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Brazil's reform of tax on interstate transactions underway

Two proposals submitted to the National Congress in March 2013 aim to tackle the "tax war" that has erupted among the 26 Brazilian states as a result of the tax on interstate transactions (ICMS) and to obtain approval of certain ICMS benefits already granted by some states.

The ICMS is a state-level VAT (levied by each of the Brazilian states) on the circulation of goods and the provision of telecommunications services and interstate/intermunicipal transportation services. Although the ICMS is a state tax, it is regulated by the federal constitution. The states have some autonomy to establish which transactions are covered and how they will be subject to ICMS, the rates and the basis for calculation of the tax.

The current ICMS intrastate rates range from 17% to 19% and the interstate rates are 4%, 7% and 12%, depending on the location of the recipient and the nature of the transaction. The 4% rate, introduced as from 1 January 2013, applies only to the circulation of imported goods and inputs. Application of the 7% and 12% rates depends on the origin and destination of the goods, which means that if a less developed state sells to a more developed state, the 12% rate should apply since the ICMS is allocated to the state of origin of the goods.

The application of the ICMS is particularly burdensome for taxpayers with operations in Brazil, since each transaction must be analyzed separately to determine the applicable rate and calculation basis. Logistics and commercial aspects also are affected by the tax because the prices charged to customers vary depending on the origin of the products and the applicable tax rate.

It is proposed to unify the interstate rates by abolishing the multiple rates and introducing a flat rate of 4% over a 12-year period. This change would be beneficial for taxpayers because it would eliminate the origin and destination principles and

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simplify identification of the applicable rate (although there has been no discussion about changes to the calculation basis of the ICMS). The less developed states in the north, northeast and central-west regions, however, have opposed the reform since a flat rate system would result in a substantial loss in revenue. (The state revenue is calculated by taking into account, among other items, the ICMS rate; thus, under the proposed reform, the states of origin that apply the 12% rate would apply 4%.)

The states are now negotiating with the federal government to find a common denominator to simplify or at least reduce the impact of ICMS on interstate operations of taxpayers. These discussions likely will take time, with a successful outcome ultimately depending on the concessions made by the federal government and how the states will be compensated for the reduction in ICMS revenue.

The second project – the approval by the National Council of Fiscal Policy (CONFAZ) of ICMS incentives granted by the states – also is likely to be subject to protracted debate and to have an uncertain outcome. Some states, especially those in the north, northeast and central-west, have unilaterally granted ICMS benefits by reducing the amount of ICMS due, allowing deemed credits or even financing taxpayer debt to attract investment. Under Brazil's federal law, a state can grant tax incentives only if the incentives have been approved by the other states, a requirement that was not complied with in certain cases. Negatively impacted states filed lawsuits challenging the incentives. It is now proposed that CONFAZ approve benefits that already have been granted to taxpayers. This negotiation is not going to be simple since the developed states that do not grant many benefits may not accept all the benefits under discussion.

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China:
VAT reform to be expanded nationwide and new industries included

China's State Council announced on 10 April 2013 that the VAT reform pilot program that currently applies in nine cities and provinces will be expanded nationwide and that new service industries will be included within the scope of the reform. The government also confirmed that the VAT reform will be finalized by 2015.

The current pilot services (i.e. two main groups covering transportation services and six groups of modern services) will be rolled out nationwide as from 1 August 2013. Additionally, three new categories of services will be covered under the VAT reform:

- Production, broadcasting and distribution of television and radio programs and films;
- Railway transportation; and
- Postal and telecommunications.

Comments

The VAT pilot program currently applies in Shanghai, Beijing, Jiangsu, Anhui, Fujian, Guangdong, Tianjin, Zhejiang and Hubei. There has been mounting anticipation in recent months that further changes to the VAT reform would be made as soon as the new government, under the leadership of President Jinping Xi, was in place. Some of these changes have materialized in the announcement, while others have not.

Nationwide expansion – The national rollout of the transportation and modern service sectors is no surprise. Cities and provinces throughout the country have expressed interest in joining the pilot since it was launched in Shanghai in January 2012, largely because Shanghai was perceived to be gaining a competitive advantage by sourcing activities from Shanghai

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so that taxpayers can claim a VAT deduction. It is, therefore, to China's advantage to level the playing field. The national rollout of VAT also will create an easier and more consistent approach by eliminating the need for taxpayers to comply with two taxing regimes (i.e. VAT and Business Tax), depending on geographical location.

One challenge that will need to be addressed is whether the local tax bureaus in smaller areas will be sufficiently prepared to implement VAT.

It should be noted that, although the announcement indicates that the VAT pilot will be expanded to the whole country starting on 1 August 2013, it is unclear whether this will take place at once or incrementally. Expectations are, however, that the rollout will move towards a nationwide industry-wide expansion rather than a geographical expansion.

New industries – As noted above, the VAT reform will be expanded to include the production, broadcasting and publication of television and radio programs and films. However, the announcement is silent on whether these industries will be rolled out on a city-by-city or a nationwide basis and the timing of their inclusion within the scope of VAT was not confirmed. We anticipate that implementation on a nationwide basis is likely and that these sectors will become part of the reform initiative possibly towards the end of 2013 or the beginning of 2014. Although the scope of the services is not yet defined, it is likely to rely on current definitions under the Business Tax rules, supplemented by additional guidance to take into account technology that did not exist when the Business Tax rules were first drafted. The VAT rates applicable to the three new industries have not been announced.

Other potential industries – There is considerable interest in whether the real estate and construction sector and the financial services sector will be taxed under the VAT rules. There have been expectations that these sectors would be included in the reform, possibly in 2013, and it was surprising that the 10 April announcement was silent on this issue. Taking into account the fact that China is keen to manage these critical sectors from a macroeconomic perspective, it is likely that more research will be needed to fully understand the impact of bringing real estate/construction and financial services within the scope of VAT.

For now, the focus will be on the three new service sectors that will be brought into the VAT reform. Based on past experience, it is almost certain that the inclusion of these services will be implemented quickly and, since businesses operating in these sectors are Business Tax payers and, therefore, unfamiliar with VAT compliance, advance preparation will be critical.

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France:
Tax authorities clarify application of dividend surtax to PEs

The French tax authorities issued administrative guidance on 10 April 2013 that aims to clarify the new 3% surtax on dividend distributions and deemed dividend distributions levied on French entities subject to corporate income tax, including French permanent establishments (PEs) of foreign companies. The surtax was introduced via the revised budget law for 2012.

The administrative guidance clarifies, in particular, the application of the surtax to PEs and in the context of a tax consolidated group.

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General rule

Under the revised budget law, profits of foreign entities are subject to the 3% surtax when they cease to be at the "disposal" of a PE. The guidance provides additional details on how a PE is to compute its taxable base for purposes of the surtax. Specifically, amounts that "cease to be at the disposal of a PE" correspond to withdrawals made by the head office and certain expenses disallowed under the French corporate income tax rules.

Withdrawals by a head office – This category includes all withdrawals made by a foreign head office from a PE's tax assets (i.e. assets recorded in the tax balance sheet of the PE), such as withdrawals of cash and/or property of the PE, as well as amounts transferred indirectly for commercial purposes, but under non-arm's length conditions.

The surtax does not apply to withdrawals by a foreign entity from its French branch as a result of their commercial relationship (e.g. where a French branch remunerates its foreign head office for a transfer of goods or services under arm's length conditions), provided the transactions are recorded in separate accounts.

The administrative guidance states that capital contributions cannot be netted off against withdrawals (thus reducing the taxable base), even if they are effected within the same financial year.

Nondeductible expenses – This category comprises withholding tax on passive income that is paid in the relevant financial year. Nondeductible expenses also include any deemed distributions within the meaning of the French Tax Code, such as:

- Hidden compensation and benefits;
- Excessive remuneration and extravagant expenditure;
- Excess interest attributed to shareholders; and
- Donations, subsidies and miscellaneous overhead costs that are added back to taxable income.

For purposes of determining the taxable base of the 3% surtax, a PE must maintain records of dividends distributed and any withdrawals made for the relevant financial year to be in a position to answer any questions that may be raised by the French tax authorities.

PEs of EU entities

Despite the above, it is worth noting that profits that cease to be at the disposal of a French PE of a foreign entity that has its place of effective management in an EU member state and is liable to corporate income tax in that county without benefiting from any exemption will not be subject to the 3% surtax.

The administrative guidance is silent, however, on the potential incompatibility with EU law of the 3% surtax as it applies to companies resident in another EU member state.

Distributions between entities within a consolidated tax group

A specific exemption from the 3% surtax is provided for dividends paid between members of a French tax consolidated group. Profits distributed by a group company to a non-group company, or vice-versa, are outside the scope of the exemption. However, where a group company is held indirectly by the head of the tax consolidated group through an EU intermediate holding company (i.e. a structure known as a "*Papillon*" structure), the surtax will not apply to distributions made through the foreign entity, provided the dividends are ultimately transferred to the French tax consolidated group (under a refund claim procedure). In this regard, there must be evidence that the distribution comes from a group company and is paid to another group company through an interposed entity.

While the administrative guidance makes welcome clarifications on the application of the surtax, unfortunately it does not answer the outstanding questions practitioners have on some potential infringements of, or conflict with, EU law (in particular, potential discrimination against a French subsidiary with an EU parent company).

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Greece:
New documentation requirements for foreign individuals

New rules enacted on 26 March 2013 make significant changes to the documentation that must be submitted by a foreign individual to demonstrate that he/she is not resident for Greek tax purposes. The following rules now apply:

- An individual who declares himself/herself a foreign tax resident and earns actual income from Greek sources must submit a tax residence certificate, along with his/her annual Greek personal income tax return.
- The certificate must be issued by the competent tax authorities or a public, municipal or other recognized authority of the jurisdiction in which the individual is resident for tax purposes.
- Alternatively, the individual can submit a copy of a tax clearance certificate issued by the country of residence or, in the absence of such a certificate, a copy of the annual income tax return filed in the foreign jurisdiction.

Specific rules apply to employees of "Law 89/1967 offices" in Greece. Law 89/1967 provides for a special tax regime for foreign companies setting up offices in Greece through which services are provided to a head office abroad or to other companies of the same group that are not established in Greece. Foreign employees of such offices are treated as nonresidents for Greek tax purposes. Under the new rules, these individuals must submit the following documents with their annual Greek personal income tax returns in which they declare Greece-source income:

- A copy of the foreign passport;
- The decision of the ministry that was published in the official gazette allowing the establishment of the Law 89/1967 office in Greece; and
- A certificate issued by the employer certifying that the individual is employed in a Law 89/1967 office and stating the employment start date.

Failure to submit any of the supporting documents or a late submission will result in the individual being deemed to be tax resident of Greece and, hence, taxable in Greece on his/her worldwide income.

Previously, a foreign individual was required to submit the following with his/her annual personal income tax returns:

- A tax residence certificate in the form of a claim for the application of a tax treaty if the country of residence of the individual had concluded a treaty with Greece; or
- A copy of the individual's foreign annual income tax return if he/she was required to file a return in his/her country of residence; or
- A certificate issued by the tax authorities of the country of residence stating the individual's worldwide income. If such documentation could not be provided, the individual had to submit a residence certificate issued by a public authority of the country of residence.

The deadline for submitting the supporting documents for fiscal year 2012 has been extended to 28 June 2013, which coincides with the deadline for submission of supporting documents for personal income tax returns for fiscal year 2013.

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International:
Global Forum (exchange of information) and OECD (BEPS) update

The finance ministers of the G20 issued a communique on 19 April 2013 in which they endorse efforts to tackle tax evasion and the global adoption of the exchange of tax information.

The finance ministers were present at the semi-annual meeting of the International Monetary Fund and the World Bank. During the meeting, the OECD's Secretary General presented a two-part report to the ministers: an update on developments relating to the Global Forum on the exchange of information and more details on the OECD's current work on offshore tax avoidance and evasion.

The G20 welcomed the report on the effectiveness of exchange of information and the progress made towards automatic exchanges, as well as the development of an action plan to address tax base erosion and profit shifting (BEPS). The G20 criticized 14 countries as they have not made sufficient progress in putting the proper legal system for exchanging information in place. (The cited countries are Botswana, Brunei, Dominica, Guatemala, Lebanon, Liberia, Marshall Islands, Nauru, Niue, Trinidad and Tobago, Switzerland, United Arab Emirates and Vanuatu.)

With Phase 1 (i.e. the peer review of countries' legal framework on fiscal transparency) of the 119 country Global Forum now nearly completed, Phase 2 has been initiated. This phase involves a review of how exchange of information actually works in practice. Thirteen countries cannot move to phase 2 because their laws do not meet global standards, and Switzerland's move to phase 2 is still subject to conditions.

The Secretary General's report describes the success of the multilateral Convention on Mutual Administrative Assistance in Tax Matters. After the third signing ceremony, which will take place in May, some 60 countries are expected to have signed or committed to the convention. The report also addresses the OECD's work on the practical aspects of automatic exchange of information. Automatic exchange of information involves the regular transmission of "bulk" information on non-specific taxpayers, and is a growing practice. The current efforts of the OECD focus on practical issues, such as a model for information exchange, reporting format, transmission methods, etc.

The final subject concerns the progress on the OECD's February 2013 BEPS report. The BEPS report sets out three broadly defined goals: the development of instruments to tackle hybrid mismatches, the improvement of transfer pricing rules and a reconsideration of tax treaty rules that allocate taxing rights (especially in e-commerce). The April report summarizes the OECD's progress to date, notes that focus groups have been set up to address the three goals listed above and indicates that input has been sought by the public and the business community. The business community has acknowledged that certain aspects of the international tax system may need to be changed and has called upon the OECD to provide a common definition of economic substance.

The G20 will meet again in Moscow on 19-20 July 2013 to discuss how the BEPS project should be advanced; the next OECD report on BEPS – likely containing more concrete proposals – is expected by that time.

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Luxembourg:
Automatic exchange of information under savings directive to apply

The Luxembourg government announced on 10 April 2013 that it will move to an automatic exchange of information under the EU savings directive (EUSD) as from 2015. As a result, the country will exchange information with other EU member states about EU resident individuals with bank accounts in Luxembourg. Until 2015, however, Luxembourg will continue to apply the transitional withholding tax regime allowed under the directive (i.e. a 35% withholding tax is levied on relevant interest payments made to EU resident individuals).

Under the exchange of information procedure, financial institutions in Luxembourg will transmit details of the individual's identity, residence, the amount of savings income (within the meaning of the EUSD) and the period to which it relates to the Luxembourg tax authorities. The authorities will then transmit that information to the tax authorities in the member state in which the individual is resident.

Luxembourg and Austria are the only two EU member states that currently apply the savings withholding tax as an alternative to an automatic exchange of information. A number of other European jurisdictions apply measures similar or equivalent to the savings directive, including a withholding tax (e.g. Liechtenstein, Switzerland (see also article on Switzerland in this issue)).
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130426_9.html

Luxembourg's concession on the application of automatic exchange is in line with the international context and also may be seen in the light of the conclusion of a FATCA intergovernmental agreement with the US, even though the scope of information to be reported under FATCA is significantly different than what is reported under the savings directive.

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Malta:
Update on recent tax treaty developments

Malta's tax treaty network, consisting of 63 tax treaties, has developed significantly in recent months. New tax treaties with Bahrain, Hong Kong, Saudi Arabia, Switzerland and Uruguay became applicable on 1 January 2013 (1 April 2013 in the case of Hong Kong). The treaty signed with Guernsey in 2012 entered into force on 10 March 2013 and will apply generally as from 1 January 2014. The revised treaty with Norway entered into force on 14 February 2013 and also will apply as from 1 January 2014. New tax treaties have been negotiated with Armenia, India and Mexico, a protocol has been signed to the existing treaty with South Africa and the treaty with Russia has been approved for signature. Malta also has concluded tax information exchange agreements with the Bahamas, Bermuda and Gibraltar.

The following are the salient features of the treaties that entered into effect on 1 January 2013:

Malta-Bahrain – Exclusive taxing rights with respect to dividends, interest and royalties are allocated to the state of residence of the recipient.

Malta-Hong Kong – Dividends and interest are taxable exclusively in the country of residence of the recipient, whereas royalties may be taxed in the source state, subject to a limited withholding tax rate of 3%. The protocol to the agreement permits both Malta and Hong Kong to continue to apply domestic measures on tax avoidance.

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Malta-Saudi Arabia – Dividends may be taxed in the source state, subject to a limited withholding tax rate of 5%. Income from debt claims is taxable exclusively in the country of residence. Royalties may be taxed in the source state, subject to a limited withholding tax rate of 5% on royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment and 7% in all other cases.

The treaty contains a general clause which provides that the treaty will not affect the application of domestic provisions designed to prevent tax avoidance and evasion.

Malta-Switzerland – Dividends paid by a company resident in Switzerland to a company resident in Malta will be exempt from withholding tax if the recipient holds directly at least 10% of the capital of the company paying the dividends for at least one year. The rate in all other cases may not exceed 15%. Interest may be taxed in the source state, subject to a limited withholding tax rate of 10% and an exemption if the interest is paid in connection with (i) the sale on credit of industrial, commercial or scientific equipment; (ii) the sale on credit of merchandise by one enterprise to another enterprise; or (iii) on any loan granted by a bank. Interest also will be exempt from source state taxation where it is paid between associated companies that are affiliated by a direct minimum holding of 10% for at least one year, or where both companies are held by a third company that has a direct minimum holding of 10% in the capital of both companies for at least one year. Royalties may be taxed exclusively in the residence state.

Malta will use the credit method to eliminate double taxation and Switzerland will use the exemption method for certain types of income and a modified credit method for other income. The treaty also includes a general anti-abuse clause such that treaty benefits will not be applied with respect to wholly artificial arrangements.

Malta-Uruguay – Dividends paid by a company resident in Uruguay to a company (other than a partnership) resident in Malta that holds directly at least 25% of the capital of the company paying the dividends will be subject to a withholding tax not to exceed 5%; the rate in all other cases may not exceed 15%. The 5% rate also will apply if the beneficial owner of the dividends is a collective investment scheme. Interest may be taxed in the source state, subject to a limited withholding tax rate of 10%. Royalties may be taxed in the source state, subject to a limited withholding tax rate of 5% (with respect to royalties for the use of, or the right to use, industrial, commercial or scientific equipment, and copyrights of literary, artistic or scientific works), and 10% in all other cases.

Both Malta and Uruguay will use the credit method to eliminate double taxation.

It should be noted that, in terms of Malta domestic tax law, in general no withholding tax is imposed on dividends, interest and royalties.

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Russia:
Transfer pricing deadlines postponed

Changes have been made to Russia's transfer pricing rules regulating the reporting of controlled transactions and the exclusion of certain transactions from the list of controlled transactions. The amendments to Federal Law No. 39-FZ were signed by the president on 5 April 2013 and apply retroactively as from 1 January 2012 (the date the transfer pricing rules became effective). These changes are designed to ensure the efficient application of the transfer pricing rules by giving taxpayers more time to prepare documentation and providing further clarification on certain controlled transactions.

The following deadlines are affected by the new measures:

- The deadline for reporting controlled transactions carried out in 2012 to the tax authorities is postponed from 20 May 2013 to 20 November 2013;
- The Russian tax authorities cannot request transfer pricing documentation related to controlled transactions carried out in 2012 before 1 December 2013 (previously 1 June 2013); and

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- The deadline for the tax authorities to initiate a transfer pricing audit for 2012 is extended from 31 December 2013 to 30 June 2014.

The law also provides that certain financing transactions carried out before 1 January 2012 will not be subject to the transfer pricing rules. Affected transactions include those related to loans, credits (including trade and commercial credits), warranties and bank guarantees. This provision does not apply, however, to pre-2012 transactions whose terms were amended after 1 January 2012.

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Switzerland: Commitment to bilateral withholding tax agreements confirmed

In response to the recent announcement from France, Germany, Italy, Spain and the UK that they would seek to implement an automatic tax information exchange regime throughout the EU (see *In brief* article in this edition), followed by the announcement from the Prime Minister of Luxembourg that his country would loosen its bank secrecy rules (see Luxembourg article in this issue), the Swiss Finance Minister has defended Switzerland's commitment to the bilateral withholding tax regime. In accordance with the EU-Switzerland agreement (which contains measures equivalent to those in the EU savings directive), Switzerland levies a 35% withholding tax on interest paid or credited to EU resident individuals by Swiss paying agents. The minister stated that the withholding-at-source method is more efficient for ensuring that tax revenues reach the national treasuries of Switzerland's EU neighbors.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130426_ib.html
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130426_6.html

The minister emphasized that Switzerland will continue to pursue bilateral tax withholding agreements with Italy and Greece to complement the agreements already in force with the UK and Austria. The Swiss President further confirmed this approach in an interview on 14 April, contending that Switzerland was not subject to the demands of the EU as are its member states and thus, unlike Luxembourg, could resist demands for its participation in an automatic information exchange regime.

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In brief

Albania – According to recent amendments to the income tax law, expenses invoiced by a nonresident for technical, consultancy and management services for which withholding tax is not paid within the fiscal year are nondeductible expenses for corporate income tax purposes.

Brazil – A Provisional Measure published in the official gazette of 5 April 2013 introduces changes to the gross revenue limitation under the presumed profit regime. As from 1 January 2014, legal entities whose total gross income does not exceed BRL 72 million in the previous year (currently BRL 48 million) or BRL 6 million multiplied by the number of months the company carried out its activities in the previous year (if less than 12 months) can opt to be taxed under the presumed profit regime. The presumed profit regime allows the taxpayer to calculate its income tax on a deemed basis related only to its revenue, rather than the actual profit regime that considers deductible and nondeductible expenses in its computation. The combined rate would be the same for both methods (34%), but depending on the profitability of the company, one method could be more advantageous than the other.

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European Union – The Court of Justice of the European Union has rejected the European Commission's contention that Ireland's VAT grouping provisions contravene EU law by allowing "nontaxable persons" to be included in the group. The Commission has mounted a similar challenge to the VAT grouping rules in a number of member states.

France, Germany, Italy, Spain, UK – As noted in the 12 April 2013 issue of *World Tax Advisor*, these five countries have agreed to work on a pilot multilateral information exchange facility based on the FATCA agreement with the US. Under the agreement, a broad range of financial information will be exchanged automatically between the five countries. The intention is that this will help catch and deter tax evaders and provide a template for wider multilateral automatic tax information exchange. The countries concerned have written to the EU Commission to invite other EU member states to join the initiative. The timing of the letter is intended to influence the EU's work in this area, specifically the 34 proposals contained in the Commission's Action Plan and Recommendations to tackle tax fraud and evasion (see also Luxembourg and Switzerland articles in this issue).
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130426_6.html
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130426_9.html

Indonesia – The deadline for submission of the 2012 annual corporate income tax return is approaching for taxpayers whose book years follow the calendar year. It is important for taxpayers who plan to file their tax returns by 30 April 2013 to note that the Directorate General of Taxation has introduced two additional requirements to the documents that must be attached to the tax return at the time of filing: (1) the original financial statements must be attached to the tax return – the tax office no longer accepts photocopies (a corporate taxpayer with assets and/or business turnover of IDR 50 billion or more must have its financial statements audited by an external auditor); and (2) a taxpayer that has obtained approval to use the US dollar as its currency and the English language in its bookkeeping must state the number, date and effective year of the approval decision on the top page of the tax return form and attach a copy of the decision to the return.

Philippines – The Secretary of Finance has issued regulations on the arm's length principle for transfer pricing, which applies to both cross-border and domestic transactions between associated enterprises. The guidelines are largely based on the methods set out in the OECD transfer pricing guidelines and they adopt the arm's length principle as the most appropriate standard to determine transfer prices between related parties.

United Kingdom – The tax authorities have published the guidance on the general anti-abuse rule (GAAR) as approved by the independent interim advisory panel. This guidance has an unusual status. The legislation on the GAAR explicitly provides that any Tribunal or court considering the application of the GAAR must take into account the guidance approved by the panel. The overall theme is to move away from literalism when construing tax law. Choices will have to be reasonable and non-abusive to achieve the desired tax result.

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

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

China-Denmark – The 2012 treaty entered into force on 27 December 2012 and applies as from 1 January 2013. The 5% rate applies where dividends are paid to a company that owns at least 25% of the capital of the payer company; otherwise, the rate is 10%. The rate on interest and royalties is 10%, but for payments on equipment rentals, the 10% rate applies to 70% of the gross payment, resulting in an effective rate of 7%.

China-Ecuador – When in effect, the treaty signed on 23 January 2013 provides for a 5% withholding tax on dividends and a 10% rate on interest and royalties.

Cyprus-Finland – The 2012 treaty enters into force on 28 April 2013 and will apply as from 1 January 2014. When in effect, the treaty will provide that a 5% withholding tax may be levied on dividends paid to a company (other than a

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partnership) that holds directly at least 10% of the voting power of the payer company; otherwise, the rate will be 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

Cyprus-Spain – When in effect, the treaty signed on 14 February 2013 provides that a 0% withholding tax will apply to dividends paid to a company whose capital is wholly or partly divided into shares and that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 5%. Interest and royalties will be taxable only in the state of residence.

France-Oman – The 2012 protocol to the treaty entered into force on 1 March 2013 and will apply as from 1 January 2014. When in effect, the protocol provides for a 7% withholding tax on royalties.

India-Malta – When in effect, the treaty and protocol signed on 8 April 2013 to replace the current treaty dating from 1984 provides that the Maltese tax on dividends paid by a Malta company to an Indian company may not exceed the amount chargeable on the profits out of which the dividends are paid. The rate will be 10% for dividends paid by an Indian company. A 10% rate also will apply to interest and royalties.

Italy-Mongolia – The 2003 treaty entered into force on 15 January 2013 and will apply as from 1 January 2014. When in effect, the withholding tax rate on dividends will be 5% if paid to a company (other than a partnership) that owns at least 10% of the capital of the payer company for a 12-month period before the date the dividends were declared; otherwise, the rate will be 15%. The rate on interest will be 10% and that on royalties, 5%.

Luxembourg-Isle of Man – When in effect, the treaty signed on 8 April 2013 provides that a 5% withholding tax rate will apply on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer; otherwise, the rate will be 15%. Interest and royalties will be taxable only in the state of residence of the recipient.

Luxembourg-Mongolia – Mongolia terminated the treaty by a law dated 2 November 2012. The treaty will cease to apply as from 1 January 2014.

Malta – See article in this issue.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130426_7.html

Singapore-Belarus – When in effect, the treaty signed on 22 March 2013 provides that dividends, interest and royalties may be taxed at a rate of 5%.

Singapore-Kazakhstan – The protocol signed on 9 April 2013 contains a most favored nation clause for interest and royalties, under which if Kazakhstan concludes a treaty with another country that limits its taxation at source on interest and royalties to a rate lower than the rate provided for in the treaty with Singapore, the lower rate will apply under the Singapore-Kazakhstan treaty.

United Kingdom-Albania – When in effect, the treaty signed on 26 March 2013 provides that a 5% rate will apply to dividends paid to a company that holds directly at least 25% of the capital of the payer company; a 15% rate will apply where the dividends are paid out of income (including gains) derived directly or indirectly from immovable property by an investment vehicle that distributes most of this income annually and whose income from such immovable property is exempt from tax. The rate in all other cases will be 10%. The rate on interest will be 6%. Royalties will be taxable only in the state of residence of the recipient.

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Norway

Consultation paper released on limit on related party debt interest deduction

The Ministry of Finance released a consultation paper on 11 April 2013 that would introduce limits on the deduction of interest on related party debt. Under the proposal, net interest expense paid to a related party would not be deductible in a year to the extent such expense exceeds 25% of EBITDA, subject to certain adjustments. [Issue date: 12 April 2013]

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