaction of tax treaty law and ordinary German domestic law. Considering the number of treaty override provisions introduced by the German legislature in recent years (e.g. the anti-treaty shopping rule in section 50d(3) of the Income Tax Code also is considered a treaty override provision), potentially affected taxpayers should monitor future developments closely and any ongoing cases should be kept open (e.g. by appealing tax assessments and referencing the pending court decision).

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Hong Kong:
2014/15 budget announced

Hong Kong's financial secretary delivered his seventh budget on 26 February 2014, proposing measures to enhance Hong Kong's position as an international hub, improve the business environment, promote the four pillar industries (financial services, logistics, tourism and professional services), sustain economic growth and, at the same time, to provide a better social and economic environment for its population. While the budget places considerable emphasis on controlling expenditure to save for the future, there are fewer "sweeteners" and tax measures for individuals as compared to previous budgets. This article looks at the proposed measures affecting businesses.

The 2014/15 budget re-emphasizes the importance of economic development through the pillar industries and the need to further strengthen Hong Kong's existing service offerings, such as RMB trade financing, RMB-denominated financial products and cross-border reinsurance, direct cross-border investment from Mainland China, asset management and fund development. Additionally, it is proposed to develop Hong Kong as a "smart city" in terms of information technology, enhance Hong Kong's reputation as an international hub by building a new airport runway, upgrade tourist facilities by expanding the existing theme parks, etc.

The following tax measures are proposed to enhance financial services:

- The interest deduction rules will be revisited and the criteria for deductions clarified, with a view to attracting more financial activities to Hong Kong. Hong Kong is a popular destination for multinational corporations to set up their regional or global financial and treasury management hubs, but the current disallowance of an interest deduction for interest paid to overseas companies is an impediment to establishing such group treasury hubs. Concrete proposals are expected to be announced within a year.
- The proposal in last year's budget to extend the profits tax exemption for offshore funds to private equity funds will move forward as soon as possible. The financial secretary also stated that a regulatory framework for the introduction of an open-ended fund company structure to attract more funds to establish in Hong Kong has been drawn up, and that consultation will begin in the near future.
- The stamp duty exemption concession that currently is available for the trading of exchange-traded funds (ETFs) that track indices comprising no more than 40% of Hong Kong stock will be extended to the trading of all ETFs (including those with a higher percentage of Hong Kong stock in their portfolios) to promote the development, management and trading of ETFs in Hong Kong.

As was announced in last year's budget, the 2014/15 budget reiterates that the Inland Revenue Department will step up its efforts to combat tax avoidance and evasion, to prevent revenue losses on taxes and to recover tax due through the effective use of information technology and international experience.

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India:
Interim budget announced

The Indian finance minister presented an "interim budget" on 17 February 2014, with the expectation that a regular budget will be presented by the new government after the general election takes place in May.

Although the interim budget does not contain any income tax law changes, it does create some issues by failing to address the fact that certain "sunset provisions" will expire on 31 March 2014, before a regular budget will be presented. For example, the special low tax rate of 15% for certain foreign dividend income will increase to the normal corporate income tax rate of 30% after 31 March 2014, unless the 15% rate is extended on a retroactive basis when the new parliament assembles after the election, and the profit-linked deduction available to the power sector also will expire on that date.

The 2013 budget introduced a one-time surcharge of 10% on individuals with taxable income exceeding INR 10 million. As the interim budget is silent in respect of this surcharge, it will continue to be levied until the new government takes action to withdraw the surcharge.

The finance minister also announced that the latest draft of the Direct Taxes Code will be placed on the finance ministry's website for public discussion.

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India:
Court rules back office operations do not create PE

The Delhi High Court issued a decision on 5 February 2014 concerning the definition of permanent establishment (PE) under the India-US tax treaty, and ruling that an Indian entity that performed "back office" operations for its ultimate US parent company and a US subsidiary of its parent (collectively, "the taxpayers") did not create a PE in India for the taxpayers. The court took the opportunity to provide an explanation of situations that could create a PE in India and provided some guidance on the attribution of profits.

Facts of the case

The e-Funds case involved two taxpayers, both of which were US companies within the e-Funds group. The group also contained an Indian company (e-Funds India) that carried out back office operations, including data entry, to support the taxpayers. e-Funds India was compensated by the taxpayers for all of its services. The amount of the service fees was reviewed by the Indian tax authorities from a transfer pricing perspective.

The taxpayers invoked the mutual agreement procedure (MAP) under the India-US tax treaty for tax years not at issue in the case. The MAP agreement indicated that each of the two US companies did have a PE in India, and the agreement set out a formula for calculating the profits attributable to the PEs. Although the taxpayers disagreed with the conclusion that they had a PE in India, they agreed to accept the settlement for those years.

For other years, the Indian tax authorities issued assessments to the two US companies on the grounds that they had PEs in India (and these assessments were upheld by the lower court); the assessments are disputed in this case.

High Court decision

The Delhi High Court considered whether the taxpayers had a "fixed place PE," a "service PE," an "agency PE" or a "subsidiary PE" in India under the India-US treaty. The court concluded that, although the MAP was relevant, it could not be the primary basis for determining whether a PE existed – the existence of a PE is a matter of law that must be decided on the merits. While the court easily dismissed the tax authorities' contention that there was an agency PE and a services PE, its discussion of a fixed place PE was interesting.

The court also considered whether the "business connection" provisions in the Indian Income Tax Act (ITA) applied, and whether any of e-Funds India's income should be attributed to the taxpayers. (The concept of a business connection is used as a way to determine the Indian tax liability of nonresidents; the business income of a nonresident will be chargeable to tax in India to the extent the income accrues or arises through a business connection in India or from an asset or source of income located in India, and to the extent that income is attributable to operations carried out in India.)

Fixed place PE – The tax authorities argued that the Indian business premises of e-funds India constituted a fixed place of business. The court concluded, however, that a fixed place PE did not exist under the treaty. Its reasons included that neither the tax authorities, nor the lower court, had provided an analysis to support that the taxpayers had a fixed place of business in India through which their business was wholly or partly carried on; they did not find that the taxpayers had a right to use any of the premises belonging to e-Funds India; and they did not apply the "right to use test" or the "disposal test" to support that a PE existed.

The court explained that the treaty contains a "negative list" of activities performed through a fixed place of business that do not give rise to a PE, but the fact that an activity does not appear on the list does not mean that a PE is automatically created.

The court considered the following factors to be irrelevant in determining whether a fixed place PE existed:

- Close association between e-Funds India and the taxpayers;
- Various services provided by e-Funds India to the taxpayers, and its dependence on the taxpayers for its earnings;
- Lack of sufficient risk for e-Funds India;
- Assignment or subcontract of contracts to e-Funds India;
- Certain reimbursements to e-Funds India on a cost-plus basis;
- Direct or indirect costs and corporate allocations related to a software development center or business process outsourcing;
- Provision of intangible software to e-Funds India free of charge;
- Savings/reduction in cost from transferring business or back office operations to e-Funds India;
- Manner and mode of the payment of royalties or associated transactions;
- Performance of core activities of the taxpayers by e-Funds India; and
- Conclusion of the tax authorities that the taxpayers had a joint venture or partnership relationship with e-Funds India because their businesses were interlinked and closely connected.

The court did note, however, that certain other offshore entities within the e-Funds group could be found to have a PE in India if their "place of management" was in India. This observation was specifically related to the fact that employees of these entities reported to an employee in India. However, since these entities were not the subject of the appeal to the Delhi High Court, the court did not further discuss the issue.

The court opined that the fixed place of business analysis must be made in accordance with the OECD and UN Commentaries and that, based on the facts, it was impossible to conclude that the premises of e-Funds India were "at the disposal" of the two US companies or that the two US companies carried on their business, in part, through those premises. Accordingly, there was no fixed place of business PE.

Business connection in India – Although the Delhi High Court concluded that a PE did not exist under the terms of the India-US treaty, it considered whether a "business connection" existed that could result in income of e-Funds India being attributed to the taxpayers under India's ITA.

The Delhi High Court held that a business connection existed because e-Funds India provided information to the taxpayers in the US for the purpose of entering into contracts with third parties, and subsequently e-Funds India wholly or partially performed services as an assignee or subcontractee under the related contracts and the taxpayers assumed and agreed to third party claims and risks. However, the court did not consider what income would be attributable and taxable under the business connection provisions of the ITA because both the tax authorities and the taxpayer had based their positions on the treaty provisions, which were more beneficial to the taxpayer.

Profit attribution – Even though the court concluded that a PE did not exist under the treaty and that the business connection provisions of the ITA did not apply, it offered some guidance on profit attribution. According to the court, once a profit attribution formula is adopted under a MAP, it generally should be followed consistently. However, if the agreed-upon formula was irrational and inappropriate, it may be corrected in other, subsequent years.

Comments

The Delhi High Court's holding that no income of e-Funds India could be attributed to and assessed in the hands of the taxpayers because they did not have a PE in India is a significant decision that will provide relief to certain companies that conduct back office operations in India. It is noteworthy that, in reaching its conclusions, the court referred to OECD and UN commentaries, as well as the views of eminent authors.

Taxpayers should consider the following steps in response to the decision:

- Review existing arrangements/contracts with Indian entities to assess whether a PE exists in India;
- Assess whether the place of management for any offshore entity is in India;
- Where employees are seconded to India, ascertain under which entity's control and supervision they are working and which entity bears the costs for the employees; and
- If a PE exists in India, determine a reasonable and logical basis for calculating the profits that are attributable to the PE.

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Isle of Man:
Five-year rule placed on "tax cap"

The main announcement in the 2014/15 Isle of Man budget delivered on 18 February 2014 concerns changes to the "tax cap" introduced in 2006 as part of the government's policy to attract wealthy individuals to the island by limiting the amount of tax such individuals are required to pay.

The tax cap of GBP 120,000 on personal income tax liabilities in any one tax year for individuals living in the Isle of Man (GBP 240,000 per year for jointly assessed couples) will remain unchanged. However, as from 6 April 2014, where an individual elects for the tax cap to apply, it will apply for five consecutive tax years and the individual (or jointly assessed couple) will be liable to the tax cap for each of the five tax years, regardless of whether the actual taxable income for a year is sufficient to produce a tax liability equal to the cap.

For the 2014/15 tax year, a tax cap election must be made by 30 June 2014. Thereafter, the election will need to be made by the end of the preceding tax year, i.e. on or before 5 April.

The budget does not contain any changes to the corporate or personal income tax rates, although the personal income tax allowance has increased by GBP 200 to GBP 9,500 (GBP 19,000 for jointly assessed couples) and the additional age allowance for those over 65 has been reduced to GBP 1,000.

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Singapore:
Highlights of 2014 budget

The principal focus of Singapore's 2014 budget, announced by the Deputy Prime Minister and Minister for Finance on 21 February 2014, is to reinforce and build on the major steps taken in recent years toward achieving quality growth (mainly through innovation and higher productivity) and building a fair and equitable society.

Some of the key provisions in the budget that would affect business include the following:

- There are no proposed changes to the 17% corporate tax rate (with a partial exemption for the first SGD 300,000 of chargeable income) or to the special three-year corporate income tax rebate (30% of tax payable, up to a maximum of SGD 30,000) available for year of assessment (YA) 2013 to YA 2015.
- Withholding tax no longer would be required on certain payments (e.g. interest, royalties) made to Singapore permanent establishments (PEs) that are Singapore branches of nonresident companies (however, the branches would continue to be subject to income tax on these payments and would be required to report the payments on their income tax returns).
- The Productivity and Innovation Credit (PIC) scheme, which grants a total 400% tax deduction or allowance for the first SGD 400,000 of qualifying expenses incurred from YA 2011 to YA 2015 for specified activities, would be extended for another three years to YA 2018. The qualifying expenditure caps for YA 2016 to 2018 can be combined to make a total combined expenditure cap of SGD 1.2 million for the period, to provide more flexibility for companies to make investments in productivity and innovation. Additionally, the following changes are proposed to the PIC scheme:
  - A new "PIC+" scheme would be introduced for qualifying small and medium-sized enterprises (SMEs), which would increase the annual deduction or allowance to SGD 600,000 of qualifying expenses from YA 2015 to YA 2018. Similar to the PIC scheme, the expenditure caps for YA 2016 to YA 2018 can be combined to make a total combined cap of SGD 1.8 million for the period.
  - The employee-related condition to obtain a cash payout under the PIC or PIC+ scheme would be tightened (as from YA 2016) to ensure that payouts are made only to businesses with active operations.
  - The PIC scheme would be expanded (as from YA 2014) to allow companies to claim PIC benefits in respect of training expenses related to individuals hired under centralized hiring arrangements, even though they are not the legal employers of these individuals.
  - The option for businesses to defer paying their tax for the current YA if they have incurred qualifying PIC expenditure in the current financial year would expire in YA 2015.
- Several tax incentive schemes would be extended (and, in some cases, modified), including the following:
  - The additional 50% tax deduction for qualifying research and development (R&D) activities undertaken in Singapore would be extended for 10 years until YA 2025, and the further R&D deduction for approved projects would be extended for five years to cover projects approved until 31 March 2020.
  - The writing-down allowance (WDA) for intellectual property rights would be extended for five years until YA 2020, and the accelerated WDA for companies in the media and digital entertainment industry would be extended for three years until YA 2018.
  - The 100% tax deduction on registration costs for qualifying intellectual property would be extended for five years until YA 2020.
  - The Land Intensification Allowance scheme, which permits businesses to claim qualifying construction expenditure for buildings or structures used for certain activities, would be extended for five years until 30 June 2020. The scheme also would be extended to the logistics sector and to businesses carrying out qualifying activities on airport and port land.
  - Certain tax exemption schemes (mainly the Singapore fund regime and enhanced tier fund regime) for qualifying funds would be extended for five years until 31 March 2019. The list of designated investments also would be expanded to include loans to qualifying offshore trusts, interests in certain limited liability companies and bankers acceptances.

- The concession allowing qualifying funds that are not registered for goods and services tax (GST) purposes to claim GST input tax recovery would be extended for five years until 31 March 2019.
- An important proposal for Singapore-incorporated banks is the announcement that Basel III Additional Tier 1 instruments (other than shares) would be treated as debt for tax purposes. Accordingly, distributions on such instruments would be deductible for issuers and taxable in the hands of investors, subject to existing rules. Further details are expected to be issued by the Monetary Authority of Singapore by the end of May 2014.

Comments

The budget statement contains little of interest to foreign multinationals looking to invest in Singapore, although the extension of the PIC, R&D and WDA schemes is welcome. The budget measures mainly are building on existing schemes, including some extensions of existing schemes, to help build economic capabilities from within Singapore. However, these measures should not be viewed in isolation, as Singapore already has a very competitive tax regime with relatively low corporate tax and personal tax rates, a broad tax treaty network and various tax incentives to promote foreign investment in Singapore.

The removal of the requirement to withhold tax on certain payments made to Singapore branches is a positive development and the waiver should ease the cash flow of branches and eliminate the administrative burden of making withholding tax waiver applications to the Singapore tax authorities.

The five-year extension of the tax incentive schemes for funds managed by Singapore-based fund managers is a welcome move, as are the expansion of the list of investments that qualify for exemption under those schemes and the extension of the concession under which prescribed funds can claim GST incurred on expenses at a fixed rate. However, what seems to be missing is a measure to allow full recovery of such GST, which would place Singapore-based funds on a level playing field with offshore funds. In addition, a measure to allow wholly-owned Singapore subsidiaries of Singapore-based qualifying funds to automatically enjoy the same tax incentives as the qualifying funds themselves would have been welcome. These additional changes could have further enhanced the tax incentive schemes for Singapore funds, at a time when Hong Kong also is stepping up its game to attract such activities.

As with earlier years, it is expected that the proposals will be enacted toward the end of 2014, after parliamentary readings.

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In brief

Belgium – According to a royal decree published on 14 February 2014, resident companies must file their corporate tax returns electronically as from tax year 2014 (instead of tax year 2015). E-filing will be mandatory for nonresident companies as from tax year 2015. An exception will apply to taxpayers (whether or not resident) that do not have the necessary electronic resources to meet the mandatory filing requirement.

Chile – The tax authorities have provided a new reporting format for the declaration that Chilean individuals and foreign individuals that have been domiciled or resident in Chile for more than three years must file by 19 March 2014 to report foreign-source income received (as opposed to accrued) in 2013, along with certain related information. Information reported in the declaration should be consistent with the information provided in the individual's annual tax return, which is due by 30 April.

European Union – The European Commission has adopted two reports that address problems linked to fighting VAT fraud within the EU, and that identify possible remedies. The first report looks at VAT collection and control procedures across the member states, and concludes that member states need to modernize their VAT administrations to reduce the VAT gap (around EUR 193 billion in 2011). Recommendations are addressed to individual member states on where they could make improvements in their procedures. The second report looks at how effectively administrative cooperation and other tools are being used to combat VAT fraud. The report finds that more effort is needed to enhance cross-border cooperation, and recommends solutions such as joint audits, administrative cooperation with third countries, more resources for inquiries and controls and automatic exchange of information among all member states on VAT.

Namibia – A vocational education and training levy will apply as from 1 April 2014, at a rate of 1% of an employer's total annual payroll, where payroll is NAD 1 million or more. The levy will be due on or before the 20th day of each month, and will have to be accompanied by a prescribed form. The first payment and return will be due on 20 May 2014, with penalties applying for noncompliance (as well as the possibility that the tax authorities may make an estimated assessment of the levy due). The tax authorities will allocate 50% of the levies received to pay training grants to qualifying employers.

OECD – The OECD has published the final text of its common reporting standard for multilateral automatic information exchange. The standard calls on jurisdictions to obtain information from their financial institutions and to exchange that information automatically with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions that need to report and the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. The standard has been developed jointly with the OECD and G20 countries.

Puerto Rico – The Department of State has issued an administrative order indicating its intention to cancel the Certificate of Incorporation or Authorization to do Business in Puerto Rico for corporations that have not filed an annual corporation report for at least two consecutive years. If a delinquent report is filed by 15 April 2014, however, the Department of State will waive any penalties that would be imposed for failure to file.

United Kingdom – The Supreme Court has unanimously dismissed all the appeals in the Marks and Spencer cross-border loss relief case following the hearings on 25/26 November 2013. No questions have been referred to the CJEU. The Supreme Court considered the three issues that remained following its 2013 decision, in which it held that whether the "no possibilities" test is satisfied should be decided as of the date of the claim, and not as of the end of the accounting period (as the UK tax authorities had contended). This was the Supreme Court's final ruling in the case and it should therefore conclude this litigation, which has been running for over a decade.

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.

Belgium-China – See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140228_2.html

Greece-San Marino – When in effect, the treaty signed on 26 June 2013 provides for a 5% withholding tax 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 will be 10% and the rate on royalties will be 5%.

India-Malta – The 2013 treaty and protocol entered into force on 7 February 2014 and will apply in India as from 1 April 2014 and as from 1 January 2015 in Malta. When in effect, the treaty provides that for dividends paid by a Malta company to an Indian company, the Maltese tax on the dividends may not exceed the amount chargeable on the profits out of which the dividends are paid. The rate will be 10% for dividends paid by an Indian company. The rate on interest and royalties also will be 10%.

Mexico-Peru – The 2011 treaty entered into force on 19 February 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 10% withholding tax on dividends paid to a company that holds directly or indirectly at least 25% of the voting rights of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 15%.

Netherlands-Malawi – Malawi has terminated the 1969 extension of the 1948 Netherlands-UK treaty to Malawi. The treaty ceased to apply in the Netherlands as from 1 January 2014 and will cease to apply in Malawi as from 1 April 2014.

New Zealand-Papua New Guinea – The 2012 treaty entered into force on 21 January 2014 and will apply in New Zealand as from 1 March 2014 for withholding taxes and as from 1 April 2014 for all other taxes. The treaty will apply in Papua New Guinea as from 1 March 2014 for withholding taxes and as from 1 January 2015 for all other taxes. When in effect, the treaty provides for a 15% withholding tax rate on dividends and a 10% rate on interest and royalties.

Philippines-Kuwait – The 2009 treaty entered into force on 22 April 2013 and applies as from 1 January 2014. A 10% withholding tax applies to 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 is 15%. The rate on interest is 10% and the rate on royalties is 20%.

Philippines-Nigeria – The 1997 treaty entered into force on 18 August 2013 and applies as from 1 January 2014. A 12.5% withholding tax applies to 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 is 15%. The rate on interest is 15% and the rate on royalties is 20%.

Poland-Singapore – The 2012 treaty to replace the current treaty dating from 1993 entered into force on 6 February 2014 and will apply as from 1 January 2015. When in effect, the treaty provides that a 0% rate will apply to dividends paid to the government of the other contracting state. A 5% rate will apply to dividends paid to a company (other than a partnership) that controls directly at least 10% of the capital of the payer company on the date the dividends are paid and has held or will have held the participation for an uninterrupted 24-month period in which that date falls; otherwise, the rate will be 10%. The rate on interest will be 5%. A 2% withholding tax will apply to royalties paid for industrial, commercial or scientific equipment; otherwise, the rate will be 5%.

Singapore-Laos – When in effect, the treaty signed on 21 February 2014 provides that dividends paid to certain government entities and financial institutions will be exempt from withholding tax. The rate will be 5% 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 8%. A 5% rate will apply on interest and royalties.

South Africa-Oman – The 2011 protocol to the treaty entered into force on 5 November 2013 and applies as from 1 January 2014. A 5% rate applies to dividends paid to a company that holds at least 10% of the capital of the payer company; otherwise, the rate is 10%. An exemption applies to dividends paid to certain government entities and central banks. The protocol does not affect the tax treatment of interest or royalties.

United Kingdom-Tajikistan – The UK treaty with the former USSR will cease to apply to Tajikistan as from 1 April 2014 for corporation tax and as from 6 April 2014 for income tax and capital gains tax. The UK announced on 20 February 2014 that it will cease to apply the treaty, which has never had effect in Tajikistan because Tajikistan did not complete the procedures required under its domestic law.

United Kingdom-Zambia – When in effect, the treaty signed on 4 February 2014 to replace the current treaty dating from 1972 provides for a 15% withholding tax if dividends are paid out of income or gains derived directly or indirectly from immovable property by a tax-exempt investment vehicle that distributes most of its income or gains annually; otherwise, the rate will be 5%. The rate on interest will be 10% and the rate on royalties will be 5%.

United States – The Treasury Department and Internal Revenue Service have released updated Foreign Account Tax Compliance Act (FATCA) regulations and related coordination regulations. Additionally, intergovernmental agreements (IGAs) to improve international tax compliance and to implement FATCA have been signed between the US and Hungary (on 4 February 2014) and Canada (on 5 February 2014). The Hungary IGA is based on the Model 1A agreement. Although the Canada IGA is not based on the most recent Model 1A agreement, both the Canada IGA and the Hungary IGA include FATCA deadlines that are consistent with other recent guidance.

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Brazil
New position adopted on tax treatment of payments for technical services without transfer of technology
Brazil's National Treasury Attorney's Office recently issued a significant opinion, in which it revisited the tax authorities' long-standing position on the interpretation of the business profits article in Brazil's tax treaties with respect to payments made abroad for services that do not involve an accompanying transfer of technology. The opinion adopts a change in the government's interpretation and acknowledges that such remittances should fall within the scope of the business profits article of a treaty rather than the "other income" article.
Issue Date: 27 February 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-270214.pdf?id=us:em:na:wta:eng:tax:022814

Canada
2014 budget includes inbound financing and anti-treaty shopping measures
Canada's 2014 federal budget, tabled in the House of Commons on 11 February 2014, contains two proposals that will have a significant impact on inbound investment into the country: a proposed anti-treaty shopping rule, and proposed amendments to the thin capitalization and withholding tax rules with respect to third-party financing backed by loans or asset pledges of non-arm's length nonresidents.
Issue date: 20 February 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-canada-200214.pdf?id=us:em:na:wta:eng:tax:022814

Netherlands
Supreme court confirms treatment of hybrid instruments for participation exemption purposes
The Dutch Supreme Court issued two decisions on 7 February 2014 regarding the distinction between debt and equity for Dutch tax purposes. These decisions settled an issue that had been the subject of substantial debate, and they should be of major practical importance in terms of refinancing transactions. In both cases, the court held that an instrument that is considered equity from a legal perspective will be treated as equity for purposes of the application of the participation exemption. The court also held that the refinancing transactions that converted the taxpayers' loans into preferred shares were not tax-abusive transactions.
Issue date: 14 February 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-netherlands-140214.pdf?id=us:em:na:wta:eng:tax:022814

Switzerland
SFTA updates guidelines for taxation of principal companies
The Swiss Federal Tax Administration has provided the cantonal tax authorities with revised guidance on how to apply rules that affect the taxation of principal companies, which will impact both existing and new principal company rulings.
Issue date: 22 February 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-switzerland-220214.pdf?id=us:em:na:wta:eng:tax:022814

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