FEBRUARY 2018 ISSUE 46
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WORLD WIDE TAX NEWS

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UNITED STATES
CORPORATE TAX REFORM – SUMMARY OF NEW LAWS TAKING EFFECT

Introduced as the Tax Cuts and Jobs Act, the 'Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018,' P.L. 115-97, was signed into law by the President on 22 December 2017. While the individual and pass-through (e.g., S corporation) provisions are generally phased out in less than a decade, the tax cuts for C corporations are permanent changes to the Internal Revenue Code. The reduced tax rate of 21%, from 35%, is certain to increase the popularity of corporations. The benefits increase the longer earnings are retained and deferred from additional tax (e.g., no dividends or stock dispositions). S-to-C corporation conversions have been made more taxpayer-friendly in an effort to ensure C corporations are not only more competitive internationally under the new law, but also domestically.

The key topics in the new law covered in this issue include:

1. Corporate tax rate reduction and the alternative minimum tax (AMT) repeal;
2. Capital contributions and dividends to corporations;
3. Debt versus equity (Section 385) and the new limitation on deducting interest expense;
4. Corporate net operating losses (NOLs);
5. Bonus depreciation and full expensing;
6. Section 199A deduction for qualified business income earned from S corporations;
7. Electing small business trusts (ESBTs); and
8. S-to-C corporation conversions.

The new law also contains other measures of international interest, including a repatriation tax and anti-base erosion measures, which we will cover in detail in our next edition.

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EDITOR'S LETTER

Welcome to this issue of *BDO World Wide Tax News*. This newsletter summarises recent tax developments of international interest across the world. If you would like more information on any of the items featured, or would like to discuss their implications for you or your business, please contact the person named under the item(s). The material discussed in this newsletter is meant to provide general information only and should not be acted upon without first obtaining professional advice tailored to your particular needs. *BDO World Wide Tax News* is published quarterly by Brussels Worldwide Services BVBA. If you have any comments or suggestions concerning *BDO World Wide Tax News*, please contact the Editor via the BDO Global Office by e-mail at mireille.derouane@bdo.global or by telephone on +32 2 778 0130.

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1. Corporate tax rate reduction and the alternative minimum tax repeal

The top corporate tax rate has been permanently reduced by 40% – from 35% to a flat tax rate of 21%. The prior four corporate tax rates, with a top rate applicable to income over USD 10 million, have been reduced to a single flat rate thereby converting the corporate progressive tax system into a flat tax system. Personal service corporations (e.g., certain corporations providing health, law, and accounting services), which have historically been subject to some of the highest tax rates and could not benefit from the lower progressive rates, are now taxed at the same rate as other C corporations. The corporate tax rate of 21% may increase the relative use of C corporations for certain businesses based on the facts and circumstances of each situation (e.g., the applicability of the new top individual rate of 37%, still subject to the individual AMT, and a new deduction for certain pass-through income discussed below). Taxpayers have already begun the difficult task of modelling out specific factors that could impact choice of entity determinations (e.g., temporary vs. permanent rate differences).

The corporate AMT has generally applied to the extent a corporation's tentative minimum tax, based on a 20% rate, exceeds its regular tax, by reducing certain tax incentives and deductions. While the House bill eliminated the corporate AMT, the Senate proposal did not. Ultimately, the Conferees opted to repeal it because retaining the corporate AMT could reduce research and development incentives intended to improve competitiveness and innovation. Further, the historic policy concerns underlying the corporate AMT, with its tax rate threshold of 20%, have been greatly diminished as a result of the top corporate tax rate reduction from 35% to 21%.

The corporate AMT repeal is effective for taxable years beginning after 31 December 2017. Going forward, any corporate AMT credit may offset the regular tax liability for any taxable year after 2017. The AMT credit is simply the corporation's prior AMT liabilities. In addition, the AMT credit is refundable for any taxable year beginning after 2017 and before 2022 in an amount equal to 50% (100% for taxable years beginning in 2021) of the excess credit for the taxable year.

2. Capital contributions and dividends to corporations

Certain capital contributions from state and local governments will no longer be excluded from income under Section 118. Section 108(e)(6), however, will not be altered for computations of cancellation of debt income on certain contributions of debt. And the meaningless gesture doctrine will continue to apply to Section 351 exchanges of wholly-owned corporations in which no shares are issued. While Section 108(e)(6) and Section 351 concerns arose following broad statutory language found in the House proposal, the subsequent Congressional reports eliminated these concerns.

As in the Senate proposal, the 70% and 80% dividend received deduction percentages for corporations have been reduced to 50% and 65%, respectively, under the new law.

3. Debt versus equity and the new limitation on deducting interest expense

The recent Section 385 regulations were identified by the Administration for possible elimination. That elimination determination was put on hold after statements that new statutory provisions may eliminate or mitigate the need for the regulations. As indicated, the new law modifies Section 163 with an enhanced limitation on the deduction of interest for any business. The new provision limits the deduction of business interest by any taxpayer to the sum of:

(1) Business interest income;

(2) 30% of the adjusted taxable income of the taxpayer; and

(3) The floor plan financing interest of the taxpayer for the taxable year.

The last element, floor plan financing, applies to dealers of vehicles, boats, farm machinery or construction machinery. For all other taxpayers, the limitation on net interest expense (interest expense less interest income) will be 30% of adjusted taxable income. Adjusted taxable income for this purpose is the taxable income of the taxpayer with the exclusion of:

(1) Any non-business income, gain, deduction or loss;

(2) Business interest and business interest income;

(3) Any net operating loss deduction; and

(4) Any deduction allowable for depreciation, amortisation or depletion.

Any amount disallowed under the limitation is treated as business interest paid or accrued in the following tax year. Disallowed interest will have an indefinite carryforward. In addition, the disallowed interest carryforward will be a tax attribute that carries over in certain corporate acquisitions subject to Section 381 (such as tax free liquidations under Section 332 and most reorganisations under Section 368). The bill also modifies Section 382 to expand the definition of pre-change loss to include any disallowed interest carryforward, making these carryforwards subject to the Section 382 limitation in the same manner as NOL carryforwards.

Special rules apply to account for interests held by partners and S corporation shareholders. Specifically, the partnership must first calculate the limitation on business interest expense at the partnership level. Any excess interest is allocated to each partner in the partnership. The partner can then carryforward the excess, but can only deduct the carryforward to the extent the partnership allocates excess business income to that partner in a future year. Excess business income is the portion of that partnership's taxable income which bears the same ratio to the partnership's adjusted taxable income as the excess of 30% of the adjusted taxable income over the amount of net business interest bears to 30% of the adjusted taxable income of the partnership. In addition, if a taxpayer is a partner in a partnership, the taxpayer removes all items of income, deduction, gain or loss of the partnership when calculating adjusted taxable income. Instead, the taxpayer only includes the excess taxable income of the partnership in the taxpayer's calculation of adjusted taxable income. S corporations will apply similar rules to that of partnerships.

The following taxpayers are excluded from the application of the new interest limitations:

(1) Any taxpayer that has annual gross receipts under USD 25 million;

(2) Regulated public utilities;

(3) An electing real property trade or business; and

(4) An electing farming business.

These new rules generally apply to taxable years beginning after 31 December 2017. The new interest limitations could lead to the repeal of the recent Section 385 regulations in whole or in part.

4. Corporate net operating losses

Under current law, Section 172 allows businesses to offset current taxable income by any NOL carryforward or carryback, subject to several limitations. Although no limitation is placed on the use of NOLs under Section 172, the AMT as it applies to businesses effectively limits utilisation of NOLs to an offset of 90% of taxable income. The House bill took the AMT limitation and proposed to incorporate it within Section 172, imposing a 90% limitation on the use of NOL carryforwards and carrybacks. The House bill also proposed to allow the indefinite carryforward of NOLs, eliminating the current 20-year carryforward limitation, while also eliminating all NOL carrybacks with the narrow exception of certain carrybacks for small businesses and farms in the event of casualty or disaster losses arising in a tax year beginning after 2017. The Senate bill proposed to limit NOL deductions to 90% of taxable income, and then 80% in tax years beginning after 31 December 2022. Like the House bill, the Senate bill also proposed the elimination of NOL carrybacks and an indefinite NOL carryforward period. The Conference Committee report and new law adopts the Senate bill approach, with the exception that NOL deductions be limited to 80% of taxable income for all years beginning after 31 December 2017.

The 80% limitation on NOL deductions applies to losses generated in tax years beginning after 31 December 2017, and the elimination of carrybacks and indefinite extension of carryforwards applies only to NOLs generated in taxable years ending after 31 December 2017. NOLs generated in 2017 and earlier would retain their 20-year life and be available to offset 100% of taxable income, subject to certain limitations. The result is that taxpayers will have to track NOLs before and after the effective date separately. While NOLs are expected to increase as a result of the expansion of allowable depreciation deductions (see below), there may be an incentive to defer deductions to a year where they can be deducted 100% against taxable income as opposed to generating an NOL which is limited to 80%. Taxpayers should also consider any carryforward of disallowed interest under revised Section 163, which will be an attribute subject to the same limitations on NOLs (specifically Section 382), potentially causing taxpayers in a profitable position to consider change of control impacts.

5. Bonus depreciation and full expensing

Under current Section 168(k), an allowance for 50% 'bonus' depreciation gives businesses an immediate deduction for half the purchase price of certain qualified property in addition to the first year tax depreciation expense (calculated after the reduction by 50%). The House bill proposed an increase of the first year allowance to 100%, allowing taxpayers the ability to deduct the full cost of qualified property acquired and placed in service after 27 September 2017, and before 1 January 2023. The House bill also proposed expanding property treated as qualifying to include used property not used by the taxpayer before acquiring it. The Senate bill proposed full expensing for property placed in service after 27 September 2017, and before 1 January 2023, (2024 for property with longer production periods) with the percentage decreasing by 20% for each successive year beginning in 2023 (80% allowance in 2023, 60% allowance in 2024, etc.) through a total phase out of the allowance for property placed in service on or after 1 January 2027. The new law adopted the Senate proposal and also allows the election for 50% bonus depreciation in lieu of the 100% available, and repeals the election to claim prior year minimum tax credits in lieu of bonus depreciation. Importantly, the new law expands the definition of qualified property by eliminating the requirement that use of the qualified property commence with the taxpayer.

Section 179 allows a deduction for the full purchase price of certain qualifying property purchased in the tax year. For tax years beginning in 2017, the Section 179 deduction is limited at USD 510,000, and begins to be reduced dollar-for-dollar when equipment purchases exceed USD 2,030,000. The House bill proposed for tax years beginning in 2018 through 2022 the expense limitation be increased to USD 5,000,000, and the phase out amount to USD 20,000,000. The Senate bill proposed the expense limitation be increased to USD 1,000,000, and the phase out amount to USD 2,500,000. The Conference Committee report and new law adopts the Senate approach, increasing the Section 179 expense limitation on qualifying property to USD 1,000,000, while also increasing the initial phase out amount to USD 2,500,000.

As noted above, the expansion of both bonus depreciation and Section 179 may increase or accelerate the generation of NOLs. The election to use such deductions will depend on the specific context and whether or not the acceleration will generate an 80% limited NOL. Further, the expansion of 'qualified' property may increase the desire of buyers to purchase assets as opposed to stock in scenarios where the result is a step up in tax basis based on purchase price which can then be immediately deducted. For the same reason, there may also be an increase in deemed asset sale elections under Sections 336(e), 338(g), and 338(h)(10) in scenarios where the structure of the acquisition is a qualified stock disposition or purchase.

6. Section 199A qualified business income earned from S corporations

The new law provides individuals, estates, and trusts with a deduction of up to 20% of their domestic qualified business income (QBI), regardless of whether it is attributable to income earned through an S corporation, partnership, sole proprietorship, or disregarded entity.

For taxpayers whose taxable income does not exceed USD 157,500 (or USD 315,000 in the case of a joint return of a married couple), the deduction is fixed at 20% with no limitations. For taxpayers whose taxable income is at least USD 207,500 (or USD 415,000 in the case of a joint return of a married couple), two additional provisions apply. First, a limitation based on W-2 wages must be applied at the individual level, and thus may reduce the deduction percentage below 20%. Second, no deduction may be claimed for income from specified service businesses. For taxpayers whose taxable income is between these two amounts, the W-2 wage limitation and the limitation on specified service businesses are phased in. It is important to note that QBI does not include reasonable compensation paid to the taxpayer for services rendered with respect to the trade or business under new Section 199A(c)(4).

A disqualified business includes a 'specified service trade or business,' which is defined in part as a business described in Section 1202(e)(3)(A), ignoring the words engineering and architecture (permissible real estate services). Specifically, a specified service business is one involving the performance of services in the fields of health, law, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners, or which involves the performance of services that consist of investing and investment management trading, or dealing in securities, partnership interests, or commodities.

The new law also adopts a two-part W-2 wage (e.g., compensation from an S corporation) limitation. Under this provision, the wage limitation is the greater of 50% of the W-2 wages paid with respect to the qualified trade or business or the sum of 25% of the W-2 wages plus 2.5% of the unadjusted basis of all qualified property used in the business. The application of this wage limitation may reduce the deduction below 20% of the qualified business income, but will never increase the deduction above 20%.

The above offers a summary of the changes to Section 199A. An in-depth alert will be issued on the topic on the BDO Tax Reform website.

7. Electing Small Business Trusts (ESBTs)

The new law modifies two rules applicable to ESBTs. First, a non-resident alien may be a potential current beneficiary of such a trust. Because the tax imposed on the S portion of an ESBT is the final incidence of taxation of such income, there is no further taxation on any amounts distributed to a beneficiary of an ESBT. Second, if an S corporation allocates a charitable contribution to an ESBT, the limitations on that deduction will be computed under the rules for individuals and not under the more restrictive rules for trusts. The rate of tax imposed on the taxable income of the S portion of an ESBT will also be reduced to 37% to match the highest rate of tax imposed on trusts.

8. S-to-C corporation conversions

In the event an S corporation and its shareholders determine that it is advantageous, in light of tax law changes or otherwise, to revoke the S corporation election, two new provisions will cushion the impact of the revocation. Both changes apply to an 'eligible terminated S corporation,' defined as any C corporation that is an S corporation on the day before enactment of the bill, revokes its S corporation election within two years after the date of enactment, and has the same shareholders, in the same proportions, as the corporation had on the date of enactment of the bill.

First, after the expiration of the post-termination transition period (at least one year after termination of the S corporation election), a distribution of money by the corporation is allocated between the accumulated adjustments account (AAA) and the accumulated earnings and profits (AE&P) of the corporation in the same ratio as the amount of the AAA bears to the amount the AEP. The portion of the distribution allocated to the corporation's AAA will reduce the shareholder's basis in the stock. The portion of the distribution allocated to AE&P will be a taxable dividend. These transition period provisions allow C corporation shareholders to benefit from historic AAA distributions, as a tax-free return of capital, where distributions would otherwise be entirely includable in income as dividends.

Second, if an eligible terminated S corporation using the cash method is required under Section 448 to adopt an accrual method, the resulting Section 481(a) adjustment, i.e., the amount necessary to prevent items of income or deduction from being duplicated or omitted, is taken into account rateably over six taxable years beginning with the year of change. Current accounting-method change procedures generally require a positive (taxpayer-unfavourable) Section 481(a) adjustment to be taken into account over four taxable years.

Finally, because the tax rate established by Sections 1374 (net recognised built-in gains) and 1375 (excess net passive income) are tied to the highest corporate tax rate, the tax rate under these two provisions will also be reduced to 21%. These provisions incentivise S-to-C corporation conversions so taxpayers can benefit from the 21% corporate tax rate and the accompanying deferral provided to shareholders until they choose to cash out.

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INTERNATIONAL

BASE EROSION AND PROFIT SHIFTING – DEVELOPING ECONOMIES

The G20 countries began the process of assessing the systemic diminishing of their taxable base – Base Erosion and Profit Shifting (BEPS). This issue was perhaps less important when economies were flourishing and it seemed that most countries were receiving their fair share of tax revenue.

Tax erosion – A phenomenon arising as a result of the big crisis

Suspects of the erosion – A twofold matter

Although the phenomenon arises from very old-fashioned practices of Multi-National Entities (MNEs), the global economy opens a new discussion regarding the wider spectrum of entities that, although not as large as MNEs, have multi-country presence, which facilitates the deviation of profits to more relaxed jurisdictions as far as taxes are concerned. While MNEs were the main actors of profit shifting from one jurisdiction to another, the hosting jurisdictions were the ones that were finger pointed by the G20 and OECD, and were classified as 'tax havens'. After having this concept for several years, the practice of finger pointing jurisdictions became more profound in its definition, widening its concept not just in jurisdictions per se, but in the used business models, special tax regimes, and several coherence and transparency matters became the new actor on stage.

The profit flow was presumably taking place from developed economies to developing economies and cooperation was the new name of the game. For developing economies, the compliance cost became a major task, starting from the major changes in the financial system as well as corporate laws. When assessing the risk of profit shifting, the suspected scenario would be of the sender – more likely a MNE based in a developed county – abusing the weak tax administrations in developing economies to shelter their profits and accomplish a reduced global effective tax rate.

Consequences for developing economies

The result of these changes is that the pressure put on developing countries is disproportionate to their resources, which becomes more significant when it is considered that the benefits are likely to revert back to developed economies (where the source of the 'base erosion' is located). Despite this fact, the professional community in both developed and developing countries, must align to the changes, in order to serve clients on the basis of the new reporting requirements, and become proactive in the assessment of the value chain as well as the new Transfer Pricing Guidelines of 2017. This alignment will reduce the client's risk and simplify the optimal path to compliance. The challenges go far beyond tax professionals, touching the sensibility to risk in financial reporting and disclosure levels for audit reports.

The fifteen actions to counteract BEPS are a coherent tool, based on business substance and global transparency principles, which requires a holistic approach from professionals in the different business-consulting disciplines. This approach will allow corporations to adopt these recommendations as best business practices, in order to protect their reputation, their low relative tax rates (within the scope of tax compliance), and the generation of after-tax cash flow for the stockholders. This equation requires a current status diagnosis, in order to create a roadmap that allows the MNE to close the gap between the new regulations and the current business practices of MNEs.

It is fundamental to understand that the BEPS Action plans which have been published constitute a 'live guide', which must be taken into consideration in order to align regulation, profitability and risk assessment.

We in BDO intend to lead this era of change.

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AUSTRALIA

NEW GUIDANCE FOR MULTINATIONALS ON PROVIDING GENERAL PURPOSE FINANCIAL ACCOUNTS

An Australian corporate tax entity that is a Significant Global Entity (SGE) (i.e. part of a group with 'annual global income' of AUD 1 billion or more) is now required to lodge a general purpose financial statement (GPFS) with the Australian Taxation Office (ATO) together with their tax return, unless a GPFS is already lodged with the Australian Securities and Investments Commission (ASIC).

The legislation, introduced in December 2015, raised a number of queries around implementation issues including whether Australian subsidiaries of Multinational Enterprises (MNEs) could provide the consolidated financial statements of an overseas parent entity to satisfy these obligations. Therefore, after consulting with stakeholders, on 28 September 2017 the ATO released guidance covering who must lodge a GPFS, how to prepare a GPFS, lodging a GPFS with the ATO and worked examples.

The requirement to lodge GPFS with the ATO applies for income tax years beginning on or after 1 July 2016. However, in recognition of the fact that the ATO guidance has generated substantial additional compliance costs for many foreign multinational groups operating in Australia, the ATO is allowing transitional arrangements:

- For companies with 30 June 2017 year ends, ATO provides a lodgment extension until 31 March 2018;
- Also, the ATO will overlook the fact that Australian Accounting Standards were not used (if required to be used) for entities that have an income year that commenced between 1 July 2016 and 30 June 2017.

Who will be impacted?

For income tax years beginning on or after 1 July 2016, Section 3CA of the Taxation Administration Act 1953 (the Act) requires SGEs to provide the Commissioner of Taxation with a GPFS with their annual tax return.

Generally, GPFS have to be prepared in accordance with Australian Accounting Standards. However, in some cases, the ATO will allow the Australian subsidiaries of multinationals to submit global consolidated accounts instead. To qualify, global consolidated financial statements must be prepared in accordance with prescribed accounting standards [i.e., either under Australian Accounting Standards or other commercially accepted accounting principles (CAAP)].

Once received by the ATO, the GPFSs will be published and made publicly available on the ASIC register. This may affect some companies' decisions on whether to prepare stand-alone GPFS for the Australian subsidiary or to provide consolidated global GPFS, particularly where the global group is privately owned. While GPFS do not need to be audited, the ATO considers it best practice to do so.

Entities currently lodging GPFS with ASIC within the stipulated time frames have no further obligations under Section 3CA of the Act.

Which types of entities will be most impacted?

The following types of entities will now have **additional reporting responsibilities**:

Entities required to prepare financial statements under the Corporations Act 2001	Entities NOT required to prepare financial statements under the Corporations Act 2001
These entities will have to use Australian Accounting Standards	These entities can use CAAP
Entities currently preparing special purpose financial statements (SPFS) Will be required to increase the number of disclosures and will need to ensure that they have complied with all recognition and measurement requirements of Australian Accounting Standards	Entities not subject to the Corporations Act e.g. corporate limited partnerships
'Grandfathered' entities currently preparing SPFS Will be required to increase the number of disclosures and will need to ensure that they have complied with all recognition and measurement requirements of Australian Accounting Standards	Entities not subject to Part 2M.3 of the Corporations Act e.g. Australian small proprietary companies
Large proprietary companies subject to the wholly-owned entity Legislative Instrument that are relieved from preparing financial statements because parent entity lodges consolidated financial statements in accordance with Australian Accounting Standards These entities will need to prepare a GPFS (stand alone or consolidated) in accordance with Australian Accounting Standards	Small foreign controlled proprietary companies because foreign parent lodges consolidated financial statements with ASIC in accordance with accounting standards applicable in parent's home jurisdiction or most foreign residents operating a PE, not lodging a GPFS with ASIC (for example, registered foreign companies)

What are commercially accepted accounting principles (CAAP)?

If Australian accounting standards do not apply to an entity (as per the above table), an entity can choose to prepare GPFS in accordance with 'commercially accepted principles relating to accounting' (CAAP). According to the ATO guidance, CAAP would include IFRS and accounting standards that are IFRS-compliant, such as Australian accounting standards and US GAAP.

According to the ATO, where other accounting principles are used, the financial statements must be assessed on a case-by-case basis and one of the key considerations will be whether the financial statements provide a 'true and fair' view.

Other issues to consider for SGEs

For income years beginning after 1 January 2016, SGEs are subject to additional transparency measures in Australia under the Country-by-Country (CbC) reporting regime adopted by the ATO. These requirements include the obligation to lodge the following documentation with the ATO 12 months after the year end:

- Master file;
- Local file, specifically developed Australian format; and
- CbC Report.

SGEs are also subject to the Diverted Profits Tax, a new penalty regime for SGEs who engage in cross border transactions with 'low tax' jurisdictions. Punitive penalties of 40% of profits found to be diverted can be imposed in a 'pay now, argue later' approach. This measure applies from 1 July 2017.

Multinational anti-avoidance law (MAAL) also continues to target SGEs who enter schemes that artificially limit a taxable presence or permanent establishment in Australia. This measure applies to income years beginning on or after 1 January 2016.

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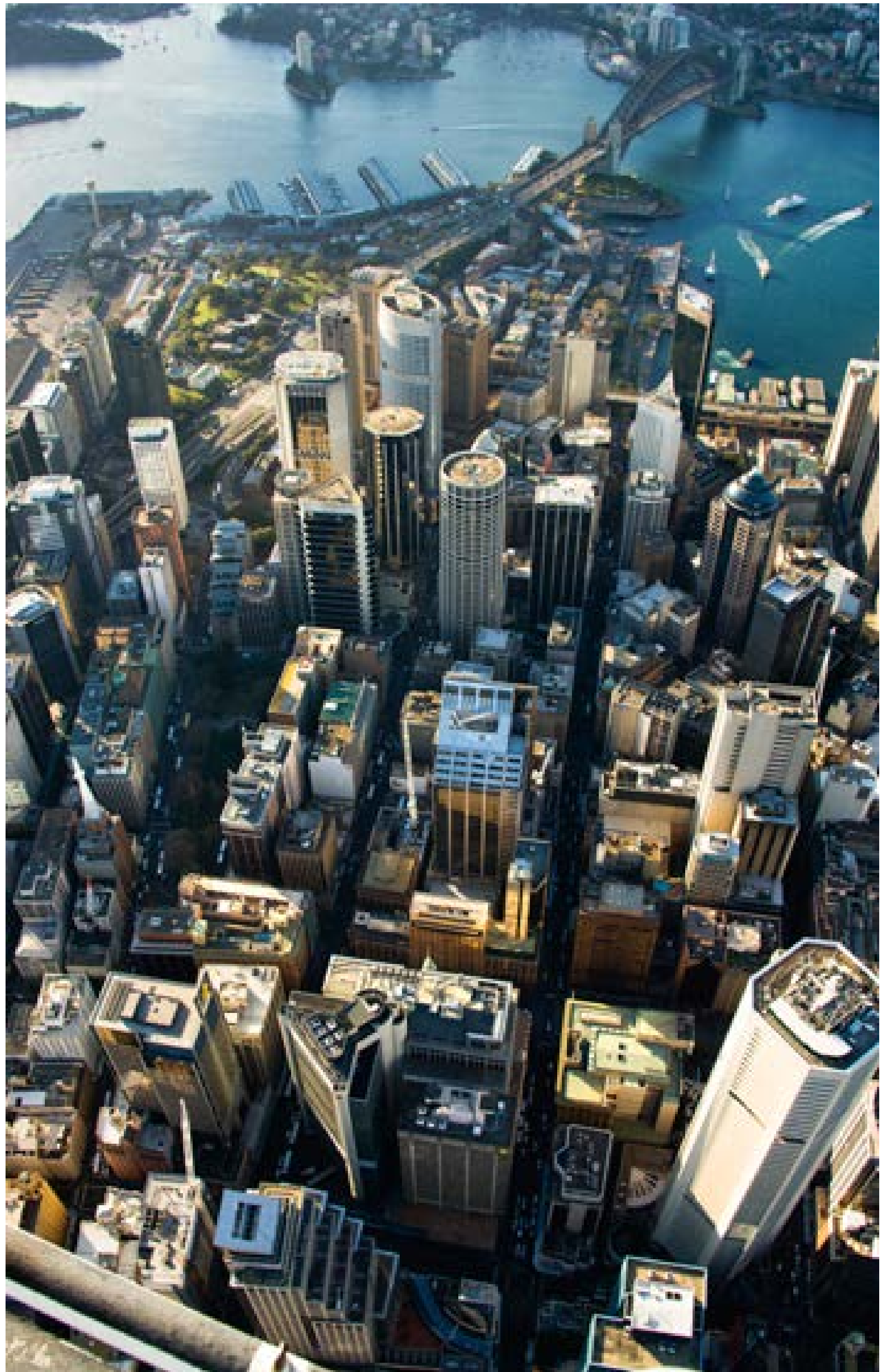

SINGAPORE

RE-DOMICILIATION OF COMPANIES

With effect from 11 October 2017, the amended Singapore Companies Act (Cap. 50) allows eligible foreign corporate entities (FCEs) to transfer their place of incorporation to Singapore by way of an inward re-domiciliation.

Re-domiciliation will not:

a) Affect the obligations, liabilities, property or rights of the foreign companies;

b) Create a new Singapore entity; or

c) Affect any proceedings by or against the foreign companies.

1. Eligibility requirements

A foreign company must first be authorised to transfer its incorporation under the laws of its place of incorporation. To do so, the country in which the FCE is originally incorporated must permit outward re-domiciliation. At present, various offshore jurisdictions such as Cayman Islands and the British Virgin Islands, Australia, Canada and New Zealand permit re-domiciliation. On the other hand, jurisdictions such as the UK and Hong Kong do not permit outward re-domiciliation.

In order to qualify for re-domiciliation to Singapore, a foreign company must satisfy any two of the following:

a) Value of the foreign company's total assets exceeds SGD 10 million;

b) Annual revenue of the foreign company exceeds SGD 10 million; and

c) Number of employees of the foreign company exceeds 50.

The above criteria must be met in the two financial years immediately preceding its re-domiciliation application.

In addition to the above, the foreign company must (amongst other solvency requirements) be balance-sheet solvent as at the date of the application and be able to pay its debts (including for the period of 12 months immediately after the date of the application for registration) as they fall due.

2. Advantages of inward re-domiciliation to Singapore

There are both tax and non-tax related advantages of re-domiciliation to Singapore:

(a) Favourable tax regime

Lower corporate income tax rate – Singapore offers a lower corporate income tax rate of 17%, with partial tax exemption of 75% on the first SGD 10,000 and 50% on the next SGD 290,000 of the company's chargeable income.

Deduction for expenses – Singapore provides a tax deduction for pre-commencement expenses incurred by a re-domiciled company that has not commenced business in the original jurisdiction.

No capital gains tax – Capital gains made on sale of properties, shares or other financial instruments are generally not taxable unless such gains are derived from the company's trading business.

Capital allowances available – Capital allowances can be claimed on transferred-in intellectual property rights used for business in Singapore.

(b) Gateway to Asia

Singapore has long been recognised as a gateway to doing business in Asia. With its stable political and pro-business environment, a well-established judicial system and extensive treaty network, Singapore is a conducive and ideal location for multinational companies to set up their regional or global headquarters to reap the potential of the growing Asian market.

(c) Robust tax environment

Given the recent international focus on Base Erosion and Profit Shifting ('BEPS') and the concerted move towards greater tax transparency, when considering a re-domiciliation location, Singapore is well placed to provide a robust tax regime which meets the BEPS standards. Singapore has joined the inclusive framework for the global implementation of the BEPS Project as a BEPS Associate, and its tax incentive regime has recently been reviewed by the Forum on Harmful Tax Practices and found to meet international tax standards.

We are happy to discuss the tax and corporate secretarial implications and assist companies in the re-domiciliation process. The entire process of re-domiciliation is estimated to take about two months. It is worth considering re-domiciling to Singapore if a company wishes to leverage on Singapore to gain a foothold in Asia.

Please feel free to contact us if you would like to know more about re-domiciliation to Singapore.

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THAILAND

THAILAND JOINS THE INCLUSIVE FRAMEWORK ON BEPS

In 2017 Thailand became the 98th jurisdiction to join the OECD's Inclusive Framework on base erosion and profit shifting (BEPS).

The Inclusive Framework, which now has more than 100 members, will monitor and peer review the implementation of the minimum standards of the BEPS Package as well as complete the work on standard setting to address BEPS issues. Membership will allow Thailand to participate on an equal footing with other Inclusive Framework members.

As a member, Thailand commits to implementing the four minimum standards of the BEPS Package as well as developing a monitoring process to review its own tax systems and identify and remove elements raising BEPS risks.

The four minimum standards developed by OECD members and the G20 countries are:

1. To fight harmful tax practices (BEPS: Action 5);
2. Prevent tax treaty abuse, including treaty shopping (Action 6);
3. Improve transparency with Country-by-Country Reporting (Action 13);
4. Enhance the effectiveness of dispute resolution (Action 14).

Thailand's harmful tax practices

The OECD recently released its 2017 Progress Report on Preferential Regimes that feature harmful tax practices, pursuant to BEPS: Action 5. The following preferential regimes in Thailand were identified:

Regime	Status
International headquarters	In the process of being amended
Regional operating headquarters	In the process of being amended
Treasury Centre regime	In the process of being amended
International banking facilities	In the process of being eliminated/amended
International trade centre	In the process of being eliminated/amended

These regimes all offer tax concessions, primarily to promote or attract the establishment of such regimes in Thailand. Thai tax legislation will now be focused on aligning with the BEPS initiatives, including the review of these preferential regimes that feature harmful tax practices.

Where a regime is 'in the process of being eliminated,' as well as where a regime is 'in the process of being amended,' this reflects that Thailand has communicated to the Forum on Harmful Tax Practices (FHTP) its government's commitment to abolish or amend the regime in light of the discussions by the FHTP about the features of the regime that are of concern, and that the FHTP could reconsider the description of these regimes if insufficient progress was being made.

Renewed focus on transfer pricing

The BEPS initiatives were born in 2013 and will result in the most significant re-write of international tax rules in a century. A guiding principle of the initiatives is that profits should be taxed where the real economic activities generating the profits are performed and where value is created.

Several years ago, Thai transfer pricing legislation was drafted to address the pricing of related party transactions, but as yet no new legislation has been enacted. Thailand is now committed to improving its transfer pricing rules to comply with international tax standards.

Pursuant to BEPS Action 13, multinational enterprises (MNEs) will be required to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a 'master file' that is to be available to all relevant tax administrations. Second, it requires that detailed transactional transfer pricing documentation be provided in a 'local file' specific to each country, identifying material related party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made with regard to those transactions.

Another key commitment for Thailand is to undertake steps necessary for the implementation of Country-by-Country (CbC) reporting for MNEs generating annual consolidated revenue equal to or more than EUR 750 million. CbC reporting will provide jurisdictions with country-by-country breakdowns of related party revenues, profits before income tax, income tax paid and accrued, number of employees, tangible assets, and other indicators of economic activities within large MNE groups. CbC reports will be disseminated through an automatic government-to-government exchange mechanism.

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DENMARK

PROPOSED TAX INITIATIVES BY THE DANISH GOVERNMENT

In connection with the opening of the new session of the Danish Parliament, the Government presented its list of intended legislation for the coming year. With regard to taxation, the list comprises 23 Bills, not including those necessary to carry out the political agreements negotiated based on the Government's recent tax and business initiative. Hence, the actual number of proposed Bills by the Minister of Taxation is expected to exceed the number initially notified. The intended tax legislation includes the following main proposals relating to business taxes. Several of the Bills have already been adopted by the Parliament:

- A Bill has been adopted allowing businesses deductions for salary expenses of their own employees regardless of the work performed. The purpose is to extend the right of deduction for businesses' wage expenses etc. in connection with the establishment, restriction or extension of the business.

  The expansion of the deduction right is a consequence of two principal judgments of the Supreme Court, where it has been established that businesses do not have the right to deduct wage expenses when establishing new businesses or expanding existing businesses.
- The Minister of Taxation will propose a Bill that will allow businesses to be transferred to foundations with tax succession – thus, without taxing the seller.
- There is also a Bill introducing new rules for the withholding of tax on dividends distributed by listed companies. This entails that reimbursement of dividend tax will not be required in the future.
- A new Tax Control Act, a new Reporting Act and a limitation of the Danish tax authorities' ability to withdraw binding rulings on valuation of assets have been adopted as part of the Government's initiatives to strengthen the rule of law with regard to taxation.
- Certain tax rules for pension savings have been adopted, including a reduction of the possibilities for contributing to certain pension schemes, but also to extend the maximum pay-out period for retirement pensions that are payable in instalments from 25 years to 30 years.
- With respect to double tax agreements, a Bill is proposed allowing Denmark to ratify the Multilateral Convention designed to amend existing double tax agreements in order to swiftly implement the BEPS (Base Erosion and Profit Shifting) initiatives by OECD.
- As part of the so-called North Sea Agreement, a Bill has been adopted abolishing the scheme of a permanent interest-free loan to export businesses corresponding to a share of their negative VAT.

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FRANCE

NEW CORPORATE TAX CONTRIBUTIONS INTRODUCED AFTER 3% CONTRIBUTION ON DIVIDENDS DECLARED

Until recently, French companies had to pay an additional 3% contribution on the amount of their distributed dividends (Art. 235 ter ZCA of the French tax Code).

This 3% additional contribution has continuously been challenged on the grounds of:

(i) The French Constitution;

(ii) EU law; and

(iii) Double Tax Treaties.

Background

The Court of Justice of the European Union (CJEU)

In May 2017, the CJEU ruled that dividends paid by a French company as a redistribution of dividends that have previously been received from an EU subsidiary cannot be subject to the 3% additional contribution, as it would lead to double taxation prohibited by Art. 4 of the Parent-Subsidiary Directive No. 2011/96/UE.

French Constitutional Court

In October 2017, the French Constitutional Court declared the 3% additional contribution as fully unconstitutional on the ground of the principle of equality before taxation (No. 2017-660 QPC).

Finance Bill for 2018

Furthermore, the Finance Act for 2018 abolished the 3% additional contribution on distributed dividends.

Implications

Tax refunds

Taxpayers can obtain a refund of the 3% additional contribution on dividends previously paid, provided they have not filed any claim that has been terminated and/or subject to a final court decision.

If the statute of limitations has not expired, taxpayers who paid the 3% additional contribution can still take action and file a claim for reimbursement.

As a reminder, please note that the French tax statute of limitation provides that taxes and/or contributions can be claimed until the 31 December in the second year after the year of their payment i.e. 3% additional contributions paid from 1 January 2016 can be reclaimed until 31 December 2018.

Two taxes introduced by the Amendment to the Finances Bill for 2017

To deal with the cost that will arise from pending and future litigation regarding such tax refunds, the Amendment to the Finance Bill for 2017 introduces the two following taxes:

1. **An exceptional contribution** of 15% applicable to French corporate income tax due by entities with a turnover of at least EUR 1 billion for fiscal years ending from 31 December 2017 to 30 December 2018;
2. **An additional contribution** of 15% applicable to French corporate income tax due by entities with a turnover of at least EUR 3 billion.

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HUNGARY

TAX CHANGES FOR 2018

The Hungarian Parliament has recently approved modifications to the Hungarian tax regulations for 2018. Although the number of changes this year are not too high, some of the modifications are significant and very favourable for taxpayers.

Otherwise, the main characteristics of the Hungarian tax system (9% flat corporate income tax rate, dividend exemption, no withholding tax based on the domestic rules, participation exemption regime, 4.5% effective tax rate on profits from royalties, 15% flat personal income tax rate, etc.) remain unchanged.

Social contribution tax

The rate of **social contribution tax**, which is the main labour-related tax burden for employers in Hungary, will **decrease from the current 22% to 19.5%**. The decreasing social contribution tax rate significantly improves Hungary's competitiveness in the field of employment. In addition, reducing the social contribution tax rate also results in a reduction of the healthcare contribution rate as well as of the tax burden of the 'cafeteria' flexible fringe benefits system.

Tax allowances

From 1 January 2018, investment forms eligible for the **development tax incentive** are expanded with **two new items** (in line with the spring modification of the EC subsidy regulation). These investments are subject to being considered initial investments resulting in product diversification or new process innovation. In the case of investment for job creation, the tax advantage is available when the investment value is at least HUF 3 billion, otherwise the minimum limit is HUF 6 billion. An extra benefit of this incentive is its availability in the 'Közép-Magyarország' (Central Hungary) region (i.e. in Budapest and Pest county), which area is usually excluded from subsidy opportunities.

Beneficial taxation in relation to energy saving

A corporate income **tax incentive for energy-efficient investments** already entered into force on 1 January 2017. However, its detailed rules were introduced only in summer 2017. By now, companies can analyse all the circumstances and conditions for utilising this incentive. Moreover, already having energy-efficient investment (i.e. before this summer but after 1 January 2017) started is not an obstacle to applying.

The other **tax allowance** in this area relates to **electric charging stations**. Establishing an electric charging station will result in an allowable deduction of up to EUR 20 million for corporate income tax purposes.

Favourable changes in tax administration regulations

Making tax administration more transparent and reducing the administrative burden for taxpayers have already been planned for years in Hungary. Finally, in **November 2017 the Parliament approved the new tax administration legislation**.

The most important change regarding the present practice of long-lasting tax revisions during tax audits by the tax authorities is the obligation to **complete revisions within a maximum of 365 days** (which already includes the potential deadline extensions as well). **For reliable taxpayers this deadline is 180 days**.

A similarly positive change for reliable taxpayers is that there will be a **further reduction to the deadline for VAT refunds to 30 days** (20 days in the case of public share companies), **from the current 45 days** (30 days in the case of public share companies).

Furthermore, it is welcomed that during (and also beyond) tax revisions **electronic communications** are expected to play an increasingly important role, which will hopefully help to ease taxpayers' lives.

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IRELAND

BUDGET 2018 AND IRELAND'S INTERNATIONAL TAX STRATEGY

The Irish Minister for Finance announced the details of Budget 2018 on 10 October 2017. Below is an overview of a number of matters which are relevant to international business.

Ireland's 12.5% corporate tax rate unaffected

As part of Budget 2018, the Department of Finance released an 'Update on Ireland's International Tax Strategy' which restated the importance of Ireland's 12.5% corporation tax rate to a stable competitive tax regime. Ireland will continue to offer certainty within a corporation tax system that meets the highest international standards in tax.

Capital allowances for intangible assets

The Budget re-introduced an 80% limitation for capital allowances for intangible assets, and any related interest expense, of the relevant income arising from the intangible asset in an accounting period.

Capital allowances for intangible assets allow for a tax deduction against trading income from the exploitation of Intellectual Property (IP) for the cost of acquiring the related IP. It was first introduced in 2009 when the tax deduction, together with associated finance costs, were limited to 80% of the related trading income.

The cap was abolished in 2015 and has been re-introduced for IP acquired on or after 11 October 2017.

The Coffey Report

In September 2016, the Government commissioned a review of Ireland's corporation tax code which was carried out by Mr Seamus Coffey and published in September 2017. In welcoming the report, the Minister for Finance stated that 'the review provides a clear road map and timeframe for Ireland to implement important international reforms'.

The review recommends that consultation be carried out on a number of potential tax changes in order to reduce uncertainty and to better inform policy-making. The Minster for Finance launched, on Budget day, a public consultation inviting interested stakeholders to give their views on these issues.

The consultation requests feedback from the public and stakeholders on the following:

EU Anti-Avoidance Directive (ATAD)

The consultation requests feedback from the public and stakeholders on the implementation of various measures of the EU ATAD including the transposition of a General Anti-Abuse Rule (GAAR) and what changes, if any, are needed to ensure the existing Irish domestic GAAR meets the minimum standard in the ATAD. The ATAD will require member states to implement Controlled Foreign Company (CFC) rules which do not currently exist in Irish tax law. Ireland's current exit tax will be replaced by the ATAD exit tax on four particular transactions. A concise set of anti-hybrid rules applicable to intra-EU payments were originally prepared by the ATAD. An amendment was made to the ATAD (ATAD 2) which extended the hybrid mismatch rules to third countries. As a result, the introduction of these anti-hybrid rules was extended to 1 January 2020.

Transfer pricing

The Coffey Report recommended that Ireland consider extending its transfer pricing rules to non-trading transactions, Small and Medium Sized enterprises, and capital transactions. By extending the rules to non-trading transactions the risk of aggressive tax planning will be reduced. Furthermore, the report recommends that the OECD's 2017 transfer pricing guidelines and the documentation requirements with BEPS Action 15 be adopted within Irish domestic legislation.

Territorial tax base

The report recommends that consideration be given on moving to a territorial corporation tax base in respect of the taxation of foreign branches of Irish companies, and the receipt of foreign dividends.

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ITALY

NEW RULING FOR MNE GROUPS WITH POTENTIAL HIDDEN PERMANENT ESTABLISHMENTS IN ITALY

Conversion Law No. 96 ('Conversion Law') of 21 June 2017 introduced a new provision concerning a special procedure of voluntary tax assessment whereby foreign multinational enterprise (MNE) groups would be entitled to spontaneously disclose hidden Italian permanent establishments (PEs).

If a hidden Italian PE is deemed to exist, the applicant can follow a tax settlement procedure to determine the tax liabilities of its Italian PE, benefiting from a reduction in administrative penalties, protection from certain criminal charges and entitlement to adhere to the special cooperative tax compliance regime.

It should be noted that this disclosure measure has been boosted by recent tax audits conducted by the Italian Tax Authority on web economy foreign giants.

In detail

The procedure of enhanced cooperation and collaboration contained in Article 1-bis ('the Article') of the Conversion Law addresses the cases where foreign multinational groups may file a request with the Italian Tax Authority for an evaluation of a risk of existence of their Italian undeclared PEs which had not been previously reported. Therefore, the new provision is aimed at addressing the tax challenges of foreign multinational groups doing business in Italy.

Requirements for admission

The new rules contained in the Article are addressed to foreign companies, which belong to multinational groups with a consolidated turnover higher than EUR 1 billion per year that sell goods and provide services in Italy for more than EUR 50 million per year through the support of one or more associated resident companies or permanent establishments in Italy. The non-resident companies can activate the procedure of enhanced cooperation and collaboration to determine the tax liabilities of their potential PEs in Italy, submitting a specific request to the Italian Tax Authority.

Under the procedure, the consolidated turnover amount of the multinational group to which the non-resident requesting company belongs is equal to the highest value of the supply of goods and services reported in the consolidated financial statements of the fiscal year prior to the current fiscal year of the submission date of the request and the two fiscal years preceding it.

Similarly, for determining the amount of supplies of goods and services made in Italy by the non-resident requesting company, the highest amount reported in the financial statements of the last fiscal year is analysed, as well as that corresponding to the two preceding fiscal years, also including transactions of the supply of goods and services involving the requesting foreign company to which the Italian transfer pricing provisions are applied as provided under Paragraph 7 of Article 110 of Italian Income Tax Code.

Exclusions from the procedure

Access to the procedure will be denied to non-resident companies which have had formal knowledge of any access, inspection and audit, of the start of any administrative audits or criminal proceedings, in relation to the scope of the request.

This exclusion is extended also to cases in which the resident associated supportive companies or the potential Italian PEs of the requesting foreign companies have formal knowledge of these circumstances.

Cooperative compliance regime

The non-resident companies may submit a request to the Italian Tax Authority in order to verify whether their business activities in Italy may trigger a PE. The request allows the applicant company to access the Italian cooperative compliance regime, which was implemented under Italian tax law by Law Decree No. 128 of 5 August 2015, aimed at promoting new forms of communication and enhancing cooperation between the Italian Tax Authority and taxpayers, as well as preventing and resolving tax controversies. Title III of that Decree sets out:

i) The minimum requirements for accessing the regime that are attributed to an effective collection, measurement, management and control system of the tax risks in the corporate government and internal audit context of the non-resident requesting company;

ii) The duties of the parties involved that will be based on the collaborative and transparent conduct either of the Italian Tax Authority or the non-resident requesting company, in order to promote a tax context of certainty;

iii) The effects resulting from the regime, referring to a common assessment by the Italian Tax Authority and the non-resident requesting company of cases likely to generate tax risks.

Benefits of a settlement agreement

The requesting non-resident company having been ascertained to have an undeclared PE in Italy for the fiscal years for which the deadline for submitting CIT returns have expired, will be invited by the Italian Tax Authority to determine, under an adversarial procedure, the PE's tax liabilities, according to the tax settlement rules implemented by Legislative Decree No. 218 of 19 June 1997 under the Italian Income Tax Code.

As a consequence, if a settlement agreement is reached and the foreign company pays the amounts due under the settlement agreement in a timely manner, the following benefits will apply:

- Ordinary tax penalties are reduced to 1/6 of the original amount;
- No criminal penalties will be applied in connection with the omitted Income Tax Returns. For that purpose the Italian Tax Authority will communicate to the competent judicial Authority the agreed tax liabilities of the hidden PE within 30 days from the payment due date;
- The possibility to have access to the cooperative compliance regime by the requesting non-resident company, regardless of the turnover or the revenue of the Italian branch, as long as it meets all the other requirements provided by D. Lgs. 128/2015.

Failure to comply with a settlement agreement

It should be noted that, for the fiscal years for which the deadline for submitting CIT returns have expired, criminal penalties may be applied to the managers of the requesting non-resident company, as provided under Article 5 Legislative Decree No. 74 of 10 March 2000, if any of the following situations apply:

i) The settlement agreement is not concluded; or
ii) Payment of the amounts due under the settlement agreement is not made; or
iii) Partial payment is made.

The Italian Tax Authority will then impose the ordinary administrative penalties on the requesting foreign company, ranging from 120% to 240% of the additional taxes due, plus interest for the late payment, by 31 December of the year following issue of the settlement invitation or the date of the settlement agreement, notwithstanding the Italian rules concerning the ordinary terms of the tax assessment, as provided under Article 43 of Presidential Decree No. 600 of 29 September 1973 and Article 57 of Presidential Decree No. 633 of 26 October 1972.

Effectiveness of international tax ruling provisions

The provisions concerning the procedure of enhanced cooperation and collaboration do not prejudice the possibility for requesting non-resident companies to agree an international tax ruling with the Italian Tax Authority, as provided under Article 31-ter of Presidential Decree No. 600 of 29 September 1973.
In particular, an international tax ruling is available for companies engaged in international activities and can cover transfer pricing issues, allocation of profit to PEs, and evaluation of the existence of an Italian PE, as well as dividends, royalties and interest concerns.

Expected regulation of the Italian Tax Authority

A regulation of the Commissioner of the Italian Tax Authority is expected, in order to issue information about how the procedure of enhanced cooperation and collaboration may be implemented.

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LATVIA

LOANS ISSUED TO RELATED PARTIES WILL BE TAXABLE TRANSACTIONS

In August 2017, the Latvian Government approved tax law changes which have taken effect from 1 January 2018, including changes in respect of issued loans to related parties.

Loans issued to related parties

Related parties

Under Latvian tax regulations, related parties are two or more natural or legal persons or a group of persons related by contract, or the representatives of such persons or groups if at least one of the following circumstances exists:

- They are parent and subsidiary commercial companies or co-operative societies;
- The shareholding of one commercial company or co-operative society in the other company is from 20-50%;
- More than 50% of the share capital or the value of the shares of the commercial company or co-operative society in each of these two or more commercial companies or co-operative societies is held or a decisive influence is ensured;
- One and the same person(s) have a majority of votes on the boards of directors (executive bodies) of these commercial companies or co-operative societies;
- In addition to a contract for a specific transaction in any form, these persons have entered into an agreement providing for any additional remuneration not laid down in the contract, or such commercial companies or co-operative societies engage in other forms of coordinated activities with a view to reducing their taxes.

Transactions with related parties in Latvia also include transactions with low and tax-free countries or territories.

New regulation for issued loans to related parties

In the new corporate income tax law, which comes into force from 1 January 2018, loans issued to related parties will be treated as deemed profit distribution. Loans issued to related parties are therefore taxable at a corporate income tax 20/80 rate (i.e. 25%) Such rules do not apply to loans issued up to the end of 2017, if the purpose of the loan is not to artificially reduce the taxable base.

The provision does not apply to the following loans issued starting from 1 January 2018:

- Loans issued by a shareholder to its subsidiary;
- Loans issued by a company to its permanent establishment;
- Loans issued which do not exceed the amounts of loans received from unrelated third parties;
- Loans issued in the tax year, if there are no retained earnings from previous periods on the balance sheet at the beginning of the tax year;
- Loans issued in a volume which does not exceed the equity value at the beginning of the year, which is decreased by retained earnings, a non-current asset revaluation reserve and other reserves which have not originated from profit distribution;
- Short-term loans (up to 12 months).

Therefore, if an issued loan to a related party does not comply with some of the above criteria, this loan has to be included in the taxable base, and corporate income tax will be payable by the lender. However, if the loan is repaid in later periods, the taxpayer will be entitled to reduce the taxable base by the amount of the repaid loan.

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THE NETHERLANDS

TAX CHANGES PROPOSED BY COALITION AGREEMENT 2017-2021

On 10 October 2017 the long-expected (draft) coalition agreement of the proposed new coalition formed by the VVD-CDA-D66 and Christen Unie political parties was published. This agreement includes a large number of proposed new tax regulations. The majority of these proposed regulations should apply from 1 January 2019, or later.

Unfortunately, the new coalition has not chosen a full-scale revision of current tax legislation, but it nevertheless pulls a significant number of tax levers. The basis is (tax) relief for the employed middle income group as well as for entrepreneurs and companies.

It remains to be seen whether the proposed regulations will indeed be introduced, and we will be monitoring developments.

Corporate income tax

Reduction of corporate income tax rates and amendment of first bracket
The corporate income tax rates will be reduced in several steps from 1 January 2019. In 2019, the rates are reduced by 1 percentage point, in 2020 by 1.5 percentage points, and in 2021 by a further 1.5 percentage points.

The increase of the first bracket that was set to be introduced in steps from 1 January 2018 will be reversed. As a result, the first bracket for which the lower corporate income tax rate applies, will remain capped at EUR 200,000. These adjustments have the following results:

2018

Taxable amount of	But not exceeding	Applicable tax rate
-	EUR 200,000	20%
EUR 200,000		25%

2019

Taxable amount of	But not exceeding	Applicable tax rate
-	EUR 200,000	19%
EUR 200,000		24%

2020

Taxable amount of	But not exceeding	Applicable tax rate
-	EUR 200,000	17.5%
EUR 200,000		22.5%

2021

Taxable amount of	But not exceeding	Applicable tax rate
-	EUR 200,000	16%
EUR 200,000		21%

Increase in effective rate for innovation box
Profits derived from innovative activities are effectively taxed at a rate of 5% under current legislation. This effective tax rate has increased to 7% from 1 January 2018. By lowering the general corporate income tax rate, the tax benefit that can be obtained by applying the innovation box is reduced.

Loss carry forward period reduced to six years
Under current legislation, losses can be carried forward to the following nine years, and can be carried back one year. The carry forward period will be reduced to six years. This measure will increase the need to take measures in order to avoid losses being wasted.

Limitation of depreciation of buildings in own use
The depreciation rules for buildings differ from the depreciation rules for other assets. Up until 31 December 2017, buildings in own use can be depreciated to 50% of the Waardering Onroerende Zaken (WOZ) value. Other buildings can only be depreciated to 100% of this WOZ-value. From 1 January 2019, the limitation on the depreciation of buildings will be equal for all buildings. As a result, buildings in own use can also only be depreciated to 100% of the WOZ-value. Note that this measure only applies for Dutch corporate income tax purposes and not for Dutch personal income tax purposes.

BDO comment

This measure is aimed at increasing the taxable base and reduces the benefit from lowering the Dutch corporate income tax rates.

General limitation of interest deduction rule – Earnings stripping rule
Under the Anti-Tax Avoidance Directive (ATAD) 1 rule, EU Member States are obliged to introduce a general limitation of interest deduction rule in the form of an earnings stripping rule. This measure would apply from 1 January 2019 and is aimed at avoiding erosion of the taxable base within a group and profit shifting though interest payments.

Interest will no longer be deductible if the net interest (on external and group debts), exceeds 30% of the EBITDA (earnings before interest, taxes, depreciation and amortisation). The cabinet has opted to apply a threshold of EUR 1 million of interest, but will not make use of the possibility of introducing a 'group escape' as mentioned in the Directive. Certain existing limitation of interest deduction rules will be abolished, with the exception of Article 10a Dutch corporate income tax Act (which specifically targets taxable base erosion).

Dividend withholding tax

Abolishment of dividend withholding tax
The dividend withholding tax will be abolished from 1 January 2020, except in the case of abusive structures and dividend payments to low tax jurisdictions.

Introduction of withholding tax on interest and royalties
In connection with the abolishment of the dividend withholding tax, a withholding tax on interest and royalties will be introduced on payments made to low tax jurisdictions. This measure aims to combat abusive structures.

DIVIDEND WITHHOLDING TAX – CHANGES FOR HOLDING COOPERATIVES, AND EXPANSION OF DUTCH DIVIDEND WITHHOLDING TAX EXEMPTION

On 19 September 2017, the Dutch Ministry of Finance published its tax Budget proposals for the 2018 Fiscal Year. As part of the proposals, the Bill on the 'Withholding obligation for holding cooperatives and expansion of the withholding exemption Act' (the Bill) was also published on the same date. This Bill introduces a dividend withholding tax inclusion obligation for Dutch holding cooperatives and expands the dividend withholding tax exemption for dividends from participations distributed to shareholders located in tax treaty countries. The Bill is broadly in line with the draft Bill published in May 2017. The hereafter mentioned changes apply as of 1 January 2018.

Changes as of 1 January 2018

The Bill would expand the dividend withholding tax obligation in order to remove the difference in treatment between B.V.s/N.V.s and holding cooperatives. In principle, dividend withholding tax is levied as of 1 January 2018 on holding cooperatives. There are three changes:

1. **Expansion of withholding obligation**
   Dividend withholding tax will also be levied on holding cooperatives, in the case of profit distributions to owners of qualifying membership rights. To ensure the withholding obligation does not apply to cooperatives carrying out real business operations, the following two conditions have to be met:
   a. The cooperative must qualify as a holding cooperative, which is defined as one whose actual activities in the year preceding the profit distribution predominantly (i.e. 70% or more) consisted of the holding of participations or direct or indirect financing of related entities or individuals; and
   b. There must be a profit distribution on a 'qualifying membership right', i.e. membership rights that grant an entitlement to at least 5% of the annual profit or to at least 5% of the liquidation dividends.

2. **Expansion of dividend withholding tax exemption**
   Dutch treaty policy aims at agreeing on an exemption for participation dividends in the source country. Therefore, the Bill contains an expansion of the dividend withholding tax exemption to third countries. This exemption only applies if the recipient:
   - Is the beneficial owner of the dividends;
   - Owns at least 5% of the entity paying the dividend;
   - Is resident in the EU/EEA or a country that has concluded a tax treaty with the Netherlands that includes an article on dividends;
   - Passes one of the following tests:
     - **Subjective test** – Does not hold the interest in the entity paying the dividend with the main purpose or one of the main purposes of avoiding the levy of Dutch dividend withholding tax; or
     - **Objective test** – The arrangements or series of arrangements is not considered artificial.

   An arrangement or series of arrangements is considered artificial if it has not been put into place for valid commercial reasons that reflect economic reality, for which there are detailed conditions.

   In addition to the draft Bill, provisions are included in the Bill with respect to dividend distributions to hybrid entities.

3. **Amendment of anti-abuse provisions**
   The anti-abuse provisions are brought in line with EU law and tax treaty anti-abuse provisions. The anti-abuse provision in the Dutch Corporate Income Tax Act, which applied until 31 December 2017, briefly stipulates that in the case of abuse the foreign shareholder will be taxable for corporate income tax purposes for income and gains derived from certain shares or membership rights in an entity established in the Netherlands (the so-called substantial interest rule, where the foreign shareholder has an interest of at least 5%).

   Based on the Bill, the foreign shareholder will from 1 January 2018 become taxable based on the substantial interest rule when the main purpose or one of the main purposes of its shareholding in a Dutch entity is to avoid the levy of personal income tax of an indirect shareholder. The subjective and objective tests outlined in Section 2 also apply here.

   When only Dutch dividend withholding tax will be avoided, this substantial interest rule would not come into play, as the Dutch Dividend Withholding Tax Act has its own anti-abuse legislation. This is different from the proposed in the draft Bill.

   Another important difference compared to the Bill is that the anti-abuse provision in the Corporate Income Tax Act as mentioned above will apply to both capital gains and regular income. Consequently, also profit distributions, e.g. dividend distributions, are included in this anti-abuse provision and, therefore, taxable at a corporation tax rate of 20%-25%.

What are the implications?

The changes in the Bill will be of great importance for cooperatives in international structures, especially where members are situated in a non-tax treaty country. In addition, it also creates possibilities to claim the dividend withholding tax exemption in more situations.

PER-ELEMENT APPROACH OF DUTCH FISCAL UNITY – CJEU RULING COULD RESULT IN RETROACTIVE LEGISLATION

On 25 October 2017 the Advocate General (AG) at the Court of Justice of the European Union (CJEU) published his opinion on the preliminary ruling request of the Dutch Supreme Court in two cases concerning the so-called 'per-element' approach of the Dutch fiscal unity. The question is whether a non-resident EU-subsidiary should be granted benefits of the Dutch fiscal unity, despite the fact that this entity is unable to enter into a fiscal unity which a resident subsidiary would have been granted when being part of a Dutch fiscal unity (the per-element approach). The AG considers that the per-element approach is also applicable to the Dutch fiscal unity legislation, in line with an earlier decision in the Groupe Steria case.

If the CJEU follows the opinion of the AG, this could have a major impact on the Dutch fiscal unity legislation. The Dutch Government, therefore, immediately announced legislation with retroactive effect, which will enter into force with retroactive effect if the CJEU follows the opinion of the AG. This will affect several provisions of the Dutch Corporate Income tax Act 1969 and the Dutch Dividend Withholding Tax Act 1965 concerning the Dutch fiscal unity. It is expected that the CJEU will rule on 22 February 2018.

Interest deduction limitation to prevent base erosion

The first case concerns a Swedish holding company which granted a loan to its Dutch subsidiary. The question is whether an interest deduction at the level of the Dutch subsidiary will be limited due to anti-abuse legislation of Article 10a Dutch Corporate Income Tax Act 1969 (DCIT). The AG considers that the application of the interest deduction limitation, in view of the beneficial effect of a fiscal unity in purely domestic situations, can be seen as an infringement on the EU freedom of establishment rule and cannot be justified by the prevention of tax avoidance. In his view, interest should be deductible at the level of the Dutch subsidiary, despite of anti-abuse legislation of Article 10a DCIT.

Currency losses on participations in EU subsidiary

The second case concerns a Dutch parent company of a Dutch fiscal unity which has suffered a currency loss on equity that was contributed in GBP to a UK subsidiary. In principle, such a loss is not deductible at the level of the parent due to the application of the Dutch participation exemption, and a fiscal unity between the Dutch parent and the UK subsidiary cannot be formed, so the question is whether this disadvantage infringes the EU freedom of establishment rule. The AG considers that there is no infringement, due to the fact that under Dutch law both currency losses and currency profits are not taken into account.

Reaction of the Dutch Government

The Dutch Government announced recovery legislation with retroactive effect from 25 October 2017, if the CJEU decides in favour of the taxpayer. As a consequence, several laws in the DCIT and the Dutch dividend withholding tax Act 1965 would be applied as if 'no fiscal unity exists'. This would affect existing fiscal unities as well as those formed from 25 October 2017, and we will keep you updated about further developments.

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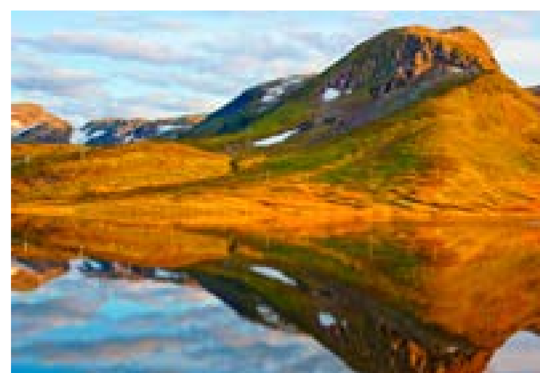
NORWAY

DEVELOPMENTS ON LIMITATION OF INTEREST DEDUCTIONS

In 2014, Norway introduced rules which limit the tax deduction of interest expenses on loans to related parties. The rules have undergone some adjustments along the way, and there are proposals for further amendments.

The current rules

Under the current rules, interest expenses to related parties exceeding a threshold of 25%[1] of the company's tax EBITDA are non-deductible for tax purposes. A NOK 5 million threshold applies for the limitation, i.e. net interest expense must be above NOK 5 million for the limit to apply. Where net interest expenses exceed NOK 5 million, the 25% calculation applies to all net interest expenses, and net interest expenses exceeding 25% of tax EBITDA are only tax deductible insofar as the interest relates to loans to non-related creditors as opposed to related parties. In other words, only interest on related party loans is subject to limitation.



Example (in NOK million)		
Taxable income (before limitations)	200	Including group contributions
+ Tax depreciation	40	
+ Net interest costs	160	
= Basis of computation	400	
Limit for deductions 25%	100	

For companies that have various degrees of related party and external debts, the following examples show the effects:

Bank interest	Related party interest	Denied
0	160	60
100	60	60
160	0	0
150	10	10

The non-deductible interest expenses can be carried forward up to 10 years after the income year, but may only be deducted insofar as the 25%-rule allows. Furthermore, the sum of the net interest expenses to be carried forward and the actual year's interest expenses must exceed NOK 5 million. Although interest on non-related loans is not as such subject to limitation, it is included in the threshold of 25% and thus may displace a deduction for related party interest expenses.

Pursuant to a statement by the Ministry of Finance, in cases where net interest expenses exceed NOK 5 million, the taxpayer may choose to claim a deduction for only NOK 5 million to avoid being subject to the interest limitation rules. In certain cases, this may be beneficial compared to having the deductibility limited to 25% of tax EBITDA, and then the potential future benefit of the excess interest deduction.

[1] Initially the threshold was set to 30%, but was reduced to 25% by legislative amendment in 2015 with effect from the income year 2016.

Related parties

A related party loan is a loan where the lender and the debtor directly or indirectly are under the same ownership or control with at least a 50% ownership at any point of time in the income year. Accordingly, not only loans from limited liability companies, but also from tax-exempt institutions, funds, state and municipally owned bodies, as well as natural persons, are included.

This also includes companies or other types of institutions which are directly or indirectly owned or controlled with at least a 50% ownership by a person/company/institution which also owns or controls the debtor with at least a 50% ownership. Furthermore, close family members of such related persons, as well as companies/institutions which they own or control with at least a 50% ownership, are considered related parties under the latest amendment of the law.

To avoid any discrimination issues under the EEA-agreement, wholly Norwegian groups are also included by the rules.

External loans

Certain external loans will also come within the rules. In back-to-back arrangements, cash pools and loans where a related party furnishes security for the external debt, the external debt will be considered as related party debt for interest limitation purposes.

However, this does not apply where:

1. The related party which has furnished security for the debtor is a 50% (at least) owned subsidiary; or
2. The security is furnished in the form of a receivable on the debtor or an ownership share in the debtor.

Please note that the term 'security' may also include informal security such as a 'letter of comfort', etc., which under given circumstances can be deemed security under the interest limitation rules. Furthermore, the ownership interest in a regular partnership with unlimited liability will also be considered as security for the loans of the partnership, if the partner and the partnership are related (owns or controls at least 50%). Another practical example is the joint and several liability that the companies splitting through a demerger will have for the liabilities that existed prior to the demerger – this will also, according to the tax authorities, be seen as security under the interest limitation rules.

In the case of related party security, the external debt will be reclassified as related party debt for the part of the debt which is secured.

Proposed changes to the legislation

In a formal notice letter of 4 May 2016 to the Norwegian Ministry of Finance, the EFTA Surveillance Authority (ESA) stated that although the Norwegian interest limitation rules appear to be equal for both Norwegian and foreign companies, the de facto rules entail that only Norwegian companies can adapt to avoid or limit the effects of the interest limitation rules. Foreign companies do not have the same opportunity to avoid limitation of interest as they cannot provide/receive group contributions with tax effect and thereby increase the taxable EBITDA. Thus, the ESA claims that the current Norwegian rules are not in accordance with the EEA Agreement. In a response, the Norwegian Government has denied that the rules represent a breach of EEA law. The outcome of this case remains unknown to date.

In May 2017, the Ministry of Finance sent a proposal for an expansion of the scope of the interest limitation rules to include interest expenses on external, third party debt out for public consultation. The objective was mainly to contribute to a more equal treatment of national and international companies by reducing the incentives multinational groups have to move profits out of Norway through the use of debt. The proposal also contained escape clauses, related to consolidated debt levels, that would apply to both related party and third party debt. However, the proposal met with massive criticism in the consultation process, as the rules were too complex and left a lot of room for interpretation and uncertainties. The Ministry of Finance therefore stated the following in connection with the presentation of the 2018 budget:

> "The Ministry of Finance needs more time to consider the views that were presented in the consultation process. The Ministry will revert with a proposal for changes in the interest limitation rules as soon as possible, with an aim that new rules should enter into force as of the Financial Year 2019."

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NEW RULES ON DIVIDENDS FROM NORWEGIAN COMPANIES

From 1 January 2019, new documentation rules will apply concerning withholding tax obligations related to dividends from Norwegian companies to foreign shareholders. If the shareholders do not meet the documentation requirements, the companies will be obliged to deduct the mandatory 25% withholding tax, regardless of the availability of treaty protection or participation exemption.

Shares registered in VPS (the Central Securities Depository)

The main rule will be that, if the identity or tax status of the actual dividend recipient is not documented, the dividend-paying company must deduct a withholding tax of 25% from the dividend payment.

To qualify for a withholding tax rate of less than 25% under a tax treaty or under the participation exemption rules, the following documentation must be provided:

Personal dividend recipients

- A certificate of residence issued by the tax authorities in the shareholder's country of residence, expressly confirming that the shareholder is resident there in accordance with the relevant double tax treaty with Norway.

Legal persons and other entities (non-natural persons)

- Documentation of previously received withholding tax refunds or approval from the Norwegian tax authorities that the shareholder is entitled to a lower withholding tax rate under a double tax treaty.
- A certificate of residence issued by the tax authorities in the shareholder's country of residence, expressly confirming that the shareholder is domiciled there in accordance with the relevant double tax treaty with Norway.

Company shareholders domiciled in the EEA area

- Documentation of previously received withholding tax refunds or approval from the Norwegian tax authorities that the shareholder is entitled to tax exemption under the Norwegian Tax Act.
- A confirmation that the shareholder is domiciled in an EEA country, as well as a statement from the shareholder that the basis of the tax-exempt status remains unchanged.

For all the certificates of residence and statements

- Must not be older than three years at the time of the dividend payment.
- Must be available at the time of registration.
- It is not sufficient for a certificate of residence to be obtained at the request of or due to control by the tax authorities.

All dividend recipients

- Confirmation from the dividend recipient that they are the beneficial owner of the dividend.

Application for approval

Shareholders who are not natural persons must document their entitlement to a reduced withholding tax rate of less than 25% in accordance with a double tax treaty or with the Norwegian exemption method. This must be done either by presenting an approved withholding tax refund application, or by presenting an approval from the Norwegian tax authorities confirming the dividend recipient is entitled to a reduced withholding tax rate. The application should contain the above documentation.

When the shares are registered in VPS, documentation must be provided either for the nominee (NOM accounts) or for the account operator (direct registration).

Similar documentation requirements for shares not registered in VPS

The main rule will be that, if the dividend-paying company does not know the identity or the tax status of the beneficial dividend recipient, the company must deduct a withholding tax of 25% from the dividend payment.

Dividend-paying companies may, however, deduct less than 25% if the company has received satisfactory documentation from the shareholder. The documentation requirements are the same as for shares registered in VPS. However, for shares outside of VPS, the documentation must only be provided directly to the dividend-paying company.

Date of entry into force

The new rules were first expected to come into force on 1 January 2018. However, the Norwegian Ministry of Finance has recently decided to postpone the entry into force by one year, to 1 January 2019. This is because of significant practical challenges the industry and the tax authorities have faced in implementing the new documentation requirements.

More information can be found on the Norwegian Tax Administration's website:

http://www.skatteetaten.no/en/business-and-organisation/dividends-from-norwegian-companies-to-foreign-shareholders---documentation-requirements-for-reduced-withholding-tax-rate/

Please get in touch if you have any questions or need assistance arranging for documents.

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SWITZERLAND

WIDE-RANGING IMPACTS FROM ADAPTING LATEST INTERNATIONAL LEGISLATION ON TAX EVASION

In Switzerland, the Automatic Exchange Of Information (AEOI) as well as the spontaneous exchange of information on tax matters came into force on 1 January 2017. With the first data to be exchanged in September 2018, Swiss taxpayers should consider various aspects. This summary focuses on the latest developments.

Spontaneous exchange of information

Switzerland has adapted national law in order to comply with at least the minimum standards under the OECD and G20 BEPS project. The federal council included detailed rules on the compulsory, spontaneous exchange of information on certain tax rulings. Many taxpayers have already received the online questionnaire in this regard; qualifying rulings issued after 1 January 2010 that are still in force on 1 January 2018 will be exchanged. Taxpayers who do not want Swiss tax rulings to be exchanged with other jurisdictions where they have business connections, only have a few weeks left to cancel or amend the existing ruling(s) after having carefully analysed the related tax consequences.

The Federal Tax Administration's opinion on how AEOI influences unpunished disclosures

It used to be unclear how the AEOI will restrict the taxpayer's option to initiate a voluntary disclosure of assets or income that remained undeclared and untaxed. Switzerland's tax law foresees the possibility (for individuals and corporations) to spontaneously disclose such assets/income and remain unpunished (no fines, no penalty) once in a lifetime. One of the conditions to benefit from the non-punishment is that the tax authorities are not aware of the undeclared assets/income.

Due to the AEOI stepping in, it was discussed at which point the tax authorities would consider themselves to have the information (as it is collected and would be reported to them). The Federal Tax Administration issued an information sheet on 15 September 2017 stating that in their eyes, **after 30 September 2018**, the unpunished voluntary disclosure of foreign accounts is no longer possible. There are some exceptions, e.g. for countries that are not yet exchanging information with Switzerland for 2017. For taxpayers with undeclared foreign accounts, it is key that they disclose these in the next few weeks; otherwise, they may end up with burdensome investigations and heavy fines (up to three times the evaded taxes).

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UNITED KINGDOM

AUTUMN BUDGET AND FINANCE BILL 2017-18

The Chancellor of the Exchequer delivered his first Autumn Budget on 22 November 2017, and the Finance Bill 2017-18 was published on 1 December 2017. In this article we summarise the main new corporate tax proposals.

Future extensions of scope of corporation tax charge

The Budget included announcements of two proposed changes to the scope of the corporation tax charge in future years:

1. **April 2019**

   a) It is proposed that gains accruing on disposals of interests in UK land and buildings will become chargeable to UK tax, regardless of the residence of the person making the disposal. Therefore, for the first time, non-residents will become chargeable on gains on disposals of interests in non-residential property, and the current charge on residential property will be extended to disposals by non-resident widely-held companies.

   For corporate bodies or any other person who would otherwise be in scope for corporation tax if they were UK-resident, any gain will be chargeable to corporation tax. For other persons the charge will be to capital gains tax, under the normal UK rules. Those who are exempt from all UK capital gains, or otherwise not in the scope of UK tax for reasons other than being non-resident, will continue to be exempt or out of scope.

   Property values will be rebased at April 2019 so that only the gains attributable to changes in value from 1 April 2019 (for companies) or 6 April 2019 (for other persons) will be chargeable. There will also be the option to compute the loss or gain using the acquisition cost as the base cost of the property. April 2015 will remain the rebasing point for direct disposals of interests in residential property for those already in the NRCGT regime. For mixed-use property consisting partly, but not exclusively, of one or more dwellings, a separate rebasing point will be needed for the residential and non-residential elements.

   b) It is also proposed that indirect disposals of UK land and buildings by non-residents will be subject to tax where an entity is 'property rich', i.e. broadly where 75% or more of its gross asset value at disposal is represented by UK immovable property, with no discount for outstanding liabilities such as debt secured on the property. Such disposals will trigger the charge only where the person holds, or has held at some point within the five years prior to the disposal, a 25% or greater interest in the entity.

   Relevant assets will include:

   – A shareholding in a company deriving its value directly or indirectly from land;

   – A partnership interest deriving its value directly or indirectly from land;

   – An interest in settled property deriving its value directly or indirectly from land;

   – Any option, consent or embargo affecting the disposition of land.

   As with direct disposals, values will be rebased at April 2019, but there will be no option to compute the loss or gain using the acquisition cost as the base cost of the property. There will be a 60-day reporting requirement on certain third-party advisors who have sufficient knowledge of an indirect disposal.

   Anti-forestalling measures taking effect from 22 November 2017 are also proposed in order to stop attempts to circumvent the charge undertaken prior to 2019, in particular by non-residents seeking protection under beneficial double tax treaties. The anti-forestalling rule would remain in force as an anti-avoidance rule after the charge is introduced, until such time as relevant treaties are amended to prevent any risk of abuse.

   These measures will have a significant impact for both individual and corporate non-residents, including reducing the incentive for multinational groups to hold UK property through offshore structures, often in low tax or no tax jurisdictions.

2. **April 2020**

   It is proposed that UK income and chargeable gains of non-resident companies will be brought within the scope of corporation tax instead of income tax and capital gains tax. Although the proposed 17% corporation tax rate would be lower than the current 20% income tax rate, affected companies are likely to be chargeable to tax on higher levels of profit, as the recently introduced loss and interest relief restrictions would apply.

Finance Bill 2017-18 main corporation tax proposals

Restriction of double taxation relief for foreign branch losses

The double taxation relief available to UK resident companies that pay foreign tax on profits of an overseas permanent establishment (PE) will be restricted with effect from 22 November 2017. The restriction will apply when losses of the overseas PE have been offset against profits of another entity in the overseas jurisdiction of the PE in the same or earlier accounting periods. This measure will ensure that a company does not get tax relief twice for the same loss.

Companies will therefore be required to track the overseas treatment of losses of their overseas PEs for double taxation relief purposes.

Venture capital scheme changes

From 6 April 2018 knowledge-intensive companies (KICs) will be able to raise more capital under the EIS and VCT rules – the annual limit will be doubled to GBP 10 million per year. The rules around the maximum age of a company to be eligible for EIS and VCT investment will also be relaxed – KICs will be able to elect to measure their age from the point at which their turnover reached GBP 200,000 per year, rather than from their 'first commercial sale'. Additionally, the amount individuals can invest each year in EIS companies will be doubled to GBP 2 million per year, provided they invest at least GBP 1 million in KICs.

A new 'risk to capital' condition will be introduced for companies raising capital under the Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS) and the Venture Capital Trust (VCT) rules, with the aim of disqualifying companies where there is low risk to the investors' capital. This measure is intended to focus the schemes towards companies seeking investment for long term growth and development. Tax motivated investments, where tax relief provides all or most of the return for an investor, with little or no risk to capital, will be disqualified.

The new provisions will take effect from the date of Royal Assent to the Finance Bill, but HMRC will not issue advance assurances in response to applications from companies:

- From 4 December 2017, where the application appears to fail the new risk to capital condition;
- From 2 January 2018, if an advance assurance application does not name the potential investors – HMRC may consider the application to be 'speculative'.

The risk to capital condition will be met if, having regard to all the circumstances existing at the time of the issue of the shares, it would be 'reasonable to conclude' that the company has long term objectives to grow and develop, and there is a significant risk that there will be a loss of capital of an amount greater than the net investment return. Here, 'Loss of capital' means loss of some or all of the amounts subscribed by the investors, and 'net investment return' is the return to investors (including income or capital growth) taking into account the EIS/SEIS/VCT relief.

Increase in research and development relief

From 1 January 2018, the rate of the Research and Development expenditure credit (RDEC) has increased from 11% to 12%, primarily benefiting large companies. The Government is also to introduce a new Advanced Clearance Service for RDEC claims.

Indexation allowance frozen

The corporate indexation allowance has been frozen from 1 January 2018. No relief will be available for inflation accruing after this date in calculating chargeable gains made by companies. The indexation allowance for assets disposed of on or after 1 January 2018 is therefore calculated up to 31 December 2017.

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ARGENTINA

UPDATE ON FISCAL AND ACCOUNTING ASSET REVALUATION PROJECT

As mentioned in the previous edition of *World Wide Tax News*, the Government proposed a Fiscal and Accounting Asset Revaluation Bill to the Argentine Congress, in the context of the comprehensive Tax Reform that the country is undergoing, with the purpose of an immediate impact on the fiscal year closing 31 December 2017. We now provide further details below.

Overview

With the objective of a fiscal and accounting update of assets that have suffered erosion through inflation, the Bill provides for the restructuring of the residual value for fixed assets (except for automobiles), investments and certain inventories (real estate). In consideration, the payment of a special tax will be required, which will not be deductible from Income Tax, and that will be determined and paid under terms and conditions set out in the regulations.

This procedure is optional, and can be applied both for individuals, residents in the country, and for companies in general.

The assets that may be subject to revaluation will be those located, placed or economically used in the country and that are involved in the generation of profits subject to Income Tax.

The assets should have been acquired or built before the effective date of the regulation and remain in existence on the date of exercising the option.

The application of this procedure is restricted to assets to which an accelerated depreciation regime is applied, hose that have been disclosed pursuant to the provisions of Law 27.260, and those that are completely depreciated at the end of the Year of Option.

As mentioned, the fiscal revaluation will be subject to a special tax that will be applied to the 'Revaluation Amount', in respect of the revalued assets, at the following rates:

A. Real Estate that does 'not' have the status of inventories: 8%.
B. Real Estate that has the status of inventories: 15%.
C. Shares, interest and equity interest owned by individuals or undivided estates: 5%.
D. Other assets: 10%.

In view of the above, two alternative excluding methods have been considered and after being selected they must be applied to all the assets included in the same category, namely:

A. Factor Revaluation (according to the useful life originally defined by the taxpayer).
B. Technical Revaluation – Independent Valuer.

In every case, the valuation method may not yield a value higher than the recoverable value at the option date (the maximum value accepted in any of the methods).

Fiscal Impact of Revaluation:

- **Depreciation** – The depreciation of the asset is calculated as if no option had been exercised, and separately, the 'Revaluation Amount' is depreciated (difference between the revalued residual value of the asset and the original residual value).

  The revaluation amount will be depreciated considering the remaining useful life of the asset, according to the method selected. The remaining useful life term considered to depreciate the 'Revaluation Amount' cannot be less than five years.

- **Accelerated Depreciation** – For real estate that does not have the status of inventories and intangible assets, the regulation allows the anticipated deduction of the 'Revaluation Amount' in relation to the useful life of the asset to which it belongs.

- **Disposal** – In the event of the disposal of an asset subject to the present regime in any of the two immediate fiscal years following the 'Option Year', the tax base will be calculated, for the year in which it occurs, as follows:

  a) If the disposal occurs during the first year, 40% of the 'Revaluation Amount' will be considered as the taxable base.
  b) If the disposal occurs in the second year, 70% of the 'Residual Value of the Revaluation Amount' will be considered as the taxable base.

If the assets disposed of have the status of inventories, the taxable base will be 100% of the 'Revaluation Amount'.

Other considerations

- It is important to note that the 'Revaluation Amount', net of the calculated depreciation, will not be taken into account for the purposes of the assessment for Minimum Presumed Income Tax.
- Likewise, the profits generated will be exempt from Income Tax.
- Additionally, the 'Fiscal Inflation Adjustment' procedure is reinstated, which will be applicable provided that the percentage of variation of the Wholesale Price Index (IPIM), accumulated over a period of 36 months, exceeds 100%.

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ZIMBABWE

PERMANENT ESTABLISHMENT CONCEPT INTRODUCED IN ZIMBABWE

The concept of a 'permanent establishment' (PE) was introduced into the Zimbabwe Income Tax Act with effect from 1 January 2017 to capture taxation of attributable profits from businesses conducted by non-residents in Zimbabwe, where this is not already captured by an existing Double Taxation Agreement.

Zimbabwe adopted the definition of PE from the OECD and UN Model, Article 5. The definition incorporates the following six basic elements for an enterprise to be termed as PE:

I. There should be a place of business;
II. The place should be at the disposal of the enterprise;
III. The place should be fixed geographically;
IV. The place should be fixed permanently;
V. The business should be carried on;
VI. The business should be carried on through it.

The adopted definition of a PE includes all the various types of PE, such as physical PE, construction project PE, services PE, agency PE, special cases, and exceptions.

General implications

The inclusion in the Income Tax Act of the concept of PE means a wider tax net for the Zimbabwe Revenue Authority:

- Companies which are not resident in Zimbabwe (NRCs) but 'carry on a business in the country through a PE in Zimbabwe' are liable to tax with effect from 1 January 2017.
- NRCs are also liable to tax on income derived from a trade or business arising directly or indirectly through or from the PE.
- NRCs will be taxed on income derived from investment, property or rights used or held by the PE.

Implications where a double tax agreement exists

In the event that Zimbabwe has entered into a double taxation agreement (DTA) with the country where the foreign company resides, the entity will only be taxable in Zimbabwe if it operates through a PE, which, in most cases, includes a fixed place of business.

The establishment of a local entity or branch will usually create a PE, although the provisions of the related tax treaty should be considered. If a PE exists, only the portion of the income attributable to the PE will be subject to tax in Zimbabwe.

The meaning of a PE in the Zimbabwean Income Tax Act context is based on the Organisation for Economic Co-operation and Development's tax model and the United Nations' tax model, which includes a company that has a fixed place of business in the country through which the business of the company is wholly or partly carried on.

Profits attributable to a PE in Zimbabwe (the State of Source) are either exempted in the State of Residence (the foreign country), or the State of Residence allows credit for taxes paid by the PE on such business profits. To this extent, the taxing jurisdiction of the foreign country which is the State of Residence is transferred to Zimbabwe which is the State of Source, where the PE is required to file a return of income and comply with Zimbabwe domestic tax laws. The position depends on whether or not this is already captured by an existing DTA.

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CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 23 January 2018.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
US Dollar (USD)	0.81668	1.00000
Australian Dollar (AUD)	0.65365	0.80033
Singapore Dollar (SGD)	0.61864	0.75750
Euro (EUR)	1.00000	1.22433
Hungarian Forint (HUF)	0.00323	0.00395
Norwegian Kroner (NOK)	0.10388	0.12718
British Pound (GBP)	1.13651	1.39159

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