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In this issue:

Hong Kong's new Companies Ordinance introduces court-free amalgamations

Hong Kong's new Companies Ordinance (Cap. 622) (New CO), which became effective on 3 March 2014, includes a broad range of measures designed to enhance corporate governance, ensure better regulation, facilitate business and modernize the law itself. Among the measures to facilitate business reorganizations, the New CO introduces a new concept of amalgamation under court-free procedures.

An amalgamation is a legal process under which the undertakings, property and liabilities of two or more companies merge and are brought under one of the original companies or a newly formed company; the companies' shareholders become the shareholders of the new or amalgamated company. In the past, an amalgamation could be pursued only under a complex and costly process involving court-sanctioned procedures. As a result, amalgamations rarely were used for business reorganizations. Transfers of a business and assets, on the other hand, have been carried out more frequently, even though they may give rise to various tax exposures.

The new court-free amalgamation procedure should allow intragroup mergers to be carried out in a simpler and less costly manner. However, there is some uncertainty about the Hong Kong (and foreign) tax treatment of court-free amalgamations. Despite requests for clarification of the tax consequences of the new amalgamation procedure and/or interpretive guidelines, Hong Kong's Inland Revenue Department (IRD) has not indicated that it plans to issue guidance or practice notes. The potential tax exposure of a court-free amalgamation could be an important factor when a taxpayer is assessing whether to proceed with such an amalgamation or to pursue other alternatives, such as a normal transfer of a business and assets.

Court-free amalgamation

Under the New CO court-free amalgamation procedure, intragroup amalgamations can be carried out without having to involve a court (however, amalgamations that are more complicated still should be pursued under the court-sanctioned procedure). All of the amalgamating companies in a court-free amalgamation must be incorporated in Hong Kong and must be companies limited by shares within the same group. An "amalgamating company" is a company that is the subject of an amalgamation proposal; once the amalgamation is completed, the single continuing entity is referred to as the "amalgamated" company.

There are two types of court-free amalgamations: vertical and horizontal. A vertical amalgamation is between a holding company and one or more of its wholly-owned subsidiaries, whereas a horizontal amalgamation is between two or more subsidiaries of the same holding company. In a vertical amalgamation, the shares of the amalgamating subsidiary will be cancelled and in a horizontal amalgamation, the shares of all but one of the amalgamating subsidiaries will be cancelled.

While minority shareholders' rights should not be a concern (since court-free amalgamations apply only to wholly-owned intragroup companies), the New CO does contain procedures to protect creditors' rights. The major procedures include special resolutions approving the amalgamation, a solvency statement to be made by the directors of each amalgamating company, a written notice to each secured creditor for consent, a public notice and a five-week period for any member or creditor to file an objection to an amalgamation.

Legal implications of court-free amalgamation

According to the New CO, the following occur on the effective date of a successful amalgamation, as specified in the certificate of amalgamation:

- Each amalgamating company ceases to exist as an entity separate from the amalgamated company; and
- The amalgamated company succeeds to all the property, rights and privileges, and all liabilities and obligations, of each amalgamating company.

The New CO also provides that, as from the effective date of an amalgamation:

- Any proceedings pending by or against an amalgamating company may be continued by or against the amalgamated company;
- Any conviction, ruling, order or judgment in favor of or against an amalgamating company may be enforced by or against the amalgamated company; and
- Any agreement entered into by an amalgamating company may be enforced by or against the amalgamated company, unless otherwise provided in the agreement.

These legal implications of a court-free amalgamation appear similar to those of a universal transfer (i.e. a full assignment of all assets, rights and liabilities of certain legal entities or economic units) that results in a universal succession by operation of law. Upon completion of a universal transfer, the assets of the amalgamating entities automatically are transferred to the amalgamated entity without the need for an individual contract and/or delivery of the asset, or even registration of the new ownership; accordingly, it is an efficient tool to streamline business and to conduct business restructuring. The same should be true of a court-free amalgamation, given its similarities to a universal transfer.

Uncertain Hong Kong tax exposure from court-free amalgamation

Although the purpose of the New CO is to reduce the business costs of restructuring, this may not be achieved (even in court-free amalgamations with a genuine commercial purpose), due to the uncertainty relating to the tax treatment of such transactions. Should the IRD regard court-free amalgamations as transfers or disposals for tax purposes, a number of potential Hong Kong profits tax issues or exposures could arise. For example:

- The amalgamating company may be assessed as if its trading stock/intangible assets/fixed assets are disposed of at their fair market value, with the result that deemed profits and clawbacks of previous deductions and/or depreciation allowances, as well as balancing charges, could arise.
- It is questionable whether the amalgamated company can adopt fair market value as its tax cost base for tax deduction or depreciation allowance purposes.
- Subsequent specific provisions or write offs of any accounts receivable assumed by an amalgamated company may be disallowed because the income relating to the accounts receivable was never treated as taxable by the amalgamated company.

- Tax losses of amalgamating companies may not be carried over to the amalgamated company.
- An advance ruling or agreed tax filing basis, such as offshore claims previously granted to an amalgamating company, may not be applicable to the amalgamated company.
- The amalgamating company may need to file a cessation tax return, while the amalgamated company may need to explain and make complicated tax adjustments to exclude any income and expenses from amalgamating companies that are incorporated in the amalgamated company's accounts for the year of amalgamation, to avoid double tax on any profits.
- Stamp duty may apply if the IRD considers that a transfer of Hong Kong stock or immovable property is involved in the intragroup amalgamation. (However, it is likely that the amalgamation would be eligible for intragroup relief under the Stamp Duty Ordinance and, therefore, that the amalgamation still would be exempt from stamp duty.)
- As it is questionable whether there is a cessation of employment of staff by the amalgamating company, it is unclear whether compliance obligations would arise for both the amalgamating and the amalgamated company and how the staff of the amalgamating company would be affected.

Various arguments can be made to support that a court-free amalgamation should be deemed not to involve a transfer or disposal for tax purposes and should instead receive tax-free treatment (e.g. that legally, amalgamation is not a transfer; that the New CO implies that a court-free amalgamation should be tax-free; and that precedent and similar legislation imply that a court-free amalgamation should be tax-free); however, due to the uncertain tax consequences, taxpayers contemplating such an amalgamation should consider requesting an advance ruling from the IRD to ascertain their potential tax exposure.

Tax anti-avoidance and other potential issues after amalgamation

Because Hong Kong's Inland Revenue Ordinance (IRO) does not contain any provisions on amalgamations, there is a potential for disputes with the IRD even after amalgamation, which may include the following issues:

- Application of the anti-avoidance rule – Hong Kong's general tax anti-avoidance provision empowers the IRD to disregard a transaction or to counteract the tax benefits of a transaction if the sole or dominant purpose of the transaction is to obtain a tax benefit for the person(s) who entered into or carried out the transaction. "Transaction" is broadly defined, so it is possible that the IRD may challenge a court-free amalgamation if it considers the sole or dominant purpose was to obtain a tax benefit; for example, to enable the amalgamated company to assume a significant tax loss from the amalgamating company. Therefore, it is important for entities to substantiate that amalgamations are driven by genuine commercial reasons.
- Change of intention – Even where there is no transfer or disposal, if the IRD regards that the intention of holding an asset changed from short-term to long-term investment (or vice versa) upon an amalgamation, it may consider a deemed disposal to have occurred as if the trading asset had been disposed of at fair market value, and any notional gain would be subject to tax.
- Interest expense deduction by the amalgamated company – Interest expense incurred by a holding company to raise funds to acquire a subsidiary's shares is not tax deductible, since it is not incurred in the production of the holding company's assessable profits. However, if there subsequently is a vertical amalgamation between the holding company and the subsidiary, the amalgamated company may then be able to claim a deduction for the interest expense, since the assets and business of the subsidiary have then become the assets and business of the amalgamated company. It is uncertain, however, whether the IRD would accept this deduction.
- Length of ownership period – In ascertaining whether an item is capital or revenue in nature (for example, a gain on the disposal of shares or property), the length of the ownership period is an important factor to consider. If an amalgamated company disposes of an asset assumed from an amalgamating company, it is questionable whether the IRD would take into account the ownership period of the amalgamating company when reviewing the nature of any gain on disposal of the asset by the amalgamated company.

Additionally, if an amalgamation involves assets located outside of Hong Kong or liabilities governed by foreign law, there will be foreign legal issues. Foreign tax issues could arise even where all the amalgamating companies are incorporated in Hong Kong (for example, if an amalgamating company or its subsidiary has an equity interest in a People's Republic of China (PRC) tax resident company, it is possible that the amalgamation may be regarded as a direct or an indirect transfer of an equity interest in the PRC tax resident company, resulting in PRC tax implications).

Comments

In view of the above, it is important to consider the commercial reasons, Hong Kong tax implications and foreign legal and tax implications when deciding how to streamline businesses. The New CO introduces the concept of court-free amalgamations as a way to reduce business costs of intragroup restructuring. However, there are uncertainties regarding the tax treatment, and unless relevant tax provisions are introduced in the IRO or guidance is issued by the IRD, undesirable tax issues could result in significant costs that inhibit the purpose envisaged in the New CO.

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Denmark:
Government proposes new central registry to report tax losses

Denmark's Minister of Taxation presented a new bill to parliament on 26 February 2014 that would create a central electronic registry for companies to report tax loss carryforwards.

According to the bill, all corporations, associations and foundations that have limited or unlimited tax liability under the Danish Corporation Tax Act or the Funds Tax Act (including foreign companies subject to Danish taxation) would be required to electronically report all tax losses carried forward as from income year 2002. The government will establish a three-month period for companies to report losses. Failure to comply (or failure to timely report the losses) would result in forfeiture of the tax losses.

Under current Danish tax rules, tax losses incurred as from 2002 may be carried forward indefinitely; losses may not be carried back. As from income year 2013, tax losses carried forward can be used to offset taxable income of up to DKK 7.5 million (approximately EUR 1 million), but any remaining losses cannot reduce the taxable income exceeding DKK 7.5 million (2013 level) by more than 60%. The DKK 7.5 million threshold is applied at the level of a Danish jointly taxed group.

The proposed registry is part of the future digitization of the Danish corporate income tax return and, if approved, is expected to be operational in the fall of 2014 or at the beginning of 2015. Parliament is likely to approve the proposal in July 2014.

Companies should monitor the progress of this proposal carefully and begin to gather the necessary documentation to ensure proper and timely registration.

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Germany:
Substantial changes to investment taxation system enacted

The Alternative Investment Fund Managers (AIFM) Tax Adaption Act, enacted by the German legislature on 24 December 2013, introduces substantial changes to the scope of the Investment Tax Act (GITA) and is expected to have a significant impact on the taxation of German investors in various regulated and unregulated fund schemes.

The scope of the GITA has been extended beyond open-ended investment fund schemes to encompass basically all collective investment schemes. Special tax rules are provided for German investors in UCITS funds (i.e. all undertakings for collective investment in transferable securities regulated under the European UCITS Directive) and Alternative Investment Funds (AIF) (i.e. collective investment undertakings that raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which are not enterprises operating outside the financial sector). Certain unregulated companies, including certain holding companies, private pension scheme securitization vehicles, family offices, entities and certain tax-exempt organizations are outside the scope of the GITA.

The new GITA distinguishes between investment funds – which continue to be subject to a semi-transparent taxation regime with tax privileges for German investors, especially with respect to certain undistributed realized capital gains – and investment companies, which do not qualify for the semi-transparent tax regime.

The new GITA rules generally apply to all funds established after 23 December 2013. Under the transition rules, an investment fund established before 24 December 2013 will continue to be classified as such until the end of its first financial year ending after 22 July 2016, if the fund continues to fulfill the former investment fund criteria.

Investment fund taxation

Investment funds are funds that fulfill all of the following criteria:

- The UCITS, AIF or the AIF manager is subject to state supervision for collective investment schemes in its country of residence.
- Investors are entitled to redeem their fund units at least once a year; any minimum holding period required by law should not prevent a fund from meeting this requirement.
- The objective of the fund is limited to passive investment and management of assets for the accounts of the unit holders, and the fund does not engage in active entrepreneurial asset management (certain exemptions apply to real estate funds).
- The fund invests its assets, directly or indirectly, in accordance with risk diversification principles.
- At least 90% of the portfolio is invested in eligible assets listed in a specific asset catalogue, which has been amended.
- Investments in shares of unlisted corporations are limited to a maximum of 20% of the fund's net asset value (NAV) (with an exception for real estate funds), and the fund must not invest 10% or more of the share capital of a particular corporation (with certain specified exceptions).
- The fund generally may obtain short-term loans only up to a maximum of 30% of the fund's NAV (real estate funds may obtain additional loans).

These criteria must be expressly stipulated in the fund documentation. If the fund changes its investment objective or if it substantially deviates from the investment fund criteria, the German tax authorities will formally reclassify the fund as an investment company (subject to the tax regime described below) for a period of at least three years.

If a fund qualifies as an investment fund, the semi-transparent investment regime will apply to its German investors, provided the fund meets the comprehensive GITA reporting and publication requirements. This semi-transparent tax regime usually is beneficial for German investors, as certain undistributed earnings can be accumulated at the fund level without being subject to tax at the investor level.

Fulfillment of the investment fund criteria (or transition provisions) is a requirement for German investment funds to benefit from the exemption from corporate income tax and trade tax, and from the VAT exemption for fund management.

Investment company taxation

Funds that do not meet the investment fund criteria (in particular, hedge funds, private equity funds and certain real estate funds) are taxed as investment companies. The tax treatment of an investment company depends on whether it is classified as a tax transparent partnership or a tax opaque corporation.

Partnership investment companies, especially German KGs or common law limited partnerships, and their German investors are subject to the general tax regime. Although partnership income will be subject to income tax at the German partner level, municipal trade tax of 7% to 17.2% may apply at the partnership level.

AIFs that do not qualify as investment funds or partnership-like investment companies are considered corporate investment companies, which are subject to corporate income tax plus the solidarity surcharge (combined rate of 15.825%). Foreign capital investment companies are subject to tax only on certain German-source income, while German corporate investment companies are subject to tax on worldwide income and also are subject to the trade tax. Participation exemption relief may apply for dividends or capital gains generated through an investment in a corporate investment company under certain circumstances.

The GITA now expressly states that contractual-type fund schemes (e.g. Luxembourg FCPs, Irish CCFs or German *Sondervermoegen*) that do not meet the investment fund criteria and are classified as corporate investment companies may be subject to German nonresident taxation.

Additionally, the controlled foreign company rules may apply to German investors in investment companies, with the result that any low-taxed passive investment income in a foreign investment structure will be subject to full taxation at the level of the German investor, irrespective of any actual distributions.

Comments

German investors should analyze the tax consequences deriving from any investments in fund schemes established after 23 December 2013. Fund investments should be monitored to determine if they continue to qualify for application of the GITA rules; if they do not, a German investor may divest or change its investment structures to avoid detrimental tax treatment in Germany.

Fund managers should consider whether their fund structures remain attractive for German investors. This will especially be true for funds resident in jurisdictions without accepted state supervision over the fund. Additionally, the fund documentation must be adjusted to reflect the amended investment fund criteria.

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Hong Kong:
Tax rate on captive insurers cut

Hong Kong's Legislative Council passed a bill on 19 March 2014 to provide a tax concession for captive insurers in the form of a 50% reduction in the profits tax on their insurance business involving offshore risk. The concession will take effect as from year of assessment 2013/14.

Captive insurance companies are insurance companies established with the specific objective of insuring risks of companies within the same group, and their use is becoming a popular means of risk management. The Central People's Government promulgated a policy in June 2012 encouraging enterprises in Mainland China to form captive insurers in Hong Kong to enhance their risk management.

The aim of the new tax concession is to establish Hong Kong as a popular domicile for captive insurance companies. This would reinforce Hong Kong's status as a regional insurance hub, while making its risk management services more diversified and promoting the development of other related services, such as reinsurance, accounting, actuarial and legal services.

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India:
Tribunal holds seconded employees create a service PE in India

The Delhi Tribunal has ruled that a secondment of employees to India created a service permanent establishment (PE) in India because the employees remained the employees of the foreign company, despite their secondment to the Indian company. However, the tribunal also held that consideration received by the foreign company pursuant to a grant of intellectual property (IP) rights to the Indian company was not "effectively connected" with the service PE.

Background

The taxpayer in this case was a UK resident that entered into two agreements with its wholly owned Indian subsidiary:

- A technology transfer agreement (TTA) to grant a license to the Indian subsidiary to manufacture, assemble, use and sell licensed products; and
- An international personnel assignment agreement (IPAA) for secondment of eight employees to the Indian subsidiary.

The taxpayer received consideration for the use of the license from the Indian subsidiary, which was treated as royalties/fees for technical services (FTS) that were subject to a 15% withholding tax rate under the India-UK tax treaty.

Upon examination, the assessing officer (AO) determined that the secondment of employees created a service PE in India, and that the consideration the taxpayer received from the Indian subsidiary was liable to tax as business profits (rather than as royalties/FTS), because it was effectively connected with the PE. The taxpayer appealed the AO's decision to the Commissioner of Income-tax (Appeals), which held that the taxpayer did not have a service PE in India because the seconded employees became the employees of the Indian subsidiary. The tax authorities then appealed the Commissioner's decision to the Delhi Tribunal.

Tribunal's decision

On appeal, the Delhi tribunal considered whether the taxpayer had a PE in India and whether the consideration it received from the Indian subsidiary was taxable as business profits or as royalties/FTS under the India-UK tax treaty.

Existence of a PE in India – To create a service PE in India under the India-UK treaty, services, including managerial services, must be rendered in India for more than 90 days through employees or other personnel of the taxpayer. At issue in the case was whether the seconded employees remained employees of the taxpayer or became employees of the Indian subsidiary. The tribunal concluded that the seconded employees remained employees of the taxpayer for several reasons, including the following:

- The IPAA was not an independent agreement; it had the nature of an addendum to the TTA to formalize the terms for the supply of personnel by the taxpayer to the Indian subsidiary. The TTA provided that the taxpayer's employees were not to be considered employees of the Indian subsidiary while they were present on its premises.
- The IPAA provided that the Indian subsidiary desired to use services of the taxpayer's employees on a "secondment" basis and, in common parlance, this terminology means that an employee remains an employee of his/her existing employer, but performs duties for the benefit of a third person.
- No appointment letters were provided from the Indian subsidiary, and there was no evidence to indicate that the taxpayer terminated the services of the seconded employees and that they were employed by the Indian subsidiary.
- The seconded employees remained on the taxpayer's payroll, and the taxpayer was solely responsible for their salaries.

Because the tribunal considered that the seconded employees remained the taxpayer's employees while they performed services in India, and all other conditions to create a service PE were satisfied, the tribunal concluded that the taxpayer had a PE in India.

Taxation of consideration from Indian subsidiary – The tribunal then considered whether the rights, property or contract for which the Indian subsidiary compensated the taxpayer were "effectively connected" with the taxpayer's PE in India, which would subject the related consideration to taxation as business profits, rather than as royalties/FTS under the India-UK tax treaty. (While the phrase "effectively connected with" is not defined under India's Income-tax Act 1961 or the treaty, the tribunal considered the term to be akin to "really connected.")

The tribunal concluded that the service PE created by the seconded employees had no role related to the grant of IP rights; the PE was concerned only with the rendering of services after the grant of IP rights. Accordingly, the grant of IP rights was not effectively connected with the taxpayer's service PE in India, and the consideration related to the IP rights was taxable as royalties under the treaty, and not as business profits.

In evaluating the consideration for the Indian subsidiary's use of services of the seconded employees, the tribunal opined that the "effective connection" to consider was the connection between the PE and the "contract" from which the fees for the seconded employees' technical services resulted, not the connection between the PE and the FTS per se. The tribunal considered that the TTA, read together with IPAA, was the contract and determined that this contract was effectively connected with the service PE of the taxpayer. Accordingly, it held that the consideration for the seconded employees' services was taxable as business profits, not as FTS under the treaty.

Comments

The tribunal decision highlights significant factors to be considered when determining the existence of a service PE in India and emphasizes that the substance of the transaction is relevant when determining if a PE exists. The decision also explains the meaning of the term "effectively connected," which is not defined in Income-tax Act or in the applicable tax treaty in this case. Taxpayers may wish to review their arrangements in the light of the ruling to determine whether employees seconded to an Indian company create a service PE, and whether consideration received from the Indian company is effectively connected with the PE.

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Japan:
New local corporate tax may increase effective rates for certain inbound investors

The enactment of the new "local corporate tax" law on 20 March 2014, which was introduced as part of the 2014 tax reforms, could increase the effective tax rate (ETR) for certain Japan-source income of inbound investors that do not have a permanent establishment (PE) in Japan.

To reallocate tax revenue among the local governments, the 2014 tax reform stated that the inhabitants tax (a local government-level tax) will be reduced and a new local corporate tax (a national government-level tax) will be effective for tax years beginning on or after 1 October 2014. In the aggregate, these changes should have no significant impact on the current ETR of a Japanese company or a nonresident with a PE in Japan.

The new local corporate tax will apply to corporations subject to the national corporation tax, and will be calculated by multiplying the national corporation tax liability (before withholding and foreign tax credits) by 4.4%. The due dates to file a local corporate tax return and pay local corporate tax are the same as for the national corporation tax.

Under Japanese tax law, a nonresident with no PE in Japan is subject to tax in Japan only on certain types of Japan-source income, and the tax imposed currently is limited to national corporation tax (i.e. the inhabitants tax does not apply). However, based on the current language provided in the local corporate tax law, a taxpayer that is subject to the national corporation tax also should be subject to the new local corporate tax.

The ETR for a nonresident with no PE in Japan, which has certain Japan-source income, therefore is likely to increase. Based on the current 25.5% national corporation tax rate (not including the special reconstruction surtax that may apply, depending on the tax year of the taxpayer), the increase in ETR would be 1.12% (25.5% multiplied by the 4.4% new local corporate tax). However, a nonresident that can benefit from an exemption under an applicable tax treaty with Japan should not be affected.

The following are a few examples of the types of Japan-source income that may be generated by a nonresident with no PE in Japan, which could be affected by the new law:

- Capital gains under the "5/25 rule" (broadly, a provision that allows Japan to tax capital gains derived from a sale of shares of a Japanese corporation if a nonresident entity (along with related persons) owns 25% or more of outstanding (common and preferred) shares at any time during the year of sale or the two prior fiscal years and sells 5% or more of the corporation's shares during the year);
- Capital gains from the sale of shares in a "real estate rich" company (a company that derives 50% or more of its asset value from real estate located in Japan);
- Capital gains from the sale of real estate located in Japan; and
- Lease revenue from property in Japan.

Comments

The increase in tax rate on certain types of income generated by nonresidents with no PE in Japan appears to be an unintended consequence of the new local corporate tax. However, absent guidance from the tax authorities, it seems that the change in the law will increase the Japanese tax liability for certain nonresidents.

Inbound investors with no PE in Japan may want to identify whether they hold any assets (e.g. stock in a Japanese company, Japanese real estate, etc.) that might give rise to income affected by the new local corporate tax.

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OECD:
Update on BEPS Action 13: Transfer pricing documentation and country-by-country reporting

On 2 April 2014, the OECD announced via a BEPS update webcast that tentative decisions have been made to streamline the initial proposals for country-by-country information reporting and transfer pricing master file documentation. (For additional coverage, see the alert dated 4 April 2014.) The revisions follow responses received to the discussion draft issued on 30 January 2014. The OECD cautioned that the Committee on Fiscal Affairs has yet to review the template, which may still be subject to change, and that further work is needed (in particular, on the important issue of the mechanism for filing and sharing information).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tpalert-2014-004-04042014.pdf?id=us:em:na:wta:eng:tax:041114

Revisions to proposals

The country-by-country reporting template will be a standalone document for the purposes of risk assessment, and will not be part of the transfer pricing master file. Data will be reported on an aggregated country-by-country (not entity-by-entity) basis, together with a list of entities and permanent establishments in each country, with activity codes. The financial data will be reduced to include only revenue, profit before tax, cash taxes paid and current year tax accrual, number of employees, tangible assets and capital and retained earnings. There will be flexibility for businesses regarding the source of financial data, provided a group adopts a consistent approach across all countries and from year to year.

There also will be flexibility for businesses on whether the transfer pricing master file should be prepared on a group-wide basis or by line of business. The OECD will clarify that the master file is intended to provide a high level overview to put a business's activities in context, and that transactional information will be reserved for the local file. There no longer will be a requirement to report details of the 25 highest-paid employees.

Timetable and next steps

The OECD is keen for businesses to see these revised proposals before the public consultation meeting on 19 May 2014, which will be the last chance for comment before the final requirements are published in September 2014.

Comments

Simplification of the data to be reported and increased flexibility for businesses are welcome, as is confirmation of the high-level nature of the master file. It is noteworthy that the focus is on providing useful, relevant and manageable global information for tax authorities that does not duplicate information better provided in tax returns and local transfer pricing documentation, and that this is intended to be achieved in a cost-effective and practical way for businesses. The revisions announced on 2 April are a significant step toward these objectives. Confidentiality of tax and commercial information will remain a concern for many businesses, unless a mechanism for sharing information under a treaty or information exchange agreement framework is made available.

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Ukraine: New law includes provisions affecting direct and indirect taxes

A law aimed at reducing the Ukrainian budget deficit and averting a fiscal crisis by increasing tax revenue and cutting government spending was published on 31 March 2014. Some provisions became effective as from 1 April 2014, and the remainder will enter into effect gradually over a period of time.

Changes effective from 1 April 2014

- The permanent base rates for corporate income tax and value added tax (VAT) are set at 18% and 20%, respectively;
- A 7% VAT applies to supplies of pharmaceuticals and healthcare products;
- A 0% VAT applies to the export of certain grain and technical crops under the export customs regime by agricultural enterprises (growers of such grain and technical crops on agricultural lands that are owned or used by such enterprises on a permanent basis as of the date of such exportation); this provision is transitional and will expire on 1 October 2014;
- A 0.5% obligatory state pension insurance duty applies to cash or noncash purchases of foreign currency by legal entities and individuals;
- Various fees and rates of excise duty are increased; and
- The threshold for the nontaxable import of goods sent by mail is reduced from EUR 300 to EUR 150.

Changes to take effect later in 2014-2015

- Progressive personal income tax rates of 15%, 20% and 25% will apply to passive income (interest (except for certain interest, dividends, royalties and other investment income), depending on monthly taxable income, with an obligatory recalculation of accrued (paid) tax to be made by the taxpayer based on annual results (effective from 1 July 2014);
- A 15% (or 17%) personal income tax rate will apply to pension payments exceeding UAH 10,000 (effective from 1 July 2014);
- Excise tax rates and the minimum excise liability will increase for tobacco products (effective from 1 July 2014) and for certain other alcoholic beverages (effective either from 1 May or 1 September 2014); and
- Indexation of normative monetary value has been introduced for calculation of the fixed agricultural tax base (effective from 1 January 2015).

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In brief

India – The interim budget has been approved by the president after being passed by both houses of parliament, and is effective as from 1 April 2014. Because the budget did not address a sunset provision that expired on 31 March 2014, the special reduced tax rate of 15% for certain foreign dividend income increased to the normal corporate income tax rate of 30% after that date (the 15% rate may be extended on a retroactive basis when the new parliament assembles after the upcoming election in May). Additionally, because the interim budget did not address the one-time surcharge of 10% on individuals with taxable income exceeding INR 10 million, the surcharge will continue to be levied until the new government takes action to withdraw it.

India – On 1 April 2014, the government released an updated version of the Direct Tax Code for public comment (proposed to be effective as from 1 April 2015). The revised version includes several changes to the taxation of indirect transfers.

Uruguay – A decree issued on 19 February 2014 sets out the process and criteria for nonresident artists to obtain an exemption from VAT on performances in Uruguay. To qualify for the exemption, the performance must be for cultural, artistic or tourism purposes and it must be declared to be of national or departmental (state) interest. Applications for the exemption must be submitted to the Ministry of Economy and Finance and must include a copy of the declaration of national or departmental interest, as applicable, as well as details of the production (specifying the intended site for the performance, the expected number of spectators, ticket prices and the amount of personal income obtained by the nonresident artist(s) as a result of the performance for which the VAT exemption is requested). The application must be filed before the performance takes place.

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Australia
ATO wins appeal on treaty issues affecting Cayman limited partnership
The Australian Taxation Office has won its appeal in the recent case of *Commissioner of Taxation v. Resource Capital Fund III LP* (*RCF*), a case that has implications for nonresidents investing into Australia, especially where investing through a fiscally transparent entity or into shares in mining or other resource companies.
Issue date: 9 April 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-australia-alert-090414.pdf?id=us:em:na:wta:eng:tax:041114

India
Indian APA Program Takes Off
The Indian tax authorities on 31 March signed the first five advance pricing agreements (APAs) in the program's history.
Issue date: 7 April 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tpalert-2014-006-070414.pdf?id=us:em:na:wta:eng:tax:041114

OECD
OECD Updates Transfer Pricing Documentation Proposal
During a 2 April webcast, Organization for Economic Cooperation and Development representatives discussed tentative decisions regarding proposed changes to Chapter V of the OECD transfer pricing guidelines on documentation. The tentative decisions reached by Working Party No. 6 at its two-day meeting during the week of 24 March reflect a positive

reaction to the numerous comment letters the OECD received in response to the discussion draft issued for comment on 30 January 2014. These tentative changes include reducing the scope of information to be included in the country-by-country template, the most controversial part of the proposed new documentation rules.
Issue date: 4 April 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tpalert-2014-004-04042014.pdf?id=us:em:na:wta:eng:tax:041114

United States

OECD Releases BEPS Draft on Hybrid Mismatch Arrangements

On 19 March 2014, the OECD released a public discussion draft on Action 2 of its BEPS Action Plan. The discussion draft is split into two papers. The first recommends domestic rules that address hybrid mismatch arrangements. The second develops and recommends treaty provisions to neutralize the effect of hybrid instruments and entities. (For previous coverage, see the related article from the *World Tax Advisor* dated 28 March 2014.)
Issue date: 4 April 2014
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140328_1.html
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-040414.pdf?id=us:em:na:wta:eng:tax:041114

2013 U.S. APA Report Shows Significant Efficiency Gains

The Internal Revenue Service on 27 March 2014 released Announcement 2014-14, the Advance Pricing Agreement (APA) annual report covering the activities of the Advance Pricing and Mutual Agreement (APMA) Program during calendar year 2013. The annual report is issued under §521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public on APAs and the APMA Program.
Issue date: 7 April 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tpalert-2014-005-070414.pdf?id=us:em:na:wta:eng:tax:041114