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In this issue:

Singapore commits to strengthening international cooperation framework

Singapore announced on 14 May 2013 that it will take significant steps to strengthen its involvement in international cooperation to combat cross-border tax offenses. This follows its endorsement of an internationally agreed standard for the exchange of information (Standard) for tax purposes in 2009. Since then, Singapore amended its laws to implement the Standard and has started to renegotiate its tax agreements to incorporate the Standard.

As part of the effort to strengthen its exchange of information (EoI) framework, Singapore will sign the Convention on Mutual Administrative Assistance in Tax Matters sometime in 2013 and extend the EoI to its existing tax agreement partners without having to update the bilateral agreements with these partners. This would enable Singapore to expand its network of EoI partners from 41 to 83 jurisdictions, including Brazil and the US.

As part of these measures, the Inland Revenue Authority of Singapore (IRAS) also will be allowed to obtain bank and trust information from financial institutions without having to seek a court order. This will help streamline the administration of EoI, but at the same time, it will not undermine the basic safeguards of taxpayers. The IRAS will continue to assess whether the requests are in line with the Standard and taxpayers will continue to have the right of appeal.

Singapore also announced its plan to conclude an Inter-Governmental Agreement (IGA) with the US, which will facilitate financial institutions in Singapore to comply with the Foreign Account Tax Compliance Act (FATCA), a rule that requires foreign banks and other financial institutions outside the US to inform the US government about the financial accounts held by US persons. Singapore has indicated that it plans to adopt a "Model 1" type IGA.

Singapore will make the necessary legislative changes to effect the above before the end of 2013.

The changes, which are part of the progressive steps taken by Singapore to enhance its EoI framework, come after measures introduced by the Monetary Authority of Singapore since 2011 to ensure that Singapore's financial system is not used to harbor illegitimate funds or as a conduit for the flow of undeclared assets. Singapore has already imposed stricter rules that require financial institutions to identify and close, if necessary, accounts that are strongly suspected to hold proceeds of fraudulent or willful tax evasion before 1 July 2013. After this date, the laundering of proceeds from serious tax offenses will become a criminal offense in Singapore.

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China:
Guidance issued on beneficial ownership of dividends

China's State Administration of Taxation (SAT) issued guidance on 12 April 2013 (Circular No. 165) in response to enquiries from various provincial and municipal SAT offices as to whether certain Hong Kong companies should be regarded as beneficial owners of dividends received for purposes of the tax arrangement between Mainland China and Hong Kong. Although Circular No. 165 is addressed to the relevant local SAT offices, the guidance is expected to be followed generally by all tax authorities in China with respect to the application of similarly worded dividends articles in China's other tax treaties.

Circular No. 165 clarifies rules issued in 2009 and 2012 that provided guidance on whether a resident of a contracting state should be considered the beneficial owner of particular items of income under the dividend, interest and royalties articles of China's tax treaties (Circular No. 601 and Bulletin No. 30, respectively). Circular No. 165, which provides guidance on the application and interpretation of the relevant provisions of the previous guidance in relation to dividends, was formulated on the basis of internal SAT studies and consultation with the Hong Kong Inland Revenue Department.

Interpretation of Circular No. 601

For a nonresident to benefit from reduced withholding tax rates on dividends, interest and royalties under Chinese treaties, the nonresident must be considered the "beneficial owner" of the income. Circular No. 601 defines the term beneficial owner and sets out a number of "negative factors" that could affect a nonresident's status as a beneficial owner. Circular No. 165 addresses the following negative factors set out in Circular No. 601 in relation to dividends.

Article 2(1): The applicant is obliged to distribute or pay the entire or most (such as above 60%) of the income within the prescribed time period (such as within 12 months of the date of receipt of income) to a resident of a third country (or region) – Circular No. 165 focuses on the words "*obliged to distribute…to a resident of a third country*" and the relationship between the nonresident applicant and its immediate parent company. According to Circular No. 165, consideration of the Circular No. 601 factor is irrelevant if the applicant does not distribute its "profits" to a non-Hong Kong resident enterprise. However, if it does distribute profits to a non-Hong Kong immediate parent company, the applicant must submit documentary evidence about its obligation to make such distributions, including any contractual obligations. The responsible tax authorities should formulate their conclusions on this adverse factor based on the evidence provided.

Circular No. 165 may be read to imply that this Circular No. 601 negative factor is irrelevant in determining the beneficial owner status of a Hong Kong resident enterprise that distributes its profits only to other Hong Kong resident enterprises, e.g. a Hong Kong company that is wholly owned by another Hong Kong company.

Article 2(2): Other than the rights or property from which the item of income is derived, the applicant has no, or hardly has any, other business activities – Circular No. 165 clearly states that the existence of this single negative factor should, in and of itself, not disqualify an applicant from being regarded as the beneficial owner of dividends. Circular No. 165 clarifies that the phrase "*business activities*" includes "*investing in the shares in respect of which the dividends are received*," and the phrase "*has no, or hardly has any, other business activities*" is intended to catch companies whose only investment and business operations relate to the shares in respect of which the dividends are received.

Article 2(3): Where the applicant is an entity such as a corporation, its assets, scale of business and personnel deployment are comparatively small (or small), and not commensurate with its income – Circular No. 165 specifies that the tax authorities should not focus merely on the single factors enumerated, e.g. the number of employees employed by the applicant or whether the applicant pays those individuals, and should not equate the applicant's "assets" with its registered capital. All relevant facts are to be considered, including the following:

- How the applicant is funded, as well as the level of risk it bears in relation to its investments; and
- The nature of the work performed by, and the role and responsibilities of, the employees of the applicant.

Article 2(4): With respect to the item of income, or the property or right from which that item of income is derived, the applicant has no or minimum rights to control or dispose of, nor does it bear any risks – Circular No. 165 focuses on the words: "*has no or minimum rights to control or dispose of, nor does it bear any risks.*" The tax authorities should not conclude that the applicant does not possess the right to control or dispose of its investments simply because it is wholly owned by its immediate parent company.

In deciding whether the applicant possesses the right to control or dispose of its investments, the tax authorities should focus on the following:

- Whether the provisions of relevant legal documents grant the applicant such rights;
- Whether the applicant has exercised such rights; and
- Whether the exercise of such rights was at the discretion of the applicant.

Article 2(5): The relevant income is nontaxable or exempted by the other contracting state (or area); or, if being taxable, the effective tax rate is extremely low – The fact that Hong Kong does not tax offshore source income should not be the "key factor" in deciding that the applicant is not the beneficial owner of the dividends received.

Interpretation of Bulletin No. 30

Bulletin No. 30 clarifies the determination of beneficial owner under China's tax treaties and introduces a listed company safe harbor, which simplifies the definition of beneficial owner to the extent recipients of dividends are qualifying listed companies or group companies. Circular No. 165 provides guidance on the application and interpretation of the listed company safe harbor. Article 3 of Bulletin No. 30 provides as follows:

> "*If a resident of the other contracting state ("the applicant") applies for preferential tax treatments of China-sourced dividends under a DTA, it can be recognized directly as a beneficial owner, provided that it is a company listed in the other contracting state or is 100% owned directly or indirectly by a company listed in the other contracting state which is also a resident of the other contracting state (excluding cases where the shares of the applicant are indirectly held by the listed company through a resident company of a third state which is a resident of neither China nor the other contracting state)…*"

Circular No. 165 clarifies that this safe harbor rule is meant to provide preferential treatment in relation to listed company groups located in relevant treaty jurisdictions, in this case, Hong Kong. The safe harbor is not meant to be applied to disqualify applicants that do not satisfy the conditions of the safe harbor from being regarded as beneficial owners of dividends received; in particular:

- An applicant that is directly or indirectly wholly owned by an unlisted Hong Kong resident company; and
- An applicant that, although ultimately controlled by a Hong Kong company, is immediately owned by an intermediate holding company located in a third jurisdiction.

Other

Circular No. 165 also stipulates that the treatment accorded an applicant for treaty benefits should be consistent among the relevant tax authorities responsible for the companies from which dividends are received by the applicant.

A taxpayer may apply for its beneficial ownership status to be reassessed in the event of substantial changes in its business.

Comments

The additional guidance and clarification provided by Circular No. 165 are welcome. The circular addresses many, although not all, of the issues and questions that have been encountered by taxpayers applying for treaty benefits. The comments in Circular No. 165 that all relevant facts and circumstances should be considered and that no one negative factor, in and of itself, should disqualify the applicant from being regarded as beneficial owner, as well as the stipulation that the treatment of a taxpayer should be consistent across different tax bureaus, are especially welcome.

The guidance may be regarded as part of the SAT's efforts to respond to the need for more certainty and improve consistency in taxpayer treatment. It is hoped that such efforts will continue.

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Hong Kong: Measures taken to allow stand-alone TIEAs and enhance exchange of information

A bill published in Hong Kong's official gazette on 12 April 2013 (Inland Revenue (Amendment) Bill 2013) would enable Hong Kong to enter into stand-alone tax information exchange agreements (TIEAs) and to expand the scope of exchange of information (EoI) provisions under existing comprehensive double taxation agreements (CDTAs).

Background

Hong Kong has been undergoing a two-phase peer review by the OECD Global Forum on Transparency and Exchange of Information, which evaluates Hong Kong's compliance with the international EoI standard. Following the Phase 1 review, the Global Forum recommended that Hong Kong put in place a legal framework for entering into TIEAs. Under existing rules, Hong Kong is permitted to exchange tax information with a jurisdiction only within the context of a CDTA.

The Phase 2 peer review will examine whether Hong Kong has taken steps to implement the Global Forum's recommendation. If Hong Kong does not implement a legal framework for TIEAs in the near future, it may run the risk of being labeled an uncooperative jurisdiction, which could harm its international reputation and competitiveness as an international business and financial center. In addition, the government considers that implementing a legal framework for TIEAs will facilitate Hong Kong's negotiation of CDTAs with existing and potential partners.

Key amendments

Legal framework for TIEAs – Existing law allows Hong Kong to enter into tax agreements with other jurisdictions only if double taxation relief is granted. The proposed bill would allow Hong Kong to enter into stand-alone TIEAs that provide for an EoI mechanism without double taxation relief.

Although the government considers that a legal TIEA framework would enable Hong Kong to expand its tax treaty network, it is possible that some jurisdictions may express less interest in a CDTA with Hong Kong once a TIEA is concluded.

Taxes covered – Currently, information may be exchanged only in respect of taxes covered by a relevant CDTA. The bill would allow an exchange in respect of any type of tax imposed by the contracting party.

Hong Kong's CDTAs mainly cover income taxes for corporations and individuals, meaning that the Inland Revenue Department (IRD) currently is only required to disclose information in relation to these taxes to the tax authorities of its treaty partners. The expanded scope of taxes covered would require the IRD to disclose information on taxes such as VAT, inheritance tax, federal and state taxes, etc. for EoI purposes. Since Hong Kong has a simple tax system with only three direct taxes (profits tax, salaries tax and property tax) that already are covered by its CDTAs, existing EoI arrangements should be sufficient from Hong Kong's perspective; hence, Hong Kong likely would not benefit much from the amendment, which has been proposed mainly to address the concerns of the tax authorities of treaty partners.

Limits on disclosure – Current law does not allow an exchange of information related to any period before the relevant CDTA came into effect; the bill would enable the IRD to disclose information in response to an EoI request if the IRD is satisfied that the information relates to tax assessments in respect of any period after the date on which the relevant CDTA becomes effective.

The Legislative Council brief contains an example of information generated before the effective date of a CDTA, but foreseeably relevant to a request relating to a period after the CDTA comes into effect. The example concerns the UK tax authorities' investigation of the tax affairs of a UK resident for the period as from April 2011 (i.e. after the effective date of the Hong Kong-UK CDTA). In the example, the UK tax authorities request the IRD to provide the Hong Kong bank statements for the period from April 2011, as well as a copy of the signature card for that account. However, since the bank account was opened on 1 March 2010 (before the effective date of the CDTA), under existing law, the IRD cannot provide the copy of the signature card, but it could do so under the rules proposed in the bill. Despite the example, the proposed wording of the legislation appears to be broad and vague in terms of what information would be deemed to be relevant, and it is difficult to predict to what extent the new law would apply to information generated before the effective date of a CDTA.

Power of information collection – Under existing law, the IRD is empowered to obtain any information in the possession of a person; this power would be expanded under the bill to allow the IRD to obtain any information within a person's "control."

The amended rules may have implications on issues other than EoI for CDTA and TIEA purposes. For example, a Hong Kong holding company may be in control of information relating to its offshore subsidiaries, but not in possession of the information. Under the new law, the IRD would be empowered to obtain such information from the Hong Kong holding company. As a result, the exposure of offshore companies to the IRD may be higher.

Conclusion

For Hong Kong to continue to move into the international playing field, it has no choice but to amend the law to meet the international EoI standard and to enter into TIEAs. The government said the bill adopts the minimum approach necessary to safeguard taxpayer privacy and the confidentiality of information.

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Hong Kong:
Treaty signed with Qatar

Hong Kong signed a comprehensive double taxation agreement with Qatar (HK-Qatar DTA) on 13 May 2013. This is the 29th comprehensive agreement concluded by Hong Kong. When in effect, the key features of the HK-Qatar DTA are as follows:

- The withholding tax on dividends and interest will be 0%, and that on royalties, 5%;
- Capital gains derived by a Hong Kong resident investor on the disposal of shares in a Qatar entity generally will not be taxable in Qatar, unless the company whose shares are being disposed of derives more than 50% of its asset value from immovable property in Qatar (with some exceptions);
- Profits from international transport arising in Qatar that are earned by Hong Kong residents will not be taxed in Qatar; and
- An exchange of information article.

The following table compares the withholding tax rates on dividends, interest and royalties under the domestic tax law of Hong Kong and Qatar and the HK-Qatar DTA:

	Dividends	Interest	Royalties
Hong Kong domestic rate	0%	0%	4.95%*
Qatar domestic rate	0%	7%	5%
HK-Qatar DTA rate	0%	0%	5%
* The 4.95% rate applies where the royalties are not paid to a related party, or if paid to a related party, the licensed intellectual property has never been owned in whole or in part by a person carrying on business in Hong Kong. Otherwise, the rate is 16.5%.			

The DTA will come into force after the completion of ratification procedures on both sides.

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Malta:
Branch profits exemption and expanded royalty exemption introduced

On 17 May 2013, Malta's parliament approved the tax amendments that were announced during the budget speech on 29 November 2012, which include the introduction of two new tax exemptions, namely for the following:

1. Branch profits – Malta operates a full participation exemption with respect to dividends and gains derived from qualifying shareholdings. To ensure compliance with EU law, the participation exemption regime is broadened to include profits and gains derived by a Maltese company that are attributable to a permanent establishment (PE) situated outside Malta, or to the transfer of such PE. The profits and gains are to be calculated as if the PE is an independent enterprise operating in similar conditions and at arm's length.
2. Trademark royalties – Malta operates a full tax exemption with respect to royalties derived from registered patents and copyrights. The amendments extend the exemption to royalties derived from qualifying trademarks. Detailed rules prescribing the terms and conditions necessary for the application of the exemption to copyrights and trademark royalties are expected to be published shortly.

The new rules apply retroactively to tax periods commencing on or after 1 January 2012.

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Mexico:
Last call for tax amnesty program

Mexico's Federal Revenue Law for Fiscal Year 2013 includes a tax amnesty program that enables taxpayers to settle tax liabilities incurred before 31 December 2012 and to obtain forgiveness of all interest and certain penalties, as well as 80% of the tax due for tax liabilities that arose before 1 January 2007 (subject to certain requirements). The tax amnesty mainly covers the income tax, the business flat tax, VAT, customs duties and fines imposed due to noncompliance with formalities.

The Federal Revenue Law is issued on an annual basis, so the tax amnesty program should be available throughout fiscal year 2013. However, the Mexican tax authorities issued administrative guidance stating that taxpayers must submit their applications to participate in the amnesty before 31 May 2013. While there has been some discussion that the tax authorities may extend the deadline, to date, there is no sign that this will happen. As a result, taxpayers that want to benefit from the tax amnesty program must submit their requests by 31 May.

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South Africa:
International tax highlights of 2013 budget speech

South Africa's Minister of Finance made some unexpected announcements in the 2013 budget speech on 27 February 2013 that will impact the taxation of foreign companies conducting business in the country.

South Africa currently levies withholding tax on dividends and royalties paid to offshore recipients at rates of 15% and 12%, respectively, subject to any relief available under an applicable tax treaty. A 15% withholding tax was expected to be introduced on interest paid to offshore recipients with effect from 1 July 2013 and the rate on royalty payments was expected to be increased to 15% with effect from the same date. However, according to the minister, the implementation of these proposals will be postponed to 1 March 2014.

While the delay likely will bring some temporary relief to foreign investors, the minister also announced that, as from 1 March 2014, a withholding tax will be introduced on service fees. No further details were provided on the service withholding tax, but the rate is likely to be 15%, in line with the current rate of dividend withholding tax, the rate of the proposed interest withholding tax and the proposed increase in the rate of royalty withholding tax.

The delay in implementing the increase in the royalty withholding tax rate could affect the changes to the tainted intellectual property taxation rules that were intended to come into operation with effect from 1 July 2013. These changes were principally introduced to increase the level of permissible deductions for royalties paid offshore in light of the proposed increase in the royalty withholding tax rate to 15% on 1 July 2013. Since the implementation of the increase in the royalty withholding tax rate has been delayed until 1 March 2014, the changes to the intellectual property taxation rules are expected to be delayed to the same date.

Other notable proposals impacting cross-border transactions are the extension of the benefits of the headquarter company regime to companies listed on the Johannesburg stock exchange (JSE) and the introduction of a special type of "South African corporate holding company" that would be able to hold African and offshore interests and would not be subject to South African exchange control restrictions. It is envisaged that each JSE-listed company would be permitted to set up a holding company to hold African and offshore interests and that the holding company would be able to choose its functional currency (or currencies); operate a foreign currency account and a Rand-denominated account for operational expenses; engage in cash pooling without restriction; freely transfer local income generated from cash management activities; and freely raise and deploy capital offshore. It also is anticipated that a complementary tax incentive may be introduced to allow such companies to use a foreign functional currency for tax accounting purposes. Further details on the tax benefits for such companies (if any) have not yet been announced.

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Taiwan:
New CFC and place of effective management rules under discussion

The Taiwan government recently presented two proposals to the Legislative Yuan that could significantly change the taxation of business entities in Taiwan that have foreign subsidiaries, as well as foreign businesses that have permanent establishments in Taiwan. The proposed measures, which will be included as two new paragraphs (sections 43-3 and 43-4) in the Taiwan Income Tax Act, are the introduction of controlled foreign company (CFC) rules and place of effective management (POEM) rules. If approved, the new rules would apply as from 1 January 2015.

Proposed CFC rules

Under existing rules, Taiwan companies are taxed only when they receive dividends from their offshore subsidiaries, i.e. earnings derived from foreign subsidiaries are not required to be included in Taiwan income until dividends are received by the Taiwan parent company. As a result, it is common practice for Taiwan businesses to "park" earnings in tax haven jurisdictions to defer their Taiwan income tax liability.

The proposed CFC rules would require a Taiwan company to include currently in its taxable income its pro rata share of the taxable profits of its CFC. A CFC for these purposes would be defined as a corporation not domiciled in Taiwan that is more than 50% owned (directly or indirectly) or controlled by a Taiwan business entity. The proposed rules would eliminate the deferral of taxation and would discourage businesses from leaving earnings in foreign jurisdictions.

Proposed POEM rules

Under the proposed POEM rules, a foreign enterprise that has its place of effective management in Taiwan would be deemed to be a resident in Taiwan and, thus, subject to tax on a worldwide income basis. In other words, the rules would require foreign companies that carry out all of their management functions in Taiwan to pay tax as domestic business entities.

Since Taiwan taxes business profits of resident companies on a worldwide basis, a common tax planning strategy is to set up a foreign company in a low or no tax jurisdiction and have the entire management team employed by a Taiwan branch of the foreign parent company. The foreign parent company is located in a tax-haven jurisdiction, but all of the management decisions are made in Taiwan. Under this structure, the foreign parent company pays tax on its Taiwan-source income and avoids being taxed on a worldwide basis. The proposed POEM rules would have the consequence that Taiwan will have the right to tax the worldwide income of a foreign company if the Taiwan tax authorities determine that the place of effective management of the company is in Taiwan.

Conclusion

The proposed CFC and POEM rules have been included with other amendments to the Income Tax Act that are currently being discussed by the Legislative Yuan. If approved, the CFC and POEM rules will affect the existing international structure of Taiwan business, as well as foreign companies with permanent establishments in Taiwan. This legislative season will end on 30 May 2013, so it is unclear whether there will be sufficient time for legislators to reach consensus on the proposals. Nevertheless, affected companies should begin to review their existing international structures and evaluate the potential impact of the CFC and POEM rules.

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United States:
Model Intergovernmental Agreements updated

On 9 May 2013, the US Treasury released updated Model Intergovernmental Agreements (IGAs) to improve international tax compliance and implement the Foreign Account Tax Compliance Act (FATCA).

The most significant development with the new releases is that the US Treasury will now enter into IGAs with jurisdictions that do not have a preexisting tax information exchange agreement (TIEA) or bilateral income tax treaty. To this end, the Treasury introduced two new model agreements: a non-reciprocal Model 1B Agreement and a Model 2 Agreement. The release also includes two updated reciprocal and non-reciprocal Model 1 agreements (Reciprocal Model 1A and Non-reciprocal Model 1B) for countries with a preexisting TIEA or bilateral income tax treaty and an updated Model 2 agreement for countries with a preexisting TIEA or bilateral income tax treaty.

In addition to the new IGAs, the Treasury released four new versions of the IGA Annexes (two for Model 1 and two for Model 2). Generally, each IGA will have an Annex 1 and Annex 2. As in the prior versions of the Annexes, Annex 1 of the IGA provides documentation and due diligence requirements applicable to foreign financial institutions in the jurisdiction, while Annex 2 provides the requirements for exempt entities and products in the jurisdiction.

The Model 2 agreement has changed significantly in that it now appears to standardize the list of exempt entities and products for all countries as opposed to the previous approach of customizing the exempt entities and products on a country-by-country basis. A footnote within the Annex 2 indicates that the US Treasury will no longer entertain requests from countries to relax the rules contained within the Annex and will modify them only in exceptional circumstances. The approach results from the US Treasury's extensive consultation with global financial institutions and governments and appears to follow the approach adopted with Annex 1 of the IGAs.

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Vietnam: Compliance efforts stepped up

Vietnam's tax authorities are enhancing their efforts to ensure compliance with the tax laws. In addition to issuing new policies that tighten and restrict tax exemptions and reductions, the authorities are:

- Stepping up the frequency of tax inspections and audits;
- Being less flexible in the application of laws and regulations that allow taxpayers to optimize their tax liabilities;
- Being more aggressive in the collection of outstanding tax amounts, as well as strictly imposing tax penalties and interest on late payments; and
- Rejecting explanations/negotiations of tax issues where there is insufficient technical basis for the negotiated position.

According to the law on tax administration and rulings issued by the General Department of Taxation, if a taxpayer wrongly declares or fails to declare tax, but is able to remedy the mistake/default by filing an amended return (or filing the return if it was not filed) and paying the full amount of tax due before the mistake/default is detected by the tax authorities, the taxpayer will only be subject to late payment interest (i.e. the taxpayer will not be subject to administrative penalties for violation of tax procedures, failure to pay tax or engaging in tax evasion).

The Ho Chi Minh Tax Department issued an official letter in March 2013, stipulating that if a taxpayer files its monthly, quarterly or annual tax return more than 90 days from the standard due date, the taxpayer will be deemed to have engaged in tax evasion or fraud and may be subject to penalties. The ruling does not mention the implications when the taxpayer voluntarily remedies a wrong declaration or non-declaration of tax.

It should be noted that the tax penalty rates will increase as from 1 July 2013 as follows:

- The late payment interest rate will be 0.05% per day if the tax payment is less than 90 days' late, increasing to 0.07% per day if payment is more than 90 days' late (currently, a flat rate of 0.05% per day); and
- The penalty rate for a wrong declaration of tax leading to a shortage of tax payable will be doubled from 10% to 20%.

Taxpayers should review their tax declarations and payment obligations to ensure they are in full compliance with Vietnam's tax regulations, as a basis to mitigate future potential tax penalties for violations.

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In brief

Belgium – The due dates for filing the corporate tax return for 2012 are 21 August 2013 for paper returns and 18 September 2013 for electronic returns. These deadlines are applicable to resident and nonresident companies and nonprofit legal entities with an accounting year closing on 31 December 2012. Unlike in recent years, the tax administration likely will be much stricter in granting an extension of the due date.

European Union – The Court of Justice of the European Union (CJEU) has ruled on a case involving Spain's exit tax rules, specifically where unrealized capital gains are taxed when a company moves from Spain to another EU member state. The CJEU held that charging tax when a permanent establishment ceased business is acceptable, but that immediate tax charges on the movement of a company are contrary to the Treaty on the Functioning of the EU.

Hungary – The tax authorities have set up a transfer pricing audit department to improve efficiency and technical expertise in audits. The new department will act as an expert in audits and will issue expert opinions to facilitate unified and professionally conducted tax audits. The department also will be responsible for the development of new transfer pricing audit methods and the training of inspectors.

Indonesia – The Ministry of Finance has issued guidance on the tax refund procedure for an incorrect tax payment and for the remittance of withholding tax or collection of tax that should not have been paid or payable to the Indonesian government. The regulation clarifies that a refund request may be submitted for the overpayment of tax upon importation (this was not specifically addressed under previous rules) and that where a foreign taxpayer is required to pay Indonesian tax and it carries on business in Indonesia through a permanent establishment, the permanent establishment can submit a refund application to the Indonesian tax authorities for any tax overpaid.

Israel – The corporate income tax rate will increase from 25% to 26.5% as from 1 January 2014.

Luxembourg – The Ministry of Finance (MOF) announced during an interview on 21 May 2013 that the country has chosen to enter into an Intergovernmental Agreement (IGA) Model I with the US. The decision to adopt Model I is a step forward in sharing financial information about bank accounts or other investments held in Luxembourg by citizens and residents of the US. The government's decision was not unexpected since the MOF announced on 10 April 2013 that Luxembourg will introduce, as from 1 January 2015, the automatic exchange of information within the EU within the scope of the 2003 EU savings directive.

New Zealand – Budget 2013 confirms that the government will extend the thin capitalization rules to situations where nonresidents are "acting together," and together have a controlling interest in a New Zealand investment. It is also confirmed that shareholder debt will be excluded from worldwide group safe harbor debt calculations; this follows a concern that shareholder debt allows companies to have excessive levels of debt without the thin capitalization rules applying.

New Zealand – The Inland Revenue and Treasury have released a joint officials' report on actions taken to address the issue of taxing large multinationals and the base erosion and profiting shifting (BEPS) project. The report is divided into three parts: (1) contributing to the OECD BEPS project; (2) projects to protect the New Zealand tax base (these include proposals to increase the effectiveness of the thin capitalization rules, identification of issues that affect New Zealand's ability to collect withholding tax (particularly on interest payments) and rules for dealing with arbitrage caused by hybrid mismatches); and (3) coordinating with Australia (New Zealand officials have been in regular contact with the Australian Treasury to share views on OECD developments and related matters).

United States – On 15 April 2013, the US signed an Intergovernmental Agreement with Norway to improve international tax compliance with respect to FATCA. In addition to the IGA, the country entered into a separate memorandum of understanding (MOU) to further clarify language in the IGA. The agreement is substantially similar to other Model 1 agreements signed in Europe by Denmark, Ireland and the UK and includes reciprocal reporting obligations for the US.

Similar to the Danish, Irish and Mexican IGAs, the US is committing to creating rules to require the collection and reporting of the Norwegian taxpayer identification number ((TIN), the Norwegian personal identification number or organization number) for Norwegian residents (along with other information), as opposed to the date of birth for UK residents.

United States – On May 14, 2013, the US signed an Intergovernmental Agreement with Spain to improve international tax compliance with respect to FATCA. The agreement is substantially similar to the other Model 1 IGAs released to date, including reciprocal reporting obligations for the US. However, minor updates were made to Annex 1, including allowing 90 days for a Reporting Spanish Financial Institution (FI) to document a preexisting account holder that no longer meets a documentation de minimis threshold at the end of a prior calendar year (e.g. an account previously excepted from review because the aggregated account balance or value was USD 50,000 or less but that later exceeds USD 1 million at the end of a calendar year, requiring additional due diligence review).

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-Australia – China's State Administration of Taxation issued guidance on 26 April 2013, which clarifies that the Australian Mineral Resource Rent Tax (a tax on profits from iron ore and coal products), introduced on 1 July 2012, is within the scope of the China-Australia tax treaty. The announcement applies as from 1 June 2013.

Hong Kong-Guernsey – When in effect, the treaty signed on 28 March 2013 provides that dividends and interest will be taxable only in the state of residence of the recipient. A 4% withholding tax will apply to royalties.

Hong Kong-Malaysia – The 2012 treaty entered into force on 28 December 2012 and applies in Malaysia as from 1 January 2012 and in Hong Kong as from 1 April 2013. The treaty provides for a 5% withholding tax on dividends paid to a company (other than a partnership) that holds directly or indirectly at least 10% of the capital of the payer company; otherwise, the rate is 10%. The rate on interest is 10% and that on royalties, 8%.

Hong Kong-Qatar – See article in this issue.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130524_4.html

Ireland-Uzbekistan – The 2012 treaty entered into force on 17 April 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 that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. (Ireland, however, does not impose withholding tax on dividends if certain formalities and requirements are met.) The rate on interest and royalties will be 5%.

Japan-Kuwait – The 2010 treaty enters into force on 14 June 2013 and will apply as from 1 January 2014. When in effect, the treaty provides for a 5% withholding tax rate on dividends paid to a company that holds directly or indirectly at least 10% of the voting shares of the distributing company for a period of six months ending on the date on which entitlement to the dividends is determined; otherwise, the rate will be 10%. The 5% rate will not apply, however, if the distributing company is entitled to a deduction for dividends paid to its beneficiaries in computing taxable income in Japan. A 10% rate will apply to interest and royalties.

Japan-United Arab Emirates – When in effect, the treaty signed on 2 May 2013 provides for a 5% maximum withholding tax rate on dividends paid to a company that owns directly or indirectly at least 10% of the voting shares of the payer company for the six-month period ending on the date entitlement to the dividends is determined; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%.

Korea-Bahrain – The 2012 treaty entered into force on 26 April 2013 and will apply as from 1 January 2014. When in effect, the treaty provides for a 5% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; the rate will be 10% in all other cases. A 5% withholding tax rate will apply to interest and the rate on royalties will be 10%.

Lithuania-Morocco – When in effect, the treaty signed on 19 April 2013 provides for a 5% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest and royalties will be 10%.

Luxembourg-Guernsey – When in effect, the treaty signed on 10 May 2013 provides for a 5% withholding tax on dividends paid to a company that holds directly at least 10% of the capital 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.

Luxembourg-Jersey – When in effect, the treaty signed on 17 April 2013 provides for a 5% withholding tax on dividends paid to a company that holds directly at least 10% of the capital 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.

Malta-Russia – When in effect, the treaty signed on 24 April 2013 provides for a 5% withholding tax on dividends paid by a Russian resident company to a Malta company that holds directly at least 25% of the capital of the Russian company and the holding is at least EUR 100,000; otherwise, the rate will be 10%. If the dividends are paid by a Malta company to a Russian company, the Maltese tax on the gross amount of the dividends may not exceed that chargeable on the profits from which the dividends are paid. The rate on interest and royalties will be 5%.

Mexico-Kuwait – The 2009 treaty entered into force on 15 May 2013 and will apply as from 1 January 2014. When in effect, the treaty provides that dividends may be taxed only in the state of residence of the beneficial owner. A 4.9% withholding tax will apply to interest paid to banks; the rate in all other cases will be 10%. The rate on royalties will be 10%.

Netherlands – The Ministry of Finance has issued a press release announcing that the government plans to negotiate tax treaties with Costa Rica, Korea, Malawi, South Africa, Spain, Tajikistan, Tanzania and Uruguay and to renegotiate the treaty with Poland.

Netherlands-Norway – A protocol to the existing treaty dating from 1990 was signed on 23 April 2013. The protocol will amend the dividends article to provide that a 0% withholding tax will apply for dividends paid to a company that holds directly at least 10% of the capital of the payer company, and for pension funds.

Singapore – See article in this issue.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130524_1.html

Singapore-Isle of Man – The 2012 treaty entered into force on 2 May 2013 and will apply as from 1 January 2014. When in effect, the treaty provides that dividends will be taxable only in the state of residence of the recipient. The rate on interest will be 12% and that on royalties, 8%.

Singapore-Jersey – The 2012 treaty entered into force on 2 May 2013 and will apply as from 1 January 2014. When in effect, the treaty provides that dividends will be taxable only in the state of residence of the recipient. The rate on interest will be 12% and that on royalties, 8%.

Slovenia-Armenia – The 2010 treaty entered into force on 23 April 2013 and will apply as from 1 January 2014. When in effect, the treaty provides that a 5% withholding tax will apply to dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 10%. The rate on interest will be 10%, and that on royalties, 5%.

Vietnam-Serbia – When in effect, the treaty signed on 1 March 2013 provides for a 10% withholding tax on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

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Australia
Budget 2013-14 targets debt funding by multinationals
The 2013-14 Australian budget presented on 14 May 2013 contains several tax proposals that will affect cross-border business. The government has proposed a tightening of the thin capitalization and interest deductibility rules, as well as the abolition of deductions for interest expense on debt used to fund the acquisition of foreign affiliates to counteract what it perceives as abusive debt pushdown transactions by multinationals. A number of the announcements are specifically linked to the OECD BEPS project. [Issue date: 15 May 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/7b2845c0929ae310VgnVCM3000003456f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Newsletters/dttl_tax_alert_Australia_150513.pdf

Court rules on foreign limited partnerships and capital gains tax issues
In a recent case before Australia's Federal Court, a foreign limited partnership successfully challenged a tax assessment issued by the tax authorities to the limited partnership in respect of a capital gain made on the sale of shares in an Australian mining company. [Issue date: 10 May 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/eb28279d04e8e310VgnVCM1000003256f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Australia_100513.pdf

Denmark
Corporate income tax rate reduction proposed
The Danish government presented four bills to parliament on 17 May 2013 that outline ways the country could become more attractive to foreign investors and how Danish businesses could be stimulated in general. The proposals include a gradual reduction in the corporate income tax rate from 25% to 22%.[Issue date: 17 May 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/5c6075d3c72be310VgnVCM3000003456f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Denmark_170513.pdf

Switzerland
Corporate tax reform report advocates strengthening of international tax competitiveness
Switzerland's federal government published an interim report on 17 May 2013 that contains the initial recommendations of the steering committee in charge of what has been termed the "Swiss Corporate Tax Reform III." The overriding objective of this contemplated comprehensive reform is to secure and strengthen the tax competitiveness and attractiveness of Switzerland as an international location for corporations. [Issue date: 20 May 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/a09b9eff983ce310VgnVCM2000003356f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Switzerland_200513.pdf

United States
Supreme Court finds UK windfall tax creditable under Code section 901
On 20 May 2013, the US Supreme Court ruled that the UK "windfall tax" was a creditable foreign tax under US Internal Revenue Code section 901 because the predominant character of the tax was that of an income tax.
[Issue date: 21 May 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/969394136cace310VgnVCM1000003256f70aRCRD.htm
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_United%20States_210513.pdf

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