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Hong Kong's TIEA with US in effect

On 25 March 2014, Hong Kong signed its first tax information exchange agreement (TIEA) with another tax jurisdiction, the US. This was followed by another six TIEAs signed with Denmark, the Faroe Islands, Greenland, Iceland, Norway and Sweden on 22 August 2014.

A TIEA, unlike a double tax agreement (DTA), is an agreement whose purpose is to provide for the exchange of information for the purposes of tax collection and enforcement of the relevant tax laws. A DTA, on the other hand, addresses both the elimination of double taxation and the prevention of fiscal evasion through the exchange of information between the contracting parties.

The US TIEA, which entered into effect on 20 June 2014, allows an exchange of information between Hong Kong and the US upon request, including information that must be reported by financial institutions in Hong Kong to the US under the Foreign Account Tax Compliance Act (FATCA). FATCA is intended to prevent US taxpayers who hold financial assets in non-US financial institutions from avoiding their US tax obligations. It requires foreign financial institutions (FFIs) to report information about offshore accounts and investments held by US taxpayers to the US Internal Revenue Service (IRS) annually. There are two IGA models through which FFIs may provide the required information: Model 1 allows FFIs in other jurisdictions to report information on US account holders directly to their national tax authorities, which, in turn, will report the information to the IRS; Model 2 enables FFIs to report information directly to the IRS. It was announced on 9 May 2014 that a Model 2 IGA had been negotiated with the US "in substance."

Background

Before the Hong Kong Inland Revenue Ordinance (IRO) was amended in July 2013, it was not possible for Hong Kong to enter into a TIEA with another jurisdiction because the IRO permitted Hong Kong to enter only into DTAs, not TIEAs. To align itself with the OECD's global initiative on the exchange of tax information to enhance cross-border tax transparency, Hong Kong amended the IRO to provide a legal framework for it to enter into TIEAs.

Features of the TIEA

The Hong Kong-US TIEA, like the exchange of information article found in Hong Kong's DTAs, contains the following features:

- **Exchange of information upon "request" –** Information will be exchanged only upon a specific request from one of the parties. The TIEA does not provide for the automatic or spontaneous exchange of information.

- **Foreseeable relevance "for tax purposes" –** A contracting party must demonstrate to the other contracting party that the information requested is relevant for tax purposes. For example, the US must show that the information requested under FATCA is foreseeably relevant for carrying out the administration or enforcement of US domestic laws concerning taxes covered by the TIEA, such as federal taxes on income; federal taxes related to employment and self-employment; federal estate and gift taxes; and federal excise taxes. In other words, the US can request information relating to US federal taxes from Hong Kong, regardless of whether such information is relevant for Hong Kong tax purposes. On the other side, Hong Kong can request information from the US related to Hong Kong profits tax, salaries tax and property tax. However, neither party can use the information obtained from the other party for nontax purposes; "fishing expeditions" are not allowed.

- **Possession and control –** The parties may request information that is "possessed" or "controlled" by a person in the other jurisdiction (the IRO was amended in 2013 to expand the power of the IRD to obtain information from taxpayers that "control" as well as "possess" the information, to conform to the OECD model TIEA). For instance, a multinational group may outsource information processing to a third-party data center in Hong Kong. Although the data center may not legally "possess" (but might be considered to physically possess) or own the information, it may be deemed to control the information, at least during the period of time for processing. Under the TIEA, the US could request information on the multinational group from the data center if the information is relevant for US tax purposes.

- **Information-gathering process –** Upon a request from a party, the tax authorities in the other jurisdiction will provide information that is readily available; otherwise, the tax authorities will request the information from the relevant persons. In the context of FATCA implementation, for example, the US may request certain information from the IRD, such as the US tax identification number or the date of birth of the taxpayer in Hong Kong, if the US account holders of FFIs do not consent to the FFIs providing the details to the IRS. The IRD will have to obtain any requested information it does not already possess from the relevant persons and supply the information directly to the IRS within a specific period of time; if the information cannot be provided within that time period, the IRD should inform the US, as well as the FFIs involved, that there will be a delay. The IRD should then exchange the information as soon as possible.

- **Notification to persons affected –** Before disclosing any information in response to a request, the tax authorities generally must notify the affected person; however, there are certain exceptions (for example, where the notification could undermine the chance of success of an investigation because the affected person may have the opportunity to destroy the relevant records relating to the transaction in question). If the affected person requests a copy of the information, that information must be provided within a reasonable time. If the person wishes to amend any of the information to be disclosed, he/she must notify the relevant authorities in writing within 21 days, based on the following grounds:

    - The information, or part of the information, does not relate to the person; or
    - The information, or part of the information, is factually incorrect.

  In the case of a request by the US to Hong Kong, if the IRD refuses to amend the information, the affected person may request the Financial Secretary to review the IRD's decision within 14 days.

- **Denial of a request –** An information exchange request may be denied in certain circumstances. These include situations where the information would disclose a trade, business, industrial, commercial or professional secret or trade process; where the information is covered by a legal professional privilege; or where disclosure of the information would be contrary to public policy (e.g. the information relates to a state secret).

- **Confidentiality –** The confidentiality provisions of the TIEA take precedence over any domestic rules that may permit disclosure to a third party other than the tax authorities. For example, under the TIEA, information obtained by the IRS from the IRD may be used by the IRS only for US tax purposes. However, the protocol to the TIEA allows the information obtained by the IRS to be further disclosed to certain US entities that serve tax-related purposes, i.e. the Treasury Inspector General for Tax Administration and the congressional Government Accountability Office, which are responsible for auditing the IRS, and the Office of the Treasury Assistant Secretary for Tax Policy and the tax-writing committees in Congress, whose duties require inquiries into tax administration for planning tax law enactments and implementation and proposing tax law changes. Disclosure to a third jurisdiction is not allowed.

- **Retroactive effect –** Information that existed or was generated before the effective date of the TIEA may be exchanged if the information is foreseeably relevant for taxes imposed in periods that start after the TIEA came into effect (on 20 June 2014); otherwise, the TIEA does not have retroactive effect.

- **No "tax examination abroad" provision –** The TIEA generally follows the OECD model TIEA, except that the TIEA does not contain a "tax examination abroad" article. Under such an article, Country A can allow the officials of Country B to enter the jurisdiction to interview individuals and examine records or be present at tax examinations in Country A, with the written consent of the persons concerned in Country A. Since the TIEA does not contain this article, IRS officials cannot come to Hong Kong to interview individuals and examine records, and vice versa.

- **Mutual Agreement Procedure (MAP) –** The TIEA contains a MAP article to resolve difficulties or questions arising from the implementation or interpretation of the TIEA. However, the article leaves it open for both parties to adopt and implement procedures to facilitate the implementation of the TIEA. This is different from the MAP mechanism in Hong Kong's DTAs that allows a taxpayer a specified period of time to petition to either tax authority if his/her tax affairs are not handled in accordance with the DTAs. The TIEA provision may lead to disputes, e.g. where an item of information is considered by a taxpayer to be a trade secret or legally privileged information, but the tax authorities do not agree. It should be noted that the grounds upon which a taxpayer may ask the tax authorities to amend the information to be exchanged (as mentioned above) do not include such a "difference in opinion."

Future trends

"Automatic" exchange of information seems to be becoming the next global standard, as evidenced by a statement of the G20 leaders (including China) in September 2013:

> "*Calling on all other jurisdictions to join us by the earliest possible date, we are committed to automatic exchange of information as the new global standard, which must ensure confidentiality and the proper use of information exchanged, and we fully support the OECD work with G20 countries aimed at presenting such a single global standard for automatic exchange by February 2014 and to finalizing technical modalities of effective automatic exchange by mid-2014.*"

The G20 already has requested the Global Forum (of which Hong Kong is a member) to establish a mechanism to monitor and review the implementation of the new global standard on the automatic exchange of information, and has stressed the importance of developing countries being able to benefit from a more transparent international tax system. Going forward, information will be exchanged automatically through the operation of DTAs, TIEAs or the multilateral convention on mutual administrative assistance in tax matters. Under the OECD model, the standard under the "automatic exchange" mechanism is known as the "Common Reporting Standard (CRS)," which operates similarly to FATCA, as follows:

- Reportable accounts are defined to include accounts held by individuals and entities (covering trusts and foundations), with a requirement to look through passive entities to report on the individuals that ultimately control these entities.
- The financial information to be reported for reportable accounts includes all types of investment income (covering dividends, interest, income from certain insurance contracts and other similar types of income), as well as account balances and sales proceeds from financial assets.
- The financial institutions that are required to report under the CRS include banks and custodians, as well as other financial institutions, such as brokers, certain collective investment vehicles and certain insurance companies.
- Due diligence procedures are to be followed by financial institutions to identify reportable accounts.

Conclusion

In light of the new CRS standard, it is important to note that cross-border tax avoidance schemes involving financial accounts likely will become more transparent to the relevant tax authorities. Accordingly, TIEAs (and similar agreements), like the new TIEA between Hong Kong and the US, will become powerful tools at the disposal of the tax authorities in combating tax avoidance schemes. Contemporaneous documentation that supports the substance and business purpose of a tax planning arrangement has become even more important in this new environment.

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Colombia:
Tax haven list updated

The Colombian government issued a decree on 8 October 2014 that updates the list of jurisdictions it considers to be tax havens.

Four new jurisdictions are included on the list because they have not yet concluded a tax information exchange agreement with Colombia, bringing the full list to 40 (Panama initially was included on the list, but subsequently was removed):

- Barbados
- Kuwait
- Qatar
- United Arab Emirates

Ten jurisdictions that have subscribed to the mutual assistance convention have been removed from the list:

- Andorra
- Anguilla
- Bermuda
- British Virgin Islands
- Cayman Islands
- Cyprus
- Guernsey
- Isle of Man
- Jersey
- Liechtenstein

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

- Payments deemed to be Colombian-source income always are subject to a 33% withholding tax.
- If the payments are deemed to be Colombian-source, the Colombian company must comply with Colombia's transfer pricing rules even if the foreign recipient is not a related party, i.e. the payments must be on arm's length terms. Such payments generally may be deductible for corporate income tax purposes.
- Payments deemed to be foreign-source income are not subject to withholding tax or the transfer pricing rules. Such payments would not be deductible for corporate income tax purposes.

The income tax withholding obligation will apply as from 1 November 2014, while the other tax implications (i.e. transfer pricing, deductibility) are applicable to payments made as from 1 January 2015.

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European Union:
CJEU rules on VAT fixed establishments

The Court of Justice of the European Union (CJEU) issued a decision on 16 October 2014 on the issue of whether a customer that receives an intra-EU supply of services should be treated as having a "fixed establishment" for VAT purposes in the member state of the supplier. The *Welmory sp. z o.o.* case involved an internet auction site operated by a Cypriot company using infrastructure located in Poland. The key issue was whether the Cypriot company had a fixed establishment in Poland where the services were received for VAT purposes, which would result in the Polish supplier having to account for Polish VAT. The CJEU confirmed the requirements for creating a fixed establishment and remanded the case to the referring Polish court to determine whether a fixed establishment existed.

The concept of “fixed establishment” for VAT purposes initially was developed by CJEU case law and then was defined in EU VAT law. It means an establishment other than an organization’s business establishment (i.e. its head office, or main seat of power) from which its activities are carried out and that involves the permanent presence of both human and technical resources necessary for making or receiving supplies. Services may be deemed to be supplied or received by a fixed establishment only where it is inappropriate to deem that the supplies in question have been provided at or from the place where the entity has its business establishment.

Background

Welmory Poland entered into a cooperation agreement with Welmory Cyprus, under which Welmory Cyprus operated an auction website in Poland. Welmory Poland then supplied the auctioned goods to customers under its own name and for its own account. Welmory Cyprus used Welmory Poland’s employees and technical equipment, located at Welmory Poland’s offices in Poland, to run and manage the website. Welmory Cyprus’ own core infrastructure was located outside of Poland.

On the basis of the cooperation agreement, Welmory Poland billed Welmory Cyprus for its services without charging Polish VAT, believing that Welmory Cyprus should account for VAT in Cyprus under the reverse charge mechanism that applies to general business-to-business supplies (that is, a service is subject to VAT in the place where the recipient is established). The Polish tax authorities disagreed, concluding that Welmory Cyprus had a fixed establishment in Poland because it was using Welmory Poland’s infrastructure and, therefore, Welmory Poland should have charged Polish VAT on the services. The case eventually went before a Polish court that referred the case to the CJEU.

Advocate General (AG) Kokott issued her opinion in the *Welmory* case on 15 May 2014, stating that it is up to the national courts to determine whether a company has a fixed establishment. For a fixed establishment to exist, she stated that the company must have a certain degree of permanence in the relevant member state, as well as the human and technical resources to supply/receive the relevant services. However, AG Kokott also opined that it is not necessary that the human and technical resources be the company’s own resources – it is sufficient that the company have access to third-party resources in the relevant member state in a way that is “comparable” to the access it would have to its own resources. This opinion, if followed by the CJEU, could have had far-reaching VAT implications for many businesses operating across Europe that share or utilize third-party resources.

CJEU decision

The CJEU did not follow the AG’s interpretation that would have taken third-party resources into consideration in defining a company’s “human and technical resources,” which could have broadened the circumstances under which a fixed establishment would be considered to exist. Instead, the court reconfirmed the earlier two-pronged test for ascertaining whether a fixed establishment exists, and stated that it is up to the national courts (the Polish court, in this case) to determine, based on the facts, whether the relevant characteristics are present in a specific case, in light of the following principles:

- The starting point for determining the place of supply of services is the place where the taxable person has a business establishment, and only if that place of business leads to an “irrational result” for VAT purposes may another (fixed) establishment be considered; and
- A fixed establishment is characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable the taxable person to receive the services supplied to it and use them for its business, and this is an issue for the national courts to decide.

The CJEU also noted the following points:

- In terms of the human and technical resources required to create a fixed establishment, it is necessary to consider what is appropriate for the business in question. Relevant factors may include the presence of equipment, such as computer equipment and servers, and associated human resources (e.g. for maintaining and servicing equipment) and the place where contracts are concluded.
- The fact that the economic activities of two companies are linked by a cooperation agreement and form an economic whole is not material for determining the existence of a fixed establishment.
- The decision confirms that the case law on the interpretation of fixed establishments is still relevant after the introduction of the EU VAT package on 1 January 2010 that updated the place of supply rules for the provision of services within the EU.

Comments

While the CJEU’s decision reconfirms the application of existing EU case law, it does highlight the importance of considering the specific facts of each case. In particular, this should include determination of the following:

- The nature of the services being provided;
- The contractual position between the parties;
- The location of the business establishments involved; and
- Whether an irrational result is created by following the corresponding VAT treatment.

Businesses operating in Europe with a presence in multiple countries (e.g. through branches, subsidiaries or human and technical resources such as employees, contractors, servers, manufacturing equipment, etc.) should consider reviewing their arrangements to identify potential risk areas and prepare for potential challenges from the tax authorities (which could result in additional VAT registration obligations, or in overseas VAT being incurred).

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Finland:
Changes proposed to tax treatment of dividends received by foreign pension institutions

The Finnish government has proposed changes to the withholding tax treatment of foreign pension funds (both EU/EEA and third country funds) that receive dividends from Finland. The proposal responds to the 2012 decision of the Court of Justice of the European Union (CJEU) in *Commission v. Finland*, in which the court held that the Finnish withholding tax levied on dividends paid to EU/EEA resident pension funds violated the free movement of capital principle. If approved, the proposed rules would apply as from 1 January 2015 and could create an opportunity for affected funds to request a refund for prior years.

Under current Finnish law, dividends received by an EU/EEA resident pension fund are subject to a 15% withholding tax on the gross amount (unless a lower rate is available under a tax treaty), whereas, in practice, a Finnish pension fund does not pay tax on dividend income. In principle, 75% of dividends is considered taxable income of a Finnish pension fund, but domestic tax law allows a domestic fund to take a notional tax deduction (e.g. based on amounts needed to cover future pension liabilities) that effectively reduces the taxable result to zero. Since Finnish pension funds are taxed on a net basis, dividends received effectively are exempt from tax. The CJEU ruled that nonresident pension funds are treated less favorably than domestic funds and that the different treatment could not be justified.

The government now has proposed that certain foreign pension funds be subject to the same treatment as Finnish pension funds. Provided certain requirements are met, a foreign pension fund would be able to deduct as a cost an amount that corresponds to the portion the Finnish-source gross dividends represent of the turnover of the fund. The 15% tax then would be withheld on the net dividends. Primarily because of the way the amount of the deduction is calculated, in practice, the Finnish dividend payer would withhold the 15% tax on the gross amount and the foreign pension fund subsequently would have to file a refund claim with the Finnish tax administration.

An EU/EEA pension fund would be entitled to the new deduction on gross dividends if (1) it is comparable to a Finnish pension fund; and (2) the Finnish shares can be classified as "investment assets," as defined in Finnish law. A pension fund from outside the EU/EEA would need to meet these requirements, as well as the following:

- The direct participation in the Finnish dividend distributing entity is less than 10%; and
- The country in which the fund is resident has concluded a treaty on the exchange of tax information with Finland, and the Finnish authorities are able to verify with the treaty partner information relating to the taxation of the pension fund, its activities and its supervision.

EU/EEA and third-country pension funds also would have to produce sufficient information to enable the calculation of the amount of the new deduction.

If enacted, the proposed rules would apply to dividends paid to foreign pension funds on or after 1 January 2015. However, the proposal also would open up an opportunity to request the deduction for years before 2015, because the Finnish withholding tax rules violated the EU freedoms prior to 2015. Because Finland's statute of limitations is five years, a refund claim for tax withheld in 2009 would need to be submitted to the Finnish tax administration before 31 December 2014 at the latest, to preserve a foreign pension fund's rights.

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India:
Restrictions relaxed on certain transfers of technical personnel

India's Central Board of Direct Taxes (CBDT) issued a circular on 8 October 2014 in which it eased restrictions on the transfer of technical personnel by taxpayers engaged in the development of software or providing information technology (IT)-enabled services from a unit set up in a Special Economic Zone (SEZ) in India.

Indian tax law grants a 15-year tax holiday (100% of profits for the first five years and 50% of profits for the next 10 years) to a unit established in an SEZ that qualifies as a new unit and complies with prescribed conditions. The tax holiday is not available if the new unit is formed by the splitting up or "reconstruction" of an existing business, or by the transfer of used plant or machinery. The law was ambiguous, however, as to whether the transfer of personnel from an existing unit to a new SEZ unit would amount to the splitting up or reconstruction of a business, and thus as to whether the new unit would be eligible for the tax holiday.

To clarify the issue, the CBDT issued a circular in July 2014 that provided that a transfer or deployment of technical personnel from an existing SEZ unit in the first year of business of the new unit would not be deemed to constitute a splitting up or reconstruction of an existing business, provided the number of personnel transferred did not exceed 20% of the total number of personnel actually engaged in the development of software or IT-enabled products in the new SEZ unit.

Responding to concerns from businesses that the 20% limit is too restrictive and negatively affects the competitiveness of the Indian software industry, the CBDT has raised the 20% limit to 50%. The new circular also provides for an alternative method for a taxpayer to qualify for the tax holiday: if the taxpayer can show that the net addition of the new technical personnel in all of its units is at least equal to the number of personnel that represents 50% of the total technical personnel in the new SEZ unit during the tax year, the tax holiday will be granted.

The new circular should be welcomed by the software industry and companies providing IT/IT-enabled services.

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Korea:
Proposed revisions to tax laws announced

Further proposed revisions to Korea's tax laws were published on 18 September 2014, following the initial release of a series of proposed changes in August. The final draft of the proposed rules was submitted to the National Assembly on 23 September for ratification.

The most important measures affecting companies are as follows:

- A new accumulated earnings tax (AET) would be imposed on excess cash accumulated by large corporations whose equity capital exceeds KRW 50 billion and companies that are members of a group with a restriction on cross-shareholdings. Either of the following methods would be able to be used to calculate the AET: (1) a 10% tax would be computed on 60% to 80% of net income minus amounts expended on investment, salary increases and dividends; or (2) a 10% tax would be computed on 20% to 40% of net income minus amounts expended on salaries and dividends. Small and medium-sized enterprises (SMEs) would be exempt from the regime. The new rules would apply for taxable years beginning on or after 1 January 2015 and before 31 December 2017.
- The thin capitalization rules would be amended. Under existing rules, if a foreign-invested company borrows from a foreign controlling shareholder (FCS), or from a third party with a guarantee by an FCS, and the amount borrowed exceeds 3:1 (or 6:1 for a financial company) of its equity (or contributed capital, if this is greater than equity), the portion of the interest expense on borrowings that exceed the applicable percentage of the FCS's share in the borrower company's equity is nondeductible and is reclassified as a dividend. The proposed revisions would expand the definition of a loan from an FCS to include loans from related parties of the FCS and would lower the thin cap ratio for nonfinancial companies from 3:1 to 2:1. This change would apply for fiscal years beginning on or after 1 January 2015.
- The useful life of a patent for depreciation purposes would be reduced from 10 to seven years.
- The tax credit rate for investment in productivity improvement facilities would increase from 3% to 5% of the investment amount for mid-sized companies that are not SMEs, and the tax credit rate for third-party logistics expenditures that a manufacturing company can claim if certain conditions are satisfied would increase from 3% to 5% for SMEs.
- A Korean parent company that receives dividends from a foreign subsidiary would be able to claim an indirect foreign tax credit with respect to income taxes paid by the foreign subsidiary only if the parent company holds directly at least 25% (currently 10%) of the voting shares of the foreign subsidiary. The indirect foreign tax credit currently available for 50% of foreign income taxes paid by a second-tier foreign subsidiary would be abolished.

- Where a company receives foreign-source income from two or more countries, it currently can calculate the foreign tax credit limitation on either a country-by-country basis or a combined total basis. The proposed measures would abolish the latter method.
- The requirement for a domestic company to submit financial information for its overseas subsidiaries to the tax office would be expanded to require reporting of details of the company's investments in overseas real estate.
- The statute of limitations for tax assessment (currently five years, or 10 years in cases of fraud or other "unjust acts") for national taxes other than gift and inheritance tax would be extended to 15 years for unjust acts involving cross-border transactions.
- The maximum penalty for a failure to report, or for underreporting, taxable income in cases that involve unjust acts involving offshore transactions would be increased from 40% to 60% of the additional tax due on the unreported income.
- The due date for a taxpayer to file an amended return to reduce the tax base or claim a tax refund would be extended from three years to five years from the original tax filing due date.
- An advance pricing adjustment system between national tax services and customs services would be introduced. A taxpayer would be able to apply for a unilateral advance pricing agreement and an advance customs valuation arrangement at the same time, and the commissioners of the services would discuss and determine the valuation method and appropriate range of taxable prices.

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Taiwan:
Imputed income credit to be reduced

As from 1 January 2015, only 50% of corporate income tax paid by a company will be able to be credited against the Taiwan individual income tax liability of its shareholders. (For prior coverage, see *World Tax Advisor*, 13 June 2014.) The reduction of the imputed credit for individual shareholders likely will increase the overall tax burden on such shareholders, so affected individuals may need to take steps now to mitigate the effect of the reduced imputed credit.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140613_7.html

Taiwan has operated an imputation system since 1998 to eliminate the double taxation of corporate earnings. Under the imputation system, corporate tax paid by a company (as well as the 10% surtax on retained earnings) may be used as a credit (imputed credit) against the personal income tax liability of individual shareholders. Nonresident shareholders can only use the 10% surtax paid by the company to credit against the withholding tax paid on dividends.

Currently, a resident individual taxpayer generally can fully utilize the imputed credits for tax paid at the level of the distributing company against his/her normal Taiwan income tax liability. As from 2015, however, only 50% of the imputed credit will be able to be used, and for nonresident individuals, only 50% of the 10% surtax paid will be able to be credited against the tax withheld on the dividends received.

To minimize the impact of the law change, an individual may wish to consider selling his/her shares before the dividend date and realizing the gain from the appreciation of the stock; capital gains are not subject to tax where listed stock trades are less than USD 10 billion.

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In brief

European Union – The European Council reached a final agreement (unanimity of the 28 EU member states is required) on 14 October 2014 on an amended directive extending the scope of the mandatory automatic exchange of information between EU member state tax authorities to include dividends, interest and other income, such as account balances and sales proceeds, in line with the new global standard on automatic exchange of information adopted by the OECD and endorsed by the G20. The amended directive will enable tax authorities to better combat tax evasion and to improve the efficiency of tax collection. The new amended directive should be transposed into national law by 1 January 2016 at the latest and should apply as from 2017 (except for a one-year transition period provided for Austria until 2018, during which time the EU savings directive will continue to apply in Austria). Tax treaties with third countries, including Andorra and Liechtenstein, are to be amended accordingly.

France – The proposed finance bill for 2015, presented to parliament on 1 October 2014, contains two proposals that would affect the French overseas departments (French Guiana, Guadeloupe, Martinique, Mayotte and Reunion): (1) an increase in the research and development tax credit from 30% to 50% of expenditure incurred up to EUR 100 million, and 5% for expenditure exceeding this amount; and (2) an increase in the competitiveness credit (CICE), which currently is 6% of total wages paid to employees earning no more than 2.5 times the French legal minimum wage, to 7.5% for salaries paid in 2015 and 9% for salaries paid in 2016 and subsequent years.

India – The Supreme Court has dismissed the taxpayer's special leave petition against the Delhi High Court's decision in *Centrica India Offshore Pvt. Ltd.* The Delhi High Court held that an employee secondment arrangement between overseas entities and an Indian company gave rise to fees for technical services, and dismissed the taxpayer's arguments that no service permanent establishment existed for the overseas entities. (For prior coverage, see *World Tax Advisor*, 23 May 2014.) The Supreme Court's order does not contain its reasons for dismissing the petition, but the dismissal reemphasizes the need for companies to review their deployment models to determine the true nature of the arrangement. Robust documentation that clearly indicates the true intent of the arrangement may mitigate tax exposure and the risk of litigation.
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140523_7.html

Jersey – The 2015 draft budget proposal has been lodged with the States Assembly. The main tax proposals include maintaining the marginal rate of tax at 26% for 2015, with longer-term goals of reducing this to 25%; increasing all tax exemption thresholds by 1.7%; requiring returnees to the island that pay tax through the income tax installment system to pay their tax on a current year basis, even if they previously paid on a prior-year basis; and extending the entitlement to claim tax credit relief under an applicable tax treaty to marginal rate taxpayers.

Jersey – Draft guidance notes have been published that provide an overview of the new online Foreign Account Tax Compliance Act (FATCA) portal, including details on how to register, information about the required file format for data exchange and information on the test platform that is being developed to help financial institutions test their file formats. Similar guidance notes have not yet been released for the Isle of Man or Guernsey.

Norway – The 2015 budget presented to parliament on 8 October 2014 includes an increase in the cap on the deductibility of internal research and development (R&D) expenses from NOK 8 million to NOK 15 million, and in the cap on outsourced R&D expenses from NOK 22 million to NOK 33 million, with a view to making the deduction available to more projects. Simplification of the tax rules applying to partnerships also is proposed: limited partners no longer would be able to deduct partnership losses against ordinary income from other sources; instead, such losses would be available for carryforward to be set off against future partnership income or gain upon the realization of partnership interests. The parliament is expected to approve the budget during November or December 2014.

South Africa – The effective date for the introduction of withholding tax on interest has been postponed from 1 January 2015 to 1 March 2015. The withholding tax will apply in respect of interest that is paid or that becomes due and payable on or after that date.

Tax treaty round up

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

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

Czech Republic-Liechtenstein – When in effect, the treaty signed on 25 September 2014 provides for a 0% 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 for an uninterrupted period of at least one year; otherwise, the rate will be 15%. A 0% withholding tax rate will apply to interest. A 10% withholding tax rate will apply to royalties received as consideration for the use of, or the right to use, a patent, trademark, design or model; plan, secret formula or process; tailor-made computer software; or industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience; otherwise, the rate will be 0%.

Hong Kong-South Africa – When in effect, the agreement signed on 30 September 2014 (South Africa) and 16 October 2014 (Hong Kong) provides for a 5% withholding tax on dividends paid to a company that holds directly at least 10% of the capital of the distributing company, and a 10% rate in all other cases. The rate on interest will be 10% and that on royalties, 5%.

Hungary-United Arab Emirates – The 2013 treaty entered into force on 4 October 2014 and will apply as from 1 January 2015. When in effect, the treaty provides that dividends, interest and royalties will be taxable only in the state of residence of the recipient.

India-Macedonia – When in effect, the tax treaty signed on 17 December 2013 provides for a 10% withholding tax rate on dividends, interest, royalties and fees for technical services.

Luxembourg-Guernsey – The 2013 tax treaty entered into force on 8 August 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 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

Portugal-Senegal – When in effect, the tax treaty signed on 13 June 2014 provides for a 5% withholding tax rate 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 10%. The rate on interest and royalties will be 10%.

Saudi Arabia-Azerbaijan – When in effect, the tax treaty signed on 13 May 2014 provides for a 5% withholding tax rate where dividends are paid to the government, the central bank, an entity wholly owned by the government or a recipient that has invested at least USD 300,000 (or its equivalent in any other currency) in the capital of the distributing company; otherwise, the rate will be 7%. The rate on interest will be 7% and the rate on royalties will be 10%.

United States – Intergovernmental agreements to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) have been signed between the US and Brazil (on 23 September 2014) and Poland (on 7 October 2014).

United States – It previously was reported that the validity of non-US approved self-certifications used by foreign financial institutions (FFI) in intergovernmental agreement (IGA) jurisdictions may be called into question because of language included in certain portions of the IGA. (For prior coverage, see *World Tax Advisor*, 26 September 2014.) The relevant language states that the FFI may use a Form W-8/W-9 "or other similar agreed form" to document an account holder. The US Internal Revenue Service has updated the FATCA General Frequently Asked Questions on its website to address this language and define what it considers to be "a similar agreed form."
URL: http://newsletters.usdbriefs.com/2014/Tax/WTA/140926_tr.html

Vietnam-Azerbaijan – When in effect, the tax treaty signed on 19 May 2014 provides for a 10% withholding tax rate on dividends, interest and royalties.

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Ireland

Budget announcement on double Irish structure

Ireland's budget 2015, presented on 14 October 2014 reaffirms the government's commitment to the 12.5% corporate tax rate, but also includes an announcement that the "double Irish" structure will be abolished and a broad range of measures introduced to provide a competitive alternative to the double Irish regime.
Issue date: 14 October 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-ireland-101414.pdf?id=us:em:na:wta:eng:tax:102414

OECD

BEPS Action Plan Item 13: The New Documentation Standard Implications for the Financial Services Industry

The Organization for Economic Cooperation and Development completed and released the *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting* in an unprecedented time frame, reflecting G20 consensus and political momentum surrounding the Base Erosion and Profit Shifting (BEPS) Project, and BEPS Action Plan item 13, which calls for a reexamination of transfer pricing documentation, in particular.
Issue date: 9 October 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tpalert-019-091014.pdf?id=us:em:na:wta:eng:tax:102414

Singapore

Singapore Releases Proposed New Transfer Pricing Documentation Guidelines

The Inland Revenue Authority of Singapore (IRAS) on 1 September published a consultation paper that sets out revised guidance on transfer pricing documentation. The proposed new guidelines are part of IRAS's ongoing efforts to require taxpayers to strengthen their due diligence in complying with the arm's length principle.
Issue date: 9 October 2014
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tpalert-018-91014.pdf?id=us:em:na:wta:eng:tax:102414