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Global Tax Update

Netherlands

Deloitte Tohmatsu Tax Co.

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1. Tax transparency package includes exchange of information on tax rulings

The European Commission published a tax transparency package that contains proposals to combat tax avoidance.

(1) Tax transparency package

The European Commission published a tax transparency package on 18 March 2015 that contains proposals to combat tax avoidance by multinationals, which threatens EU member states' tax revenues. A key component of the package is a proposal to introduce the automatic exchange of information between the tax authorities of EU member states on their tax rulings.

While tax rulings are granted to taxpayers primarily to provide legal certainty, rulings can result in tax base erosion where they are granted to offer selective tax advantages or to artificially shift profits to low or no-tax jurisdictions. The European Commission already has launched state aid investigations into specific tax rulings granted by several member states and has asked the targeted states to provide information on the rulings so the Commission can determine whether selective tax advantages are creating competitive distortions.

Under the tax transparency package, the EU directive on administrative cooperation in the field of taxation, amended by the European Council in 2014, would be amended to require full transparency regarding cross-border tax rulings granted by the EU member states' tax authorities. (The directive currently requires member states to automatically exchange a broad range of financial information with each other, in line with the new OECD/G20 global standard for automatic exchange of information between jurisdictions.)

The proposed tax transparency ruling measures would require the tax authorities of EU member states to automatically exchange information about the cross-border tax rulings they grant with the tax authorities of other EU member states on a quarterly basis. If another EU member state has any questions about a ruling, it would have the opportunity to request additional information from the member state that granted the ruling, and it then would be able to act against abusive situations as appropriate.

(2) Deloitte Comments

The tax transparency package represents another ambitious initiative in the EU's efforts to combat tax avoidance and evasion and to ensure greater transparency and cooperation between EU tax authorities. In addition to the 1997 code of conduct on business taxation, the 2012 action plan to combat fraud and the revision of the administrative cooperation directive, the European Commission has been negotiating with Switzerland about the automatic exchange of information. As from 2018, Switzerland will automatically exchange data with the tax authorities of EU member states about holders of Swiss bank accounts. The Commission aims to conclude similar agreements with Andorra, Monaco and San Marino; the EU and these countries currently have agreements in place that are substantially similar to the savings tax directive.

The proposals now will be submitted to the European Parliament for consultation and then to the Council for approval, with the goal of obtaining agreement on the measures before the end of 2015, so the new regulations would become effective on 1 January 2016. However, it is unclear whether all EU member states will agree to the measures.

2. Procedure to obtain dividend withholding tax exemption revised

New regulations published by the Netherlands government on 3 February 2015 set out the procedure for obtaining an exemption or a refund of withholding tax for intercompany dividends under Dutch tax treaties. The regulations became effective on 4 February, replacing regulations dating from 2010, and will apply to dividends paid or made payable on or after 1 March 2015.

The main changes in the new regulations are as follows:

- If a Dutch company distributes intercompany dividends to a foreign entity that is eligible for an exemption from dividend withholding tax, the Dutch distributing company can file a request for an exemption with the "Belastingdienst kantoor Arnhem, Team Dividendbelasting" (Tax office Arnhem, Dividend Tax Team), rather than with the local tax inspectorate (as previously was required). However, the local competent inspector will continue to issue the decision on the request.
- If the tax authorities approve a withholding tax exemption on intercompany dividends, the decision will be valid for each entity covered for a maximum of four years. Companies distributing dividends, therefore, periodically will have to confirm that their approvals remain valid. The four-year period applies to both new and existing approvals (for existing approvals, the four-year period starts to run on 4 February 2015, so these approvals will begin to expire in 2019).

To comply with the regulations, taxpayers will have to file an exemption request at least once every four years; however, if the relevant facts and circumstances change, taxpayers should file a new request regardless of whether the four-year period has expired, to avoid uncertainty.

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