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International Tax

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## Changes to EU VAT place of supply rules coming in 2015

The EU VAT place of supply rules for business-to-consumer (B2C) supplies of digital services will change significantly on 1 January 2015, as will the rules governing where VAT is collected and paid for such services. The revised rules specifically target the VAT treatment of supplies where the consumer is based in a different EU member state than the member state in which the supplier is established. The place of taxation will be determined by the location of the consumer, and the digital supplies will be taxed at the VAT rate applicable in the member state of the consumer. The changes aim to eliminate certain inconsistencies in the current VAT rules and bring the taxation of supplies made by EU businesses in line with the VAT treatment applicable for non-EU businesses. The 2015 changes do not affect business-to-business (B2B) supplies.

In conjunction with the changes to the place of supply rules, the “mini one-stop shop” (MOSS) VAT registration is being introduced, which will allow both EU and non-EU businesses to account for the different EU VAT rates through a single VAT registration, rather than having up to 28 VAT registrations in different member states.

The new rules represent the final phase of the EU VAT package that introduced changes to the place of supply rules in 2010 and has made further modifications over the past four years The overall objective of the VAT package was to tax supplies of services in the place where they are consumed, i.e. with a focus on where the customer is receiving the supply, rather than where the supplier is located. EU member states are required to implement this final piece of the VAT package into their domestic legislation before 1 January 2015.

Recent media reports have focused on situations where it may seem that tax in general (not only VAT) is not being accounted for in the right place (e.g. where there are inconsistencies in taxation based on where the supplier is established). For EU VAT and, more generally, for certain other VAT systems, there has been an increasing shift in moving the country of taxation from the place where the supplier is established to the place where the goods or services are consumed – changes that will apply in the EU from 1 January 2015 are the final step in achieving this shift for certain B2C digital sales.

Currently, an EU supplier of music downloads can legitimately choose to establish its business in Luxembourg (which has the lowest VAT rate in the EU) and account for VAT at the standard rate of 15% (proposed to be increased to 17% in 2015) on its supplies to private consumers in the EU, regardless of where in the EU those consumers are located. If the same business were established in Denmark or the UK, it would account for VAT at a 25% or a 20% rate, respectively, on the same supplies. This is a significant discrepancy that may encourage VAT rate shopping for both suppliers and consumers. Moreover, this option is not available to non-EU suppliers of the same services to EU consumers – instead, their supplies already are taxed based on where the consumer is located.

**Background**

In the EU, the place of supply rules govern where a particular supply takes place for VAT purposes and, therefore, determine which member state and which party must collect the VAT due on the supply.

As from 1 January 2015, EU businesses supplying digital services, i.e. broadcasting, telecommunications and electronic services (e.g. fixed and mobile telephone and internet services, television and radio programs, video on demand, music downloads, etc.), to nonbusiness consumers will be taxed in the place where the customer usually resides or is established. This is a significant departure from the current rules where such supplies are subject to VAT in the place where the supplier "belongs," i.e. is established.

The new rules will have ramifications for all EU businesses supplying broadcasting, telecommunications and electronic services to EU consumers (i.e. to all nonbusiness customers, such as private individuals and organizations that are not engaged in business). Suppliers of such services will have to determine where their customers are established or usually reside and will have to account for VAT at the applicable rate in that member state, regardless of where the supplier itself is established or registered for VAT. Therefore, suppliers may need to register for VAT in all EU member states where they have customers (but see MOSS discussion below). No minimum thresholds will apply, so making supplies to just one customer in one member state will trigger a VAT registration requirement in that country. For example, an EU business supplying B2C downloads from its establishment in Luxembourg currently would account for Luxembourg VAT on its supplies to consumers located throughout the EU. From 2015, that same business will be required to account for VAT at the rates applicable in the 28 EU member states, based on where each customer usually resides or is established. Accordingly, the current VAT benefit for businesses supplying these services that are established in member states that enjoy a low VAT rate will be eliminated; the applicable VAT rate will depend, not on where the supplier is established, but rather on where its customer is located.

The following chart compares the current place of supply rules for B2C supplies with the rules that will apply as from 2015.

| Supply | Pre-2015 taxation | Post-2015 taxation |
|---|---|---|
| EU business to EU consumer | Where the supplier is established | Where the customer usually resides or is established** |
| EU business to non-EU consumer | Outside the scope of VAT | Outside the scope of VAT |
| Non-EU business to EU consumer | Where the customer belongs* | Where the customer belongs** |
| Non-EU business to non-EU consumer | Outside the scope of VAT | Outside the scope of VAT |

* "Use and enjoyment" provisions may apply to supplies of broadcasting and telecommunications services (not electronic services), depending on the member state. This means that if services are effectively used and enjoyed within or outside the EU, the member state may elect to bring these supplies into or outside of (respectively) the scope of EU VAT through a use and enjoyment provision.

** Again, use and enjoyment provisions may apply, depending on the member state. There may be additional complexities due to the interaction of the applicable presumptions for determining the customer's location under the new rules and any applicable use and enjoyment provisions. In many cases, the applicable presumption of where the customer resides will be where the customer is using and enjoying the services. However, there will be complexities in some circumstances – for example, the presumption for SIM cards is that the customer resides in the location of the country code of the SIM card, but the country code also may be valid in areas outside the EU VAT territory (e.g. the Spain country code is valid in the Canary Islands).

**Pricing considerations:** The revised place of supply rules for B2C transactions have led many businesses to consider their pricing and margin strategy. Currently, an eBook retailing on a Luxembourg website for EUR 8.99 will include EUR 1.17 of Luxembourg VAT (at 15%) when sold to customers in the EU. Beginning in 2015, if a single pricing model is maintained (as seems likely to be the case on websites where supplies are priced in a single currency), the same sale made, for example, to a Swedish customer will include EUR 1.80 of VAT (at Sweden's 25% standard rate). The changes have the potential to significantly affect the margins generated.

**Determining location of customers:** Clearly, one of the challenges for businesses supplying services subject to the new rules in 2015 and beyond will be how to accurately identify where their customer usually resides/is established so they can apply the correct VAT rate. In some cases, it may be possible for the tax authorities in two member states to consider that a supply is subject to VAT in their country. To address this issue, the implementing regulation sets out a number of rules for determining where the customer belongs for each type of supply, including presumptions that a supplier may make and how it may rebut those presumptions based on certain evidence. For example, electronic services supplied via a wi-fi hot spot will be subject to VAT based on where the wi-fi hot spot is located (i.e. the supplier may presume that its customer belongs in that location). However, this presumption can be rebutted if the supplier holds three pieces of alternative, noncontradictory evidence that indicate the customer belongs elsewhere. In these circumstances, three pieces of evidence could be the billing address, IP address and bank details.

**MOSS scheme**

As noted above, the VAT MOSS also comes into effect on 1 January 2015. The MOSS will allow taxable persons making B2C supplies of broadcasting, telecommunications and electronic services in EU member states in which they do not have an establishment to submit returns and pay VAT due through the web portal of one member state. Otherwise, due to the change in the place of supply rules for B2C supplies (i.e. taxation at the place of consumption), the business would be required to register and submit VAT returns in each member state in which it makes such supplies.

The MOSS is an optional regime, but once an election is made to register for the MOSS, the taxable person must apply it in all relevant member states. The MOSS will be available to EU businesses ("EU scheme") and non-EU businesses ("non-EU scheme"). The non-EU scheme is similar to the VAT on e-services (VOES) registration scheme that currently is available, albeit with a broader scope in that it will apply to telecommunications and broadcasting services.

**Registration:** VAT MOSS registration, which is optional, is intended to simplify the administrative burden of accounting for VAT in each member state in which a supply is made.

A taxable person that opts to use MOSS can register from October 2014 (the exact date will depend on the country in which it has its business establishment or head office) and will be identified for MOSS purposes with the same VAT identification number that it uses for its domestic VAT returns. (A VAT group can be registered under MOSS as one taxable person.) A taxable person that is not established in the EU can choose any member state in which to register.

A taxable person, however, can only have one MOSS registration throughout the EU.

**MOSS returns:** A taxable person using the EU or non-EU scheme will be required to submit an electronic MOSS VAT return for each calendar quarter, which will have to include details of the supplies of telecommunications, broadcasting and electronic services to nontaxable persons in other member states. (If there have not been any supplies in a period, a nil return must be submitted.) The MOSS return and accompanying VAT payment will be filed in the business' member state of "identification" (typically, the member state in which the business has its business establishment) within 20 days of the end of the period covered by the return; the return and the VAT payable will then be transmitted to the relevant member state of consumption via a secure communications network.

The MOSS VAT return must be filed in addition to the normal VAT return a business files with the member state in which it is established. While the aim of MOSS is to reduce administrative burdens for businesses making B2C supplies of digital services, MOSS does entail an additional administrative burden because the business will have to file an extra VAT return, and it will have to be able to separate within its accounting system the different types of supplies it makes. Nevertheless, the benefit of a single VAT registration in the EU, as opposed to up to 28 separate registrations, would seem to outweigh the burden of filing an additional VAT return.

Notably, if a business is established in a member state for VAT purposes, it must report B2C sales of broadcasting, telecommunications or electronically supplied services through a local VAT registration in that state, and not through a MOSS registration. Although the MOSS system does not permit recovery of any input tax (which must be recovered through a local VAT registration), this may not be an issue in many cases, as a business making supplies of only these types of services in a member state where it is not established would be unlikely to be incur local VAT in that country.

**Comments**

In the time remaining before 1 January 2015, there are a number of actions that affected businesses may take, including the following:

- Determine whether sales are impacted by the changes.
- Non-EU businesses making digital supplies to customers within the EU that currently are not VOES-registered should take steps to organize their VAT affairs in the EU and ensure they are fully compliant with the new rules.
- Evaluate the customer information that currently is collected to ensure that it is possible to determine where customers belong/where services are used and enjoyed (if applicable).
- Prepare accounting systems so that VAT can be accounted for directly and determine if pricing needs to vary depending on where the customer belongs or whether, for commercial reasons, the business wants to maintain a single price point across the EU and account for VAT from this VAT-inclusive amount.
- Determine whether MOSS or individual VAT registrations are preferable.
- Register for MOSS (if desired).

The 2015 changes will have a significant impact on affected businesses. However, they conform to a wider policy trend among tax authorities aimed at ensuring that tax revenues accrue to the jurisdiction in which goods or services are consumed. The exponential increase of supplies of e-services over the last two decades has been unprecedented, and has occurred over too short a time period for tax authorities to incrementally adjust legislation in response.

Although the principles underlying the changes are clear, the application of the correct rules in practice may well be more of a challenge for businesses. The introduction of the MOSS VAT registration to help simplify the VAT compliance process and ease the administrative burden on businesses is a practical and welcome step. If successful, this is an approach that also could benefit other business sectors – for example, online retailers making distance sales of goods (B2C supplies of delivered goods), where the retailer typically is required to register in a number of EU member states to account for local VAT on its supplies.

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## China:
## National customs audits to intensify

September marked the start of the peak season for Chinese Customs audits for 2014 and, as the year-end approaches, the Customs authorities are stepping up their investigation activities – but now with a new emphasis on "national" audits, that is, audits covering all affected Chinese companies within a group.

While Customs' audits will continue to focus on normal trade, processing trade and duty relief operations, it appears that, based on audit results of 2013 and the first three quarters of 2014, royalty payments (regardless of whether paid), especially those of multinational groups, will be a principal target area in the fourth quarter of 2014. Specific products under scrutiny include yachts, business aircraft, luxury cars, blankets, milk powder, ATM machines and electrical products.

Considering this round of intensive targeted audits and the limited internal resources of the Customs authorities, the authorities are likely to adopt innovative approaches. For example, the Customs authorities may push for an extension of the Voluntary Disclosure Program (VDP), which has been piloted in various regions for the past several months. The VDP aims to encourage companies to voluntarily report noncompliance activities to Customs, in exchange for relief from penalties. The authorities are expected to further clarify certain aspects of the VDP, especially with respect to the mitigation or reduction of penalties and interest surcharges.

It also is possible that the Customs authorities will involve third-party agencies to assist with audits, including encouraging companies to engage such agencies to carry out self-inspections of import and export activities.

### Comments

In Customs audit cases, especially audits initiated at year-end, companies often are at a disadvantage due to the condensed timeframe to respond to the authorities and the risk that the case may be referred to the anti-smuggling bureau, which could create legal and reputational issues for the company. Any noncompliance identified by Customs will have a negative impact on a company's profit and loss accounts, which the company may not have factored in.

A proactive approach to Customs audits is essential. Companies, especially those conducting business in targeted areas, should consider performing self-inspections to assess potential risks and make provisions, where necessary. If any noncompliance comes to light during a self-assessment, the company should immediately contact Customs and take advantage of the VDP, if possible. The prospects for potential relief from penalties usually are more encouraging if the noncompliance is reported to Customs before an audit is initiated. Considering the timeline pressures, companies may consider assistance from third-party agencies to ensure the quality of the voluntary disclosure.

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## Luxembourg: 2015 budget measures presented

Luxembourg's government presented the 2015 budget draft law on 15 October 2014. Notably, there are no proposals in the budget that would increase the corporate income tax rate, so the existing rate of 22.47% (including the surcharge) will continue to apply for 2015.

The main proposals that would affect companies are as follows:

**Transfer pricing:** In line with previous announcements made by the Minister of Finance, the government would reinforce the existing transfer pricing rules; this would include a new provision in the procedural section of the tax law to specifically refer to transfer pricing situations in which the tax authorities would be permitted to request documents to investigate transactions with related parties (currently, the tax authorities' power to ask questions or request information related to transfer pricing is not clearly stated in the law).

**Minimum income tax:** Currently, collective entities that own qualifying holding and financial assets that exceed 90% of their total balance sheet are liable to a minimum income tax of EUR 3,210. Other collective entities are subject to a progressive minimum income tax (from EUR 535 to EUR 21,400) that depends on the total assets on their balance sheet. The criteria for the application of the minimum income tax of EUR 3,210 would be revised. Under the proposal, a collective entity would have to own qualifying holding and financial assets that exceed 90% of its balance sheet *and* have a total balance sheet exceeding EUR 350,000 to be liable to the EUR 3,210 minimum income tax. Entities that meet the 90% test and have a total balance sheet below EUR 350,000 would be liable to a minimum income tax of EUR 535 (currently, EUR 3,210).

**Advance tax decisions:** The advance tax decisions practice of the Luxembourg tax authorities would be formalized:

- Upon a legitimate written request, the tax inspector of the relevant tax office will issue an advance tax decision;
- The advance tax decision will be limited to the determination of the correct application of tax laws; and
- The advance tax decision will bind the Luxembourg tax authorities regarding future taxation of the taxpayer.

The proposals would allow the tax authorities to charge a fee for an advance tax decision. The government will issue further guidance on the procedure for applying for a decision.

(It should be noted that the European Commission currently is investigating possible state aid regarding some advance tax decisions.)

**VAT:** The Luxembourg VAT rates generally would increase by 2% as from 1 January 2015. The VAT rates of 6%, 12% and 15% would increase to 8%, 14% and 17%. The VAT rate of 3% would remain unchanged. Even after the increase, the standard VAT rate of 17% would remain the lowest within the EU. In addition to the increase of the VAT rates, changes would be made to certain categories of goods and services.

The Luxembourg parliament will debate the proposed budget measures and vote on a final version before the end of 2014, with the changes becoming effective as from 1 January 2015.

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## Mexico:
## SAT issues regulations on deductions under shared expense agreements

Mexico's Tax Administration Service (SAT) published regulations on 16 October 2014 that allow expenses incurred on a pro rata basis with nonresidents to be deductible if certain requirements are met, despite a specific provision to the contrary in the Income Tax Law (ITL). These regulations put into effect the decision issued by the second chamber of the Supreme Court on 19 March 2014, in which the court held that the provision in the ITL could not be justified because Mexico's transfer pricing rules require taxpayers to adjust their transactions with related nonresident parties to arm's length terms. (For previous coverage, see the *World Tax Advisor*, 9 May 2014.)
**URL:** http://newsletters.usdbriefs.com/2014/Tax/WTA/140509_8.html

Under the new regulations, the ITL provision disallowing the deduction of shared expenses with nonresidents will not apply if a Mexican company complies with the requirements in the regulations.

In addition to the general deductibility requirements included in the published regulations (e.g. the expenses must be necessary for the company to carry out its activities; there must be a justifiable connection between the expenses incurred and the benefit received, or expected to be received, by the company; if the expenses were incurred between related parties, the taxpayer must demonstrate that the allocation was agreed on at arm's length terms, etc.), certain transfer pricing documentation must be maintained for prorated expense transactions between related parties.

The following requirements in the published regulations must be met to certify there is a reasonable relationship between the expenses incurred and the benefit received, or expected to be received, by the taxpayer that incurred the expenses:

- Each party to the shared expense agreement must have access to the details of the transaction, how the anticipated profits will be determined, the prorated expenses incurred and the profits received.
- The participants must be companies that will mutually benefit from the agreement.
- The agreement must specify the nature and scope of the benefits that will be available at a global and an individual company level with respect to the expenses incurred and prorated among the members of the group.
- The agreement must provide for prorated expenses using an allocation method that reflects the expenses in relation to the anticipated profits.
- The agreement must specify the scope of the transactions covered and the term of the agreement.

The following transfer pricing documentation must be retained for each transaction; otherwise, the expenses will not be deductible:

- Name, country of incorporation and tax residence, country where the company has its management headquarters, tax domicile and tax ID number of each related party involved in the prorating of global expenses or that will benefit from the prorating;
- Description of the transactions and the terms of the agreement;
- Functions and activities performed by each party, as well as the risks assumed and assets used by each party;
- Documentation supporting the global expenses incurred;
- Details and documentary evidence that the expenses were paid and prorated per the agreement;
- Documentation demonstrating that the transactions were carried out on arm's length terms and the transfer pricing method used;
- Documentation showing how comparables were determined for each transaction; and
- Supporting documentation regarding future transactions, projections used as a basis for calculating pro rata expenses and expected benefits, as well as pro rata expenses effectively incurred and benefits effectively received.

The issuance of the regulations should be welcomed by international groups, because historically they have been unable to deduct an allocation of shared expenses that benefit their Mexican operations, and they may have been discouraged from challenging this treatment through the Mexican tax court system due to the time and cost involved in litigation. Under the new regulations, these groups will be able deduct an appropriate allocation of expenses benefiting their Mexican operations, provided they comply with the detailed tax and transfer pricing requirements.

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## Mexico:
## Deadline for reporting transactions on SAT website extended

Mexico's tax authorities (State Administration of Taxation, or SAT) have extended the deadline for reporting information on certain transactions carried out during fiscal year 2014 to 31 January 2015, in response to feedback from taxpayers that the deadlines and other requirements were announced too late to provide sufficient time to comply.

The Federal Tax Code approved in 2013 and in effect from 1 January 2014 included a new requirement for taxpayers to report certain transactions on the SAT website. On 17 October 2014, the SAT published new annexes to the tax miscellaneous rules, which include the guidelines for the relevant transactions that taxpayers must report, as well as the schedule of deadlines for reporting the information. The reporting deadlines originally were between 30 October 2014 and 30 January 2015, depending on when the transaction took place.

According to the new annexes, information on the following must be uploaded to the SAT website:

- Financial transactions carried out outside of a recognized market, and derivative financial transactions;
- Transfer pricing adjustments and royalties determined based on profit residuals;
- Changes to the ownership structure or tax residence of an entity;
- Restructurings and reorganizations (including changes in the business model); and
- Any other relevant transactions, such as sales of intangible assets, mergers, spin offs, the application of tax treaty benefits (reduced withholding tax rates or exemptions) with parties located in countries that have a territorial tax regime and certain other transactions.

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## Spain:
## Inheritance and gift tax rules contrary to EU law

The Court of Justice of the European Union (CJEU) issued a decision on 3 September 2014 concluding that Spain's inheritance and gift tax rules are not in conformity with the free movement of capital principle under EU law (specifically, article 63 of the Treaty on the Functioning of the European Union and article 40 of the Agreement on the European Economic Area). Spain's inheritance and gift tax laws currently allow for a higher tax burden on nonresidents and property located outside Spain than would apply to residents in the same situation. Even though the court concludes that discrimination takes place with EU residents, the effects could be extended to non-EU residents.

Although the inheritance and gift tax laws are national laws, under Spanish law, the Autonomous Communities have certain legislative powers that allow them to grant benefits to persons and property within their regions. With respect to the inheritance and gift tax laws, the Autonomous Communities have exercised these powers by granting certain reductions and exemptions where the donor/testator/beneficiary or property is in Spain, with the result that the tax burden on residents (and property in Spain) is considerably lower than the burden on persons/property in other countries.

According to the CJEU, it is incompatible with EU law for tax advantages to be granted only in the case of an inheritance or donation with a resident heir or donee, a resident decedent or property located in Spain, where that person/property has a connection with an Autonomous Community.

The CJEU decision arose out of an infringement procedure initiated by the European Commission in 2010; the Commission requested that Spain amend its legislation and referred the country to the CJEU after it failed to take any steps.

Affected nonresidents who have paid Spanish inheritance and gift tax may be able to file a claim for a refund of tax paid within the last four years (i.e. within Spain's statute of limitations). The CJEU decision also means that Spain will have to amend its inheritance and gift tax rules, which could result in a lower tax burden for nonresidents, at least for those who are resident within the EU.

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## United States:
## IRS simplifies requirements for certain Canadian retirement plan reporting

On 7 October 2014, the US Internal Revenue Service (IRS) issued guidance (Rev. Proc. 2014-55) that changes the method for electing to defer income accrued in certain Canadian pension plans pursuant to the US-Canada income tax treaty. The new rules make the election automatic for many taxpayers and remove the annual Form 8891 filing requirement for registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs).

### Background

Under US domestic law, US citizens and residents generally are subject to tax annually on income accrued within Canadian pension plans, regardless of whether a distribution has been received during the tax year. Under previous guidance, taxpayers could elect to defer current taxation on undistributed income under the US-Canada treaty until distributions were received from the plan. This election was made on Form 8891 in the case of RRSPs and RRIFs, and on a statement attached to the return with respect to Canadian Registered Pension Plans and Canadian Deferred Profit Sharing Plans. By filing Form 8891, taxpayers also were exempted from having to separately disclose their RRSPs and RRIFs on Forms 8938, 3520 and 3520-A.

Failure to make a timely election under the prior rules would result in a taxpayer being taxable each year on undistributed plan earnings, unless retroactive relief was requested through IRS-prescribed procedures.

### Automatic election and reduced reporting requirements

Under the new guidance in Rev. Proc. 2014-55, the election to defer accrued income until distribution for certain Canadian pension plans is now automatic for eligible individuals, and the annual reporting required on Form 8891 for RRSPs and RRIFs and on other statements for Canadian Registered Pension Plans and Canadian Deferred Profit Sharing Plans has been removed.

An eligible individual is a beneficiary of a covered plan who:

- Is a US citizen or resident;
- Has satisfied the requirement for filing a US income tax return for each year of citizenship or residence;
- Has not reported income from the undistributed plan earnings during any taxable year; and
- Has reported any and all distributions from the plan in prior years.

Eligible individuals who did not previously make an election are treated as having made an election in the first tax year in which they were an eligible individual, thereby preventing the need for retroactive election relief. The election applies separately to each plan a taxpayer has an interest in and, once made, cannot be revoked without the consent of the IRS.

Individuals who do not qualify as “eligible individuals” do not benefit from the new automatic election regime and remain currently taxable on accrued income in Canadian pension plans.

Such individuals must seek IRS approval to make the election to defer earnings in their Canadian pension plans.

Information reporting requirements also have been reduced under the new rules. The annual reporting requirement under Rev. Proc. 2002-23 has been eliminated, which also eliminates the need for Form 8891.

Individuals still are subject to foreign financial asset informational reporting requirements unrelated to the US-Canada treaty. Such requirements may include disclosure of assets on Form 8938 or FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR). The exemption that allowed plan custodians not to file Form 3520-A and plan beneficiaries not to file Form 3520 with respect to RRSPs and RRIFs remains in effect.

The new rules are effective for tax years ending after 31 December 2012, and Form 8891 will become obsolete as of 31 December 2014.

**Comments**

The new rules put Canadian pension plans on par with US qualified plans for a number of taxpayers. These taxpayers no longer will be required to make timely elections to defer income, nor will they have to annually report information to maintain those elections. Like US plan beneficiaries, they will not be taxable until they receive distributions from the plan. Taxpayers who do not qualify for the new automatic election regime either will be subject to current taxation on plan earnings or will be required to seek IRS approval to make the elections to defer.

Taxpayers subject to FBAR reporting requirements and/or Form 8938 reporting will continue to have to disclose their interests in Canadian pension plans, as under prior rules. Such individuals that previously disclosed their RRSPs and RRIFs on Form 8891 now will do so on Form 8938.

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## In brief

**Australia:** The government has issued a discussion paper on the proposed design of a 10% nonfinal withholding tax that would apply to the disposal of certain taxable Australian property by foreign residents as from 1 July 2016. This measure previously was announced in the 2013-14 federal budget. Under the proposal, the payer would be required to withhold an amount equal to 10% of the proceeds from the transaction and to pay this amount to the commissioner where all of the following apply: (1) the payee is a nonresident for Australian income tax purposes; (2) the transaction involves an asset that is taxable Australian property; and (3) the asset is not residential property with a value less than AUD 2.5 million. The tax is proposed to apply regardless of whether the gains on disposal are subject to tax under the capital gains tax regime or are subject to tax because the gains constitute ordinary income. Submissions on the discussion paper are due by 28 November 2014.

**European Union:** The European Commission has published a paper outlining ideas on how to ensure a simpler, more effective and more fraud-proof VAT system tailored to the single market in the EU. The future VAT regime should better meet the needs of businesses and be less susceptible to fraud than the current system. The Commission document sets out several options for shaping the future VAT regime: (1) maintaining the status quo (with some modifications); (2) making the supplier responsible for charging and paying VAT; or (3) taxing supplies according to where the goods are delivered or where the customer is established; the customer – rather than the supplier – would be liable for the VAT and taxation would take place either where that customer is based or where the goods are delivered. The Commission is now undertaking an in-depth assessment to determine the impact of each of the options for businesses and for EU member states. On the basis of its findings, it will present the possible way forward in spring 2015.

**European Union:** The European Commission has published the new Combined Nomenclature (CN) to be used by the European Community for levying import duties as from 1 January 2015. The applicable duty rate for imported goods depends on their classification code in the CN. There are new codes for certain products (including dairy products, fish products, organic compounds and chemical products), and the descriptions of the codes for certain wine products will change. Where applicable, the new codes should be used on import declarations as from 1 January 2015.

**Greece:** Greece has been asked to amend its legislation relating to Greek and foreign flag ships. Under Greek tax rules, Greek-flag ships and certain vessels managed from Greece are exempt from income tax and are instead subject to the simplified and lower special tonnage tax for maritime activities. Foreign-flag ships, however, are subject to a less favorable income tax regime. Greek legislation also allows an income tax exemption for dividends from entities using Greek-flag ships, but not for dividends from companies using foreign-flag ships. The European Commission has determined that the different treatment potentially infringes EU law.

**Italy:** A measure dated 30 September 2014 sets out how registration for the VAT mini one-stop shop (MOSS) will operate in Italy. MOSS registration is carried out via the MOSS webpage on the Italian tax authorities' website. There also is a link for non-EU taxpayers to request an EU identification number. (For additional coverage of the MOSS, see the article in this issue on the EU VAT place of supply rules.)
**URL:** http://newsletters.usdbriefs.com/2014/Tax/WTA/141114_1.html

**Poland:** The president has signed into law a bill introducing changes to the Corporate Income Tax Act that include the introduction of controlled foreign company (CFC) rules. The CFC rules will apply as from 1 January 2015.

**Poland:** Changes to Poland's VAT law that were published in the official journal on 3 October 2014 implement the new EU place of supply rules that will apply as from 1 January 2015 and launch a web portal for suppliers to register for the VAT MOSS procedure. The MOSS portal is open for registration as from 1 October 2014. (For additional coverage of the MOSS, see the article in this issue on the EU VAT place of supply rules.)
**URL:** http://newsletters.usdbriefs.com/2014/Tax/WTA/141114_1.html

**United Kingdom:** The UK tax authorities have announced that the UK registration system for the MOSS is now available. Although the MOSS will not come into operation fully until 2015 – the first returns under MOSS will cover the calendar quarter to 31 March 2015 – businesses are now able to set up their MOSS registration. The system is available online and requires each business that wants to use the scheme to set up its own registration. Once the registration is in place, businesses can appoint agents to assist with their compliance obligations. (For additional coverage of the MOSS, see the article in this issue on the EU VAT place of supply rules.)
**URL:** http://newsletters.usdbriefs.com/2014/Tax/WTA/141114_1.html

**Vietnam:** A recently issued circular allows newly established companies to declare VAT on a quarterly (rather than monthly) basis for the first 12 months of operations.

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## BEPS corner

Starting this issue, *World Tax Advisor* will include this monthly column that will provide updates on developments in the OECD's base erosion and profit shifting initiative. The column will appear in the first issue of each month.

**Permanent establishments (PEs):** On 31 October 2014, the OECD released a discussion draft on Action 7: Preventing the Artificial Avoidance of PE Status. The objective of Action 7 is to develop changes to the definition of a PE to prevent the artificial avoidance of PE status in relation to BEPS. Broadly, the discussion draft includes the preliminary results of the work carried on with respect to issues related to:

- Artificial avoidance of PE status through *commissionnaire* arrangements and similar strategies;
- Artificial avoidance of PE status through the specific activity exemptions;
- Splitting-up of contracts;
- Insurance; and
- Profit attribution to PEs and interaction with action points on transfer pricing.

The discussion draft also includes proposals for changes to the definition of PE found in the OECD model treaty. For additional coverage of the discussion draft, see the OECD Tax Alert dated 4 November 2014.
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-051114.pdf?id=us:em:na:wta:eng:tax:111414

**Low value-adding intragroup services:** On 3 November 2014, the OECD released a discussion draft on Action 10: Proposed Modifications to Chapter VII of the Transfer Pricing Guidelines Relating to Low Value-Adding Intra-Group Services. The objective of Action 10 is to develop transfer pricing rules to provide protection against common types of base eroding payments, such as management fees and head office expenses. The discussion draft indicates that there are two main issues that need to be addressed in the analysis of transfer pricing for intragroup services: (1) determining whether intragroup services have been rendered; and (2) determining an arm's length charge. The discussion draft also proposes an approach that would identify a wide category of common intragroup services fees commanding a very limited profit mark-up on costs, apply a consistent allocation key for all recipients and

provide greater transparency through specific reporting requirements. Public comments on the draft are due by 14 January 2015. For additional coverage of the draft, see the OECD Tax Alert dated 10 November 2014.
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-101114.pdf?id=us:em:na:wta:eng:tax:111414

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### Germany
**Upper house of parliament proposes new anti-hybrid rule and other measures**
On 7 November 2014, Germany's upper house of parliament approved a draft tax bill that includes a new anti-hybrid rule and several other measures, including the introduction of a 10% minimum shareholding requirement to qualify for the 95% participation exemption on gains from a sale of shares and a broadening of the intragroup restructuring exception to the change-in-ownership rule.
Issue date: 7 November 2014
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-germany-071114.pdf?id=us:em:na:wta:eng:tax:111414

### Greece
**Greece Issues Templates and Guidelines for APA Negotiations**
In an effort to provide taxpayers with an integrated procedural framework for the negotiation of advance pricing agreements (APAs), the Greek Ministry of Finance on 16 October 2014 released template application forms for both preliminary consultations and formal negotiations, as well as additional guidelines on the overall APA procedure.
Issue date: 3 November 2014
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tpalert-022-031114.pdf?id=us:em:na:wta:eng:tax:111414

### Ireland
**Finance Bill 2014: Impact on multinational corporations**
Ireland's Finance Bill 2014 was published on 23 October 2014, to bring into effect the budget announced on 14 October. Measures relevant to the multinational sector include the grandfathering of "double Irish" structures created before 1 January 2015, and the change in tax residence rules for Irish companies incorporated after that date; and enhancement of the onshore intellectual property and R&D tax credit regimes.
Issue date: 23 October 2014
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-ireland-231014.pdf?id=us:em:na:wta:eng:tax:111414

### OECD
**BEPS Action 7: Preventing the artificial avoidance of PE status**
On 31 October 2014, the OECD, as part of its work on the Action Plan to address Base Erosion and Profit Shifting (BEPS), released a Discussion Draft on Action 7 in relation to preventing the artificial avoidance of permanent establishment (PE) status. This Action is

focused on the need to update the OECD tax treaty definition of PE (article 5 in the OECD model treaty) to prevent abuses of the threshold allocating taxing rights for trading activities to different jurisdictions. As part of this work, the OECD is considering the modernization of the PE threshold in relation to digital cross-border business, in line with the work on Action 1.
Issue date: 4 November 2014
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-051114.pdf?id=us:em:na:wta:eng:tax:111414

**Proposed modifications to transfer pricing guidelines relating to low value-adding intragroup services**

On 3 November 2014, the OECD, as part of its work on the Action Plan to address BEPS, released a discussion draft in relation to Action 10 that proposes a simplified transfer pricing approach for low value-adding intragroup services, which ultimately would lead to revisions in Chapter VII of the OECD's transfer pricing guidelines. The aim is to reduce base erosion through excessive management fees and head office expenses, particularly in developing countries. The simplified approach, which a group may elect to adopt, recognizes that the arm's length price is closely related to costs and allocates the costs of providing each category of such services to the group companies that benefit from using the services using consistent group-wide allocation keys with an associated consistent small mark-up.
Issue date: 10 November 2014
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-oecd-101114.pdf?id=us:em:na:wta:eng:tax:111414

**United States**

**Multistate Tax Commission Hears From Firms on Transfer Pricing Project**

The Multistate Tax Commission's (MTC's) Arm's-length Adjustment Service Advisory Group held a two-day conference in Atlanta, Georgia on 6 and 7 October to meet with transfer pricing firms and discuss the MTC's project to develop a multistate transfer pricing service.
Issue date: 3 November 2014
**URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-tp-021-31114.pdf?id=us:em:na:wta:eng:tax:111414