International Tax

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## Finnish government publishes action plan to combat international tax avoidance

The Finnish government published its plan for an action program to combat international tax avoidance on 8 May 2014. Some aspects of the program are built on international cooperation, while others seek to develop domestic legislation. There are five focus areas:

1. Securing the tax base and preventing harmful tax competition;
2. Improving tax controls and exchange of information;
3. Promoting transparency of information;
4. Addressing issues related to public procurement; and
5. Cooperating with developing countries on tax matters.

Recognizing the importance of multinational companies to the Finnish economy and, at the same time, the inherent mobility of certain of their income streams, the government's plan calls for international cooperation and consensus, in particular, when discussing and agreeing on measures intended to result in a desired impact. Although actions to combat aggressive tax planning, tax abuse and tax havens have been one of the central themes in recent international political forums, the Finnish government feels that tax planning that threatens tax revenues can best be mitigated by maintaining taxation at a competitive level. In its introduction of the action program, the government emphasizes the importance of identifying which areas of tax planning can be controlled, and what kind of planning is acceptable and what is not. The measures in the program are targeted at aggressive tax planning and would be executed through a combination of participation in global, EU and Nordic initiatives, and taking action domestically.

Securing the tax base and preventing harmful tax competition – Finland will participate in the OECD base erosion and profit shifting (BEPS) action plan. The actions identified by the program include contribution to working group 11 (focus on aggressive tax planning) and its steering group, updating the guidance on transfer pricing documentation and participation in other BEPS actions on transfer pricing. (The action program also refers to the transfer pricing competence group set up in the Finnish tax administration in 2012 to improve tax controls and guidance and increase tax revenue).

The European Commission addressed the automatic exchange of information and fair tax competition in December 2012 and gave two recommendations to all EU member states: the first was on a general anti-avoidance regulation and the second was on setting minimum requirements for "tax good governance." Consistent with the recommendations and the related action plan, Finland will review its existing substance-over-form and anti-avoidance regulations to assess how well the current rules combat tax avoidance and whether there is a need to update them. Finland also is in favor of implementing a black list for those non-EU countries not meeting the tax good governance requirements, if this is agreed upon at the EU level. Finland does not intend to modify its tax treaties to include a "subject-to-tax" rule because the credit method applied in most Finnish treaties already tackles the "nil tax" problem identified by the European Commission.

Improving tax controls and exchange of information – There are multiple action points in the program on tax supervision, controls and exchange of information:

- Finland will actively participate in the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes and in OECD member state initiatives aimed at preventing the use of tax havens, and also will continue to cooperate with other Nordic countries in these areas.
- Finland initialed and signed an agreement with the US to implement the Foreign Account Tax Compliance Act (FATCA) in March 2014.
- The government favors expanding the scope of the EU savings directive to cover a broader spectrum of instruments and to improve administrative cooperation in the field of taxation within the EU.
- The Finnish tax administration has embarked on a project on more effective exchange of information and sharing of best practices. One particular focus area is the use of information possessed by the banking sector. The tax administration's information technology systems will be fully modernized from 2013 – 2018, and the appropriate interaction of these systems with the flow of information from banks will then be reviewed.
- Finnish tax laws include substantial penalties for failure to report income. A study also has been initiated on a tax amnesty that would allow and promote the voluntary disclosure of unreported income. The study also analyzes the consequences of tax fraud on voluntary disclosures.

Promoting transparency – The government favors country-by-country reporting in the EU and is seeking to require companies in which the government holds a majority stake to report their tax footprints.

The Finnish private-sector earnings-related pension system has been decentralized so that funds are invested by pension insurance companies, company pension funds and industry-wide pension funds. It has been publicly debated whether these companies should be banned from investing in tax haven structures, and the government stated that this issue will be vetted in 2014.

Addressing public procurement – Some companies have gained significant negative publicity for their connections with tax havens, in particular, in the health care sector, where private companies are partly compensated through public means. Certain large cities have analyzed measures on how to take tax haven arrangements into account in public procurement, but the government now has concluded that tax haven prevention should be addressed as part of an EU-wide regulation, which should define a tax haven in relation to public procurement.

Cooperating with developing nations – Finland continues to be active in many arenas and initiatives (such as those related to country-by-country reporting, discussions on beneficial ownership and adoption of company registers that disclose stakeholders) that also support improving the taxation capacity of developing countries, along with transparency and the growth of national resources within these countries.

## Process

Finland's tax administration already has set up seven groups to address the program's core items. The transfer pricing competence group established in 2012 has initiated many transfer pricing audits, and there also is an active financing-focused specialist group (with debt push-downs and hybrids as agenda items) within the team. In addition, there are five new groups, with members nominated for two-year terms: foreign transactions (evasive transactions with low-taxed entities, exchange of information), banking sector information (utilized for comparability analysis), e-commerce (pilot cases, controls), carried interests (private equity) and tax fraud mitigation in EU intra-community trade (with a focus on value added tax).

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## CJEU Advocate General opines overseas establishments can be included in VAT groups

Advocate General (AG) Wathelet issued his opinion in the case of *Skandia America Corporation USA, filial Sverige (C-7/13)* (*Skandia*), a case involving the VAT treatment of transactions between a head office in a third (i.e. non-EU) country and its Swedish branch that was included in a Swedish VAT group with other related companies, on 8 May 2014.

According to the AG, an overseas company with a branch in an EU member state can be included in a VAT group, and transactions between a head office and a branch should not be liable to VAT. However, the AG suggests that the combination of the use of a branch structure and participation in a VAT grouping should not lead to nontaxation for VAT purposes, as this would contravene EU law. A decision by the Court of Justice of the European Union (CJEU), expected later in 2014, will be important for all companies with EU branches that have joined a VAT group.

### Background

VAT grouping allows EU member states to treat two or more companies as a single person for VAT purposes. This means that transactions between VAT group members normally would be disregarded for VAT purposes.

As noted above, the *Skandia* case involves the VAT treatment of charges made by a US head office to its Swedish branch that had joined a Swedish VAT group. The head office purchased information technology (IT) services from a third party, and made those services available to the branch. The US head office charged the costs of the externally purchased IT services to its Swedish fixed establishment, with a 5% mark-up. The branch used these supplies to provide services to recipients both within and outside the VAT group.

The costs charged by the head office to the Swedish branch were disregarded for VAT purposes. However, the Swedish tax authorities took the view that the supplies from the US head office to its Swedish branch were subject to VAT in Sweden, and they therefore imposed a tax assessment on the branch. Skandia appealed the assessment, and the Swedish courts requested a preliminary ruling from the CJEU on the following issues:

1. Whether supplies of externally purchased services by a head office to its branch constitute taxable transactions if the branch belongs to a VAT group; and
2. If so, whether the head office should be considered a taxable person that is not established in the EU member state where the branch is located.

### Advocate General's opinion

In *Skandia*, the AG opined that:

- A branch of an overseas entity cannot be included in a VAT group independently from its head office. This would imply that, instead, the overseas entity as a whole should join the VAT group.
- Supplies between a head office and a branch are not supplies for VAT purposes (and, hence, are not taxable transactions). However, the treatment is different for supplies between the branch and its customers; these supplies are taxable transactions, irrespective of whether the customers are in the same VAT group as the branch supplying them.
- If supplies between the head office and the branch were to be taxable in this case, the branch's VAT group should account for the VAT.

Comments

It is important to note that the AG's opinion is merely an advisory opinion to be used by the CJEU when reaching its own conclusions. The majority of CJEU decisions tend to be in line with the opinion of the AG, but at this stage, it is by no means clear what the CJEU will decide. Nevertheless, the AG raised an important point: he considers the nontaxation of supplies (resulting from the combination of the nontaxable transaction between the head office and the branch, and the provision of disregarded supplies within the VAT group) to violate the intent of EU law.

If the CJEU were to follow the AG's opinion, this could have a significant impact on organizations that have branches and VAT groups in EU member states, in particular, many companies within the financial services industry. It could lead to VAT (at an average EU rate of 20%) being accounted for on the costs of some, or all, supplies between a branch and other VAT group members or, possibly, on the recharge of costs from the overseas head office to the branch. For businesses that cannot recover all of their VAT because some of their supplies are exempt (such as banks and insurers), this would mean an increase in the overall VAT liability.

A decision by the CJEU is likely to be issued in the autumn of 2014, at the earliest. The Swedish courts and national tax authorities then will have to interpret the decision. In the meantime, businesses that may be affected should consider the potential impact of a decision in the tax authorities' favor, and continue to monitor this case closely.

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## Australia:
## 2014-15 budget announcement and thin capitalization amendments released

The 2014-15 Australian budget, presented on 13 May 2014, generally reaffirms or refines earlier government announcements affecting cross-border business. The government committed to reducing the corporate income tax rate by 1.5% from 1 July 2015, but also announced a reduction in the research and development (R&D) tax offset. In the week leading up to the budget announcement, the government released draft legislation to implement the tightening of the thin capitalization rules and the amendments to the foreign dividend exemption that were announced as part of the 2013-14 budget.

Corporate tax rate reduction – The government previously announced its intention to cut the corporate tax rate by 1.5%, to 28.5%, from 1 July 2015, and the 2014-15 budget reaffirms this intent. However, the government also proposes to introduce a 1.5% levy on companies with taxable income in excess of AUD 5 million to fund the government's paid parental leave scheme (also expected to commence from 1 July 2015).

Reduction in net tax benefit of R&D tax offsets – In an unanticipated move, the government announced a reduction of 1.5 percentage points in the rate of both refundable and nonrefundable R&D tax offsets. Although this matches the proposed cut in the corporate income tax rate to 28.5% from 1 July 2015, the R&D tax incentive cut would occur one year earlier, from 1 July 2014. The refundable R&D tax offset would be set at 43.5%, and the nonrefundable tax offset set at 38.5%.

This announcement comes as the proposed restriction to deny access to the R&D tax offset to large groups with Australian assessable income in excess of AUD 20 billion is before the senate and due to be debated the week of 19 May.

Targeted integrity measure affecting debt funding – The government previously had indicated that it would introduce a "targeted anti-avoidance provision" in connection with section 25-90. (Section 25-90 allows deductions for interest expenses on debt used to fund investments in foreign subsidiaries and other foreign nonportfolio equity investments.) The government announced in the budget that it had not yet made a decision on a targeted anti-avoidance provision to address certain conduit arrangements and still is seeking advice on this matter.

Extension of foreign CGT integrity measure – The government announced it will refine the 2013-14 budget measure that would amend the nonresident capital gains tax (CGT) regime. This measure was intended to strengthen the regime in relation to disposals of indirect interests in Australian real property to address perceived flaws in the "principal asset test," which (broadly) compares the value of land and nonland assets to determine whether a disposal of an interest in an entity is subject to CGT.

Under the previously announced measure, dealings (e.g. loans) between entities within the same tax consolidated group would be ignored, to prevent multiple counting that would otherwise inflate the proportion of nonland assets. The budget announcement provides that the measure now would apply to interests held by nonresidents in unconsolidated groups, as well as in consolidated groups.

For interests held by nonresidents in unconsolidated groups, the measure would apply to CGT events occurring on or after 13 May 2014. For interests held in a consolidated group or a multiple-entry consolidated group, the measure would continue to have effect from 14 May 2013.

Draft legislation amending the foreign CGT regime has been released for public consultation and interested parties are invited to submit comments by 9 June 2014.

Investment manager regime – There was no announcement in the budget regarding the status of the long-awaited amendments to the investment manager regime (IMR). In early May, the government had indicated that the IMR legislation would be introduced in the June/July sittings of parliament. However, there had been some speculation that the legislation might be delayed until 2015, while the government revisits the adequacy of the legislation in light of the government's policy goals and the fund industry's business objectives.

Base erosion and profits shifting (BEPS) – The budget contained no measures related to BEPS.

Thin capitalization rules – On 8 May 2014, the government released exposure draft (ED) legislation relating to the thin capitalization regime and the reform of the current exemption for foreign nonportfolio dividends received by Australian companies.

In relation to the thin capitalization rules, as per the 2013-14 federal budget announcement, the ED would:

- Reduce the general safe harbor from 75% to 60% of Australian assets (net of nondebt liabilities) or, expressed differently, reduce the safe harbor from 3:1 to 1.5:1 (on a debt-to-equity basis);
- Reduce the safe harbors for financial entities (nonauthorized deposit taking institutions and authorized deposit taking institutions, as defined);
- Reduce the existing worldwide gearing test available to Australian multinationals from 120% of worldwide gearing to 100%;
- Introduce a new worldwide gearing test for entities making an inbound investment (see below); and
- Increase the de minimis exemption threshold from AUD 250,000 to AUD 2 million of debt deductions per annum, to minimize compliance costs.

If enacted, the rules generally would apply for income years starting on or after 1 July 2014; however, for companies with a 31 December year end, the new rules would apply from 1 January 2015. There would be no transitional measures.

The prospective start date gives affected businesses time to review existing structures and funding arrangements to test debt levels against the reduced safe harbors, and to evaluate any opportunities to restore debt capacity via asset revaluations or other balance sheet items. Alternative methods to the safe harbors also should be considered for testing debt levels in Australia (e.g. the arm's-length debt test and worldwide gearing test).

The introduction of the new worldwide gearing test as an option for entities making an inbound investment to test their debt levels is a substantial and welcome change to the rules. The rationale for the new worldwide gearing test is that it "better reflects the policy intent of the thin capitalization rules" and allows "Australian operations to claim deductions on their debt where they are geared to the same level as the global group." This would effectively allow financial markets to determine thin capitalization compliant gearing levels.

To use the new worldwide gearing test, an entity must have eligible financial statements, i.e. broadly, audited consolidated financial statements prepared under "recognized overseas accounting standards." Where the new worldwide gearing test is available, it could be beneficial for Australian businesses owned by a multinational group that have substantial leverage.

Exemption for foreign nonportfolio dividends – The proposed amendments in the ED related to foreign nonportfolio dividends (dividends received by an Australian company that holds at least 10% of the voting power in the foreign company paying the dividends) are consistent with the 2013-14 budget announcement. The foreign nonportfolio dividend exemption is proposed to be amended to apply to returns on foreign nonportfolio equity interests and to align with the tax debt-equity classification rules. This change is targeted at the use of certain hybrid preference shares that are treated as debt for thin capitalization and interest deductibility purposes, but currently qualify for the exemption because they have the legal form of equity.

Another, welcome amendment would be the widening of the exemption to include dividends paid through a trust or partnership.

The ED does not expressly provide a start date for these changes; however they also are expected to apply for income years starting on or after 1 July 2014.

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## China:
## Guidance issued on determination of beneficial owner in entrusted investment structures

China's State Administration of Taxation (SAT) issued guidance on 21 April 2014 (Bulletin No. 24) that contains supplementary rules on determining beneficial owner status in "entrusted investment" structures and that clarifies previous SAT guidance on tax treaties issued since 2009.

Bulletin 24 is effective as from 1 June 2014, and will apply to any cases that commenced before this date that are yet to be settled.

Highlights of Bulletin 24 include the following:

- The bulletin provides that a nonresident investor may apply for tax treaty benefits as the beneficial owner of income derived from an entrusted investment.

  Entrusted investment structures are those in which "*nonresidents entrust their own funds to an 'offshore professional institution' for making equity or debt investments in Chinese resident enterprises.*" The term "offshore professional institutions" refers to financial institutions that are permitted by the jurisdictions in which they are established to engage in the business of securities brokerage, asset management and custodial services for funds or securities, etc. The bulletin provides that, under an entrusted investment structure, the entrusted funds are managed separately from the other funds of the offshore professional institution. The institution charges the nonresident investors service fees or commissions based on an agreement, and the nonresident investors bear the risks and receive the benefits of the investments.

  In general, it appears that the definition of an entrusted investment structure will include certain investment arrangements between nonresidents and Qualified Foreign Institutional Investors (QFIIs) that are covered by the current Chinese rules; investments through other types of financial institutions engaged in asset management and investment (such as private equity funds, collective investment vehicles, trusts, etc.) likely will be excluded from the scope of the bulletin, due to differences in their investment decision-making processes, distribution of risks and benefits, etc. Additionally, despite the numerous types of QFII investment structures, only the types meeting the definitions/requirements described above will qualify as entrusted investments for purposes of Bulletin 24.

Even if a QFII investment structure meets the definitions provided in Bulletin 24, other domestic and treaty rules may prevent a nonresident investor from qualifying for beneficial owner status and, hence, from being entitled to receive treaty benefits. Under most of China's tax treaties, a reduced withholding tax rate on dividends generally is granted where the beneficial owner holds directly at least 25% of the capital of the company distributing the dividends. Therefore, when an offshore professional institution is regarded as a nonresident investor's nominee/agent for purposes of the beneficial ownership requirement under a treaty, the nonresident investor can enjoy the reduced withholding tax rate only where it meets the "25% shareholding" requirement. This requirement may restrict the application of Bulletin 24 until the future relaxation of terms for QFII investments in China, as the current QFII regulations may not allow QFIIs to own more than a certain percentage of a Chinese company. Additionally, the nonresident investor must satisfy other conditions to qualify for beneficial owner status, as set forth in other SAT guidance.

- Strict documentation requirements will apply for nonresident investors to prove the existence of a qualifying entrusted investment structure, which some investors may find difficult to satisfy due to confidentiality concerns. The documentation required to be submitted to the Chinese tax authorities will include the following:
  - All agreements or contracts entered into between the relevant parties (including the nonresident investor, investment manager, custodians, securities firms, etc.) related to the investment, and any other materials that document the investment arrangement (which should include the source of the entrusted funds and the components of the investment, as well as the fees charged by each party);
  - Documents related to the remittance of investment income and other income and the flow of this income through each level/person to the nonresident investor, and an explanation of the nature and allocation of each type of income (dividends or interest). Where the nonresident is related to one or more other parties in the investment chain, it will be necessary to indicate the transfer pricing methodology used and to demonstrate that the transaction was carried out on arm's length terms; and
  - Any other documents requested by the tax authorities.
- The tax authorities will handle each case based on the type of income received by the nonresident investor. (It is worth noting that the only types of income covered by Bulletin 24 are dividends and interest; for capital gains or any other type of income, the provisions of the relevant tax treaty will apply.) Where the type of investment income is dividends or interest, the nonresident investor will be considered the beneficial owner that is eligible to receive treaty benefits only where "*the nature of the income remains unchanged through each step of remittance to the nonresident, and the actual remittance to the nonresident can be backed up by supporting documents.*" This documentation requirement emphasizes that the character of an equity/debt investment must remain the same throughout the investment chain for the nonresident investor to qualify as the beneficial owner.
- If the fees or remuneration received by any party other than the nonresident investor in the investment chain are linked to the dividends or interest income, the nonresident investor will not be considered the beneficial owner of the dividends or interest to the extent of the fees/remuneration and will not be eligible to receive treaty benefits related to this income. It appears that the fees/remuneration that would be denied preferential treaty rates would be those calculated based on a percentage of the equity/debt investment income.

With the emergence of various investment structures for offshore funds to invest into China, the SAT hopes to clarify the determination of beneficial ownership for certain common investments, and Bulletin 24 thus provides welcome guidance. However, taxpayers that hoped for clarification of beneficial ownership for a broader range of investment structures than the qualifying entrusted investment structures defined in Bulletin 24 may find the narrow scope of the bulletin disappointing.

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## European Union:
## CJEU rejects UK challenge to EU financial transaction tax

In a decision issued on 30 April 2014, the Court of Justice of the European Union (CJEU) rejected the UK's challenge to the introduction of an EU financial transaction tax (FTT). The European Commission's revised proposal for an EU-wide FTT was published in February 2013, to be levied where:

- A financial institution undertakes a financial transaction (e.g. a transfer of shares, bonds or derivatives, or a repo transaction) with another party (regardless of whether that other party is a financial institution); and
- One of the parties to the transaction is "established," or deemed to be established, in one of the participating EU member states (including where the financial instrument is issued in one of the participating EU member states).

Sales and purchases of shares and bonds would be taxed at a minimum rate of 0.1%, and derivative contracts at a minimum rate of 0.01% of the notional value, in each case, per financial institution. The Commission had proposed that the tax should come into effect as from 1 January 2014. However, because it was not possible to obtain the unanimous agreement of all EU member states, several countries decided to proceed with the introduction of the FTT in participating countries using the EU enhanced cooperation procedure (ECP). (ECP can be invoked when it proves impossible to obtain the unanimous agreement of all member states, but a group of at least nine member states decides to move forward with an initiative.)

The UK government lodged a legal challenge on 18 April 2013 against the decision by the Council of the EU to authorize the use of the ECP by 11 member states (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain) to introduce the FTT. The primary basis for the UK's challenge was that the imposition of the FTT on financial transactions that have a connection to one of the participating member states would affect businesses and residents within nonparticipating member states and, therefore, would infringe EU treaty law.

The CJEU dismissed the UK's challenge on procedural grounds, concluding that the action taken by the UK government was premature because it was based on a tax that does not yet exist, nor is there any detail on what the final tax would look like. As a result, further legal challenge to the FTT (by the UK or other nonparticipating EU member states) should be possible once there is more clarity on the final design of the tax.

Such clarity on the tax may still be a long way off. According to a joint statement issued on 6 May 2014 by the ministers of 10 of the 11 member states participating in the ECP (Slovenia was not part of the statement due to its upcoming elections), they remain firmly committed to introducing an FTT through a progressive step-by-step implementation, with the tax initially applying to shares and "some derivatives" as from 1 January 2016 at the latest. Member states that currently tax the transfer of other financial instruments (such as bonds) will be permitted to continue to maintain such taxes.

While this is a significant development in the process and implementation approach for the proposed FTT, key aspects of the design of the tax remain unclear, including the following:

- The meaning of the term "some derivatives";
- Whether the tax will apply on the basis of the residence of the parties and/or the market in which the securities are issued; and
- What exemptions will be available (such as those in relation to market making and repo transactions).

The challenge for firms, both within the participating member states and outside of these states (whether or not in the EU), remains the same – monitoring developments on the proposal and continuing to evaluate how these developments could have an impact on their businesses.

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## Germany:
## Draft decree issued on interpretation of change-in-ownership rules

The German tax authorities have issued a draft decree outlining their interpretation of the change-in-ownership rules. The decree is intended to update a 2008 decree and includes, for the first time, guidance on the intragroup restructuring exemption rule and the built-in gains exemption rule.

Under the change-in-ownership rules enacted in 2008, certain tax attributes (tax loss carryforwards, current year losses and interest carryforwards) may be forfeited when a person (or a group of persons with common interests) directly or indirectly acquires a shareholding of more than 25% in a loss company. If a person (or group of persons with common interests) acquires more than 25% but no more than 50% of a loss company, the loss company's tax loss carryforwards, current year losses and interest carryforwards generally are forfeited on a pro-rata basis; if a person (or group of persons with common interests) acquires more than 50% of a loss company, all such tax attributes generally are forfeited. The change-in-ownership rules apply to both intragroup share transfers and transfers involving third parties.

The "intragroup restructuring exemption rule" and the "built-in gains exemption rule" were introduced in 2010 to provide relief from the forfeiture of tax attributes in certain cases:

- As the name implies, the intragroup restructuring exemption rule exempts certain intragroup share transfers from the forfeiture of tax losses/interest carryforwards.
- Under the built-in gains exemption rule, tax losses/interest carryforwards are not forfeited to the extent the loss company has unrealized taxable built-in gains. Built-in gains typically are calculated as the difference between the purchase price for the acquired shares and the equity in the loss company's balance sheet.

The draft decree would provide guidance on some controversial aspects of the exemption rules, as well as on the allocation of profits and losses in cases involving mid-year share acquisitions. Unfortunately, however, the tax authorities largely apply a rather formalistic and taxpayer-unfriendly approach in the decree.

The decree would provide guidance on the following topics:

- With respect to the intragroup restructuring exemption rule, the draft includes explanations and examples and would clarify that, for this exemption to apply, there must be a single person that wholly owns (i) the entity that transfers the shares in the loss entity, and (ii) the entity that acquires the shares in the loss entity. As a result, the intragroup exemption rule would not apply where the shares in a loss company are either acquired or sold directly by the ultimate head of a group of companies whose shares are publicly listed.
- With respect to the built-in gains exemption rule, the decree would clarify that built-in gains of a subsidiary in a consolidated group could not be used to offset losses/carryforwards at the level of the head of the income tax consolidation, and could not prevent the forfeiture of these tax attributes. This interpretation has been subject to criticism because, under income tax consolidation principles, a subsidiary's taxable profits and losses are allocated to and accumulate at the level of the head of the income tax consolidation.
- With respect to a mid-year share acquisition, the decree would provide the following guidance:
    - Profits that are realized between the beginning of the year and the date of the change in ownership could be offset by tax loss carryforwards that were unused as of the end of the previous fiscal year. This statement is in line with a recent decision of the Federal Tax Court (I R 14/11). However, such an offset would be possible only in cases where the company whose shares are transferred has positive taxable income for the entire year in which the change in ownership occurs. Minimum taxation rules would apply (only 60% of current year income that exceeds EUR 1 million could be offset by tax loss carryforwards).
    - Taxable income for the entire year would need to be allocated between the periods before and after the change in ownership. Economic criteria would have to be applied when allocating the income (e.g. an interim financial statement may be prepared).
    - If a member of an income tax consolidated group is acquired during the consolidated group's fiscal year, the change-in-ownership rules would need to be applied separately at the level of the controlling entity and at the level of the controlled subsidiaries that are part of the tax consolidated group, before the attribution of the controlled subsidiaries' profit/loss to the controlling parent entity. This means that in cases where the controlling entity realizes a standalone profit between the beginning of the year and the

date of the change in ownership, but a subsidiary incurs a standalone loss during this period, the subsidiary's loss would not be available to offset the parent's profit and generally would be forfeited.

Since the decree is in draft form, it is possible that it still could be revised before being finalized. Interested parties may submit comments until 27 May 2014.

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## India:
## Court rules secondment gives rise to FTS and service PE

In a decision issued on 25 April 2014 (*Centrica India Offshore Pvt. Ltd*), on an appeal of a ruling from India's Authority for Advance Rulings (AAR), the Delhi High Court held that reimbursements of salaries by an Indian company to overseas entities in relation to the secondment of employees would qualify as fees for technical services (FTS) under India's tax treaties with the UK and Canada. At the same time, the court rejected the Indian company's arguments that no service permanent establishment (PE) existed for the overseas entities, thereby implicitly confirming the ruling of the AAR to the effect that such a PE did exist. The decision is controversial because, under India's treaties with the UK and Canada, where payments qualify as FTS, the activities that generate such payments are specifically excluded from activities that can create a service PE; the court's decision, however, seems to suggest that the relevant payments qualify as FTS and that a service PE exists.

### Facts of the case

The taxpayer, Centrica India Offshore Private Limited (CIOP), an Indian company, is a wholly owned subsidiary of a UK company, Centrica Plc. Centrica Plc and its other subsidiaries in the UK and Canada (the overseas entities), which were in the business of supplying gas and electricity to consumers in the UK and Canada, outsourced their back office support functions to third-party vendors in India. CIOP was set up in India to act as a local interface between the overseas entities and the Indian service providers, and to ensure that the Indian vendors complied with Centrica's quality standards. Under a service agreement with the overseas entities, CIOP received payments for its services, plus a mark-up of 15%.

CIOP and the overseas entities simultaneously entered into a secondment agreement, under which employees of the overseas entities were sent on short-term assignments to CIOP. According to the secondment agreement, the seconded employees were to work under CIOP's direct supervision and control – the overseas entities were not responsible for any error or omission related to the work of these employees. CIOP bore all risks and rewards associated with the work performed by the seconded individuals. CIOP also bore all costs for the monthly remuneration of the seconded employees; although the overseas entities continued to pay the seconded employees' salaries directly, the overseas entities recharged these costs to CIOP on a monthly basis and CIOP made the relevant payments to the overseas entities. Taxes were withheld in respect of salaries paid to the seconded employees.

In 2009, CIOP requested a ruling from the AAR on whether the amounts it paid to the overseas entities under the secondment agreement were in the nature of income accrued to the overseas entities and, if so, whether it was required to withhold tax on the payments under India's Income-tax Act (ITA).

The AAR ruled as follows:

- The reimbursement of salary costs for the seconded employees was in the nature of income accrued to the overseas entities because CIOP did not have any obligation to pay salaries to the seconded employees' under the secondment agreement and the seconded employees had no rights to claim their salaries from CIOP.
- The services provided by the seconded employees were managerial in nature and were not within the scope of the definition of FTS in India's treaties with the UK and Canada. Accordingly, the payments from CIOP to the overseas entities for the seconded employees' services were not considered FTS.

- Because the seconded employees remained the employees of the overseas entities and they remained in India for a period that exceeded the PE threshold, the services the employees performed in India created a service PE for the overseas entities in India under the relevant tax treaties.
- Under the ITA, CIOP was required to withhold tax on the amounts paid to the overseas entities, on account of the establishment of the service PE.

CIOP appealed the AAR's ruling to the Delhi High Court.

Delhi High Court decision

The Delhi High Court held that the payments by CIOP to the overseas entities qualified as FTS under the relevant tax treaties. The court also dismissed CIOP's arguments against the existence of a service PE, which could be seen as indirectly concluding that a service PE existed for the overseas entities.

Fees for technical services – The court examined the relevant articles of India's tax treaties with the UK and Canada and, unlike the AAR, concluded that the payments from CIOP to the overseas entities qualified as FTS under the provisions of both treaties.

Article 13 of the India-UK treaty defines FTS as "payments of any kind to any person in consideration for the rendering of any technical or consultancy services (*including the provision of services of technical or other personnel*)" (emphasis added). In this case, the court concluded that the overseas entities provided technical services to CIOP through the seconded employees, since the definition in the treaty expressly includes the provision of services of personnel. The court explained that technical services are not limited to technological services – the definition encompasses the provision of know-how, techniques and technical knowledge.

Article 12 of the India-Canada treaty covers fees for "included services." This term includes both technical services and consultancy services, but the relevant definition specifically requires technical knowledge to be "made available." In this case, the Delhi High Court concluded that the function of the seconded employees was to transfer their technical abilities to ensure quality control in relation to the Indian vendors or, in other words, to "make available" their know-how of the field to CIOP for its consumption. The secondment, if viewed from this angle, led to the benefit of transmission of the seconded employees' knowledge to CIOP's regular employees. The court stated that article 12 contemplates not only a formal transfer of intellectual property, but also the transfer of other techniques and skills, such as those required to ensure that the task entrusted to CIOP – quality control – was carried out diligently.

The court further held that there was no distinction between the provision of services by the overseas entities and the mere secondment of employees, since the service performed by the overseas entities was to provide technical services through the seconded employees.

Service PE – The Delhi High Court rejected CIOP's arguments that the seconded employees did not create a service PE for the overseas entities. The court held that the facts indicated that the overseas entities were the employers of the seconded employees for the following reasons:

- Salaries were paid by the overseas entities, which were not mere conduits. The seconded employees could not sue CIOP for default in payment of their salary; no obligation was spelled out for CIOP in relation to these employees. Documents submitted did not reflect that the salary costs of the seconded employees were to be borne by CIOP.
- The seconded employees remained entitled to participate in the overseas entities' retirement and social security plans, and in other benefits applicable to them.
- There was no documentation to substantiate that the seconded employees could terminate the secondment arrangement. CIOP had the right to terminate the arrangement only in respect of its agreement with the overseas entities, and not in respect of the services the seconded employees provided to the overseas entities under the original employment relationship, which remained independent and beyond the control of CIOP.
- The employment relationship between the overseas entities and the seconded employees was never terminated, and CIOP had no authority to modify the continuing relationship. The court also determined that the OECD commentary, which distinguishes a situation where an employee works exclusively for an enterprise in the state of employment and is released for a period by the enterprise in the state of residence, did not apply given the facts in this case.

- Although CIOP may have had operational control over the seconded employees and may have been responsible for their failures, these factors could not displace the larger, established context of the employment between the seconded employees and the overseas entities.
- The services provided by the seconded employees were not in the nature of stewardship, and the overseas entities continued to be the real employers.

The court distinguished the concepts of legal and economic employers. The court recognized that the seconded employees were originally employees of the overseas entities, not employees whose productivity was ultimately to be traced to CIOP that were hired by the overseas entities as a façade. They were seconded for a limited period of time to CIOP to utilize their technical expertise.

The court also cited case law of the Indian Supreme Court to support the AAR's view that a service PE existed. However, despite doing so, the court did not appear to consider the Supreme Court's position that, in order for a service PE to be created, it is necessary that the foreign enterprise should assume responsibility for the work of the seconded personnel.

The court relied on the ruling in *AT & S India Private Limited* to conclude that the payments from CIOP to the overseas entities were not in the nature of a reimbursement. The court stated that the nature of a transaction determines whether it is taxable, not the nomenclature used to describe the transaction or the absence of a markup on costs.

Comments

The Delhi High Court held that the payments made by CIOP to the overseas entities fell within the scope of FTS under the relevant tax treaties. At the same time, by rejecting CIOP's arguments that no service PE existed, the Delhi High Court appears to have concluded that the secondment of employees created a service PE. However, because the Delhi High Court did not independently analyze article 5 of the applicable treaties, which covers PEs and specifically excludes services that are taxable under the articles on FTS from creating a service PE, it is unclear how the court would have resolved the conflict between these provisions. Due to the limited analysis provided by the Delhi High Court, it may be necessary to read its decision in tandem with the AAR ruling for a complete picture of the reasons for the conclusion that a service PE existed in this case.

The court's approach in the CIOP case effectively eliminated the ability to transfer employment through a secondment arrangement. Assuming the decision is not appealed, payments made to reimburse salary costs of seconded employees may result in a tax liability for the overseas entity. Companies should consider reviewing their secondment arrangements in the light of the ruling, to determine whether employees seconded to an Indian company result in performance of a taxable service in India by the seconding entity.

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## Malta:
## Tax treaty signed with Moldova and treaty ratified with Russia

Malta and Moldova signed their first income tax treaty and an accompanying protocol on 10 April 2014, and the treaty signed between Malta and Russia on 24 April 2013 has been ratified by both states. Both treaties are expected to contribute to the development of cross-border trade, as well as the finance and investment relationships between the treaty partners.

Moldova treaty

The main features of the Malta-Moldova treaty are as follows:

Withholding taxes – The treaty provides for withholding at source, at the following rates:

- **Dividends** – A 5% rate will apply where dividends are paid by a resident of Moldova to a resident of Malta that is the beneficial owner of the dividends. In the case of Malta, no withholding tax effectively will be levied, since any withholding tax on dividends may not exceed the tax chargeable on the distributable profits.
- **Interest and royalties** – The rate on interest and royalties generally will be 5%. However, the term "royalties" does not include payments for the use of, or the right to use, industrial, commercial or scientific equipment (e.g. leasing income).

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

**Elimination of double taxation** – Both states will apply the ordinary credit method for purposes of elimination of double taxation.

**Limitation of benefits (LOB)** – The treaty does not contain any LOB provisions.

**Protocol** – The protocol clarifies the following provisions:

- The term "person" includes "an investment fund," which means:
    - In Malta, a scheme or arrangement that is licensed or otherwise authorized under the Investment Services Act; and
    - In Moldova, a public company participant of the securities market, created for attracting funds by offering its own shares and registered under domestic legislation.
- With respect to the term "enterprise of a contracting state," where an enterprise that operates ships and aircraft in international traffic is not a resident of either of the contracting states, the right to tax will be allocated to the state under which flag the ship or aircraft operates.

**Entry into force** – The treaty will enter into force on the date the second country gives notice that its internal ratification procedures have been completed. The treaty will apply:

- In respect of taxes withheld at source, on income derived on or after 1 January of the calendar year following the entry into force; and
- In respect of other taxes on income, to taxes chargeable for any tax year beginning on or after 1 January of the calendar year following the entry into force.

### Russia treaty

The main features of the Malta-Russia tax treaty are as follows.

**Withholding taxes** – The treaty provides for withholding at source, at the following rates:

- **Dividends** – A 0% rate will apply to dividends paid to a Malta-resident pension fund, provided the dividends are derived from investments that are made out of assets of the pension fund; a 5% rate will apply to dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the distributing company and the holding amounts to at least EUR 100,000; the rate will be 10% in all other cases. From a Maltese perspective, any withholding tax on dividends may not exceed the tax chargeable on the profits out of which the dividends are paid, i.e. effectively, no withholding tax will be levied.
- **Interest and royalties** – The rate on interest and royalties generally will be 5%. However, the term "royalties" does not include payments for the use of, or the right to use, industrial, commercial or scientific equipment (e.g. leasing income).

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

**Elimination of double taxation** – Both states apply the ordinary credit method for purposes of the elimination of double taxation.

Limitation of benefits – In addition to an LOB provision that will apply to all payments of dividends, interest and royalties, the reduced withholding tax rates will not apply at the level of the recipient in triangular situations (i.e. a permanent establishment of the recipient in a third state). The treaty also contains a general LOB; however, this provision will not apply where a company is engaged in substantive business operations in the residence state and claims relief from taxation in the source state with respect to income that is connected to such operations.

Protocol – The protocol to the treaty authorizes the treaty partners to apply the provisions of their national thin capitalization rules or controlled foreign company rules (if any).

Benefits of Malta's tax system

In addition to the benefits provided under treaties, certain features of Malta's domestic tax rules may be beneficial, including the following:

- Participation exemption – Malta is an attractive jurisdiction for holding shares in foreign entities, whether within or outside the EU. Under the participation exemption, dividends or gains derived from a qualifying participating holding (typically, at least 10% of equity shares or an equity investment of at least EUR 1.2 million held for more than 183 days) in a company are exempt from tax in Malta, provided certain other requirements are met. Additional criteria apply to dividend distributions received from a non-EU company.
- Full imputation system – A Malta company generally is subject to Malta tax on its worldwide income at the standard tax rate of 35%. However, the application of the full imputation system, in conjunction with the possibility for the shareholders to claim Malta tax refunds, typically results in an effective tax rate for the company and its shareholders of 5% or less. That is, a shareholder in receipt of a dividend from a Malta company out of certain profits is entitled to claim a refund of the Malta tax on those profits, provided it is registered for this purpose and all other conditions have been satisfied. A claim for a refund is paid by the Malta tax authorities within 14 days of the submission of a valid application.
- Source and remittance basis of taxation – A person who is "resident" but not "domiciled" in Malta (e.g. a company incorporated outside Malta but managed and controlled from Malta) is taxable on all chargeable income earned or derived in Malta (i.e. on a source basis), and on all chargeable income arising outside Malta (passive income) to the extent such income is received in Malta (i.e. on a remittance basis). Capital gains arising outside Malta are not taxable in Malta, irrespective of whether the gains are remitted to Malta. This basis of taxation may be used to achieve an effective tax rate in Malta of, typically, 0% with respect to certain foreign-source (passive) income that is not received in Malta, and foreign-source capital gains.

In addition, Malta generally does not levy withholding tax on dividends, interest and royalty payments made by a Malta company to nonresidents, and there are no CFC rules or thin capitalization restrictions in Malta.

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## Vietnam:
## Circular issued on invoices for sales of goods and supplies of services

Vietnam's Ministry of Finance has issued a circular dated 31 March 2014 (Circular 39) to provide guidance on the management and use of invoices for sales of goods and supplies of services. Circular 39 replaces a previous circular and applies as from 1 June 2014.

According to Circular 39, instead of issuing export invoices for exported goods and services (as previously required), export processing enterprises should issue sales invoices (which were specially designed for enterprises in a nontariff zone), while other enterprises should issue standard VAT invoices.

Accordingly, as from 1 June, the tax authorities no longer handle notifications of issuance of export invoices from enterprises. However, if an enterprise already has notified the tax authorities that such invoices were issued, the enterprise still may be allowed to continue using these invoices if it registers with the local tax authorities before 1 August 2014. Otherwise, the enterprise is required to destroy the export invoices.

Circular 39 also provides that enterprises classified as "high tax risk" enterprises must (i) acquire printed invoices from the tax authorities for use, or (ii) self-print invoices using the software provided via the tax authorities' website. These enterprises also must report invoice usage on a monthly basis, instead of a quarterly, basis.

Circular 39 defines enterprises with high tax risks as those with owner equity below VND 15 billion and that have one of the indicators of tax risks listed in the circular, such as the following:

- An enterprise has no legal ownership or right to use its factories, warehouses or means of transportation;
- An enterprise has carried out purchase/sale transactions with another enterprise, and both enterprises are owned by members of the same family; or
- An enterprise frequently changes its business address without proper notification to the tax authorities.

Circular 39 also provides details on the required contents of an invoice and guidance for enterprises that self-print invoices.

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## In brief

Greece – The Ministry of Finance issued a press release on 14 May 2014 that revokes a circular issued earlier in 2014 that required nonresident investors to pay tax on gains derived from the transfer of sovereign and corporate bonds that were sold between 29 February 2012 and 31 December 2013. In another press release, also issued on 14 May, the ministry clarified that nonresident investors are not subject to capital gains tax on the transfer of Greek state bonds as from 1 January 2014. The capital gains tax rate was 40% for 2012 and 33% for 2013, and is 26% as from 2014.

Korea – During a recent meeting between the tax authorities of Japan and Korea, the parties discussed and exchanged experiences on global tax administration trends, the reporting of offshore financial accounts and international tax cooperation. The commissioner of the Korean authorities also requested proactive support and cooperation from a research task force that was set up to study specific action and development plans to strengthen international tax cooperation, including the probe against offshore tax evasion. The commissioners of both countries agreed to share ideas and experiences to improve the administration of their tax systems.

New Zealand – The 2014 budget announced on 15 May 2014 contained only a few tax-related measures, including the following: (1) measures providing that R&D start-up companies will have access to all or part of their tax losses in the form of a cash receipt, rather than carrying these losses forward, provided certain requirements are met; (2) measures to ensure that capitalized development expenditure on depreciable intangible assets (e.g. patents) is deductible over time; and (3) an allocation of NZD 132 million to the New Zealand tax authorities over the next five years to bolster tax compliance activities. Notably, the budget did not include any announcements relating to base erosion and profit shifting.

Thailand – The Director-General of the Revenue Department has proposed the following measures to the Minister of Finance: extend the 20% corporate income tax rate for an additional year after the rate expires at the end of the 2014 accounting period; and extend the 7% standard rate of VAT for an additional year after the current reduction (from 10%) expires on 30 September 2014. If approved by the Ministry, the proposals will be forwarded to the cabinet for review.

## Tax treaty round up

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

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

Belgium-Norway – When in effect, the treaty signed on 23 April 2014 provides for a 0% rate where dividends are paid to a company that holds directly at least 10% of the capital of the distributing company for an uninterrupted period of at least 12 months; a 5% rate will apply where dividends are paid to a qualifying pension fund; otherwise, the rate will be 15%. The rate on interest will be 10%, with exemptions for interest paid in connection with a commercial credit resulting from deferred payments for goods, merchandise, equipment or services; on a bank loan (other than loans represented by bearer instruments); on a credit or loan granted or extended by one enterprise to another; or to a qualifying pension fund. Royalties will be taxable only in the state of residence of the recipient.

Belgium-Poland – When in effect, the protocol to the 2001 treaty signed on 14 April 2014 provides that a 0% rate will apply where dividends are paid to a company that holds at least 10% of the capital of the distributing company for a period of 24 months, or where dividends are paid to specified pension funds; otherwise, the rate will be 10%. An exemption will be provided for interest paid to specified pension funds. The withholding tax rate on royalties will not be affected by the protocol.

Belgium-Switzerland – When in effect, the protocol to the 1978 treaty signed on 10 April 2014 provides that a 0% rate will apply where dividends are paid to a company that holds directly at least 10% of the capital of the distributing company for an uninterrupted period of at least 12 months, or where dividends are paid to a qualifying pension fund; otherwise, the rate will be 15%. A 0% rate will apply to interest paid on a loan or credit granted by an enterprise to another enterprise, and to interest paid to a qualifying pension fund; otherwise, the rate will be 10%. The withholding tax rate on royalties will not be affected by the protocol.

Croatia-Portugal – When in effect, the treaty signed on 4 October 2013 provides for a 5% withholding tax where dividends are paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company; otherwise, the rate will be 10%. A 10% rate will apply to interest and royalties.

Czech Republic-Pakistan – When in effect, the treaty signed on 2 May provides for a 5% withholding tax where dividends are paid to a company (other than a partnership) that holds directly at least 25% of the capital of the distributing company; otherwise, the rate will be 15%. A 10% rate will apply to interest and royalties.

Malta-Moldova – See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140523_8.html

Malta-Russia – See article in this issue.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140523_8.html

New Zealand-Vietnam – The 2013 treaty entered into force on 5 May 2014 and will apply in New Zealand as from 1 January 2015 for withholding taxes and as from 1 April 2015 for other taxes; it will apply in Vietnam as from 1 January 2015. When in effect, the treaty provides for a 5% withholding tax on dividends paid to a company that holds directly at least 50% of the voting power of the distributing company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Portugal-Qatar – The 2011 treaty entered into force on 4 April 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 5% rate where dividends are paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%.

Singapore-Barbados – The 2013 treaty entered into force on 25 April 2013 and will apply in Barbados as from 1 January 2015; in Singapore, the treaty will apply in respect of tax chargeable for years of assessment beginning on or after 1 January 2016 and in respect of requests for exchange of information made on or after 25 April 2014 related to taxes arising on or after 1 January 2015. When in effect, the treaty provides that dividends will be taxable only in the state of residence of the recipient. A 12% withholding tax will apply to interest, and an 8% rate on royalties.

Slovenia-Kosovo – The 2013 treaty entered into force on 16 April 2014 and will apply as from 1 January 2015. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the distributing company; otherwise, the rate will be 10%. The rate on interest and royalties will be 5%.

Spain-Azerbaijan – When in effect, the treaty signed on 23 April 2014 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 distributing company and that has invested at least EUR 25,000 (or its equivalent in another currency) in the distributing company; otherwise, the rate will be 10%. The rate on interest will be 5%, with an exemption for interest paid to a public financial institution. A 5% rate will apply to royalties paid for the use of, or the right to use, a patent, design or model, plan, secret formula or process, or for information relating to industrial, commercial or scientific experience; otherwise, the rate will be 10%.

Spain-Oman – When in effect, the treaty signed on 30 April 2014 provides for a 0% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 20% of the capital of the distributing company; otherwise, the rate will be 10%. The rate on interest will be 5% and that on royalties, 8%.

Spain-Uzbekistan – When in effect, the treaty signed on 8 July 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 distributing company; otherwise, the rate will be 10%. The rate on interest and royalties will be 5%.

United Kingdom – The government recently announced its treaty plans for the coming year (up to 31 March 2015) as part of its annual review of the UK's tax treaty network to ensure that the UK's treaties continue to meet the needs of the businesses and individuals receiving income from abroad. The government intends to commence treaty negotiations with Colombia, Kyrgyzstan and Trinidad & Tobago, and to move forward work on treaties/protocols with Austria, Bulgaria, Canada, Croatia, India, Kosovo, Lesotho, Luxembourg, Malawi, Portugal, Russia, Senegal, Sweden, Tajikistan, Thailand, Turkmenistan and the US.

United States – Intergovernmental agreements (IGAs) to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) have been signed between the US and Belgium (on 23 April 2014), Australia (on 28 April 2014), Austria (on 29 April 2014), Jamaica (on 1 May 2014), Gibraltar (on 8 May 2014) and Liechtenstein (on 16 May 2014). The Internal Revenue Service has also released a notice announcing that any enforcement actions for calendar years 2014 and 2015 under FATCA and the related regulations will take into consideration the good faith efforts of foreign financial institutions and withholding agents to comply with those provisions.

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Brazil
Repeal of RTT and changes to CFC/share premium allocation rules converted into law
Provisional Measure No. 627/13 (PM 627) was converted into Law 12,973/14 and published in Brazil's official gazette on 14 May 2014, a full six months after its enactment in November 2013. PM 627 introduced measures to update the tax rules to account for differences with Brazilian GAAP and for the transition to IFRS, and made some other broad changes to the tax rules. For example, PM 627 repealed the transition tax regime and introduced new controlled foreign company rules and

allocation of share premium recognition criteria. Most of the changes in Law 12,973/14 are taxpayer favorable and provide more clarity, although additional guidance from the Brazilian tax authorities still will be needed in several areas.
Issue date: 15 May 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-brazil-160514.pdf?id=us:em:na:wta:eng:tax:052314

United States
Bills Extend Scope of Section 7874
On Tuesday, 20 May 2014, House Ways and Means Committee Ranking Member Sander Levin introduced the "Stop Corporate Inversions Act of 2014." Similar legislation was introduced in the Senate by Senate Permanent Subcommittee on Investigations Chairman Carl Levin. Both bills would make changes to the anti-inversion rules in Internal Revenue Code section 7874.
Issue date: 21 May 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-210514.pdf?id=us:em:na:wta:eng:tax:052314