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French tax authorities issue final guidelines on anti-hybrid rule

On 5 August 2014, the French tax authorities (FTA) issued final guidelines on the new anti-hybrid rule that limits the deductibility of interest paid to related entities and that is applicable to interest incurred during the fiscal years ended since 25 September 2013, irrespective of the date the loan was granted. The FTA issued draft guidelines for public consultation in April; the final guidelines further clarify the "minimum taxation test" and confirm that disallowed interest should not be considered deemed dividend income.

The anti-hybrid rule included in the 2014 finance law limits the deductibility of interest by a French borrower that is directly or indirectly related to the lender, regardless of whether the lender is a French company or a nonresident company. Under the anti-hybrid rule, an interest deduction is disallowed at the level of the French borrower if the lender is not subject to corporate income tax on the interest income at a rate equal to at least 25% of the tax rate that would have applied under the normal French rules (the normal French corporate rate is 33.33%, plus surtaxes – a social security charge of 3.3% levied on legal entities whose corporate income tax exceeds EUR 763,000, and a temporary contribution of 10.7% where turnover exceeds EUR 250 million). As a result, the minimum rate to avoid application of the anti-hybrid rule ranges from 8.33% to 9.5%, depending on whether the lender is subject to the surtaxes.

The main clarifications in the final guidelines are as follows.

Minimum taxation

The minimum tax rate is the "reference rate" for determining the tax level of the gross interest income corresponding to financing expenses paid by the French borrower. As explained above, interest received by a lender from a related French borrower must be subject to a tax equal to at least 25% of the corporate tax that would have been due in France (by a French lender or, where the lender is nonresident, that would have been due in France had the lender been established in

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France). Whether the minimum taxation threshold is satisfied is tested by reference to the gross amount of interest income received by the lender.

The FTA stated in the draft guidelines that it is not necessary for the receipt of interest by the lender from the borrower to result in the actual payment of tax, but only for the income to be included in the lender's taxable base. Interest income for this purpose is accounted for on a gross basis, i.e. expenses (such as financing expenses) that could reduce taxable income are not taken into account.

Deductible interest relating to the lender company's own refinancing will not be taken into account when determining the tax rate on interest received from the affiliated borrower company. It is important to note that, under the final guidelines, this treatment is not limited to cases in which the refinancing is carried out through third-party companies; refinancing through related parties also is excluded from the determination.

The mere fact that the lender does not have profits, or is operating at a loss, will not make the finance charges nondeductible for the borrower company. Likewise, the final guidelines have added that the mere fact that the lender company is part of a French consolidated tax group has no impact on the determination of whether the minimum tax rate threshold is satisfied for interest income. Unfortunately, the FTA has not provided guidance on the implications for the deductibility of interest when the lender company is subject to a foreign tax group regime. The final guidelines do clarify, however, that the tax rate on the interest that is to be compared to the reference rate should be determined by taking into account the law of the country in which the lender is resident and, in particular, any specific rules that affect the determination of the taxable amount of the interest received. Accordingly, when interest paid receives special treatment under foreign law, the tax rate will be determined by multiplying the normal tax rate applicable to interest income under the relevant foreign law by the percentage of the taxable base actually subject to tax.

Taxation reference rate

To the extent the lender is taxed during the fiscal year on interest paid by the borrower at a rate equal to at least 25% of the French corporate tax rate, plus any additional corporate surtaxes/contributions that may apply, the interest will be deductible in arriving at the taxable results of the borrower company. Accordingly, as specifically clarified in the final guidelines, which specifically mention the three tax and surtax rates currently applicable, the minimum tax rate may be as high as 9.5% if the lender company is (or, had it been established in France, would be) subject to the 3.3% social security contribution and the 10.7% exceptional contribution. The minimum tax rate thus ranges from 8.33% (25% of the standard French corporate tax rate, if neither of the contributions are due), to 8.6083% (if only the 3.3% social contribution applies), to 9.5% (if both additional contributions are due).

Nondeductible interest is not deemed dividend income

Significantly, the FTA clarifies in the final guidelines that the fact that finance charges are not deductible under the anti-hybrid rule will not have any impact on the classification of these amounts. In particular, the nondeductibility of these charges will not result in the amounts being reclassified as distributed income. There thus is no impact from the anti-hybrid rule in terms of source withholding tax or the 3% contribution on distributed income.

Transparent entities

When the lender is a transparent entity (French or nonresident), special rules apply regarding the dependence between the parties and the minimum taxation rate. To fall within the scope of the anti-hybrid rule, both of the following requirements must be met:

- The borrower must be related to the transparent lender entity; and
- The transparent lender entity must be related to one or more of its partners/shareholders/unitholders.

Where this double-dependence link is not met, the anti-hybrid rule does not apply. Where this double-dependence link is met, the minimum taxation test is applied at the level of the related partners/shareholders/unitholders of the transparent lender entity on interest paid to such partners/shareholders/unitholders. The final guidelines provide that the FTA tolerates up to two levels of transparency. When the transparent lender entity linked to the borrower is itself held by another transparent entity, the minimum taxation test is applied at the level of the partners/shareholders/unitholders of the second entity.

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Burden of proof

The draft guidelines provide that the borrower must prove that the lender is liable to the minimum corporate tax on the gross interest income it receives during the relevant period, i.e. the fiscal year during which the finance charges are deducted from the taxable result of the borrower company. Although the proof must be provided only if the FTA requests it (and need not be included with the annual tax return), borrowers should ensure that the documentation is available before taking an interest deduction. As specified by the final guidelines, the corresponding income simply needs to be included in the taxable results of the lender company for that period.

Where the accounting and/or tax rules for the borrower and a nonresident lender are different, the charge is deductible for the borrower only in the fiscal year in which the borrower can demonstrate that the interest income is included in the taxable results of the lender company and is subject to at least the minimum tax rate.

Where the fiscal years of the borrower and lender do not close at the same date (e.g. where there is a difference between the fiscal year in which the expense normally is deductible for the borrower and the year in which the corresponding income is included in the lender's taxable results), the final guidelines specifically added that the borrower may take the deduction immediately, but bears the burden of risk regarding the lender company's minimum taxation on interest income where the lender has not yet closed its fiscal year.

Miscellaneous

- The final comments clarify that if a company related to the lender transfers the loan to an unrelated company during the fiscal year, or vice versa, the anti-hybrid rule will apply for the borrower company, but nondeductibility will apply only to the portion of the interest, determined on a pro-rata basis, that relates to the period during which the debt was held by the related company during the relevant financial year.
- Where finance charges that fall within the scope of the anti-hybrid rule are deemed to be profits taxable in France under the French controlled foreign company rules, the borrower is not required to treat the interest as a disallowed expense under the anti-hybrid rule.

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India's Delhi High Court clarifies tax consequences of indirect share transfers

In a decision issued on 14 August 2014 (*Director of Income Tax (International tax) v. Copal Research Limited, Mauritius*), the Delhi High Court examined the meaning of the term "substantially" in the amended version of the provisions of the Income Tax Act (ITA) dealing with indirect transfers, and opined that the purpose of the amended rules is not to expand the scope of taxation to include income derived from transfers that do not have a territorial nexus with India. The court ruled in favor of the taxpayer and stated that capital gains arising from a transfer of shares of a foreign company should not be liable to tax in India if such shares derive less than 50% of their value from underlying assets located in India. In other words, a threshold of *50% or more* should be met before taxation of capital gains is triggered in India. The court also upheld the applicability of the capital gains tax exemption under the India-Mauritius tax treaty.

While the Delhi High Court decision provides welcome clarification with respect to the interpretation of the term "substantially" that is used in the provisions of the ITA relating to indirect transfers, the fact that the court addressed the meaning of the term even though this issue was not specifically before it means that its interpretation may be considered nonbinding *dicta* that may have only persuasive value in other cases.

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Background

Following the India Supreme Court's decision in the *Vodafone* case in 2012, the Finance Act 2012 introduced a controversial and far-reaching amendment into the ITA that clarified that a nonresident would be subject to tax in India on a transfer of shares or an interest in a foreign entity if such shares/interest substantially derive their value from assets located in India. The fact that the word "substantially" is not defined in the amended rules has created considerable uncertainty regarding the application of the rules, particularly for foreign companies with business interests in India; such companies have faced ambiguity about the capital gains tax and withholding tax implications of certain share transfers overseas that result in the indirect transfer of an India business, as well as potential challenges by the India tax authorities.

Facts of the case

The Copal Group had undertaken the sale of shares of its companies to the Moody's Group via three transactions:

- Copal Research Limited, Mauritius (CRL) sold a wholly-owned Indian subsidiary to Moody Cyprus (transaction 1);
- Copal Market Research Limited, Mauritius (CMRL) sold a wholly-owned US subsidiary that, in turn, was the 100% owner of an Indian subsidiary to Moody USA (transaction 2); and
- One day after transactions 1 and 2, the Copal group shareholders holding 67% of the shares in Copal Partners Limited, Jersey (CPL), the ultimate holding company at the head of the Copal group, sold their shareholdings to Moody UK; the balance of 33% of shares in CPL continued to be held by banks and financial institutions (transaction 3).

The taxpayers claimed that transactions 1 and 2 were not taxable in India under the provisions of the India-Mauritius tax treaty, and requested a ruling from India's Authority for Advance Rulings (AAR) on the capital gains and withholding tax implications of these transactions. The AAR determined that the capital gains resulting from the transfers were not taxable in India and, consequently, did not attract withholding tax.

The Indian tax authorities challenged the AAR's ruling, claiming that:

- Transactions 1 and 2 were carried out with the objective of avoiding tax and had no commercial substance. All three transactions should be viewed together as a transfer of the entire business of the Copal group to the Moody's group, which would have been taxable in India if transactions 1 and 2 had not been executed because the shares of CPL (involved in transaction 3) derived significant value from assets located in India. Effectively, all three transactions were part of a single larger transaction.
- Management and control of the Copal group were carried out by a UK resident, and not in Mauritius; therefore, the companies involved in transactions 1 and 2 should not have been entitled to beneficial treatment under the India-Mauritius tax treaty.

Delhi High Court ruling

The Delhi High Court upheld the determination of the AAR, ruling that the sales of shares by the Mauritius companies were bona fide transactions with a commercial justification.

Specifically, the court held that transactions 1 and 2 were commercially justified and were not structured to avoid tax. Executing transactions 1 and 2 before transaction 3 allowed the Moody's group to acquire 100% of the Copal subsidiaries sold (rather than the 67% it would have acquired from a direct transfer of the shares in CPL), and allowed the Copal group to distribute the entire consideration from the sale of these subsidiaries to the Copal shareholders and the other 33% shareholders in CPL by way of a dividend.

Although it was not necessary for the high court to consider whether the sale of CPL would have been taxable in India if transactions 1 and 2 had not been respected, the court considered it appropriate to address the tax authorities' argument.

The Delhi High Court noted that, according to the amended law dealing with indirect transfers, income from a transfer of shares of a foreign company is deemed to be income from an asset located in India if the shares substantially derive their value from assets located in India. The court determined that the purpose of the amended rules is not to expand the scope of taxation to include income derived from transfers that do not have a territorial nexus with India. It opined that the term "substantially" should be interpreted to mean "principally," "mainly" or at least "a majority," and stated that capital gains

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arising from a transfer of shares of a foreign company should not be liable to tax in India if such shares derive less than 50% of their value from underlying assets located in India. In arriving at the 50% threshold, the court referred to relevant provisions of the proposed Direct Taxes Code (DTC) 2010 and the "Shome Committee" report (which recommended that the term be defined at a threshold of 50% of the total value being derived from assets located in India). The court also referred to the capital gains articles in the UN and OECD model treaties (which provide a threshold of 50% to determine whether shares derive their value "principally" from immovable property situated in the relevant contracting state).

The court considered the values of the consideration for transactions 1 and 2 (which involved the Indian subsidiaries) and for transaction 3, and concluded that only a fraction of the value of the shares in CPL (less than 50%) was derived indirectly from India. Accordingly, even if transactions 1 and 2 had been disregarded, the court concluded that the income from the sale of CPL would not have been taxable in India.

Although the court agreed with the AAR that a UK individual played a broader role than that of an agent with respect to the transactions, it concluded that this fact alone, in the absence of further evidence, was insufficient to conclude that CRL and CMRL were managed from the UK rather than by their Mauritius boards of directors. Accordingly, the court did not deny the benefits of the India-Mauritius treaty for transactions 1 and 2.

Comments

As noted above, the decision of the Delhi High Court provides much-anticipated clarification of the term "substantially" in the law relating to indirect transfers. However, the meaning of this term was not an issue specifically before the court; therefore, the court's interpretation is dicta that may have only persuasive value. More guidance also is awaited from the government.

It is relevant to note that the proposed DTC 2013 defines the term "substantial" to mean an interest of 20% or more (in the instant case, the Delhi High Court considered the earlier, 2010 version of the DTC). It would be interesting to see what the court's conclusion would have been if it had an opportunity to consider the DTC 2013.

Taxpayers should carefully review their cross-border sales and acquisitions of businesses, as well as intragroup restructurings, in light of this decision.

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Albania:
Transfer pricing rules introduced

New transfer pricing rules that follow the OECD guidelines became effective in Albania on 4 June 2014, and accompanying instructions that provide guidance on the implementation of the rules apply as from 26 June. The new rules define controlled transactions, provide accepted transfer pricing methods and allow taxpayers to conclude an advance pricing agreement (APA) with the tax authorities (the procedures and terms for an APA will be set forth in separate instructions that are being drafted with the assistance of the World Bank and are expected to be published in October).

The transfer pricing rules apply to entities engaged in controlled transactions with nonresident related parties on or after 4 June 2014. In other words, the rules apply only to cross-border controlled transactions – transactions between an Albanian resident or Albanian permanent establishment of a nonresident and a nonresident/foreign permanent establishment of an Albanian resident. The rules do not apply to domestic transactions. Two persons are deemed to be related for purposes of the transfer pricing rules if:

- One person participates, directly or indirectly, in the management, control or capital of the other person; or
- The same person(s) participate, directly or indirectly, in the management, control or capital of the two parties.

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A direct or indirect participation in the management, control or capital of another person exists for transfer pricing purposes where a person holds, directly or indirectly, 50% or more of the share capital of the other person or effectively controls the business decisions of that person.

Under the new transfer pricing rules, taxpayers can select the most appropriate transfer pricing method from the one of the following approved methods:

- Traditional transaction methods, such as the comparable uncontrolled price method, resale price method and cost plus method; or
- Transactional profit methods – the transactional net margin method and transactional profit split method.

It is not necessary for the taxpayer to apply more than one method to determine consistency with the arm's length principle for a given controlled transaction. The tax authorities' examination of whether the transaction is consistent with this principle will be based on the transfer pricing method applied by the taxpayer.

The transfer pricing rules include documentation requirements that place the initial burden of proof on the taxpayer to demonstrate that the controlled transactions are consistent with the arm's length principle. The documentation must be submitted to the tax authorities within 30 days of a request, with penalties applying for noncompliance. The preparation and submission of documentation will not prevent the tax authorities from making a transfer pricing adjustment if the authorities can show that the conditions of the controlled transactions are not consistent with the arm's length principle.

Taxpayers engaged in controlled transactions that exceed LEK 50 million in the aggregate within the reporting period must complete and submit to the relevant regional tax directorate an "annual controlled transactions notice" by 31 March of the following year. Taxpayers with turnover of controlled transactions of less than LEK 50 million are not required to submit the notice; such taxpayers will be deemed to have met the transfer pricing documentation requirements even where, in the case of external comparable transactions, the transactions are updated every third reporting period, provided there have been no material changes to the controlled transactions, the external comparable uncontrolled transactions or the relevant economic circumstances. Penalties apply for failure to comply with the annual controlled transactions notice.

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China:
Voluntary disclosure program introduced in China (Shanghai) Pilot Free Trade Zone

In a bulletin issued on 4 July 2014 (Bulletin 32), Shanghai Customs introduced a pilot voluntary disclosure program (VDP) in the China (Shanghai) Pilot Free Trade Zone (FTZ) that aims to encourage companies to voluntarily report noncompliance with the Customs rules and regulations, in exchange for potential relief from penalties associated with the noncompliance. It is anticipated that the VDP eventually will be rolled out to the city of Shanghai, and then nationwide. Bulletin 32 applies as from the date of issuance.

Highlights of VDP

- All companies registered with Customs in the FTZ can participate in the VDP.
- A company participating in the VDP can report to Customs any noncompliance associated with:
    - o Imports/exports under general trade;
    - o Imports/exports under processing trade, and those relating to bonded goods;
    - o Goods eligible for duty relief (including equipment supplied for no consideration by a foreign investor for processing trade purposes);
    - o Customs declarations, bonded logistics and sales of duty-free goods; and
    - o Any other activities related to import/export operations.
- The Customs authorities can grant the following relief to a company that comes forward and reports its noncompliance:

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- Waiver or reduction of administrative penalties;
- Waiver or reduction of the late payment surcharge, provided the underpaid duty was collected within the prescribed timeline and the company had difficulties in paying the surcharge;
- No downgrading of the Customs compliance rating for the company; and
- Exclusion from the Customs audit list for the following year, provided the company has rectified its noncompliance and improved its internal controls.

Comments

Combined with the measures relating to the voluntary reporting of noncompliance and the role of intermediaries that were added to a discussion draft of the Customs Audit Regulations in June 2014, the VDP should provide an effective Customs risk management tool for both Customs and taxpayers. Affected companies should consider conducting regular self-reviews with the assistance of Customs professionals to identify and report noncompliance under the VDP and seek potential relief from penalties, surcharges and downgrading.

A number of countries have used voluntary compliance programs as a means to facilitate compliance; avoid costly audits, litigation, etc.; and improve revenue collection. The Chinese Customs authorities are expected to use the experience gained by their counterparts in such jurisdictions to issue further guidance on the process and requirements for reporting and supporting documentation, etc. Companies that wish to participate in the VDP should closely monitor future developments and consult professionals where necessary.

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Germany:
New requirements for PLPAs may require action before year end

Strict formal requirements must be met to form a valid tax consolidated group (*Organschaft*) under German tax law, and a new requirement related to the wording of the loss absorption provision in a profit and loss pooling agreement (PLPA) may require companies to take action before 31 December 2014. This requirement is relevant in any situation in which a German GmbH (limited liability company) is a controlled subsidiary in a tax group.

Germany's tax consolidated group regime is based on a legal concept and has tax, legal and accounting consequences. One of the requirements to form a tax consolidated group is that the members must conclude a valid PLPA for at least five years. A PLPA requires a controlled subsidiary in a group to automatically transfer its annual profits to the controlling parent company; where the controlled entity has incurred losses, the controlling entity must compensate the subsidiary for those losses.

Before 26 February 2013, a PLPA had to contain a provision for the absorption of losses that was in accordance with section 302 of the Stock Corporation Act. Under revised rules that apply as from that date, the PLPA must contain a provision for the absorption of losses that specifically refers to the current version of section 302, as amended from time to time.

The PLPA must contain the correct wording for the agreement to be valid; failure to use the appropriate wording could result in invalidation of the tax consolidation, with the result that the companies that are part of the PLPA could be taxed on a stand-alone basis instead of on a consolidated basis.

Under the grandfathering rule that accompanied the change in the law, the revised requirement for the recognition of a tax consolidated group is mandatory for all PLPAs concluded or amended after 26 February 2013; PLPAs concluded before that

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date, however, do not need to be amended. However, if the loss absorption provision in a pre-27 February 2013 PLPA was not in line with the wording requirements under the previous law, the deficiency may be remedied by:

- Terminating the PLPA and the tax consolidated group before 1 January 2015; or
- Amending the PLPA to conform to the requirements under the previous law before 1 January 2015, and having the amended PLPA become valid (i.e. be registered in the commercial register) before that date.

Since the nonrecognition of a PLPA could have severe tax consequences and could lead to significant additional German tax, taxpayers should analyze their PLPAs to determine whether any action is required before 1 January 2015.

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Germany:
Legislation to implement EU VAT package adopted

Germany's parliament adopted a law on 11 July 2014 to implement the provisions of the EU VAT package into domestic legislation. The VAT package changes the place of supply rules for supplies of broadcasting, telecommunications and electronically provided services (i.e. e-services). EU member states are required to implement the VAT package into their domestic legislation before 1 January 2015.

The new rules will affect supplies made to private individuals and nonbusiness customers ("B2C supplies") that are based in an EU member state other than the state in which the supplier is established.

Suppliers of broadcasting, telecommunications and electronically provided services will need to determine where their customers are established or usually reside, and will need to account for VAT at the applicable rate in that country. The new rules will apply regardless of where the supplier is established or registered for VAT purposes.

While a number of services are easy to identify as services falling within the scope of the new rules, such as downloads of software or other electronically provided content, businesses should carefully examine all services provided, in light of the new regulations.

As part of the changes, B2C service providers may be able to opt to account for VAT across the EU via a single electronic declaration (under the "mini-one-stop-shop scheme," or MOSS), which is designed to simplify compliance requirements by avoiding the need for multiple-country VAT registrations that otherwise would be required. The federal tax office will open a registration portal for German businesses willing to apply MOSS as from 1 October 2014.

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Indonesia:
Tax audit targets announced

The focus of Indonesia's Tax Audit Plan and Strategy for 2014 will be:

- Corporate taxpayers in the property and financial services industry;
- Individuals who earn income as an entrepreneur, shareholder or notary; and
- Taxpayers with the following characteristics:

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- Those that carry out transactions with related parties in Indonesia (corporate group taxpayers);
- Those in the oil and gas sector; and
- Those whose tax returns' statutory limitation for audit will expire in 2014.

Taxpayers in any industry sector that potentially will earn high income or have increased income in 2014 and taxpayers with a track record of a low level of compliance will continue to be the primary targets for audit.

It appears that, going forward, the Directorate General of Taxation may expand its audit targets.

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Spain:
Government amends corporate tax reform proposal

Spain is considering a broad-based tax reform package that, if approved, would apply as from 1 January 2015 (for prior coverage, see the alert dated 2 July 2014). As a second step in the legal procedure for the reform, the government has drafted an amended proposal that includes some modifications to the first draft.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-spain-020714.pdf?id=us:em:na:wta:eng:tax:091214

The most relevant proposed changes are the following.

Profit participating loans – Intragroup profit participating loans would be characterized as equity instruments (rather than debt) and, therefore, "interest" payments on such loans would be nondeductible. Under a new transitional regime, this treatment would not apply to participating loans granted before 20 June 2014.

Deductibility of financing expenses in leveraged buyouts – The earlier proposal included an additional limit on the deductibility of financial expenses related to leveraged buyout transactions. The amended proposal introduces changes relating to the additional limit:

- The additional limit would be 30% of the acquiring company's operating profit, without taking into account the operating profit of any entity that merges or is included in the tax group within four years of the acquisition.
- In acquisitions where the acquiring entity is part of a consolidated tax group, the operating profit of the entire group would be required to be taken into account when calculating the additional limit.
- If the acquisition is financed with debt equal to up to 70% of the purchase price, there would be no additional limit during the tax period in which the shares are acquired. There also would be no additional limit during subsequent tax periods if the amount of the debt is decreased from the time of acquisition by 5% annually, until the debt reaches 30% of the acquisition price.

Participation exemption – The requirements to qualify for the participation exemption would be amended:

- With respect to participations in foreign companies, the controlled company would be required to be subject to, and not exempt from, a tax that is identical or similar to the Spanish corporate income tax, at a nominal rate of at least 10% (regardless of the application of any exemption, bonus, reduction or deduction).
- If the minimum participation threshold of 5% is not satisfied, the amount of the investment required for a Spanish company subject to the holding company (ETVE) regime to qualify for the participation exemption would be lowered from EUR 50 million (as previously proposed) to EUR 20 million.
- Intragroup profit participating loans would qualify as dividends or shares in profits exempt from tax.
- The transitional regime that would have allowed a partial exemption in 2015 and 2016 for disposals of shares in Spanish entities would be eliminated; thus, a full exemption would be available for these years.
- An alternative minimum participation (to the current 5% threshold) of EUR 20 million would be introduced to qualify for benefits under the EU parent-subsidiary directive.

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Miscellaneous – The new definition of "related party" for transfer pricing purposes would not include a provision to deem parties to be related where decision-making power is (or may be) exercised.

The tax authorities would be granted the right to audit and review net operating losses (NOLs) for a period of 10 years from the time the NOLs arise (the existing standard review period under the statute of limitations is four years).

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In brief

Albania – Taxpayers that are required to withhold tax on the payment of dividends, interest, etc. must submit a withholding tax declaration by the deadline for remitting the tax due. As from 1 October 2014, it will be possible to submit the declaration form electronically (currently, the form must be sent to the competent regional tax office via registered mail). Penalties apply for failure to comply.

Belgium – The Brussels Court of Appeal has rejected an appeal relating to the disallowance of a deduction for stock option costs, to the extent they related to capital losses on shares recharged by a foreign affiliate to the Belgian employer of the beneficiary. The court based its decision on the fact that the Belgian income tax code specifically disallows such a deduction, regardless of whether the losses were incurred by the Belgian shareholder or incurred abroad by a foreign shareholder and recharged to a Belgian entity. The court also disallowed the deduction of the recharged capital losses as salary costs.

France – The rate of the corporate tax surcharge applicable to companies with revenue exceeding EUR 250 million increased from 5% to 10.7% for fiscal years closed on or after 31 December 2013, which increased the maximum corporate income tax rate from 36.10% to 38%. A law issued on 9 August 2014 extended the application of the temporary surcharge by one year; the surcharge now is expected to apply until fiscal years ending on 30 December 2016

Indonesia – As from 16 May 2014, taxpayers with more than 6,000 shareholders may use stamped signatures on withholding tax slips for payments of dividends to shareholders. A qualifying taxpayer can submit a request to the tax office where it is registered to obtain approval to use such stamped signatures on withholding tax slips; the request should specify the number of dividend recipients and the name of the official authorized to sign the withholding tax slips. The tax office should issue its decision within 14 business days from the date the request is received. The regulation aims to reduce administrative burdens and provides certainty to taxpayers, particularly public companies with many shareholders, as to whether they may use stamped signatures on their withholding tax slips.

OECD – The first recommendations for a coordinated international approach to combat tax avoidance by multinationals under the BEPS action plan are expected to be released on 16 September 2014.

Ukraine – Parliament has adopted a law that introduces a new temporary tax on individuals in the form of a military contribution for the period from 3 August 2014 until 1 January 2015. The military contribution applies to residents who receive Ukrainian-source income and foreign income and to nonresidents who receive Ukrainian-source income. The rate is 1.5% of taxable income from salary, other incentive and compensatory payments and other benefits and remuneration accrued in connection with employment relations and under civil contracts. Tax agents generally are responsible for withholding and payment of the military contribution; where there is no tax agent, the taxpayer must declare and pay the tax. Guidance on the administration of the military contribution is expected from the tax authorities.

United Kingdom – The government previously announced that it would consult on extending the scope of offshore penalties and other civil sanctions to increase deterrence against offshore noncompliance. The UK tax authorities now have

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published a consultation document that seeks views on six options, which fall into the following three broad categories: (1) extending the scope of the existing penalty regime for offshore noncompliance; (2) deterring taxpayers from deliberately moving offshore assets to continue evading tax; and (3) updating the existing offshore penalties regime to reflect the new global standard in tax information exchange. A summary of responses will be published later in 2014.

Vietnam – The government issued guidance on 25 August 2014 that includes a number of stimulus tax provisions to assist businesses that are having financial and operational difficulties and to encourage business development. The measures affect corporate income tax, incentives, VAT and tax compliance procedures. Detailed guidance is expected to be issued on these provisions. Some provisions already have been approved by the government, while others will be considered by the National Assembly.

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Chile
Amended tax reform bill approved by Senate
On 9 August 2014, the Chilean government presented to Congress a 235-page document containing modifications to the 2014 tax reform bill initially presented in April. On 19 August, the Senate approved the modified reform bill, which now will be voted on by the House of Representatives, with a view to obtaining legislative approval before the end of September.
Issue date: 23 August 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-chile-230814.pdf?id=us:em:na:wta:eng:tax:091214

United States
PFIC Reporting Relief for Mark-to-Market Investments
On 10 September 2014, the US Treasury released Notice 2014-51, announcing intent to amend its regulations under section 1298(f) to provide relief for reporting on Form 8621 with respect to investments in a passive foreign investment company which is marked to market under any provision of the Internal Revenue Code.
Issue date: 10 September 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-100914.pdf?id=us:em:na:wta:eng:tax:091214

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