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In this issue:

Belgian tax authorities issue guidance on refunds of dividend withholding tax to nonresident entities

The Belgian tax authorities issued a circular on 28 June 2013 in response to the 2012 decision of the Court of Justice of the European Union (CJEU) that Belgium's dividend tax treatment of nonresident shareholders is incompatible with the free movement of capital principle in the EU treaty. The circular (which deals only with shareholdings that would have qualified for the dividends received deduction) provides guidance on refunds of withholding tax on Belgian-source dividends to nonresident entities subject to a foreign corporate income tax regime. The circular clarifies certain general conditions for dividend withholding tax refunds and confirms that the tax authorities will give priority handling to refund claims satisfying such conditions.

Under Belgian law, dividends received by a Belgian company that holds less than 10% of the capital in a Belgian resident subsidiary are subject to a 25% withholding tax. However, the corporate income tax base of the Belgian parent company is reduced by 95% of the dividend income, with the remaining 5% subject to tax. The dividend withholding tax can be credited against the corporate income tax due and if the withholding tax exceeds the corporate income tax due, the excess is eligible for a refund. By contrast, where the parent company is resident in another EU member state and does not operate through a Belgian permanent establishment, the withholding tax cannot be offset or refunded in Belgium, so the foreign parent must bear the full cost of the withholding tax. It was this aspect of the Belgian law that the CJEU ruled was in violation of EU law.

The new circular limits the eligibility for refund claims to companies resident in the European Economic Area (EEA) or in countries that have concluded a tax treaty with Belgium that contains an exchange of information clause (the same limitation applies to regulated investment companies).

The circular also provides that nonresident companies (other than regulated investment companies) that are qualifying beneficiaries may make withholding tax claims for qualifying dividends.

- A *qualifying beneficiary* is a nonresident company that does not have a Belgian permanent establishment to which the qualifying shareholding is attributable. This can include non-EEA resident companies, provided the relevant tax treaty contains an exchange of information clause.
- A *qualifying dividend* is a Belgian-source dividend that would have qualified for the Belgian participation exemption if the foreign company had been taxable in Belgium on the dividend. To satisfy this requirement, the foreign company must have held full ownership for an uninterrupted one-year period of Belgian shares representing less than 10% of the Belgian company's issued capital, but having an acquisition value of at least EUR 2.5 million (EUR 1.2 million before 1 January 2010).

The circular limits the refund to the amount of Belgian-source dividend withholding tax, reduced by (1) the hypothetical Belgian tax suffered (i.e. the tax on the 5% of the dividend that is taxable under the dividends received deduction regime); and (2) any (full or partial) credit or refund obtained in the state of residence of the recipient.

The circular also confirms that a five-year statute applies for refund claims, i.e. a claim can be filed in 2013 for withholding tax on dividends paid as from 1 January 2009.

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European Union:
Belgian notional interest deduction rules infringe EU law

The Court of Justice of the European Union (CJEU) issued its decision in the *Argenta Spaarbank* case on 4 July 2013, concluding that the Belgian notional interest deduction (NID) rules, as applied to a Belgian company with a permanent establishment (PE) in a country that has concluded a tax treaty with Belgium, violate EU law. Under Belgian law, the net assets of a foreign PE located in a treaty country are excluded from the NID calculation basis, which is not the case for a Belgian PE. The court followed the 2012 opinion of Advocate General (AG) Mengozzi.

Background and facts of the case

Article 205 *ter* of the Belgian Income Tax Code allows a corporate taxpayer to claim an NID in computing its taxable income. The NID is based on a percentage of the net equity of the company, but certain items are excluded from the net equity, such as the net asset value of a PE located in a country that has concluded a tax treaty with Belgium under which the PE income is exempt from tax in Belgium.

Notwithstanding this exclusion, Argenta Spaarbank, a Belgian financial institution with a Dutch PE, claimed the NID on the net assets of the PE for tax year 2008. The Belgian tax authorities disallowed the NID on the amount of net assets attributable to the PE and the case was brought before the Antwerp Court of First Instance. That court referred the case to the CJEU in 2011, requesting a ruling on whether the exclusion of the Dutch PE's assets violates the freedom of establishment principle in article 43 of the EC Treaty (now article 49 in the Treaty on the Functioning of the European Union).

The Belgian government claimed that any violation of the freedom of establishment principle could be justified by the need to preserve the coherence of the Belgian tax system and by the equal distribution of taxation power among the EU member states.

In his opinion to the CJEU, AG Mengozzi stated that the NID rule was incompatible with EU law because taxpayers with a PE in Belgium (or a PE whose income is not exempt in Belgium) are treated differently from taxpayers with a PE in another EU member state and that there is no sufficient justification for restriction on the freedom of establishment.

CJEU decision and comments

The CJEU agreed with AG Mengozzi that the Belgian provision is contrary to EU law. The decision will affect Belgian companies with a PE in another EU member state, as well as Belgian companies with a PE in Iceland or Norway (which are part of the EEA). As a result of the CJEU ruling, subject to certain conditions, Belgian companies with a PE in other member states may be able to file an objection or a request for *ex officio* relief (a request for *ex officio* relief can be filed against tax assessments issued as from 1 January 2009, provided the assessment has not been challenged by a tax protest on which a final decision has been issued by the regional tax director; however, if the taxpayer is still able to file a tax protest for a specific tax year, a protest should be filed rather than an *ex officio* relief request).

Based on the reasoning of the CJEU, it seems likely that the provision in Belgian law excluding the net equity attributable to foreign real estate (that is not part of a PE) from the NID calculation basis also would be considered contrary to EU law. The Finance Minister has stated that the Belgian government will examine the decision and submit a proposal to adapt domestic legislation to comply with the CJEU decision in *Argenta Spaarbank* within the next few months.

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European Union:
European Parliament approves enhanced cooperation on FTT

On 3 July 2013, the European Parliament approved the proposed financial transaction tax (FTT) by 11 EU member states (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain) under the enhanced cooperation procedure. The FTT would be levied on trades in stocks and bonds at a rate of 0.1% and on derivatives at a rate of 0.01%.

This is only the third time that enhanced cooperation has been used to allow a limited number of EU member states to proceed with a particular measure, and the first time in the area of taxation. For enhanced cooperation to apply, it must be demonstrated that the objectives cannot be attained within a reasonable period by the EU as a whole and at least nine member states must participate.

The countries received approval from the European Council to proceed with the FTT in January 2013. The UK initiated litigation (which is now pending) against the European Council for approving the enhanced cooperation, on the grounds that the proposed FTT would affect nonparticipating member states. According to the UK, the extraterritorial effects of the FTT may not be compatible with EU law.

The European Commission first proposed a directive on an FTT in 2011 to prevent the fragmentation of the single market that could result from numerous uncoordinated national approaches to taxing financial transactions, to ensure that the financial sector makes a fair and substantial contribution to public finances and to discourage financial transactions that do not contribute to the efficiency of financial markets or of the real economy.

It is now up to the 11 participating countries to move forward with the tax.

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Italy:
Tax authorities approve new forms for withholding tax relief

The Italian tax authorities have approved a new set of forms to be used by nonresidents to claim benefits under Italy's tax treaties and the EU parent-subsidiary and interest and royalties directives, and a tax residence certificate form to be used by Italian residents seeking to claim benefits under Italy's treaties. The new forms should be used in respect of payments made after 10 July 2013.

The forms for nonresidents are to be used when claiming an exemption or a reduction of withholding tax or a refund of tax withheld on dividends, interest, royalties and other Italian-source income. The following forms should simplify the procedure for the direct application of Italy's treaties and the directives:

- Direct application of a withholding tax exemption or reduction or a refund of tax withheld under a tax treaty:
    - Form A: Dividends
    - Form B: Interest
    - Form C: Royalties
    - Form D: Other income
- Exemption from, or a refund of, withholding tax under an EU directive:
    - Form E: Parent-subsidiary directive
    - Form F: Interest and royalties directive

Italian residents seeking to claim benefits under Italy's tax treaties must use the form, "Request for a certificate of tax residence for individuals, corporations and other entities."

All of the forms are available in Italian, English and French and can be downloaded from the website of the Italian tax authorities.
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Korea:
Court rules on direct/indirect ownership under treaty with Japan

Korea's Supreme Court recently issued a decision in which it concluded that the term "beneficial ownership," as it relates to dividend income under the Korea-Japan tax treaty, includes both direct and indirect ownership.

The case involved a Korean company (Korea Co) that was wholly owned by a Labuan company (Labuan Co) that was, in turn, wholly owned by a Japanese company (Japan Co). On the grounds that Labuan Co, the direct shareholder of Korea Co, lacked substance, Korea Co regarded Japan Co as the beneficial owner of the dividends paid by Korea Co and therefore applied the Korea-Japan tax treaty.

Under the Korea-Japan tax treaty, the lower dividend withholding tax rate of 5% applies where the beneficial owner of dividends holds 25% or more of the voting shares of the dividend-paying company during the six-month period immediately before the end of the accounting period in which the distribution of the dividends takes place; the rate in all other cases is 15%.

In the case, Korea Co (i.e. the withholding agent) withheld tax at the 5% rate on the dividends it distributed. The Korean tax authorities, however, assessed taxes in the amount of the difference between tax at the 15% rate and tax at the 5% rate, based on the interpretation that the ownership of shares under the treaty means only "direct" ownership. Therefore, Japan Co, which was an "indirect" shareholder of Korea Co, did not qualify for the lower 5% withholding tax rate. The Tax Tribunal agreed with the conclusion of the tax authorities, but in subsequent appeals, the Administrative Court and the High Court overturned the tribunal's decision and ruled that the ownership of shares under the Korea-Japan tax treaty includes more than just direct ownership.

The Supreme Court affirmed the decision of the High Court. The High Court had concluded that the purpose of the "ownership" clause is to minimize the potential for double taxation and to promote cross-border investment. Since the potential for double taxation is more acute in the case of a company that holds 25% or more of the voting shares, such a company is provided with a lower withholding tax rate. The High Court also added that, because the treaty requires only that the beneficial owner "own" the shares and does not explicitly require the recipient to "directly own" the shares, the meaning of ownership should not be limited to direct ownership.

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Luxembourg: New legal and tax rules for partnerships

In the context of the transposition of the EU Alternative Investment Fund Managers Directive into domestic law, the Luxembourg parliament approved new rules for partnerships ("the New Partnership Rules"), which apply as from 15 July 2013.

The New Partnership Rules introduce a flexible regime for common limited partnerships (*sociétés en commandite simple* or SCSs) and a new special limited partnership vehicle (*société en commandite spéciale* or SCSp). In addition, the tax rules have been amended to provide for full tax transparency and tax neutrality.

Common limited partnership and special limited partnership

The New Partnership Rules modernize the legal regime applicable to SCSs and introduce the special SCSp. Although most of the provisions applicable to these entities are similar, the main difference between the SCS and the SCSp is that the SCSp does not have legal personality (i.e. it is a transparent entity). Under both types of entity, however, it will be possible to:

- Keep the identity of the limited partners confidential;
- Appoint a manager that (provided it is not a general partner) will be liable only for the execution of its mandate and any misconduct in the management and that can delegate power to a representative that, in turn, will be liable only for the execution of its mandate;
- Allow the limited partners to perform some internal management (as opposed to external management) functions, such as advisory or supervisory functions and the granting of loans or guarantees to the SCS/SCSp or its affiliates;
- Derogate from the "one share, one vote" principle;
- Exclude a partner from sharing in the profits and/or losses of the entity; and
- Preclude the clawback of distributions to partners.

The main advantage of the SCSp appears to be that it is comparable to the Anglo-Saxon partnership model (no legal personality). Simultaneously, the SCS gains in flexibility make Luxembourg a prime location for partnerships.

Full tax transparency for SCS/SCSp

The New Partnership Rules provide for full tax transparency of the SCS/SCSp for corporate income tax, municipal business tax and net wealth tax purposes, provided certain conditions are satisfied. In addition, dividends distributed by a SCS/SCSp will not be subject to Luxembourg withholding tax.

Full tax transparency treatment will apply when a Luxembourg tax resident corporate general partner of the SCS/SCSp owns less than 5% of the partnership interests and the SCS/SCSp does not carry out any activities of a commercial nature. In addition, if the general partner is not a Luxembourg tax resident and the SCS/SCSp does not carry out commercial activities, no municipal business tax applies at the partnership level, as under the previous rules.

When a Luxembourg tax resident corporate general partner (i.e. a SARL, SA or an SCA) holds a partnership interest that exceeds 5%, the tax treatment of the partnership is subject to the *Geprägetheorie*. Partnerships (such as SCSs) falling within the scope of the *Geprägetheorie* are transparent for corporate income tax and net wealth tax purposes, but are subject to municipal business tax (at a rate of 6.75% for the city of Luxembourg), regardless of the activities carried out by the partnership.

By maintaining the *Geprägetheorie* for an SCS/SCSp with at least one Luxembourg corporate general partner that holds 5% or more of the partnership interests, the New Partnership Rules preserve the possibility for the SCS/SCSp to benefit from the favorable effect of the theory in certain cases.

The modernization of the partnership rules significantly improves the competitiveness of Luxembourg for partnership structuring. Among other things, the new rules improve the attractiveness of maintaining management and control in Luxembourg in cases where an SCS/SCSp is incorporated in Luxembourg and the general partner is resident in Luxembourg.

In addition to the new partnership rules, the law transposing the directive into Luxembourg law introduces measures on the tax treatment of carried interest (e.g. the tax rate applicable to carried interest is temporarily decreased by 75% for 10 years) and expands the scope of the VAT exemption for fund management services to apply to any AIF, as defined by the law, as well as to any investment vehicle located in another EU member state that is similar to a Luxembourg regulated fund.

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Luxembourg:
Treaty signed with Saudi Arabia

On the occasion of the most recent *Luxembourg for Finance* mission to the Middle East, the Minister of Finance announced that Luxembourg has concluded its first tax treaty with Saudi Arabia. The signing of this agreement on 7 May 2013 represents another milestone in the relationship between Luxembourg and Saudi Arabia, and more generally in the Grand-Duchy's relationship with the Middle East. This treaty should spur business communities on both sides to further strengthen and enhance the economic relationship between Luxembourg and Saudi Arabia.

Luxembourg's tax treaty network continues to grow and now includes most of the Middle Eastern countries, notably Bahrain, Qatar and the United Arab Emirates. In addition, negotiations are ongoing to conclude treaties with Egypt, Kuwait, Lebanon and Syria.

The main features of the new Luxembourg-Saudi Arabia treaty are as follows:

Permanent establishment (PE)

The treaty contains specific provisions on the definition of a PE and explicitly mentions that the provision of services (including consulting services) for a period of at least six months during any continuous 12-month period will give rise to a PE. All sites related to the extraction of natural resources will give rise to a PE.

The PE article also contains detailed provisions regarding the determination of the taxable basis of a PE, in line with Saudi Arabia's domestic law.

Dividends

The withholding tax levied on dividends paid by a company resident in one contracting state to a resident of the other contracting state will be limited to 5% of the gross amount of dividends. No minimum holding period will be required to benefit from the 5% rate.

This provision grants a lower withholding tax rate than under Luxembourg domestic law, which imposes a 15% withholding tax on dividends paid to a nonresident company. (Under Luxembourg domestic law, however, the withholding tax rate may be reduced to 0% if the recipient of the dividends is resident in a tax treaty country.)

Conversely, the provision is not more advantageous from a Saudi Arabian perspective, since Saudi domestic law imposes a 5% withholding tax on dividends paid by a resident company to a foreign shareholder, assuming that no exemptions apply.

Income from receivables

The treaty allocates the right to tax income arising from receivables to the contracting state of the beneficiary. However, this provision will not impact interest payments made by a Luxembourg taxpayer, since Luxembourg generally does not levy withholding tax on interest paid to a nonresident company under its domestic law.

In contrast, this provision makes interest paid by a Saudi resident to a Luxembourg resident more attractive as compared to Saudi domestic law, under which a 5% withholding tax is levied on interest payments, provided no exemption applies.

As a result of this provision, no withholding tax will apply to income from receivables between Saudi Arabia and Luxembourg residents.

Royalties

The treaty limits the withholding tax levied on royalties by a company that is resident in one of the contracting states to a resident of the other contracting state to the following:

- 5% of the gross amount where the royalties are paid in consideration for the right to use industrial, commercial or scientific equipment (this should include all equipment related to mining, oil and gas activities); and
- 7% of the gross amount in all other cases.

Again, this provision will not change the effect of Luxembourg domestic law, since no withholding tax is levied on royalties paid by a Luxembourg resident company to a nonresident.

The treaty is more advantageous than Saudi domestic law, under which a 15% withholding tax is levied on royalties paid by a resident company to a nonresident company, provided no exemption applies.

The beneficial rates also apply to rental payments made for the right to use industrial, commercial or scientific equipment, as these are included in the treaty's definition of royalties.

Capital gains

The treaty allocates the right to tax capital gains arising from the sale of immovable property realized by a resident of one of the contracting states to the contracting state in which the property is situated. The right to tax capital gains arising from the sale of shares of a company that is resident in one contracting state by a resident of the other contracting state is allocated to that other contracting state, unless:

- The company whose shares are sold invests predominantly in immovable property located in a contracting state; in that case, the capital gains arising from the sale will be taxable in the state in which the company holding the property is located; or
- The sale of the shares represents more than 25% of the total capital of a resident entity; in that case, the capital gains arising from the sale will be taxable in the state in which the company whose shares are sold is resident. Where a less-than 25% holding is disposed of, this provision will be more advantageous to a Luxembourg resident transferor than the position under Saudi domestic law, which normally imposes a 20% tax on capital gains derived from the disposal of shares in a Saudi company, regardless of the holding percentage (with an exemption for capital gains derived from the disposal of shares traded on the Saudi stock exchange, if acquired after 2004).

Elimination of double taxation

The treaty provisions for the elimination of double taxation through credits or exemptions will not be applicable for Zakat as it applies to Saudi nationals (Zakat is a levy under which an individual is required to donate a certain proportion of his/her wealth (2.5%) each year to charitable causes).

The treaty provides that dividends received by a Luxembourg-resident company from a Saudi company are exempt from tax in Luxembourg if the Luxembourg entity holds a participation of at least 10% in the capital of the Saudi company from the beginning of its financial year and the Saudi company is subject to a tax comparable to the Luxembourg corporate income tax. This exemption may apply even if the Saudi company is exempt from tax or is taxed at a reduced rate, provided the dividends are derived from profits relating to agriculture, industrial, infrastructure or tourism activities in Saudi Arabia.

Protocol

The protocol to the treaty provides that pension funds and undertakings for collective investments will be considered residents for treaty purposes and beneficial owners of the income they receive. This is an important provision for the Luxembourg fund industry.

Entry into force

The treaty will enter into force following the exchange of ratification instruments, and its provisions will apply as from 1 January of the following year (including withholding taxes for payments or distributions made on or after 1 January).

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Mexico:
Court rules on partial income tax exemption for maquiladoras

Mexico's Supreme Court issued a decision in June 2013, concluding that the partial income tax exemption granted to maquiladora companies under the 2003 maquila decree (now known as the IMMEX decree) should be taken into account in calculating the amount of annual income tax due and before crediting any advance payments of income tax, thus allowing for a refund of any income tax overpaid by way of advance payments.

A maquiladora is a Mexican company that is owned and operated by a foreign related party and performs toll manufacturing or contract manufacturing services for that related party or another foreign related party. Mexico's maquiladora program aims to create a favorable environment for foreign investment in the manufacturing sector. Under this regime, provided certain conditions are satisfied, a maquila is entitled to a number of trade and tax benefits, including a partial income tax exemption if certain requirements are met.

The taxpayer in the case, the maquila, filed a lawsuit after the Mexican tax authorities denied its request for a refund of the excess income tax paid by way of advance payments over its income tax liability for the year. The authorities' view was that the partial exemption should be taken into account after crediting the monthly advance payments of income tax against the taxpayer's income tax liability for the year, and that the exemption therefore does not generate an amount that can be the subject of a refund claim. It should be noted that the 2003 decree that contains the tax benefits for maquilas specifically states that the application of the benefits would not lead to a tax refund.

The Supreme Court, however, held that the tax benefits for the maquila industry included in the decree, which include the partial exemption, should be applied directly in making the annual tax calculation and not after crediting the monthly income tax installment payments for the relevant year.

In reaching its decision, the court focused on the *purpose* of the decree rather than its literal interpretation, specifically, that the benefit intended by the decree is enhanced by allowing a tax refund or the setoff of a favorable tax balance; this occurs when the partial exemption is applied in calculating the annual income tax liability, rather than after taking into account the taxpayer's advance payments of corporate income tax.

The court's decision is relevant not only for the maquila sector, but also for any taxpayers applying benefits under tax decrees.

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Peru:
Income tax and VAT rules amended to accommodate Securities Market Promotion Act

On 26 June 2013, the Peruvian government enacted the Securities Market Promotion Act (Law No. 30050), as part of a series of measures announced under a "capital market reform" initiative designed to develop the Peruvian capital market.

Law No. 30050 introduces rules to make the Peruvian securities market more flexible with a view to increasing the number of public offerings, facilitating new financing structures and attracting investors. The law amends provisions of the Income Tax Act (ITA) and the VAT Act that otherwise could interfere with the achievement of these goals. The changes to the ITA will apply as from 1 January 2014 and the changes to the VAT Act apply as from 1 July 2013.

Income tax amendments

The main amendments to the income tax regime are summarized below.

Interest and capital gains derived from public treasury notes – Under the current regime, the following interest and capital gains derived from certain debt instruments issued by the Peruvian government are permanently exempted from income tax:

- Interest and gains derived from public bonds;
- Interest and gains derived from obligations of the Central Reserve Bank, except those originating from deposits made by financial institutions to comply with their legal reserve requirements; and
- Gains derived from certain direct or indirect transfers of securities from exchange-traded funds.

Interest and capital gains derived from public treasury notes issued by the government are not exempt from income tax. Since no technical reason was ever given for denying public treasury notes the exemption granted with respect to public bonds, and both are debt instruments issued by the Peruvian government, Law No. 30050 will permanently exempt from income tax interest and capital gains derived from such instruments and other debt instruments issued by the Peruvian government with effect from 1 January 2014.

Capital gains tax (CGT) withholding on indirect transfers – Peruvian Clearing and Settlement Institutions (ICVLs) currently are treated as withholding agents for purposes of the 5% CGT when they participate in cash settlements of securities transactions, including direct and indirect transfers of stock or participating interests representing the equity capital of a Peruvian company. Reporting obligations and rules facilitating the process of gathering the necessary information in connection with direct transfers are available at the ICVL level, but there are no rules providing guidance on how an ICVL should monitor and identify indirect transfers that fall within the scope of the CGT rules.

Law No. 30050 provides that, in an indirect transfer of shares or participating interests representing the equity capital of a Peruvian company by a resident individual, an undivided estate or marital partnership treated as a resident taxpayer or a nonresident, withholding of CGT will take place at the time of the settlement and remittance of funds if the taxpayer or an authorized third party (for instance, a tax agent) notifies the ICVL of the existence of an indirect transfer and the amount subject to reporting, and provides supporting documentation. In the case of a resident, the withholding will represent an advance payment of tax and will be credited against the taxpayer's final tax liability for the relevant fiscal year; for a nonresident, the withholding will be a final payment in settlement of the nonresident's tax liability with respect to the CGT on the transfer.

Individuals must notify the Peruvian ICVL of their residence status, either directly or through an authorized third party. This notification will remain valid for purposes of the CGT determination unless a specific change is communicated to the ICVL.

Amounts withheld by an ICVL will be payable to the tax authorities by the due dates established by the tax code.

Joint and several liability of issuer company on indirect transfers by nonresident – Under the CGT rules, a domestic legal entity is jointly and severally liable with a nonresident transferor for the payment of any CGT that may arise from an indirect transfer of its shares or participating interests, if within the 12-month period before the transfer the transferee and the nonresident transferor were economically related. These rules do not apply to indirect transfers where the transferee is a Peruvian resident, since in that case the transferee will act as a withholding agent. Law No. 30050 clarifies that joint and several liability will continue to apply when an ICVL is acting as a withholding agent.

VAT amendments

Before the enactment of Law No. 30050, the lack of uniformity in the VAT provisions applicable to different financing options created uncertainty for companies planning to raise funds through the Peruvian securities market. Interest derived from deposits in bank accounts or from credits granted by financial institutions was permanently exempted from VAT, but interest derived from other specific sources of financing, such as securities issued by a legal entity incorporated in Peru through a public offering implemented under the Securities Market Act (SMA) or the Investment Funds Act (IFA) and financial instruments not publicly placed but acquired though a centralized mechanism of negotiation (i.e. a Peruvian stock exchange) was only temporarily exempt from VAT.

To standardize the VAT treatment of financing through the issuance of securities, Law No. 30050 establishes a permanent VAT exemption for the following:

- Interest derived from securities issued through a public or private offering by a legal entity incorporated in Peru; and
- Interest derived from other financial instruments when acquired in the secondary market through a centralized mechanism of negotiation.

These changes should encourage the issuance of instruments connected with long-term securities (such as bonds), as well as investment by participants that were unable to access the securities market alternatives that were previously exempt from VAT.

Comments

The new rules mitigate the tax costs associated with specific investments in the Peruvian securities market and increase the neutrality of the tax regime by providing the securities market with rules equivalent to those applicable to the financial system.

Law No. 30050 also complements Peru's CGT rules by introducing guidelines that will assist taxpayers with their compliance obligations in the case of indirect transfers of shares or participating interests in a Peruvian company that take place through a Peruvian stock exchange.

Based on the expected growth that Law No. 30050 will promote in the Peruvian capital market, investors should start reassessing the various financing structures available in Peru that could become more attractive. They also should identify the reporting obligations that might apply to investments currently held in foreign entities within the scope of Peru's CGT rules; in some instances, this may require appointing a tax agent in Peru to facilitate appropriate compliance.

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South Africa:
Mandatory VAT registration for foreign suppliers to be introduced

An important change to South Africa's VAT law will come into effect on 1 January 2014, under which foreign suppliers of digital products will be required to register for VAT purposes. The following supplies will give rise to a registration requirement:

- Music
- Movies
- E-books, E-magazines and E-comics
- Applications
- Games
- Betting sites
- Programs
- Any downloadable content

Foreign suppliers of the above items currently are not required to register for South African VAT purposes, mainly because the VAT law does not contain any place of supply rules and the rules determining the obligation to register are not entirely clear. The general rule to determine which jurisdiction has taxing rights usually is based on the location of the customer, so that internet supplies to South African-based customers from abroad should be subject to VAT in South Africa (based on the destination principle). Although South African VAT legislation contains a reverse charge mechanism that seeks to tax these supplies, there is a general lack of compliance.

The new legislation contains place of supply rules that will require suppliers of e-commerce to register for VAT in South Africa. Since the location of the customer is often unknown in the case of internet supplies, a proxy for customer location will be used to determine the registration requirement: either payment from a South African bank or customer residence in South Africa.

As a result of the amendments, all foreign suppliers of internet services to South African customers will be required to registers as vendors for VAT purposes. There will be no monetary thresholds to trigger the obligation; registration will be determined based on the place from which the payment of the supply is made. Failure to comply with the new rules could result in exposure to interest and penalties. Understatement penalties in South Africa have been revised and can be costly.

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Ukraine:
Draft transfer pricing law approved

Ukraine's parliament approved a draft law on 4 July 2013 that amends the transfer pricing rules. Once signed by the president, the new rules will come into effect on 1 September 2013.

The draft law makes the following changes to the transfer pricing regime:

- Each transaction between two given parties will be deemed to be a controlled transaction for purposes of the transfer pricing rules if the total volume of such transaction exceeds UAH 50 million for the relevant calendar year and the transaction is concluded with one of the following:
  - A resident related party that (i) declared tax losses for the previous reporting year; (ii) benefited from a special tax regime at the beginning of the current reporting year; (iii) was subject to a nonstandard income tax or VAT rate at the beginning of the current reporting year; or (iv) was not a corporate income tax or VAT payer at the beginning of the current reporting year;
  - A nonresident related party; or
  - A nonresident entity resident in a country where the income/corporate tax rate is at least 5% lower than the rate applicable in Ukraine.
- The comparable uncontrolled price method will have priority over other transfer pricing methods only if it can be applied with the same degree of reliability. If not, no hierarchy of the other four methods (i.e. resale minus, cost plus, profit split and transactional net margin methods) will apply.
- The new rules do not contain the safe harbor that allows a 20% deviation for the contract price from the usual price.
- A Ukraine taxpayer will be required to submit a report by 1 May on its controlled transactions for the previous calendar year. The tax authorities can request transfer pricing documentation (special documentation that demonstrates that transactions were carried out in compliance with the transfer pricing rules), although such documentation need not be submitted with the controlled transactions report.
- Large taxpayers (i.e. companies that have reported UAH 500 million in income or paid more than UAH 12 million in tax during the past four quarters) will be able to enter into advance pricing agreements with the tax authorities in respect of the pricing of their controlled transactions.
- Increased penalties will apply for noncompliance with the transfer pricing rules. A penalty of up to 50% of underpaid tax liabilities will apply where the tax authorities make an adjustment and a penalty of 5% of the controlled transaction amount will apply for failure to submit the transfer pricing report.
- Optional transition rules may be applied until 1 January 2018 to determine conventional export/import prices on certain commodities in the agriculture, metallurgy, chemical and oil and gas industries, and special rules will apply to forward contracts.

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Vietnam:
Update on tax developments

The Vietnamese government and the tax authorities recently made a number of announcements about changes to the tax system, including the following:

- The standard corporate income tax rate will decrease from 25% to 22% on 1 January 2014 and then to 20% on 1 January 2016.
- The General Department of Taxation has issued guidance on the personal income tax exemption applicable to expatriates and foreign employees working for NGOs in Vietnam. According to the guidance, foreign employees working at representative offices and project offices of NGOs in Vietnam are entitled to a tax exemption for income from salary, wages and allowances that are foreign-sourced and not directly withdrawn from the project fund. Where an employee receives income that comes partly from the NGO's fund and partly from the project fund, only the income from the NGO's fund is exempt from personal income tax. Failure of a representative office or project office of an NGO in Vietnam to submit a list of expatriates that qualify for the personal income tax exemption within the stipulated deadline is a violation of the Law on Tax Administration. However, the qualifying expatriates will continue to benefit from the exemption.
- A Vietnamese party is required to inform its foreign contractors about the personal income tax filing obligations of their foreign employees, and to request that such foreign contractors provide information on their foreign employees. Information that must be provided includes the following: name, nationality, passport number, duration of work assignment, position and income. The information will be used for the Vietnamese party's notification to the tax authorities that is due seven days before the foreign employees start their assignments in Vietnam.

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In brief

Belgium – The law that includes changes to the patent income deduction and the withholding tax exemption for qualified researchers was published in the official journal on 28 June 2013. The main change to the patent income deduction (which treats 80% of qualifying patent income as exempt) is that, as from tax year 2014, small and medium-sized enterprises can claim the deduction on patents they own, even if the patent was not developed or improved in a research and development center. Companies that employ qualifying researchers to work on R&D projects or programs benefit from an increased partial exemption from withholding tax (from 75% to 80%) on the wages of these employees with respect to payroll tax due on wages received as from 1 July 2013.

Denmark – On 27 June 2013, the parliament adopted the proposed reduction in the corporate income tax rate. The rate will decrease from 25% to 24.5% on 1 January 2014, to 23.5% in 2015 and to 22% as from 2016. The rate reduction will not apply to businesses in the oil and gas industry.

European Union –

- Lithuania has assumed the Presidency of the EU Council of Ministers from Ireland. The tax priorities for the next six months are the following: political agreement on the savings taxation directive; progress on extending the scope of the administrative cooperation directive to provide for automatic exchanges of information on additional types of income; and continued work on a common consolidated corporate tax base, VAT on vouchers, the financial transaction tax and the energy taxation directive.
- The Court of Justice of the European Union (CJEU) has ruled that by introducing and maintaining legislation allowing immediate exit taxation when a company transfers assets to another EU member state, Denmark has failed to fulfill its obligations under the EU Treaty.
- The CJEU has gone straight to judgment in a Bulgarian case involving the recovery of input VAT on transport costs, work clothing and safety gear used by staff provided to it (and employed) by another entity, and the expenses incurred on business trips the staff took on behalf of the company. The decision suggests that, in general, as long as costs incurred by a taxpayer relate to that taxpayer's taxable economic activities, the fact that another party (e.g. a subcontractor or agency staff member) is involved should not prevent the recovery of input VAT.
- EU member states were required to transpose the Administrative Cooperation Directive into domestic law by 1 January 2013. However, Belgium, Finland, Greece, Italy and Poland did not inform the European Commission that

the directive had been implemented, so a reasoned opinion has been sent to the member states requiring them to notify the EC about implementation within two months.

- The EU has issued one of its regular updates on VAT rates in the EU member states. Hungary has the highest standard rate at 27%, followed by Denmark, Sweden and new member Croatia at 25%. Luxembourg has the lowest standard rate at 15%.

VAT rates in EU member states (as of 1 July 2013)			
	Standard rate	Reduced rate	Super reduced rate
Austria	20	10	-
Belgium	21	6/12	-
Bulgaria	20	9	-
Croatia	25	5/10	-
Cyprus	18	5/8	-
Czech Republic	21	15	-
Denmark	25	-	-
Estonia	20	9	-
Finland	24	10/14	-
France	19.6	5.5/7	2.1
Germany	19	7	-
Greece	23	6.5/13	-
Hungary	27	5/18	-
Ireland	23	9/13.5	4.8
Italy	21	10	4
Latvia	21	12	-
Lithuania	21	5/9	-
Luxembourg	15	6/12	3
Malta	18	5/7	-
Netherlands	21	6	-
Poland	23	5/8	-
Portugal	23	6/13	-
Romania	24	5/9	-
Slovakia	20	10	-
Slovenia	22	9.5	-
Spain	21	10	4
Sweden	25	6/12	-
United Kingdom	20	5	-

Germany – The Annual Tax Act 2013 became effective on 29 June 2013. Included in the act are the introduction of an anti-hybrid rule that must be met for taxpayers to benefit from the 95% exemption for dividends; a limitation on the use of net operating loss carryforwards in reorganizations that have retroactive effect for tax purposes; elimination of real estate transfer tax (RETT) blocker structures and a broadening of the intragroup restructuring exception for RETT purposes; introduction of a tax treaty override provision to tax partnership-to-foreign partner payments; and implementation of the authorized OECD approach for the profit allocation to a permanent establishment.

United States – The Internal Revenue Service (IRS) has released a notice delaying the Foreign Financial Institution (FFI) Registration Portal opening until 19 August 2013 and extending most of the FATCA deadlines established by the final regulations (including deadlines for FFI agreements, withholding, onboarding and preexisting account remediation) by six months. The IRS also indicated that the FFI Registration Portal opening will be a soft launch, when FFIs may start setting up their profiles and adding entities without actually committing to signing or registering, until 1 January 2014. On or after 1 January 2014, FFIs will be able to finalize their registrations through 25 April 2014 to appear on the first IRS FFI list.

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.

Australia-Turkey – The 2010 treaty entered into force on 5 June 2013 and will apply in Australia as from 1 January 2014 for withholding taxes and as from 1 July 2013 for all other tax matters. The treaty will apply in Turkey as from 1 January 2014. When in effect, the treaty provides for a 5% withholding tax on dividends paid by a company that is resident in Australia to a company that holds directly at least 10% of the voting power of the payer company; otherwise, the rate will be 15%. The withholding tax rate on dividends paid by a company that is resident in Turkey will be 5% if the recipient is a company that holds directly at least 25% of the capital of the company paying the dividends and the dividends are paid out of profits that have been subject to tax at the full rate; otherwise, the rate will be 15%. The rate on interest and royalties will be 10%.

Colombia-Mexico – The 2009 treaty entered into force on 11 July 2013 and will apply in Colombia as from 1 January 2014 for income tax matters and as from 11 July 2013 for all other tax matters. The treaty will apply in Mexico 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. A 5% withholding tax rate will apply to interest paid to a bank; otherwise, the rate will be 10%. The rate on royalties will be 10%.

Czech Republic-Singapore – When in effect, the protocol signed on 26 June 2013 provides that the rate will be 5% on royalties received as consideration for the use of, or the right to use, industrial, commercial or scientific equipment; and 10% on royalties received as consideration for the use of, or the right to use, a patent, trademark, design or model, plan, secret formula or process and computer software or for information concerning industrial, commercial or scientific experience. Otherwise, the rate will be 10%. The withholding tax rates on dividends and interest will not be affected by the protocol.

Ecuador-Singapore – When in effect, the treaty signed on 27 June 2013 provides that dividends paid to certain government entities and financial institutions will be exempt from withholding tax; otherwise, the rate will be 5%. A 10% rate will apply on interest and royalties.

Hong Kong-Jersey – The 2012 treaty entered into force on 3 July 2013 and will apply in Jersey as from 1 January 2014 and in Hong Kong as from 1 April 2014. When in effect, the treaty provides for a 0% withholding tax rate on dividends and interest and a 4% rate on royalties.

India-Uruguay – The 2011 treaty entered into force on 21 June 2013 and will apply in Uruguay as from 1 January 2014 and in India as from 1 April 2014. When in effect, the treaty provides for a 5% withholding tax on dividends and a 10% rate on interest and royalties.

Japan-Portugal – The 2011 income tax treaty will enter into force on 28 July 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 has owned directly for the 12-month period ending on the date on which entitlement to the dividends is determined at least 10% of the voting shares of the Japanese payer company or 10% of the capital of the Portuguese payer company; otherwise, the rate will be 10%.The rate on interest will be 5% if paid to a qualifying bank; otherwise, the rate will be 10%.The rate on royalties will be 5%.

Luxembourg-Saudi Arabia – See article in this issue.
URL: http://newsletters.usdbriefs.com/2013/Tax/WTA/130726_7.html

Malaysia-Poland – When in effect, the treaty signed on 8 July 2013 to replace the current treaty dating from 1977 provides for a 5% rate on dividends, a 10% rate on interest and an 8% rate on royalties.

Singapore-Barbados – When in effect, the treaty signed on 15 July 2013 provides that dividends will be taxable only in the state of residence. A 12% withholding tax will apply to interest and an 8% rate on royalties.

Singapore-Liechtenstein – When in effect, the treaty signed on 27 June 2013 provides that dividends will be taxable only in the state of residence. A 12% withholding tax will apply to interest and an 8% rate on royalties.

Slovenia-Kuwait – The 2011 treaty entered into force on 17 May 2013 and will apply as from 1 January 2014. When in effect, the treaty provides for a 0% withholding tax on dividends paid to a government or one of its political subdivisions or entities; otherwise, the rate will be 5%. The rate on interest will be 5% and that on royalties, 10%.

Slovenia-Uzbekistan – When in effect, the treaty signed on 11 February 2013 provides for an 8% rate on dividends and interest and a 10% rate on royalties.

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Italy
Draft implementation rules issued on optional exit tax deferral regime
The Italian Ministry of Finance issued a draft decree on 10 July 2013 that contains the long-overdue implementation rules for the optional deferral regime for the exit tax on deemed gains when an Italian company migrates to another EU/EEA jurisdiction. The draft decree addresses matters such as the computation and scope of the exit tax liability, exit tax payment elections, and termination of the regime and recapture of the deferral election amounts.
[Issue date: 23 July 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/7ad51e9c3fb00410VgnVCM3000003456f70aRCRD.htm?id=us:em:na:wta:eng:tax:072613
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Italy_230713.pdf?id=us:em:na:wta:eng:tax:072613

Mexico
Deadline to file 2012 maquiladora information return approaching
The deadline for maquiladora companies to file their information returns for 2012 is 31 July 2013, and the return must be submitted electronically to Mexico's Tax Administration Service (SAT) using the updated form the SAT posted on its website in June; the old form (dating from 2010) will not be accepted.
[Issue date: 24 July 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/dda7d276f3410410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:wta:eng:tax:072613
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_Mexico_240713.pdf?id=us:em:na:wta:eng:tax:072613

OECD
Action plan on base erosion and profit shifting released
The OECD has published its promised Action Plan on addressing Base Erosion and Profit Shifting (BEPS), after presenting the plan to the G20 Finance Ministers' meeting in Moscow on 19 July 2013. The Action Plan sets out 15 areas for further work, including a summary of the key considerations to be addressed and the timetable for the work in each area. OECD working groups are being set up to focus on each of the issues.
[Issue date: 19 July 2013]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/cross-border-tax/international-tax/1137f8684e7ff310VgnVCM2000003356f70aRCRD.htm?id=us:em:na:wta:eng:tax:072613
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/Global%20Tax%20Alerts/2013/dttl_tax_alert_OECD_190713.pdf?id=us:em:na:wta:eng:tax:072613

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