Tax Link
Newsletter

Issue 111

Contents

Introduction to Taxlink

Welcome to the May 2016 edition of Taxlink. This part of the year is usually very busy as we review new legislation that has been introduced by many countries where the fiscal year starts on 1 January. This time there is even more happening with the OECD BEPS project moving from global aspirations to changes in domestic legislation, the advent of Country-by-Country reporting and more countries agreeing to exchange information on tax matters.

As you will see from the index, we have more articles than ever before at this time. There are too many to review here, but we have countries introducing benefits for foreign direct investors and other countries bringing in anti-avoidance measures to minimise the potential for abuse. We also have countries introducing wholly new major tax regimes.

It is a good mix and should make interesting reading. If you would like to contact any of the authors, they would be pleased to hear from you.

Mike Adams
Nexia Tax Director
E mike.adams@nexia.com
T +44 (0)20 7436 1114

Argentina

New Exchange and Tax Regulations to encourage Investment

In December 2015 and after a 12-year populist government, a new center-right political party that is more pro-market assumed the Government in Argentina.

The first economic measures were focused on releasing strong exchange restrictions and providing tax benefits, ending the financial default, paying the debt held with the holdouts and adjusting prices that had been kept frozen and subsidized by the Government for the last 12 years with an accumulated inflation of over 500% during that period.

TI. Amendments to the Exchange and Customs Regulation – Release of Restrictions

Through Communication "A" 5850 of the Argentine Central Bank and Resolution Nr. 3/2015 of the Ministry of Public Finance issued in December 2015, the requirements on the inflow and outflow of funds to/from Argentina have been made significantly more flexible and access to foreign currency has been given to both individuals and legal entities for hoarding purposes.

The measures brought transparency in the exchange regime which implied acknowledging the parallel market exchange rate, which was 40% distant from the official exchange rate applicable only to certain transactions.
It is worth mentioning that prior to the new measures, due to the strong exchange restrictions the official exchange rate was only applicable to commercial transactions which, in turn, were very controlled and restricted.

After implementing these amendments:

- There are no more:
  a) Prior requirements to import goods that are registered as cleared for importation (subject to the efficiency of the system from a bureaucratic viewpoint)
  b) Amount limits for importation and exportation of services
- Withholding rates for exportation are reduced (0% for agribusiness, except in the case of the soya)
- Individuals and legal entities will be able to access the exchange market without prior authorization from the Central Bank for up to USD 2,000,000 per month and recently increased to USD 5.000.000 per month.
- Withholdings and blocked deposits for a year of 30% on loans made from offshore are eliminated and the minimum term for permanence of the inflow of funds received is reduced from 365 to 120 days.

II. Tax Amendments

Though the implementation of most of the pipeline projects of the new administration to encourage investment is still pending, attention should also be drawn to the enactment of regulations on investment intended to promote renewable energy as follows:

EXECUTIVE ORDER IMPLEMENTING THE RENEWABLE ENERGY INCENTIVE REGIME – TAX BENEFITS

Act 26190, as amended by Act 27191, establishes the Renewable Energy Incentive Regime intended to promote the use of renewable energy sources for electricity generation. Some of the tax benefits included in this Act include:

- Early VAT refunds and accelerated depreciation for Income Tax purposes. It is possible to qualify for both benefits at the same time.
- The period to carry forward tax losses is extended to ten years.
- The assets used in the activity that is being promoted are excluded from the Minimum Presumptive Income Tax (MPIT) base until the 8th year following project startup.
- The dividends distributed by the companies carrying out projects entitled to these benefits are exempted from the 10% tax established by the ITL.
- A tax certificate is granted that may be creditable against Income Tax, VAT, MPIT and Excise Taxes which is equal to a certain percentage of the national component of electromechanical facilities.

> It is worth mentioning that prior to the new measures, due to the strong exchange restrictions the official exchange rate was only applicable to commercial transactions which, in turn, were very controlled and restricted.

Executive order 531/2016 was published in the Official Gazette on March 31, 2016 and implements this incentive regime and the eligibility to tax benefits. In this respect, it provides as follows:

- The tax losses incurred in the promoted activity may only be offset against net income recorded in the same activity.

- The assets excluded for MPIT purposes should be used in the promoted project and should be added to the project's owner's equity after the project is approved.
- To qualify for the tax certificate the holder should not have any cash debt owed to the AFIP.(National Tax Authorities)
- The Argentine National Bank will establish special short term credit lines at a differential rate in order to finance any VAT payment owed by the beneficiaries of the Incentive Regime during the performance of the project until the commercial start-up of operations.
- Any party seeking to be covered by this Regime should waive the benefits granted by previous tax incentive regimes (Acts 25019 and 26360). In addition, any projects that were covered by such previous regimes may only access this new regime provided that the works committed under the agreements had not been commenced.
- The users of electricity (that do not qualify as large users according to the executive order) will pay a specific charge to be allocated to an escrow account held by a public trust fund (FODER) which, among other things, will grant loans and make capital contributions to promoted projects.
- The exemption of specific taxes, royalties and the like to access or use of energy renewable sources until December 31, 2025 will apply to jurisdictions that abide to the regime established by Acts 26190 and 27191.

Contributed by
Noemí Cohn and Roberto D. Murmis, Estudio Abelovich, Polano & Asociados
ncohn@estabe.com.ar , rmurmis@estabe.com.ar

Australia

New Rules for Foreign Investors Selling Property in Australia

In a bid to strengthen Australia's non-resident Capital Gains Tax (CGT) regime to assist in the collection of tax liabilities, new rules will soon apply to sales of taxable Australian property with a market value of $2 million or above.

The new rules mean a 10% non-final withholding tax will be incurred for all relevant contracts entered into on or after 1 July 2016. Broadly, where a foreign resident disposes of certain taxable Australian property, the purchaser will be required to withhold 10% of the market value and pay that amount to the Australian Taxation Office (ATO). The withheld amount will be creditable against the non-resident's final CGT liability.

If the purchase price negotiated between a purchaser and the non-resident vendor is on an arm's-length basis, then the purchase price may be used as a proxy for the market value. While the withholding regime is designed to protect the integrity of the foreign resident CGT regime, it also applies where the disposal of such taxable Australian property by a foreign resident generates gains on revenue account which, as a result, are taxable as ordinary income, rather than as a capital gain.

The withholding regime is limited only to taxable Australian property, being:

- Real property in Australia – land, buildings, residential and commercial property;
- Lease premiums paid for the grant of a lease over real property in Australia;
- Mining, quarrying or prospecting rights;
- Interests in Australian entities whose majority assets consist of the above such property or interests;
- Options or rights to acquire the real property or interest therein.

With regard to indirect interests the withholding regime will apply if the purchaser knows or reasonably believes the vendor is a foreign resident, the vendor has a foreign address or requests the purchaser to make payment to an account outside of Australia. An indirect interest is a non-portfolio interest, being greater than 10%, in an entity, or holding entity of another entity, where that entity's value is predominantly represented by taxable Australian property.

The withholding regime also provides for a number of exclusions. In the main, if the foreign resident vendor falls within one of these categories then the 10% withholding is not applicable:

- Real property transactions with a market value under $2 million (ensuring that the vast majority of residential house sales will be unaffected by the regime);
- Transactions by entities listed on an approved stock exchange;
- The foreign resident vendor is under external administration or in bankruptcy.

> The legislation also introduces a clearance certificate model to provide certainty to purchasers regarding their withholding obligations. The clearance certificate confirms that the withholding tax is not to be withheld from the transaction.

Generally a clearance certificate will need to be obtained by an Australian resident vendor to avoid tax being withheld by a purchaser. A non-resident vendor would not ordinarily be able to apply for a clearance certificate but is able to apply for a rate variation if it is believed a withholding of 10% is inappropriate and a lesser rate should apply. For example, a variation could be applied for if the non-resident vendor has Australian tax losses available to offset against the gain.

Where a withholding obligation exists, the purchaser must withhold the relevant amount at time of settlement and pay it to the ATO without delay. The penalty for failing to withhold is equal to the amount that was required to be withheld and paid. The ramifications for a purchaser failing to withhold are so severe they invariably will be almost forced to assume withholding applies unless the vendor can prove otherwise.

Where an amount is withheld, the purchaser is required to complete an online 'Purchaser Payment Notification' form to provide details of the vendor, purchaser and the asset being acquired to the ATO.

Conclusion

It is important to remember the new measures impose a non-final withholding tax which means a non-resident vendor will still be obligated to lodge an Australian income tax return returning any gain, but they will be entitled to a tax credit (or even a tax refund) for the withheld amount.

As information will now be readily available, we would expect the ATO will be vigilant in chasing taxpayers who do not lodge income tax returns disclosing CGT events where they have disposed of Australian property.

Contributed
Stephen Rogers, Nexia Australia
srogers@nexiacourt.com.au

Australia

Transfer pricing: Country-by-country (CBC) reporting
What do we have to do now?

Introduction

As you may be aware, the proposed changes to Australia's transfer pricing regime for multinationals with annual global revenue of $1 billion or more (as flagged in our August 2015 client alert[1]) is now law[2] in Australia.

This article specifically addresses one of the proposals mentioned there, namely the new CBC reporting requirements[3] for such significant global entities.

What is CBC reporting?

Significant global entities (i.e. the head company of a global group with annual global revenue of $1 billion or more or members of such a group) that operate in Australia, will have to lodge the following documents with the ATO:

1. **a CBC report**[4] showing information on the global activities of the multinational (and the location of its income and taxes it paid);
2. **a master file** containing an overview of the multinational's global business, its organisational structure and its transfer pricing policies; and
3. **a local file** that provides detailed information about the local company's intercompany transactions.

These reports will provide the ATO with a global overview of the MNEs operations, assist them in carrying out transfer pricing risk assessments and help to identify tax avoidance.

CBC reporting is independent from the International Dealing Schedule (IDS), so by only completing an IDS, will not discharge a significant entity's CBC reporting obligations.

1 As reported by us on the nexia website in August 2015 – see nexia.com.au
2 The Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 received Royal Assent on 11 December 2015
3 This CBC reporting implements Action 13 of the G20 and the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS Action plan) and is set out in Subdivision 815-E of the ITAA 1997 (and Law Companion Guideline LCG 2015/3).
4 Approved form is OECD specified CBC XML Schema.

> Please note that since requirements apply to multinationals with global revenue of $1 million or more, the smallest Australian subsidiary or branch that forms part of such a large multinational, would also be impacted by these CBC reporting requirements

Who needs to do CBC reporting?

All entities (except tax-exempt entities[5]) with annual global revenue of $1 billion or more are required to do CBC reporting.

This means that the following entities operating in Australia will be subject to CBC reporting if they are:

- Australian headquartered multinational enterprises (i.e. so that they can file the report with the ATO themselves); or
- Australian subsidiaries of multinational enterprises headquartered outside Australia (e.g. if the foreign parent has not provided the report to the foreign tax department).

The Commissioner has a limited discretion[6] to exempt entities from CBC reporting after considering an entity's risk profile, the compliance burden CBC reporting would impose on the entity, as well as whether the ATO will receive the relevant statements by alternative means (e.g. a multinational may have already lodged CBC reports in other jurisdictions with which Australia has information sharing arrangements in place[7]).

Only time will tell how flexible the ATO will be when exercising this discretion.

5 Paragraph 20 of Law Companion Guidelines LCG 2015/3.
6 Paragraph 16 of Law Companion Guidelines LCG 2015/3.
7On 27 January 2016 Australia signed such an agreement with 31 countries (e.g. some of the countries include the UK, Japan, Germany, France, Malaysia, Luxembourg, the Netherlands, Spain and Switzerland). On 12 May 2016, Canada, Iceland, India, Israel, New Zealand and China also signed such an agreement – bringing the total number of signatories to 39 countries (including Australia).

When do significant global entities need to report the first time?

Although the new CBC reporting rules apply to income years (or any 12 month period)[8] beginning on or after 1 January 2016 – the actual lodgement of the required CBC documentation is still a long way off.

This is because lodgement of CBC documentation is only necessary within 12 months of the entity's income tax year-end[9].
For example:

- Multinationals with a 1 January 2016 income tax year start date (and 31 December 2016 income tax year end date) will only have to lodge CBC documentation by the latest just before 31 December 2017; and
- Multinationals with a 1 July 2016 income tax year start date (and 30 June 2017 income tax year end date) will only have to lodge CBC documentation by the latest just before 30 June 2018.

Nevertheless, we would encourage multinationals to start familiarising themselves with the new reporting requirements.

Penalties for non-compliance

Significant global entities that do not provide the required CBC reporting, may be liable to both administrative penalties or potential criminal sanctions.
However, they would still be eligible to have a reasonably arguable position in relation to a transfer pricing matter if they meet the ordinary Australian documentation requirements.

In Summary

To comply with Australian transfer pricing rules has become a daunting task.
Not only do you have to consider a number of factors to determine the appropriateness of your transfer pricing methodology, but you also need to conduct a functional analysis to prepare a risk-appropriate level of documentation to "justify" your transfer pricing methodology adopted.

This means that there would be even more scrutiny of CBC reports – making it even more imperative to provide the correct CBC documentation.

Contributed by

Roelof Van Der Merwe, Nexia Australia
rvandermerwe@nexiaaustralia.com.au

8 s815-360 of the ITAA 1997
9 s815-355(2)

China

China completes the VAT reform by including all of the remaining sectors that are subject to business tax into the VAT regime from 1 May 2016

Introduction

China completes the VAT reform by including all of the remaining sectors that are subject to business tax into the VAT regime from 1 May 2016

Background

On 23rd March 2016, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) in China jointly issued a regulatory circular Cai Shui [2016] No. 36 ("Circular No. 36") concerning the enforcement of the VAT reform in lieu of business tax to all of the sectors in China. Except for the sectors that were already converted to the VAT regime since 2012, the remaining sectors, i.e. construction sectors, financial and insurance service sector, real estate sector and lifestyle service sectors including hospitality, entertainment, healthcare, education etc. will be levied with VAT in China from 1 May 2016 onwards.

After completing the VAT reform, sales of goods, services provisions, intangible assets and real estate transactions are all subject to VAT. Business tax (BT), which was once another important indirect tax levied mainly on service provision and assets transactions in China, will be completely abolished from the Chinese taxation system.

Category of transaction	Sub-category	VAT rate
Sale of goods	N/A	17% or 13%
Repair and Replacement services	N/A	17%
Transportation services	N/A	11%
Postal services	N/A	11%
Telecommunication services	Basic telecommunication services	11%
	Value added telecommunication services	6%
Construction services	N/A	11%
Financial and insurance services	N/A	6%
Modern services	R&D and technical services	6%
	IT services	6%
	Culture creativity services	6%
	Logistics supporting services	6%
	Leasing services	11% (lease of real estate) 17% (lease of movable tangible assets)
	Attestation and consultancy services	6%
	Radio, film and television services	6%
	Commercial supporting services	6%
	Other modern services	6%
Lifestyle services	N/A	6%
Sale of intangible assets	Transfer of land use right	11%
	Transfer of other intangible assets	6%
Sales of real estate		11%

Tax burden

According to the estimates announced by the central government, after implementing VAT to all of the sectors, enterprises can save tax revenues of up to about 900 billion CNY in total. But for each individual sector, the effect of the tax saving may be different. It mainly depends on the cost structure of each industry and how many VAT invoices can be obtained by the enterprise.

Classification of the transactions

Sectors that were subject to the BT regime usually streamlined their business with reference to the BT regulations which were quite straightforward as compared

to the VAT regulations. After converting to the VAT regime, taxpayers should review their transactions to determine the nature of the transactions and declare their taxes accordingly.

> For foreign companies that provide services in China, it is recommended that they take care to define the activities in the contracts more carefully so that the correct tax rates can be applied. For example, whilst engineering and installation services belong to the construction sector with a tax rate of 11%, design and technical services belong to modern services with tax rate of 6%. An annex to Circular No. 36 provides an explanation of the service categorization.

General VAT taxpayer vs. Small-scale VAT taxpayer

Under the BT regime, taxpayers were not required to apply for a general payer qualification. However, this qualification (增值税一般 税人 格) is of great importance in the VAT regime. Only those with the general VAT payer status are allowed to deduct input VAT from output VAT.

Currently, only entities registered in China can apply for the general VAT payer status. Foreign companies are not allowed to register for general VAT payer status and hence, are not permitted to deduct input VAT from output VAT.

For a small-scale VAT taxpayer, a reduced collection rate of 3% will be applied to the sales and no input VAT deduction is allowed from the output VAT.

Tax invoice

One more difficulty for taxpayers converting from the BT regime is the VAT invoice. In general, all invoices issued by taxpayers in China shall be bought from the tax authority. For VAT taxpayers, two types of VAT invoices are allowed to be used, one is the special VAT invoice (增值税 用 票) and the other is the general VAT invoice （增值税普通 票). Only the special VAT invoices can be used to claim an input VAT deduction. For taxpayers that obtain only general VAT invoices, no input VAT is allowed as a deduction.

The special VAT invoice must be registered in a "Golden Tax" system which is developed by the Chinese tax authority to manage the issuance of VAT invoices. If the special VAT invoices fail the verification test in the system, the input VAT cannot be deducted.

Special types of sales in the VAT regime

Deemed sales

Unlike VAT, there was no such "deemed sales" concept in business tax. After converting to VAT, companies should pay attention to this important concept in VAT. In Circular No. 36, deemed sales are defined as sales of services and intangible assets or real estate without charge, except where the sale is for the public good. Deemed sales are a tax concept and may not be recognized as sales for accounting purposes.

Mixed sales and composite sales

A transaction that involves both goods sales and service provision is classified as a mixed sale. Enterprises shall declare tax according to their main operating business, i.e. sale of goods or provision of services. If an enterprise engages in a number of different transactions, it should declare taxes with the different applicable tax rates.

Cross-border service transactions in the VAT regime

Export

In general, VAT is exempted for services provided by a Chinese entity to a foreign customer. In Circular No. 36, more services such as construction services and construction supervision services, culture services, education services, medical services and tourism services provided outside the territory of China are also exempted from VAT.

In the meantime, certain services such as international transportation services, R&D services, design services, software services, IT system services, outsourcing services, technology transfer etc. enjoy a zero per cent VAT rate and thus have the possibility of applying for a VAT refund.

Import

China adopts the withholding approach to levy VAT on foreign taxpayers. In general, if either the service recipient or the service provider is a Chinese entity, the service fees are subject to VAT in China. Usually, the service fee payer shall withhold the VAT and declare this to China's tax authority. The VAT withheld is input VAT and can be deducted by the Chinese withholding agent. Under this mechanism, the foreign service provider will usually receive less fees than stated in the invoice. To avoid this problem, the foreign service provider may negotiate with the service recipient in China to have the service recipient in China to bear the taxes due.

Other compliance requirements

In general, the VAT return shall be filed on a monthly basis. Banks, trusts and small-scale VAT payers etc. that are specified by the regulations can declare VAT on a quarterly basis.

The place of filing the tax return is usually the registration place of the company. But for a branch office that is subject to VAT, the branch office shall file the tax return at the place of operating and the head office shall also report the VAT at the place of registration. For construction services that are provided in a province or city other than the registration place, and sales or leases of real property that is located in other areas, the company shall file an interim return at the place of providing the construction service or at the place where the real property is located and report to the tax authority at the registration place afterwards.

Some specific regulations in Circular No.36

1) VAT on the purchase of real estate is creditable, 60% in the first year and 40% in the second year.
2) Office rent is creditable at a VAT rate of 11%. Management fees are categorized as commercial supporting services and the VAT rate is 6%.
3) Interest income is subject to VAT with a tax rate of 6%. But, interest on loans paid by a general VAT payer is not creditable. Fees and charges relating to the loan are also not creditable.
4) Meals, entertainment and daily services are not creditable. Hotel and conference services are creditable. For the creditable services, companies shall consult the hotels to determine how special VAT invoices could be obtained.
5) It is not clear whether marketing and purchase services provided to overseas headquarters are exempted from VAT. Exemption for these services is not explicitly mentioned in Circular No. 36.

Conclusion

Circular No. 36 is a very comprehensive regulation. But, due to the complexity of the business, there are still a lot of issues that need to be clarified in the future. We expect that the tax authorities will issue more regulations to clarify unclear issues and also provide guidance for the understanding of the new regulations.

Contributed by

Eloise Yao, Fan, Chan & Dr. Neumann Business Advisory Co. Ltd.
eloise@fcn-neumann.com

China

China Updates Tax Regulations for Cross-Border E-Commerce

Introduction

In June 2015, the China State Council released Guo Ban Fa [2015] 46, Guiding Opinions on the Promotion and Development of Cross-border E-commerce, and since that release, both the Hangzhou Cross-border E-commerce Pilot Zone and the Cross-Straights E-commerce Economic Cooperation Zone were created. The volume of cross-border e-commerce transactions has thus dramatically multiplied in the last year, and in keeping with the government's stated goal to effectively regulate and standardize the industry, various ministries have recently published relevant policies and regulations.

Of primary interest here is the joint release of Cai Guan Shui [2016] 18, Tax Policy for Cross-border E-commerce Imported Goods, by the State Administration of Taxation (SAT), the Ministry of Finance (MOF), and the Customs Administration. Drawing on imported goods classifications newly outlined by the Customs Administration in a separate circular, this new tax policy specifically targets cross-border business-to-customer e-commerce transactions that involve the importation of consumer retail goods. These policies took effect on April 8, 2016.

> Prior to the issuance of Circular 18, there was little clarity for both consumers and e-commerce businesses as to how transactions would be taxed upon import of the purchased goods.

Prior to the issuance of Circular 18, there was little clarity for both consumers and e-commerce businesses as to how transactions would be taxed upon import of the purchased goods. Articles purchased and imported through cross-border e-commerce transactions were generally treated as personal and/or postal articles subject to minimal, if any, taxation, at least as long as the e-commerce business focused efforts to ensure this treatment. In the absence of such focused effort, import duty and VAT would apply to the transactions. As a result of the lack of standardization, e-commerce businesses competed not on the merits of their service, but rather on the ability to manipulate a transaction so that it fell into the personal articles regime.

Competition was also unfair to local retail shops that had no way to get around import duties and related taxes for similar goods. Now that Circular 18 has taken effect, the tax uncertainty has been removed and the playing field for e-commerce businesses has been leveled to a high degree. The leveling also extends to competition between e-commerce businesses and local retail businesses.

Key Features of Circular 18

Circular 18 clarifies that the individual online shopper is the taxpayer of record in all cross-border e-commerce transactions involving the import of retail consumer goods. It is also clear that the goods shall be subject to import tariffs, VAT and consumption tax, with the taxes based on the total value of the transaction, including the purchase price, the shipping charges and any associated insurance charges. While these standardized rules will no doubt increase the consumer's tax burden in the long term, Circular 18 does currently offer reduced tax rates, given that certain purchase limits are not exceeded.

At least on an interim basis, online shoppers who do not exceed RMB 2,000 in cross-border purchases for a single transaction, or RMB 20,000 worth of such transactions for a year, will be liable for only 70% of the usual VAT and consumption taxes. Additionally, as long as these limitation conditions are met, consumers will enjoy a 0% import tariff rate. Should tariffs apply to these transactions (either through exceeding the limits or through cancelation of the interim policy), imported goods purchased online will fall into one of three categories as follows:

1. Category I shall have an import tax rate of 15% and include goods such as publications; educational audio/video materials; computers and other IT products; food and beverages; furniture; toys and gaming products; gold and silver; festivity products, and similar recreational use goods.
2. Category II shall have an import tax rate of 30% and includes sporting goods (other than for golf); fishing supplies; textiles and textile products; electric appliances; bicycles; and other items not specifically listed in the other two categories.
3. Category III shall have an import tax rate of 60% and includes alcohol and tobacco products; golf balls and golf clubs; valuable accessories; jewelry and/or gemstones; luxury watches; and cosmetics.

Consumer online shopping transactions involving import of goods must be conducted through e-commerce companies or logistics service providers that are registered with the Customs Administration. In a given transaction, this registered entity shall: 1) act as the withholding agent; 2) collect all relevant taxes from the shopper; 3) accurately report all transaction information to the Customs Administration; and 4) remit the taxes to the Customs Administration when the imported goods are declared. In the event that a given purchase is returned to the seller within 30 days of import, the withholding agent entity shall also handle all the formalities related to shipping the returned article and obtaining a tax refund for the online shopper.

While Circular 18 and the accompanying announcements address previously unclear tax practices for cross-border e-commerce transactions, businesses in the industry may now face uncertainty and challenges related to customs clearance procedures and efficiency, as well as reporting and records compliance. Additionally, the latest rules indicate that cross-border e-commerce businesses are not required to setup dedicated entities inside special customs or free trade zones. Postal companies and couriers are allowed to handle the reporting on behalf of the e-commerce businesses, as long as they accept liability for errors. However, due to lingering uncertainty in the current regulations, it remains to be seen whether or not having a dedicated registered entity in China will be a requirement for overseas cross-border e-commerce businesses in the future.

Conclusion

The implementation of the rules outlined in Circular 18 and the accompanying circulars has without a doubt brought tax and customs-related clarity to a growth industry that previously struggled through ill-defined processes. The resulting clarifications have not only helped to level the competition playing field for all businesses (foreign and domestic) handling cross-border e-commerce retail transactions, but have also brought certainty for online retail shoppers as to how their purchases of imported goods will be taxed. However, as is always the case with China's new tax and company law regulations, Circular 18 is most likely only the first in a line of circulars that will shape and define the e-commerce industry in China for years to come.

Contributed by
Scott Heidecke and Flora Luo, Nexia TS (Shanghai) Ltd.
scott@nexiats.com.cn , floraluo@nexiats.com.cn

Cyprus

New tax law amendments – Enhancing Cyprus' corporate and personal tax competitiveness

Why Cyprus!

- Cyprus is an EU member since 2004 as well as being an Economic and a Monetary Union Member since 2008.
- On the 7th of March 2016 Cyprus exited from the economic adjustment programme with both the IMF and ESM congratulating the Cypriot authorities on the favourable economic results achieved under the adjustment programme.
- Cyprus is at the crossroads of three continents – Europe, Africa and Asia – providing a gateway to and from each one of them.
- Cyprus has Double Tax Treaties with over 55 countries
- Cyprus maintains one of the most attractive tax systems in Europe. The corporation tax rate for Cyprus companies is 12.5%.
- Cyprus is the largest third party Management centre in the EU. It is the home to some of the world's leading names of the shipping industry, and has the 10th largest merchant fleet in the world.
- Cyprus is currently the most attractive jurisdiction for private aircraft registration in the EU as well as for Yacht registration with the latter tax rate being as low as 3% through the use of the Yacht Leasing Scheme.
- The US Geological Survey estimated offshore reserves of 1.7 billion barrels of oil and 122 trillion cubic feet (TcF) of natural gas in the Levant Basin while reserves of 5 TcF already confirmed.
- Cyprus has the highest percentage of university graduates per capita in Europe & possesses a well-trained and versatile labour force with fluency in English.
- The legal system is based on the UK Common Law principles and aligned with the EU laws and regulations (Acqui Communautaire).
- The 2013 Knight Frank Report ranked Cyprus as the 5th best place for lifestyle among major European cities and other competitive destinations.
- Cyprus has also been recently ranked 1st among smaller Countries and 5th worldwide in the Safest Countries in the World study.

The new Cyprus tax law amendments

The Cyprus tax legislation is fully compliant with the EU Acquis Communautaire and EU Directives as well as the code of Conduct for Business Taxation and against harmful tax competition.

Cyprus proudly features on the White list of the OECD and has legally committed to the highest standards of transparency by assuming early adopter status for the automatic exchange of information on tax matters.

The Cyprus House of Parliament has recently voted some important tax law amendments which aim to:

- modernize the framework of the Cyprus tax system,
- improve Cyprus' competitiveness in attracting foreign investments,
- encourage business substance by offering personal tax incentives to individuals relocating to Cyprus

Extension of the Definition of "Republic" and that of 'Permanent Establishment' (PE)

The income tax law (ITL) has been amended so that the definition of the terms "Republic" and "PE" include explicitly amongst others the exclusive economic zone (EEZ) of Cyprus and its continental shelf and any constructions or plants located in these zones.

The above amendments are effective from 1 January 2015.

Taxation of income arising from services relating to natural (gas etc.) resources

Income earned by persons who are not Cyprus tax residents and do not have a PE in Cyprus, as consideration for services carried out in the Republic with respect to the extraction, exploration or exploitation of the continental shelf, subsoil or natural resources on the ground, the seabed or above the surface of the sea, is subject to tax at the rate of 5%.

This amendment will be effective from 1 January 2016.

Introduction of Notional interest deduction (NID)

In an attempt to reduce excessive corporate debt financing and encourage investment in new equity, the Cyprus government has introduced an annual tax allowable deduction, the NID, on new equity as from 1 January 2015. New equity in the form of paid-up share capital or share premium is eligible for the annual NID.

The NID will be calculated in the same manner as interest expense on debt financing is usually calculated, and specifically as an interest rate on the eligible share capital/ share premium i.e. on the basis of an interest rate on new equity held by the company and used in the business.

The NID interest rate is calculated on the basis of the 10 year government bond yield of the country where the funds are employed in the business of the company, plus a 3% premium. This is subject to a minimum amount which is the yield of the 10 year Cyprus government bond plus a 3% premium, as at 31 December of the year preceding the relevant tax year.

The NID is deductible against the company's taxable profits that arise as a result of the newly introduced capital and cannot exceed 80% of the taxable profit (as calculated prior to the NID) i.e. leading to an effective tax rate of as low as 2.5%.

The relevant article of the tax legislation also includes anti avoidance provisions in the cases where arrangements or transactions have no substantive economic or commercial reason and have been put into place 'for the purposes' of benefiting from the NID.

The above amendment is effective as from 1 January 2015.

Key Tax Benefits for Expatriate Individuals - Introduction of the "domicile" concept & exemption from taxation on investment income of non-Cyprus domiciled individuals

Until recently, Cyprus tax resident individuals earning income from Cyprus or foreign sources such as dividends and interest income, were subject to the Cyprus Special Defence Contribution (SDC) at the rate of 17% and 30% respectively. Such dividend and 'passive' interest income are exempt from Cyprus income tax.

With this amendment, such Cyprus tax resident individuals will not be subject to SDC on the aforementioned income provided they are not domiciled in Cyprus.

So, taking into consideration the Cyprus income tax exemption on such income, non-Cyprus domiciled but Cyprus tax resident individuals will be exempt from taxation in Cyprus, irrespective of whether such income is earned in Cyprus or abroad.

For the purposes of the SDC Law an individual has his / her domicile in Cyprus if he/she is either:

- an individual who has a domicile-of-origin in Cyprus, (generally as defined in the Cyprus Wills and Succession Law), or
- irrespective of the above, an individual who is a resident of Cyprus per the Income Tax Law for a period of at least 17 years out of the last 20 years prior to the tax year of assessment.

This amendment of the tax legislation also includes anti avoidance provisions i.e. on transfer of assets to non-domiciled individuals etc.

This amendment is applicable from the 16 July 2015.

Key Tax Benefits for Expatriate Individuals - Income Tax exemption on employment income

Individuals taking up employment in Cyprus, who were previously residents outside Cyprus, are eligible to claim one of the following two tax exemptions:

1. 20% of their employment income earned in Cyprus to be exempt from income tax, up to a maximum of €8,550. According to the amending law, the exemption period is extended from 3 years to 5 years provided the employment started during or after 2012 and applies up to and including 2020 when it is abolished.
2. 50% of their employment income earned in Cyprus to be exempt from income tax, assuming such individuals earn more than €100,000 per year;

The 50% income tax exemption can lead to effective income tax rates between 8% to 17.5%!

The exemption period for this tax exemption is extended from 5 years to 10 years but for individuals commencing employment from 1 January 2015, there will be additional requirements in order to be eligible for the 50% tax exemption.

The 50% income tax exemption can lead to effective income tax rates between 8% to 17.5%!

Expenditure incurred for Innovative business

Expenditure incurred for the cost of acquisition of shares in an innovative business is tax deductible while expenditure for scientific research, including research and development, carried out by innovative businesses is also tax deductible.

Tax treatment of foreign currency exchange differences

According to this new tax law provision, any realised or unrealised foreign exchange differences (gains or losses) will be tax neutral i.e. gains not taxable/losses not tax deductible, except for gains/losses arising in the case of companies trading in foreign currencies and related products.

This amendment is effective from 1 January 2015.

Amendments to the group relief provisions of the tax legislation

In order to harmonise and align the tax framework with European Court of Justice decisions, a Cyprus tax resident company can include in the calculation of its taxable profits, tax losses (as computed under Cyprus tax law) of a company which is a tax resident of another EU country, as long as both companies are part of the same group according to Cyprus group relief provisions.

As per the amendment, the surrendering EU Company must first exhaust all possibilities available to utilise the losses in its country of residence or in the country of any intermediary EU holding company.

Furthermore, in establishing whether two Cyprus tax resident companies are eligible for group relief, the interposition of a non-Cyprus tax resident company will not affect their group relief eligibility as long as such company is tax resident in an EU country or in any other country with which Cyprus has signed either a (bilateral or multilateral) tax treaty or an exchange of information agreement.

This amendment is effective from 1 January 2015.

Taxation of dividend income arising from hybrid instruments

According to the amendment, where a Cyprus resident company or a PE situated in Cyprus of a non-Cyprus resident company receives dividend income from another company, the income tax exemption on such dividend income shall not apply to the extent that such dividends are deductible from the taxable income of the dividend paying company.

The above amendment will be effective from 1 January 2016.

Claiming unilateral tax relief for underlying tax on dividend income paid by a company resident in another EU member state to a Cyprus company

According to the amending law, in the case where dividend income is received from a company resident in another EU member state and such dividend income is subject to income tax in Cyprus, unilateral tax relief for the foreign underlying tax paid may not be credited against the Cyprus tax liability if an arrangement is considered to have been put in place that has no valid commercial reasons and aims to obtain a tax benefit.

The above amendment will be effective from 1 January 2016.

Restriction of losses arising from the licensing and/or sale of intellectual property (IP) rights

Under the Cyprus IP tax regime, only 20% of the net profit from the exploitation/disposal of qualifying intangibles is taxable, leading to an effective corporation tax rate of as low as 2.5%. The net profit is calculated after deducting from the license income/gains from disposal, all direct expenses associated with the production of this income.

According to the amendment, in cases where a company (or a PE) generates a taxable loss, only 20% of such loss will be eligible to be surrendered (via group relief) and/or carried forward to subsequent years.

It is furthermore clarified that any corresponding downward transfer pricing (TP) adjustment that may arise from applying the revised arm's length provisions of the income tax law and any NID attributable to qualifying IP, will be deemed as direct expenses for the purposes of calculating the taxable profit/ loss.

The above provisions have a retrospective effect from 1 January 2012.

Anti-avoidance provisions for reorganisations

According to the amended law, a re-organisation would only be eligible to qualify as tax-free, where the Tax Commissioner is satisfied that such a re-organisation has substantial economic or commercial purpose i.e. the Commissioner may not exempt from tax any profits arising from a reorganisation, where in his judgment, the main purpose or one of the main purposes of such a re-organisation was to avoid / decrease / postpone the payment of tax or the direct/indirect allocation of an enterprise's assets to any person without paying the relevant tax.

The above provisions will be effective from 1 January 2016

Cyprus Capital Gains Tax (CGT) Exemption & Transfer fees Exemption

An exemption from Cyprus (CGT) will be granted on the capital gain from the disposal of immovable property, provided that such immovable property is acquired between 16 July 2015 and 31 December 2016.

> Therefore, regardless of when the property will be sold, as long as it acquired within the aforementioned time period, no CGT will be payable

In addition to the above, a 50% exemption from transfer fees will apply to all transfer applications effected until 31/12/2016.

These amendments are applicable as from 16 July 2015.

Contributed by

Michael Mavrommatis, Nexia Poyiadjis
michael.mavrommatis@nexia.com.cy

Germany

Treaty Override Allowed by German Constitutional Law

The German Federal Constitutional Court decided on December 15, 2015 that a treaty override is compatible with the German constitution. Remember: A treaty override refers to a situation in which the domestic laws of a state overrule the provisions of a tax treaty concluded with another (contracting) state. The case which the Constitutional Court had to decide upon referred to sec. 50d para 8 German Income Tax Act.

According to this – domestic – position, German income taxation is assessed on income deriving from employment in a foreign tax treaty country, unless the employee (taxpayer) proves that the other country "has waived its right for taxation or that the taxes which were assessed on such income in the respective country have been paid". In the case at hand, a German resident expatriate triggered income from employment in Turkey. According to the tax treaty concluded between Turkey and Germany and at that time valid for this particular case (treaty 1985, replaced by treaty 2011), the right for taxation was allocated to Turkey. As the employee, under German domestic law, was liable to tax in Germany on all his income and was not able to provide evidence that neither was a tax exemption granted in Turkey, nor that taxes were paid there, German income tax was assessed also on this part of his income.

The taxpayer appealed on the basis that taxing rights were allocated to Turkey under the treaty and so the Turkish income should be excluded from taxation in Germany. The case was brought to the Federal Tax Court. According to its view a domestic treaty override was constitutionally not allowed as it qualified as a breach of the principle of constitutional openness to international law (verfassungsrechtlicher Grundsatz der Völkerrechtsfreundlichkeit). The Tax Court forwarded the case to the Federal Constitutional Court since it is the only court that can declare a law to be constitutionally void.

The Constitutional Court stated that a treaty override violates usual contractual behavior "pacta sunt servanda" and thus the respective international contract.

However, despite this international obligation to observe internationally bilateral (or multilateral) conducted contracts, it came to the conclusion that the legislature is not barred from domestically enacting contradicting laws for the following reasons:

- According to the German Constitution, international contracts such as tax treaties become only valid once they are transformed into German law upon the usual legislative process as required for any law. Given this, a tax treaty is domestically invalid before its transformation into national law and takes the same rank as any other domestic law after its transformation (Art. 59 para 2 of the Constitution).
- According to German constitutional law, only general rules of public international law rank above statutory law (Art. 25 of the Constitution), but tax treaties are not acknowledged as such. The Federal Constitutional Court argued that the principle of law is to be observed and not restricted by constitutional openness to international law. Democracy with changing legislative majorities requires that later legislatures are allowed to modify, abolish or overrule legal acts of a previous legislature ("lex posterior derogat legi priori").

Of course those laws have to be in line with all constitutional rules as to taxation and i.e. justified by the purpose and intent of the respective override (e.g. avoiding anti-abuse or double non-taxation).

Which consequences may derive from this decision? There are some other court cases pending in which the German Federal Tax Court expressed its opinion on a law constituting an unconstitutional treaty override. Although the purpose and intention of each treaty override can differ, it is expected that the Federal Constitutional Court will continue in its opinion that a treaty override is not unconstitutional. The same may be extended to other domestic rules such as the tax exemption of dividends. Domestically the tax exemption only applies if the underlying profits were subject to income tax.

The treaty override is commonly used by the legislature to react to structures which are legally allowed but lead to non-taxation. Thus, treaty override laws often have the function of anti-abuse legislation. An increasing number of such anti-abuse provisions are already negotiated and included in German tax treaties with foreign states by means of a "subject to" tax clause. Furthermore, the German treaty override behavior will most probably not be of that importance due to the current BEPS discussion with the OECD Report and its Action Plan on Base Erosion and Profit Shifting (2015) with 15 action points. In this context, it shall be focused in particular on action point 2, action point 6 and action point 7 of the OECD Action Plan. According to action point 2, hybrid mismatches (in particular by different qualifications) leading to non-taxation, double deduction or long term deferral shall be avoided by model treaty provisions and domestic laws thereon. The same applies to action point 6 which states that taxpayers shall be prevented from treaty abuse, in particular by generating double non-taxation. Therefore, a limitation-on-benefit-clause is proposed to be included into the tax treaties together with a general principle purpose test. Action point 7 requires measures to prevent the artificial avoidance of a permanent establishment. Given the above, it appears that a treaty override by domestic laws may be justified internationally as being in line with BEPS requirements.

Contributed by
Heinrich Watermeyer, DHPG
Heinrich.Watermeyer@dhpg.de

Hong Kong

Hong Kong Budget 2016/17

The Financial Secretary John Tsang Chun-wah delivered his 2016/17 Budget Speech at the Legislative Council on February 24, 2016.

The Financial Secretary stressed that it is his duty to mobilise resources effectively to maintain Hong Kong's economic development and fiscal health; to support local enterprises, especially the small and medium enterprises ("SMEs"); to cope with economic volatilities; and to safeguard the jobs of workers.

He also added that the Government should continue to fortify the economic foundation of Hong Kong, promote diversity and channel public resources towards improving people's livelihood and supporting the disadvantaged.

Economic performance

Hong Kong's economic performance was affected by the global economic setback. The Financial Secretary reported:-

- Our economy grew by 2.4% over last year.
- Export of goods down by 1.7%, the first annual decline since 2009.
- Unemployment rate stayed at a low level of 3.3%.
- The average underlying inflation rate was 2.5%, lower than the 3.5% in 2014.
- An expected surplus of HK$30 billion for 2015/16 was forecast and by March 31, 2016, fiscal reserves are expected to reach HK$860 billion, equivalent to 24 months of Government expenditure.

Economic Outlook and Prospects

The year 2016 is expected to be another challenging year as the global economic climate has continued to be unstable.

The key forecast figures for Hong Kong economy for 2016 are as follows:

- GDP growth of 1% to 2%.
- Average underlying inflation rate at 2%.

The projections for medium term (2017-2020) are a 3% annual growth rate increase in real GDP and an estimated fiscal reserves at HK$835 billion by March 31, 2021.

Reliefs and measures

In order to ease the impact on economic confidence, various support measures targeting affected industries, including tourism, SMEs, commerce and logistics and financial services as well as individuals. A package of relief measures amounting to HK$38.8 billion was announced.

Support for SMEs

SMEs, the mainstay of Hong Kong's economy, were handed one-off relief measures including:-

- The extension of the application period for the "Special Concessionary Measures" under the "SME Financing Guarantee Scheme" to February 28, 2017.
- The reduction in the annual guarantee fee rate for the measures by 10%.
- The removal of the minimum guarantee fee for the measures.
- A Pilot Technology Voucher Programme under the Innovation and Technology Fund will be launched to subsidise SME's use of technological services and solutions, to improve productivity and upgrade or transform business process.
- Business registration fee for 2016/17 will be waived.

New Economic Order

The Financial Secretary is of the view that the key to embracing the "New Economic Order" is nurturing innovation and highlighted a series of achievements and future initiatives. These related in large part to research and development, FinTech, start-ups and the so-called creative industries, the "Belt and Road", commerce and logistics, and financial services.

Belt and Road Initiative

China is taking forward the Belt and Road Initiative, a conceptual framework for long-term development by connecting Asia, Europe and Africa along five routes

It is believed that the emerging markets along the routes are the new opportunities for the future development of Hong Kong. Hong Kong is well placed to serve as a platform for related investment projects and fund management for the emerging markets.

Caring for People's Livelihood

Caring for people's livelihood was given a particular focus. Investment in healthcare and additional support for the underprivileged were indicated, including:-.

- To set a dedicated provision of HK$200 billion for a ten-year hospital development plan to expand and upgrade healthcare facilities.
- To allocate HK$10 billion to the Hospital Authority to set up an endowment fund to generate investment returns for enhancing public-private partnership programmes.
- To offer loans to non-profit making organisations for hospital development.

Livelihood related expenditure for 2016-17 continues to increase with education increased by 67%, social welfare by 106% and healthcare services by 90% over the corresponding expenditure for 2006-07.

Taxes

In this 2016-17 Budget, the Financial Secretary proposed a number of tax measures.

It is believed that the emerging markets along the routes are the new opportunities for the future development of Hong Kong. Hong Kong is well placed to serve as a platform for related investment projects and fund management for the emerging markets.

Salaries Tax

- The standard rate will remain at 15%.
- Salaries tax for 2015/16 will be reduced by 75%, subject to a cap of HK$20,000.
- Basic personal allowance will be increased from HK$120,000 to HK$132,000 for 2016/17 and married person's allowance from HK$240,000 to HK$264,000.

Profits Tax

- For corporations, the profits tax will remain unchanged at 16.5%.
- For unincorporated businesses, the profits tax rate will remain unchanged at 15%.
- Profits tax for 2015-16 will be reduced by 75%, subject to a cap of HK$20,000.

Property Tax

The property tax rate will remain unchanged at 15%.

(Note: Legislative proposals do not generally become law until their enactment and may be modified by the Legislative Council before enactment.)

Contributed by

Thomas Wong, Nexia Charles Mar Fan & Co.
tw@charles-marfan.com

India

Patent Box Regime in India

The Patent Box regime refers to a special tax regime for Intellectual Property (IP) revenues. This regime is introduced with the intention to incentivise commercialisation of indigenously developed IPs. In order to encourage indigenous R&D activities and to discourage registration of patents in lower tax jurisdictions, the Indian Budget 2016 has proposed to introduce a concessional tax regime for royalty income earned from patents.

This article discusses the salient features of the scheme and how does the Indian regime compare with the global best practices.

Salient Features of Indian Patent Box Regime:

The concessional regime, popularly known as 'patent boxes', provides for lower tax rates for Indian residents earning royalty income in respect of patents registered in India. The patent box regime proposes to tax income from royalties at the rate of 10% (plus applicable surcharge and cess) on a gross basis. It is pertinent to note that no deduction of any expenditure would be allowed against the royalty income which means that it would be taxed @ 10% on a gross basis.

> This article discusses the salient features of the scheme and how the Indian regime compares with the global best practices.

Royalty income would include consideration from:

- transfer of all or any rights (including the granting of a licence) in respect of a patent; or
- imparting of any information concerning the working of, or the use of, a patent; or
- use of any patent; or
- rendering of any services in connection with the activities specified above.

However, the concessional tax rate will not be available when income is derived in relation to the patent, where:

- such income would be chargeable under the head Capital Gains; or
- such income is in respect of the sale of product manufactured with the use of the patented process or the patented article for commercial use.

The benefits from the patent regime can be availed only by a Patentee who is a person resident in India. The term 'Patentee' has been defined to mean a person who is, exclusively or jointly, a true and first inventor of the invention and whose name is entered on the patent register as the patentee, in accordance with the Indian Patents Act in respect of that patent.

Need for a Patent Box Regime

Multinational corporations adopt innovative strategies to take advantage of unintended gaps and mismatches between varying tax systems and favourable tax treaties to lower their effective tax rate through double non-taxation of income or taxation at a lower rate. One of the popular tax planning tools is IP tax planning. Many corporations register IP in lower tax jurisdictions even when major expenses to develop such IP are incurred in the home country/other countries (i.e. high tax jurisdictions). This type of tax planning results in NIL/lower tax outflow on income earned from exploiting such IP.

To tackle this menace, the OECD in its Action Plan 5 in the Base Erosion Profit Shifting (BEPS) Project has envisaged a nexus based approach wherein it is proposed that income arising from the exploitation of IP should be attributed and taxed in the jurisdiction where substantial R&D activities are undertaken rather than the jurisdiction of legal ownership.

In a developing country like India the concessional regime has been proposed with a view to encourage companies to retain and commercialise existing patents and to develop new innovative patented products in India. This will also help in the creation and the location of more innovation-based jobs in India. Also, such a regime would make it easier for knowledge-based establishments located in India to compete globally.

Patent Box Regime- A Comparative Analysis

Even before the BEPS Action Plan was introduced, more and more countries without a patent box regime had realised that they were losing out on tax revenues on IP income due to favourable tax regimes provided by some other countries like Ireland, Luxembourg etc. BEPS in a way has highlighted the loss of tax revenues on account of the shifting of IPs by corporates, which in-turn has encouraged countries like India to have IP regimes with a nexus-based approach.

The below table provides a bird's eye view of various patent box regimes[1] which have already been implemented by many countries to incentivise the commercialisation of R&D.

1 Based on the data available in public databases

Table 1

Country	Qualifying IP	Regular Corporate Tax Rate	Effective Tax Rate for IP income	Acquire IP eligible?	Can R&B be done abroad?	Year
India	Patents registered under the Patents Act, 1970	34.61%	11.54% on gross income	No	75% expenses to be incurred in India	2016
Belgium	Patents and supplementary patent certificates	33.99%	6.8% of patent income	No	Yes, subject to conditions	2007
France	Patents and patentable inventions	33.33%	15% subject to conditions	Yes, subject to a condition	Yes	2000
Ireland	Patented inventions and copyrighted software	12.5%	6.25% of net income	Not explicitly provided	No	2016
Luxembourg	Models & Software, copyrights, patents, trademarks, designs, or domain names	22.47%	4.5% on net qualifying IP income	Yes, only if acquired from unrelated party	Yes	2008
Netherlands	Worldwide patents and IP innovation activities	20%-25%	5% on net qualifying IP income	Yes, if further developed	Yes, subject to certain conditions	2007
Spain	Patents, drawings, models, plans, formulas, etc.	25%	10% on net income	Yes subject to certain conditions	No from 2016	2008
UK	Patents, supplementary protection certificates, regulatory data protection, and plant variety rights	20%	Reducing rate up to 10% in phased manner	Yes, provided significant activities were undertaken by taxpayer	No from 2016	2013

How will the India patent box compete with other patent box regimes?

At a conceptual level, the Indian regime is in sync with the regimes adopted/being adopted by various other countries. However, when it comes to the actual incentive i.e. the effective tax rates on IP income, tax as per the Indian regime is still higher as compared to other countries. Also, most of the countries provide for deduction of expenses along with the beneficial tax rate for patent boxes. (For example, Ireland taxes IP income on a net basis at 6.25% and The Netherlands taxes IP income on a net basis at 5% whereas Indian regime provides for a tax rate of 10% on a gross basis). The Indian regime does not provide for beneficial tax rates for the capital gains arising from the sale of the said IPs whereas many other countries provide for that as well.

As can be seen from the above analysis, whilst the proposed patent box regime introduced by the government seems attractive at the first blush, it is not so when compared to similar schemes adopted by some of the advanced countries.

Conclusion

The proposed regime is a clear indication that India is moving towards globally accepted practices. This regime certainly gives an impression that India is eager and proactive to implement various proposals suggested in the BEPS Project. It appears that the beneficial patent box regime in India would not be available for patents which are developed outside India. This shows that the intent of the government is to encourage indigenous research which will help in developing and nurturing innovation and is in sync with the other measures introduced by the government to encourage innovation and to promote India as a business friendly destination.

Contributed by

Manish Shah and Nishit Parikh, SKP Group
manish.shah@skparekh.com, nishit.parikh@skparekh.com

Italy

New provisions on permanent establishment: Full alignment with OECD standards

Implementation of the "functionally separate entity" approach

The Internationalization Decree[1] recently introduced, in the Italian Corporate Income Tax Code ("ITC"), new provisions specifically referring to permanent establishments ("PEs"). Namely, article 152 of ITC definitely aligns the Italian rules on profit attribution to PE with the OECD "functionally separate entity" approach[2] .

> In this regard, lacking in the past specific provisions, it is important to consider that – even if the Italian Central Revenue always declared that it embraced OECD concepts – nonetheless, it never closed the door to peculiar interpretations of domestic jurisprudence, adopting a conservative attitude against taxpayers (e.g., Philip Morris Case).

Accordingly, article 152 now provides that, for companies and commercial entities with a permanent establishment in the State, the taxable income of their PE is determined considering the profits and losses attributable to it, on the basis of a dedicated balance sheet and profit & loss account, to be drawn up in accordance with accounting principles provided for tax resident entities with the same characteristics.

For these purposes, the permanent establishment is considered to be a separate and independent entity from the parent company, conducting the same or similar activities under the same or similar conditions, taking into account the functions performed, risks assumed and assets used. The free capital of the PE is determined in full compliance with the criteria defined by the OECD, taking into account the functions performed, risks assumed and assets used.

In addition, revenues and costs attributable to the permanent establishment in relation to the transactions occurred with its parent company have to be in line in the arm's length principle as stated in par. 7 of article 110 of the ICT.

1 Decreto Legislativo n. 147/2015 («Decreto Legislativo recante misure per la crescita e l'internazionalizzazione delle imprese») in force as of 7 October 2015.

2 See the "Report on the attribution of profits to Permanent Establishments", 22 July 2010.

Attribution of free capital to enterprises carrying on a banking business

Decision n. 49121 of 5 April 2016 by the Italian tax authority's chief executive[3] provides follow-up guidance on how to calculate the amount of free capital to be attributed to non-resident banks. More specifically, the provisions of said decision state the amount of free capital considered adequate for tax purposes to be allotted to Italian permanent establishments of non-resident banks.

Banking enterprises operating in Italy through a permanent establishment decide on the amount of the free capital to attributed to the PE according to the criteria defined by OECD and in particular to the guidelines contained in the "Report on the attribution of profits to permanent establishment (July 2010)", thereby taking into account functions performed, assets used and risks assumed by the PE according to the functionally separate entity approach. Funding costs and - consequently - the free capital to be allotted to the permanent establishment is determined, for what concerns risk capital and third-party equity, on the account of functions performed, assets used and risks assumed by the PE. To this end, once the value of the financial assets and liabilities is determined, it has to be divided between risk capital and third-party equity by preliminarily defining an adequate amount of free capital to support the functions performed, the assets used and the risks assumed by the PE.

Free capital may also be allocated to the permanent establishment just for reporting purposes, i.e. just for tax purposes. The adequate free capital must be compared to the actual free capital: if there is a free capital gap, the actual free capital will be corrected, even if just for reporting purposes, by requalifying debt into non-interest bearing own equity for the amount of the gap. The resulting interest expenses in excess deducted from the income of the permanent establishment will have to be declared in the tax return and will be subject to tax.

If the capital structure of the permanent establishment does not recognise any interest-bearing debt, (i) the balance sheet must be corrected, if only just for reporting purposes, by allocating a higher amount of free capital to the liabilities side and interest-bearing investments to the assets side of the same amount, whereas (ii) the cash flow statement must be corrected by bringing out the interest income which represent

3 Provvedimento del Direttore dell'Agenzia delle Entrate n. 49121 issued 05 April 2016.

the consideration for the higher amount of funds available (i.e. the so-called theoretical yield of the free capital gap).

According to the decision of the Italian tax authority, the adequate amount of free capital to be allocated has to be determined using one of the approaches mentioned in the OECD report, namely:

a) the capital allocation approach, which seeks to allocate a portion of a company's equity to a permanent establishment belonging to the same company;
b) the thin capitalisation approach, which seeks to allocate to the permanent establishment the same amount of free capital of an independent enterprise carrying on the same or similar activities under the same or similar conditions in Italy.

Alternatively, the quasi thin capitalization approach may be used. This approach requires the PE to have at least the same amount of "free" capital required for regulatory purposes as would an independent banking enterprise operating in Italy. The quasi thin capitalisation approach is considered by OECD as a safe harbour.

Branch exemption: new rules to come

On 25 February 2016 the Italian tax authority[4] published the draft of the implementing act on the branch exemption provisions under article 168-ter of the ITC, introduced by the Internationalization Decree.

This legislation allows Italian companies to opt for exemption of profits and losses generated by their permanent establishments (branches) abroad. As this topic is fairly new and significant, the draft has been issued for consultation until 31 March 2016. Until then, all those interested (i.e. companies, economic operators, professional associations, academic circles and experts on the matter) had the chance to submit their comments and remarks to the Italian tax authority.

The key features of this provision are:

i. the option is irrevocable and must be exercised for all branches of the Italian company ("all in, all out");
ii. the option has to be exercised with the tax return and starts with the tax year the tax return refers to. For existing permanent establishments, the option may be exercised within the second tax period subsequent to the one during which the new article 168-ter of the ITC enters into force. For newly established branches, the option must be exercised during incorporation and is applicable as of the corresponding tax period;
iii. the option ceases to exist following closure of all existing branches as well as in all the cases under subsection 8 (i.e., extraordinary transactions);
iv. a mechanism has been put in place for recapturing losses generated by the branch in the five previous years;
v. similarly, some provisions (applicable during a tax compliance check) are meant to avoid double taxation relief and double tax exemption ("hybrid mismatch arrangements");
vi. in addition, the following provisions of the Italian Income Tax Code apply: article 152 (e.g., separate entity approach; endowment capital), article 110(7) (i.e., transfer pricing) and article 167 (i.e., controlled foreign companies).

On March 31st, 2016, the deadline to submit comments to the Central Revenue elapsed: the business community is now waiting for the final version of the branch exemption regime and relating guidance for its full implementation in the Italian tax system.

All the newly introduced provisions mentioned above witness that the PE tax framework is rapidly evolving in alignment with the international standards: therefore, multinational companies should re-examine their local operational set-up in conjunction with cross-border principles and actions (e.g., OECD BEPS Project, EU Anti-Tax Avoidance Package) to allow a revision of current flows and the implementation of more effective tax value chain models.

Contributed by
Dirk Prato and Gian Luca Nieddu, HAGER & PARTNERS
dirk.prato@hager-partners.it, gianluca.nieddu@hager-partners.it

4 http://www.agenziaentrate.gov.it

Luxembourg

Is Luxembourg still attractive under the increased substance requirements, remaining compliant under BEPS/OECD?

In Luxembourg everybody was waiting for 26 April 2016 when the Luxembourg Prime Minister, Xavier Bettel, summarized the country's social and economic situation and presented the government's policy plans.

The 2017 tax reform announced in February (after the Lux-leaks) confirmed, that the tax system will be compliant with the European and international rules.

The Luxembourg current IP tax regime will be abolished as from 1 July 2016. The IP regime, including improvements made to such IP, will be maintained for income tax purposes for a transitional period starting on 1 July 2016 and expiring on 30 June 2021. The regime will be replaced by the OECD's/BEPS approved 'Nexus approach'. The Luxembourg working group will examine various subjects for corporate entities, which will be announced in the future, including a tax-exempt reserve for investments.

Corporate tax news

- The corporate income tax rate will be reduced from the current 21% to 19% in 2017 and 18% in 2018. Therefore the effective rate, including corporate income tax, municipal business tax (Luxembourg city) and the contribution to the unemployment fund, will decrease from 29.22% in 2016 to 27.08% in 2017 and 26.01% in 2018. A special rate (15%) is announced for young innovative companies whose annual taxable income does not exceed EUR 25,000.
- For the SOPARFIs or Holding companies there will be an increase of the minimum net wealth tax.

Till 2015 these companies paid a minimum corporate income tax of EUR 3,210, which was replaced from 2016 by a minimum wealth tax of the same amount. In 2017 the minimum wealth tax will be increased to EUR 4,815.

This rate is applicable to all corporate entities having their statutory seat or central administration in Luxembourg and that own fixed financial assets, transferable securities, and cash at banks (including receivables due by affiliated companies) exceeding 90% of their total assets and which is greater than EUR 350,000.

If the aforementioned threshold is not met, the amount of minimum net wealth tax will depend, from 2016, on the total of the balance-sheet at the closing of the preceding financial year. Ranging from EUR 500 to EUR 20,000 (increased by the solidarity surtax), depending on a company's total assets, which is applicable to all other corporations having their statutory seat or central administration in Luxembourg (i.e. it is applicable to all corporations not falling within the scope of the EUR 3,000 CIT noted above), as follows:

Total assets (EUR)	Minimum wealthtax (EUR)
Up to 350,000	535
350,001 to 2,000,000	1,605
2,000,001 to 10,000,000	5,350
10,000,001 to 15,000,000	10,700
15,000,001 to 20,000,000	16,050
20,000,001 to 30,000,000	21,400
30,000,0001 and above	32,100

A new IF tax of 0,05% has been introduced for the bracket of net taxable wealth greater than 500,000,000,00.
The current IF tax of 0,5% is preserved for the bracket of net taxable wealth inferior or equal to 500,000,000,00.

This tax makes it crucial to prepare the year end closing before 31 December.

- A really important new measure for Luxembourg is that the utilization of carried-forward losses will be restricted as from 2017. Losses realized as from tax year 2017 will be carried forward for a limited period of 17 years and could be set off against only 75% of the profits realized in a tax year.
- Tax credits for investments will be increased as follows:
- The complementary tax credit for investments will be increased from 12% to 13%;
- The global tax credit for investments will be increased from 7% to 8%;
- As to investments in fixed assets authorised to apply a special depreciation rate, the rate of 8% for the first bracket will be increased to 9%.
- To facilitate the transfer of family-owned companies, capital gains derived from immovable property (land or buildings) belonging to the divested business would be exempt if certain conditions are met.

Additional measures for Individual taxation

- Married couples would be permitted to opt to be taxed separately and equality of tax treatment will be introduced between cross-border workers and residents living in Luxembourg with respect to the applicable tax classes and tax allowances (if applicable).
- The maximum individual tax rate will be increased progressively from 40% to 41% or 42% (for taxable income above EUR 150,000 or EUR 200,000).
- A modulation of the benefit in kind for company cars depending on the carbon emissions and a tax allowance for zero-emission vehicles including bikes, as well as, a new tax reduction will be introduced.
- Various tax advantages will be considered as most important:

- The face value of meal vouchers for employees "chèques repas" will be increased from EUR 8.40 to EUR 10.80.
- The tax credits for single parent households will be increased up to EUR1,500.
- The tax credits for employees and pensions will be modulated depending on the revenues.
- The tax deduction for home saving schemes will be increased from EUR 672 to EUR 1,344 for taxpayers under 40.
- The monthly maintenance allowance amount which does not reduce the tax credits for single parent households ("Crédit d'impôt monoparental") will be increased.
- The lump sum allowance for extra-ordinary charges currently amounts to EUR 3,600 per tax year. As from 2017, it will amount to EUR 5,400 per tax year.
- Premiums for voluntary pension schemes (3rd pillar) will be deductible up to €3,200 per year irrespective of the subscriber's age

- The withholding tax on interest income will increase from 10% to 20% for Luxembourg resident individuals
- The capital gain from a real estate transaction involving one's private wealth, under the condition that the property was held for more than 2 years, will fall to 25% of the global tax rate for the period from July 1, 2016 to December 31, 2017.

The taxation of speculative profits would however always apply following the normal regime, thus subject to the marginal rate.

Conclusion

The tax environment in Luxembourg is changing, thus affecting corporate entities in the way those are operating. We are happy to assist you cope with the shifting environment and adapt your current structures to the new requirements emerging from the change.

Contributed by

Lut Laget, VGD Luxembourg
lut.laget@vgd.eu

Malaysia

Malaysian Goods and Services Tax – 1 Year Later

April 1, 2016 marked the first anniversary of the implementation of Malaysian Goods and Services Tax ('GST'). (Is it possible that there are still some who believe it to be an April Fool's joke??). GST has been implemented since 1 April 2015 at a standard rate of 6% and the new Act replaced the Sales Tax and Services Tax of 10% and 6% respectively. The "birth" pains of GST have receded somewhat and it is gradually gaining acceptance after the earlier resistance by businesses and consumers. Albeit, there is still a long way to go!

The introduction of GST is part of the overall Government tax reform programme towards making the taxation system more efficient, effective, transparent, business-friendly and capable of generation of a stable source of revenue.

Many countries have implemented GST, also known as Value Added Tax ('VAT'), and in varying degrees, the experience of implementation is generally similar. It must be acknowledged that the Malaysian authorities did not attempt to re-invent the wheel and relied on the many countries' experiences to execute the implementation. The implementation of GST was deferred several times due to opposition from politicians and unfavourable responses from the public. With less than 18 months of preparation period before the implementation date, the Royal Malaysian Customs ('RMC') have put in a lot of effort to ensure that the new tax system will run smoothly. It included public awareness programs, training courses, hand-holding programs, seminars, enquiries dialogues, open discussions, etc.

The introduction of GST is part of the overall Government tax reform programme towards making the taxation system more efficient, effective, transparent, business-friendly and capable of generation of a stable source of revenue.

GST is a multi-stage consumption tax on all goods and services in Malaysia, at all levels of business transactions. GST is payable in stages by the intermediaries in the production and distribution process. However, the tax itself is not a cost to the intermediaries as it will ultimately pass on to the final consumer.

The GST system overcomes the weakness under the previous tax system i.e. Sales Tax and Services Tax namely:

(i) Tax cascading and tax compounding
(ii) Issue of transfer pricing and value shifting
(iii) No complete relief of the tax on goods exported
(iv) Discourage vertical integration
(v) Bureaucratic red tape

The One-year Report Card based on the data from the Royal Malaysian Customs Department ('RMCD') is that there are more than 406,000 companies/businesses which are registered for GST, which is much higher than the expected 240,000. It also appears that there are still businesses that are liable to register but have not done so. A construction company was fined RM15,000 at the Sessions Court for failing to register before the deadline of 28 February 2015 (which was extended from 31 December 2014). Further, a mobile phone and accessories shop was fined RM5,000 for committing the same offence. The awareness process continues as the criteria for GST has many definitions viz. businesses who make taxable supplies in Malaysia and whose annual turnover exceeds the proposed threshold of RM500,000 in the preceding 12 month period (historical) or is currently making taxable supplies and his annual turnover is expected to exceed RM500,000 in the next 12 months (Future) or even a hybrid of historical and future that becomes complicated to the uninitiated. It would be a prudent business decision to seek professional advice.

In the first year of its implementation, the GST collection exceeded the RM27 billion mark set by the government for 2015. RMCD is targeted to raise RM39 billion from GST in year 2016. During the first month of the GST implementation, the RMCD only managed to refund 17% of the total GST claims within the stipulated period i.e. 14 working days. This figure has been improved to 70% to date.

The government has no plans to review the GST rate as the current six percent is reasonable compared to the previous rate for sales tax and services tax which was 10% and 6% respectively. For political expediency, it would be wise that the acceptance of GST per se by the populace increases substantially before any increase.

Besides the standard rate of 6%, selected essential goods and services are subject to GST at zero-rate such as foodstuffs (rice, table salt, sugar, plain flour etc.), agriculture products (paddy, vegetables etc.), livestock supplies (live animals and unprocessed meat of cattle, buffaloes, goats, sheep and swine etc.), poultry (live and unprocessed meat of chickens and ducks), International services and many more which cannot be listed here.

Further, there are also goods and services which are exempt from GST such as land used for residential or agricultural purposes or general use, buildings used for residential purposes, financial services, private education services, childcare services, private healthcare services, transport services and many more. The comprehensive list for the goods and services which are zero-rated and exempt is available for download from the RMCD website (www.gst.customs.gov.my).

As a comparison, the following are the GST rates among the ASEAN countries:

Countries	Year of implementation	Initial Rate (%)	Current Rate (%)
Indonesia	1984	10	10
Thailand	1992	10	7
Singapore	1993	3	7
Philippines	1998	10	12
Cambodia	1999	10	10
Vietnam	1999	10	10
Laos	2009	10	10

To-date, the RMCD has issued 58 industry guides and 17 specific guides to assist the public in their understanding of the Malaysian GST Act. However, there are still many businesses, especially the Small-Medium Enterprises, facing difficulties in coping with GST due to confusion and in making mistakes in their GST returns. RMCD have hired over 200 new officers to carry out more field audits to check on common mistakes made by businesses. Since it is still transitional, the audits are intended to assist those genuinely unprepared for GST and are not punitive. The RMCD have imposed nominal fines for non-compliance such as not issuing a tax invoice and not displaying prices with GST.

In conclusion, GST is here to stay in Malaysia. In essence, as a consumption tax, it is (by any stretch of imagination) a fair tax. (Quote: The only two things that are certain in life are Death and Taxes!) The Malaysian public will accept GST as a component of living costs and it is hoped that with the continued improvement of the imposition and collection processes of GST, living with GST becomes hassle free.

Contributed by
Jason Sia , Nexia SSY
jasonsia@nexiassy.com

Malta

Recent amendments to the Aircraft Leasing Guidelines in Malta

Through the application of the 'use and enjoyment' provisions provided for by the EU VAT Directive and the Maltese VAT Act, in 2012 the Director General (Value Added Tax) had issued guidelines relating to VAT Aircraft Leasing arrangements concerning privately operated aircraft, determining that services which take place within Malta are to be considered to take place outside the EU if they are used and enjoyed outside the EU. This was another step towards the enhancement of Malta's significance as an aviation jurisdiction.

The VAT Department acknowledged the difficulty which arises when determining the period when an aircraft is used within the EU's airspace and thus, based on the aircraft model, the Guidelines sought to establish a maximum percentage for this purpose.

> Such amendment now enables a wider range of aircraft to fall within the scope of this Guideline.

On 5th April, 2016 the VAT Department published a revised version of the guidelines. Whilst the existing conditions for applying VAT on the lease remained the same, the table which establishes the percentage of deemed use of the aircraft within EU airspace has been amended to be based on the flight range of the aircraft as shown below, rather than as originally provided depending on the aircraft model, maximum take-off mass and fuel capacity, fuel burn, optimal altitude in feet and optimum cruising speed in knots.

Aircraft type by range (km)	% of lease taking place in the EU	Computation of VAT
0 – 2,999	60%	60% of consideration X 18%
3,000 – 4,999	50%	50% of consideration X 18%
5,000 – 6,999	40%	40% of consideration X 18%
7,000 – upwards	30%	30% of consideration X 18%

Such amendment now enables a wider range of aircraft to fall within the scope of this Guideline. The VAT treatment provides that on the basis of the use and enjoyment principle, only the portion of deemed use of the aircraft within European airspace is taxable. The remaining portion is deemed to be effectively used and enjoyed outside the EU and consequently falls outside scope of VAT. The guidelines provide for a minimum percentage of time that an aircraft could be deemed to spend within the EU of 30% resulting in a minimum effective VAT charge of 5.4%.

In order to apply the VAT aircraft leasing treatment procedure as explained above, the following requirements have to be met:

1. there shall be a lease agreement between a lessor who is established in Malta and a lessee who is also established in Malta and who would not be eligible to claim input VAT in respect of the lease. However, the lessor will have the right of recovery of input VAT on supplies used for the furtherance of the aircraft leasing activities;
2. the lease agreement shall not exceed a period of 60 months and the lease installments shall be payable on a monthly basis; and
3. the lease agreement shall provide an option (not an obligation) to the lessee to purchase the aircraft at the end of the lease term for a percentage of the original cost.

Prior approval must be sought in writing from the VAT Department and if the lessee exercises the option to purchase the aircraft at the end of the lease, a VAT paid certificate will be issued to the lessee provided that all due VAT has been paid.

Contributed by
Antoinette Scerri, Nexia BT
antoinette.scerri@nexiabt.com

Romania

Transfer pricing documentation – changes in law and tax audit practice

“In regard of transfer pricing, ANAF has since several years ago a structure dedicated to this. We already have fiscal inspection reports on this topic. Our intention is to accentuate this type of inspections (on transfer pricing) in the future” mentioned Dragos Doros president of ANAF .

(Agenția Națională de Administrare Fiscală (ANAF) is the Romanian tax authority)

Legal Aspects

Order 442/2016 governing the value of the transactions, the terms for preparing, the conditions and content of the transfer pricing (TP) documentation and TP adjustment/estimation procedures was published on February 2, 2016

Applicability:

A. Large taxpayers having transactions with affiliated persons of an annual value (calculated by aggregation of transaction values with all affiliated persons) over following limits:

- EUR 200,000 for interest paid/ received
- EUR 250,000 for services supplied / purchased
- EUR 350,000 for purchases/ sales of tangible or intangible assets

Preparation deadline:

- Legal deadline for submitting annual corporate tax return (25.th March of following year)

Deadline for presentation:

- 10 days from the date of the request, but not earlier than 10 days after the expiry of the deadline for their preparation

B. Large taxpayers that do not meet above mentioned criteria, small and medium taxpayers having transactions with affiliated persons of an annual value (calculated by aggregation of transaction values with all affiliated persons) over following limits:

- EUR 50,000 for interest paid/ received
- EUR 50,000 for services supplied / purchased
- EUR 100,000 for purchases/ sales of tangible or intangible assets

Preparation deadline:

- Based on written request of the fiscal authority

Deadline for presentation:

- Between 30 and 60 calendar days from request. A one-off extension of no more than 30 calendar days is allowed

Disposition applicable to all taxpayers:

All documents in foreign languages have to be translated into Romanian.

> Taxpayers are exempt from preparing TP documentation for transactions and periods that are covered by an advance pricing agreement issued by ANAF.

If transactions with affiliated persons are undertaken without respecting the arm’s length principle, tax auditors will adjust the transfer prices used.

Failing to present or presenting incomplete TP documentation leads to the right of the tax auditors to estimate the transfer prices.

Fines:

Not respecting the deadlines and obligations in regard to presenting TP documentation is sanctioned with a fine of RON 12,000 – 14,000 for large taxpayers and RON 2,000 – 3,500 for all other taxpayers.

Contents of the transfer pricing documentation file is structured in 2 sections A – information on the group (having 11 points to be described) and section B – information on the taxpayer (having 16 points to be described)

Changes in tax audit practice

Very recent changes in the transfer pricing audit practice implemented by the ANAF relate to the approach regarding the independent nature of the selected comparables. At the moment, cases have emerged where the ANAF have started to assume that any comparable with an unknown shareholder or shareholding percentage is by default exposed to the risk of

undertaking related party transactions, and is thus eliminated from the final sample.

Furthermore, it has been brought to our attention that the ANAF has currently started using a different version of the database as compared to the database habitually used by all tax advisors in our market. The database version recently acquired by the ANAF also contains detailed information regarding individuals and administrators/general managers of companies, which the ANAF are starting to use as an argument in order to eliminate comparables in the light of a possible affiliation through control.

Although local and international transfer pricing legislative provisions require that the tax audit should be performed by the ANAF using the same information reasonably available at the level of the audited taxpayer (i.e., the same database version), the ANAF could disregard this and identify potential risks with the companies identified for the final comparability sample, these risks mainly arising from the unknown status of their independence, but also through a potential affiliation through the control held by administrators or general managers in other companies.

Furthermore, it has been brought to our attention that the ANAF has currently started using a different version of the database as compared to the database habitually used by all tax advisors in our market.

Contents of the transfer pricing documentation file

The transfer pricing documentation file shall contain the following:

(A) Information on the group:

1. Organisational, legal and operational structure of the group (a list of the component entities of the group, including the permanent head offices and their identification information), geographical location of the component entities, including shareholdings of the group and the period of time for which the transfer documentation file has been prepared)
2. General description of the group activity, business strategy, including changes in the business strategy throughout the period of time for which the transfer documentation file has been prepared;
3. Description of the transfer pricing policy within the group, if applicable;
4. General description of the transactions between affiliated parties;
5. General description of the functions performed, risks assumed and the assets employed in the transactions concluded between the affiliated persons (functional analysis), including any changes that occurred in relation to the functional profile of the companies within the group, throughout the period of time for which the transfer pricing documentation file has been prepared;
6. Description of the main functions performed, risks assumed and assets employed within the group, that significantly and definingly contribute to the creation of the value added, identifying them for each entity participating in the group;
7. Overview of the holders of intangible assets and the corresponding ownership rights within the group (patent, licence, trademark, brand name, logo, know-how, etc.), if applicable;
8. General description of the transfer pricing policy relating to the financial arrangements (intra-group financing services) between the affiliated persons, if applicable;
9. Description of any reorganisation of the businesses within the group throughout the period of time for which the transfer documentation file has been prepared;
10. General description of the research and development activity of the group, if applicable;
11. Description of the advance pricing agreements concluded by the taxpayer / payer or by other companies within the group, except for those issued by the National Agency for Fiscal Administration.

(B) Information on the taxpayer / payer:

1. Organisational, legal and operational structure of the taxpayer / payer (a list of the affiliated persons, including the permanent head offices and their identification information), geographical location of the affiliated persons, specification of the direct and indirect affiliation relationships of the taxpayer / payer for the period of

time for which the transfer documentation file has been prepared, specifying the changes occurred;

2. General description of taxpayer's / payer's activity, business strategy, including changes in the business strategy throughout the period of time for which the transfer documentation file has been prepared;
3. Description of the transactions concluded with each affiliated person and the context of their conclusion;
4. Description of the transfer pricing policy of the taxpayer / payer;
5. Description of the implementation methodology of transfer pricing for the transactions concluded by the taxpayer / payer with the affiliated persons;
6. Description of the research / development activity of the taxpayer / payer, where applicable;
7. General description of the transfer pricing policy relating to the intra-group financing services of the taxpayer / payer with the affiliated persons, presenting the financing agreements concluded with both affiliated persons and independent creditors, where applicable;
8. Description of any agreements concluded by the taxpayer / payer with affiliated persons, relating to cost contribution arrangements;
9. Description of the transactions consisting of intra-group services and the presentation of cost allocation formulas, as applicable, identifying the services that significantly and definingly contribute to the creation of the value added;
10. Description of the main outlets for tangible assets delivery / services supply of the taxpayer / payer with the affiliated persons;
11. Description of the transactions related to any potential reorganisation of businesses of the taxpayer / payer in question throughout the period of time for which the transfer pricing documentation file has been prepared;
12. Detailed description of the transactions with the affiliated persons:

a) transaction flow;
b) invoice flow;
c) value of transactions concluded with affiliated person(s);
d) value of payments / collection corresponding to each of the transactions concluded by the taxpayer / payer with every affiliated person.

13. Detailed description of the functional analysis and of the comparability analysis:

a) characteristics of tangible or intangible goods or services, including those of the financing services being the object of the transaction(s) with the affiliated persons;
b) specific business strategies (e.g.: market penetration strategies, extraordinary events, etc.);
c) functions performed, risks assumed and assets employed by the taxpayer / payer and the affiliated person(s) for the concluded transactions;
d) contractual terms of the transaction(s), with copies of the contracts / agreements underlying the conclusion of the transaction(s) with the affiliated persons attached;
e) special economic circumstances of the transaction(s);
f) comparability analysis: information referring to international or domestic comparable transactions (description of the search strategy for comparable companies and sources of information, description of the values of the financial indicators used in the comparability analysis, description of the potential comparability adjustments, list of comparable companies and list of the companies excluded from the comparability sample, as a result of a manual search, stating the reasons for exclusion, etc.). The justification for the observance of the market value principle shall rely on the information made available by the taxpayer / payer in a reasonable manner in the transfer price documentation / transfer pricing, providing the supporting documents for this purpose;
g) description of the critical assumptions underlying the transfer pricing policy;
h) description of the reasons based on which a multiannual analysis or an annual analysis of the comparable information, whichever applicable, has been approached;

14. Description of the transfer pricing method for each transaction and the justification for its selection criteria; for the transfer pricing methods applying to the selection of the tested party, the justification for its selection criteria shall be presented;
15. Description of the unilateral or bilateral / multilateral advance pricing agreements related to the transaction(s) concluded and in which the National Agency for Fiscal Administration is not a party;
16. Description of other information which may be relevant to the taxpayer / payer.

Contributed by
Karina Nicolau, KG Audit & Accounting
office@kgaudit.ro

Singapore

Common Reporting Standard

A World Without Secrets

There has been a fair bit of brouhaha over the impact that FATCA has had on the financial affairs of US persons and the financial institutions that engage them as clients. That din barely having died down, UK FATCA burst onto the scene targeting UK citizens based in the UK's Crown Dependencies and Overseas Territories. And now it seems the rest of us may well need to sit up and start taking notice too. That is because a new global FATCA-style information exchange initiative called the Common Reporting Standard (CRS) is being drawn up by the Organisation for Economic Co-operation and Development (OECD) which will impact individuals of all nationalities.

So what exactly is CRS and Why Now ?

The recent leaking of the "Panama Papers" demonstrates the prevalence of the use of far-flung offshore jurisdictions, some constituting nothing more than a collection of picturesque beaches with fringing palms, as a means of parking funds away from the prying eyes of tax authorities worldwide. Increasing capital mobility across borders in tandem with an unprecedented growth in wealth that has accompanied the booming economies of the emerging world means such jurisdictions have never been more attractive. Indeed, it has never been easier for the wealthy global elite to move money and investments across national borders and as an extension for them to hide their money abroad to evade taxes.

Against this backdrop, CRS essentially aims to facilitate the "automatic" exchange of information among countries to counter such evasion. The CRS requires jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information required to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as the common due diligence procedures to be followed by financial institutions.

The financial institutions covered by the standard include banks, custodians, brokers, certain collective investment vehicles, trusts and certain insurance companies. The financial information to be reported include interest, dividends, account balance, income from certain insurance products, sales proceeds from financial assets and other income generated with respect to assets held in the account or payments made with respect to the account.

Such information is required to be reported for the 'reportable accounts' which means accounts held by any individual who is a resident for tax purposes in the reportable country. The standard also requires financial institutions to "look through" passive entities (including trusts and foundations) to report on the relevant controlling persons.

> This will all no doubt have a huge impact on financial institutions in general given the wide scope of CRS and the need to identify customers from the participating jurisdictions for whom reporting will be done as well as customers from jurisdictions which will be adopting CRS in the coming years.

Which are the jurisdictions covered under CRS?

More than 50 jurisdictions (known as the "Early Adopters") across the world have committed to first exchange of information under CRS in 2017. These include the United Kingdom along with its Crown Dependencies and Overseas Territories as well as tax havens like the Cayman Islands, Cyprus, Liechtenstein, Luxembourg and Seychelles amongst others.

Hot on their heels, more than 40 other jurisdictions have committed to first exchange information under CRS in 2018. These include key business and banking hubs such as Singapore, Hong Kong and Switzerland. There was an initial hesitation from Panama to commit to CRS, however on 11 May 2016, OECD announced Panama's commitment, taking the number to 101 jurisdictions. Interestingly, the US has not indicated any commitment to the CRS given that it has already entered into various bilateral Inter Governmental Agreements (IGAs) with other participating countries for implementation of FATCA.

Singapore's commitment to CRS

As stated above, Singapore has indicated its commitment to CRS in 2018 by signing bilateral Competent Authority Agreements (CAAs) with other jurisdictions.

Indeed, Singapore had, on 1 March 2016, released draft legislative amendments for public consultation. The draft Bill makes clear that the existing Automatic Exchange of Financial Account Information (AEOI) provisions in the Income Tax Act, which were earlier introduced to implement the Singapore-United States FATCA IGA, will also be applicable to any other AEOI agreement that is in accordance with the CRS. This will enable the signing of CAAs with other jurisdictions to implement AEOI under the CRS.

Conclusion

The CRS may not necessarily be a game changer in the ever widening pursuit to combat tax evasion but it does ratchet those efforts up by a significant notch. Suspicious jurisdictions, dodgy dealings and shady structures will always be around. What the CRS aims to do is shine yet another spotlight on the darker corners of our global tax landscape by enabling the sharing of vital information globally among tax administrators. And by the looks of it, such a measure has arrived none too soon.

Contributed by

Lam Fong Kiew, Nexia TS
lamfongkiew@nexiats.com.sg

South Africa

Another tax amnesty for South Africa

The release of the 'Panama Papers' to the world, has made the man in the street aware of tax havens where rich taxpayers are able to move their funds and so be taxed in an advantageous manner. One must stress that all monies that find their way to tax havens are not 'dirty money' and may have legitimately been placed there. However, certain politicians and influential people have found it necessary to resign from their positions of power. More resignations may follow.

With the advent of terrorism, drugs and tax evasion, amongst others, it is evident that it is in the best interests of all governments to be part of a new global standard where an automatic exchange of information is shared amongst tax authorities. More than 100 countries have signed up for a tax co-operation agreement introduced by the Organisation for Economic Co-operation and Development (OECD). From September 2017, this data sharing will happen. As most tax havens have agreed to supply this information, it will make keeping undisclosed accounts very risky. Furthermore, with the global economic downturn of 2008 and the slow recovery of the world economies, all revenue authorities are searching for additional taxes to balance their annual budgets.

The South African Treasury (SARS) and South African Reserve Bank (SARB), are offering a six month period between 1 October 2016 and 31 March 2017, for those with undisclosed offshore income and assets to regularise their affairs.

This is no different in South Africa (SA), especially when 4% of the population is paying 70% of the income tax. The global consensus is that the optimal rate for VAT is seen at between 15% and 20%. The present VAT rate in SA is 14% and a 1% increase in this rate will generate an additional R20 billion at no additional cost.

On 3 August 2016, SA will go to the polls for the Municipal elections and there will never be a VAT increase in an election year. There are hints from Treasury that a VAT increase is being seriously considered for the 2017/2018 tax year.
It is therefore important that SA explore ways of increasing the tax collected and during his Annual Budget Speech on 24 February 2016, the Minister of Finance, Pravin Gordhan, announced a third tax amnesty; a Special Voluntary Disclosure Programme (SVDP). It has been termed a tax amnesty or an exchange control amnesty. It is a chance for non-compliant taxpayers to disclose their offshore assets and income.

The South African Treasury (SARS) and South African Reserve Bank (SARB), are offering a six month period between 1 October 2016 and 31 March 2017, for those with undisclosed offshore income and assets to regularise their affairs. The amnesty applies to individuals and companies but not trusts in general. The full details have not been announced and clarity on the treatment of testamentary trusts may be provided later. However, it is thought that settlers, donors, deceased estates or beneficiaries of foreign discretionary trusts, can participate in the amnesty programme if they are willing to have the trusts' offshore assets and income to be deemed to be held by them in SA.

Treasury has warned that those who do not avail themselves of the amnesty offer, 'will face the full force of the law'. South Africa has an ongoing voluntary disclosure programme (VDP), which provides relief for penalties and criminal sanction. It is thought that this new amnesty must go further, otherwise there would be no reason to implement it on 1 October 2016.

The relief is thought not to be too generous as half of the money used to buy the offshore asset will be taxed at normal tax rates in SA. There will be confusion because if the asset was acquired from capital funds irregularly exported out of the country, then there will be a form of double taxation, before and after regularisation, which would seem unfair. The threat of criminal sanction may finally influence the taxpayers' decision.

It is thought that the proposed amnesty will exempt any investment income prior to 1 March 2010 and only investment income from these previously undisclosed offshore assets will be taxed from 1 March 2010. As in previous amnesties (there have been two, in 2003 and 2010), a levy of 5% will be imposed on the leviable amount of the undeclared offshore assets or the proceeds of their sale, if repatriated to South Africa. A 10% levy, will be imposed on the leviable amount, if the regularised assets are kept offshore.

Another requirement is that the levy must be paid from foreign sourced funds. If there are insufficient liquid foreign funds available to settle the levy, then an additional 2% will be added to the extent that local assets are utilised to settle the levy. It is further stated that South African taxpayers will not be allowed to use their annual foreign capital allowance of R10 million to reduce the leviable amount.

Contributed by
Patrick Ross, Nexia Cape Town
Patrick@nexiasa.com

Switzerland

Change of status for companies with tax privileges

Background

Faced with pressure from the European Union and the OECD, Switzerland has decided to subject corporate taxation to fundamental reform in the coming years. The objective of the so-called 'Corporate Tax Reform III' (CTR III) is to abolish the status of tax privileged special status companies and to introduce fiscal countermeasures for increasing the competitiveness of Switzerland as a corporate location. The abolition of special status companies affects, amongst others, holding companies, so-called mixed companies and domiciliary companies[1] . The legislative proposal of the Swiss Federal Council for CTR III has been debated in Parliament for several months now.

It is already possible today for those companies concerned to voluntarily relinquish their special status and thus cause the change of status from privileged to ordinary taxation on their own behalf. With regard to tax planning, it is interesting to note that, in certain cases, an early, voluntary change of status can be advantageous. Once the CTR III is implemented, the change of status will become mandatory for the remaining tax-privileged companies.

If the tax privileges no longer apply (change of status), the question arises for the companies concerned as to how hidden reserves that were generated during the time of tax privileges are to be treated. Will the realisation of these hidden reserves in the future be subject to ordinary or privileged taxation? The hidden reserves of real estate and of investments in qualified participations remain generally unaffected by a change of status. However, an interesting issue arises from the latter hidden reserves if valuation allowances on the investments have been carried out during the time of tax privileges.

Applicable law

In case of a change of status, the tax treatment of hidden reserves differs according to the canton. However, in principle, two models apply, as outlined in the following:

- Step-up in basis of assets comprising hidden reserves generated during the time of tax privilege ("step-up" model): The hidden reserves are realised for tax purposes by way of a step-up in basis at the time of the change of status. The assets concerned are then depreciated over a specified period of time. These processes will only be represented in the tax balance sheet, i.e. no commercial accounting takes place. Depending on the canton, however, the step-up in basis is subject to minimal taxation or is tax-neutral. Depreciation of the realised hidden reserves causes a reduction in the taxable profit at cantonal level.
- Determination of hidden reserves generated during the time of tax privilege ("pro memoria" model): The amount of hidden reserves is determined at the time of the change of status. When realised at a later point in time, the hidden reserves are not, or only partly, subject to ordinary taxation, as they were generated during the time of tax privilege.

If the tax privileges no longer apply (change of status), the question arises for the companies concerned as to how hidden reserves that were generated during the time of tax privileges are to be treated.

The arrangement of these two models differs according to the individual canton, which raises the following key questions: Which valuation method will be used to quantify the hidden reserves? How is self-generated goodwill treated? How long is the transitional effect (e.g. depreciation period)? How will possible tax losses be treated?

What should also be pointed out are two special effects of the "step-up" model: (i) Companies that apply accounting standards according to the principle of "true and fair view" (e.g. IFRS, US GAAP) are subject to a one-time effect in the form of deferred tax income as the result of the step-up in basis. (ii) The tax basis for annual capital tax, which in the future will no longer be calculated using privileged tax rates, is increased by the "step-up".

The CTR III proposal

The CTR III draft proposes a uniform regulation for all cantons in the treatment of hidden reserves where there is a change of status. According to the proposal, it is intended that the amount of hidden reserves be determined at the time of the change of status ("pro memoria" model). It is thereby expressly stated that hidden reserves will also include

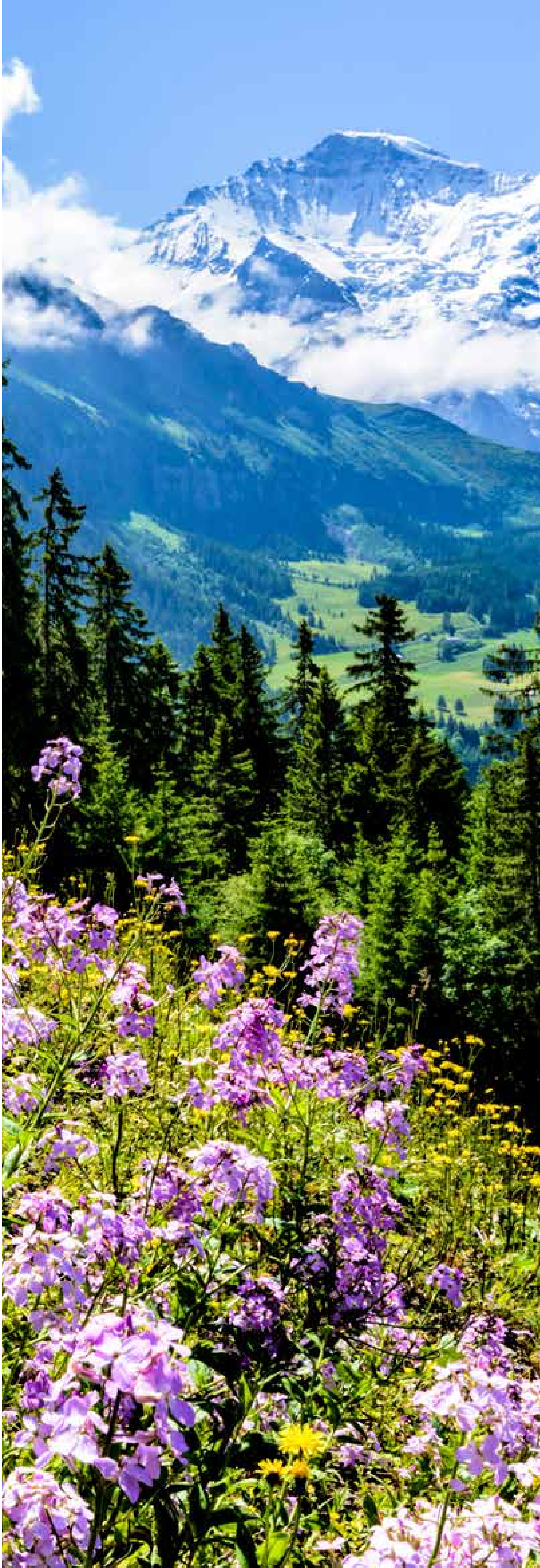
1 Corporate income taxes in Switzerland consist of federal tax and cantonal taxes. However, these tax privileges exist at cantonal level only. While the federal tax rate is approx. 8%, the standard rate for cantonal taxes varies from approx. 4% to 16% depending on location. Altogether this equates to an ordinary (i.e. not considering any tax privileges) effective tax rate of between 12% and 24%.

self-generated goodwill. Insofar as the determined hidden reserves are realised within five years following the change of status, they will be subject to a special, lower taxation. The level of special tax rate applicable during the five-year period will be determined by each canton individually.

Tax planning?

As described above, there are some significant differences between the practices of the cantons and the proposal according to the CTR III. It is therefore worthwhile for those companies concerned to compare the scenario of an early voluntary change of status with the model according to the CTR III based on the actual circumstances and budget figures. The step-up model appears to be generally more advantageous since all hidden reserves can be used (no expiration after five years). In the model according to the CTR III, the particular question arises as to if and how the determined hidden reserves can be realised within five years. It is still not clear when the CTR III will be implemented. Due to the announced referendum, we assume that the earliest date that the reform will come into force will be 1 January 2018. There will also be a two-year transitional period for cantons to adapt to the new law. Thus, there is still sufficient time to plan and implement the change of status for taxation.

Contributed by
Mathias Haeni and Fabian Duss,
ADB Altorfer Duss & Beilstein AG
mathias.haeni@adbtax.ch, fabian.duss@adbtax.ch



Tunisia

New Investment Code: Export? Don't know!

See how some senior State officials get excited at the arrival of the new Investment Code, it is expected that in-bound investment will take off and transform Tunisia into an African version of Singapore. We dare to believe it if we can banish negative thoughts and keep an optimistic spirit for our country.

A cornerstone of the Tunisian industrial sector remains the exporting plan, as introduced, not without boldness, by the late Hédi Nouira in 1972 and cleverly perpetuated by the Investment Incentives Code.

But to achieve this, one must not only set new and ambitious targets, but also safeguard achievements, i.e. ensure sustainability of existing companies and in particular Entreprises totalement exportatrices 'ETE' (Totally exporting companies).

A cornerstone of the Tunisian industrial sector remains the exporting plan, as introduced, not without boldness, by the late Hédi Nouira in 1972 and cleverly perpetuated by the Investment Incentives Code. Such regime, strongly contributing to the supply of currency in the country, has been successful for a range of industries, from classic garment enterprises to those operating in aeronautics.

According to data from the Agency for the Promotion of Industry and Innovation (APII) in 2010 (being before the start of the post-revolution crisis), the ETE constitute 48% of the industrial sector but nevertheless represent 65% of the total workforce employed in the industrial sector (>300,000 jobs). In recent years, the ETE assimilated without difficulty the new taxes and contributions, whether direct (Income Taxes - Impôts sur les sociétés ("IS") - rate for ETE companies is 10%, withholding on dividends of 5%) but also indirect (withholding taxes on royalty and fees paid abroad for 15% or at a lower rate according to Double Tax Treaties), which allowed the State to have significant financial windfalls to meet its budget deficits (in addition to significant social contributions).

But against all the odds, the new Investment Code, whilst encouraging regional development or sectors considered as of national interest, will not include any chapter to encourage export.This is confirmed by Article 9 of the bill enacting the new Code, which states: "Articles 10 to 17 of the Investment Incentives Code shall be applied until 31 December 2016 subject to the provisions of Article 20 of the 2013 Finance Act. Whilst ETE enjoying a full exemption from tax will continue to benefit until the expiration of the ten-year period following their entry into production, all ETE will lose the advantages conferred by sections 10 to 17 of the current Code. Thus, it would be interesting to dwell below on the most important ones, because their consequences are very debilitating, if not disastrous.

Article 10 (definition of the concept of export): "are considered ETE the companies whose production is entirely destined abroad or those performing overseas service delivery or with production in Tunisia for use abroad (...). Also considered ETE the companies working exclusively with companies mentioned in the first paragraph of this Article. " With the extinction of such provision, reference has to be to the common law, including Article 39-V of the tax code (defining export operations as subject to the corporation tax rate of 10% according to Article 49-I). With the substitution of such article, two consequences follow:

Indirect export is no longer recognized:

The end of indirect export means that thousands of supplier companies of ETE will suddenly be taxed at the full common IS rate of 25%, instead of the privileged rate of 0% or 10%, resulting in a total reappraisal of their business plans. So how will the State deal with the internationally renowned groups, that Tunisia had so much trouble attracting (through the premium mechanism for regional development, the sale of land at the symbolic dinar ...) and have connected them to multiple contractors?

But against all the odds, the new Investment Code, whilst encouraging regional development or sectors considered as of national interest, will not include any chapter to encourage export.

The export of assembled products is no longer an export:

Unlike the current Code, which recognizes the assembly as an export activity, the common system considers as an export only when the product sold abroad is a local production, i.e. with an integration rate of 40% and is thus coded with a certificate of origin.

To better illustrate the two abovementioned consequences, consider the following 4 companies:

- A company that produces electronic components and sells them to an ETE for manufacturing;
- Company B, which assembles electronic components

imported from abroad and exports the finished product;
- Company C, which manufactures shirts for export with imported fabric ;
- Company D, which makes clothing items on behalf of an exporter garment maker.

With the extinction of Article 10 of the current Code, Companies A, B, C and D will no longer be regarded as exporters.

Article 11 (definition of the customs regime) provides that "exporting companies are governed by the customs regime of economic activity parks (formerly called free zones)". In practice, an ETE is considered by Customs as a free point or extra territorial customs area, allowing it to import machinery and other inputs without going through customs formalities at the port or the airport and without paying customs duties and VAT, and also export the output by completing the formalities with the customs agent assigned to his building. This procedure allows an expeditious transaction to meet the tight deadlines imposed by foreign contractors and to avoid the rather stringent penalties.

With the removal of such an article, an ETE would have to accommodate the common rules of the Article 143 of the Customs Code concerning the regime of bond note, or the exceptional rules of the Article 145 of the same code (but under which conditions?) .

Article 12 (Taxes and duties to which the ETE are subject): Without going into the details of such article, two main conclusions emerge:

First, under such an article, ETE are not subject to VAT. And it is under such an article that any ETE gets from the Tax Administration an authorization of VAT suspension purchases for goods and services necessary for its operation. This is logical, since such companies do not charge VAT on their export sales. With the removal of Article 12 of the current Code, reference should be made to the common law, and specifically Article 11 of the VAT Code, which provides the possibility to obtain a certificate of VAT suspension purchase in case of export operation. However, the procedure can be blocked if the applicant company does not meet the definition of exporter under common law as aforesaid. Furthermore, with the introduction of Article 47 of 2016 Finance Law (which imposes a new immediate VAT credit restitution procedure for pilot enterprises who are required to leave their VAT suspension regime), it is expected that such restitution procedures will be widespread very soon. But it would be difficult to envisage the ability of the State to immediately repay any VAT credit, especially in view of the recurrent budget crisis that has faced the country for years.

Second, under Article 7a of the 94-42 law on "Sociétés de Commerce International" ("SCI"), (International trade companies), the SCI operating under the ETE regime enjoy the benefits provided by the present Code to exporting companies. With the removal of Article 12 of the current Code, totally exporting SCI will no longer enjoy the benefit of the corporation tax rate of 0% or 10% as related to an export regime. Thus, the State must rectify such failure if it wants to keep a minimum of credibility with investors already involved in their projects. This is also likely to mean the early loss of such companies, which the Centre de promotion des exportations (CEPEX) has long encouraged and recognized as one of the forces of both the Tunisian export economy and also of the foreign direct investment in Tunisia.

Article 14 (non-resident regime): The current Code clearly provides that an ETE is regarded as not resident with respect to the Exchange Act (commonly defined as "Off-shore") as long as its capital is held, for at least 66% by non-resident persons. Given the silence observed by the draft of the new Code, it raises questions as to the loss of the advantage of being an offshore ETE. This is already reflected in practice by the delays increasingly observed when performing transfers abroad through offshore companies (e.g. by applying to them the Tunisian Central bank (BCT) circular number 93-17, related to the transfer of dividends to non-resident shareholders, even though such circular does not apply to offshore companies).

Thus, given the observed silence of economic operators, both private (Companies, chambers of commerce, the Tunisian Union of Industry, Commerce and Craft - UTICA) and public (APII, CEPEX, the Foreign Investment Promotion Agency), this new code will gradually begin to suffocate the Tunisian export market, even finish it. What do we have left? No one knows.

Contributed by:
Mourad Abdelmoula, AFINCO
mourad@afinco.net

Ukraine

Legislative Measures in Order to Stabilize and Improve Current Economic Situation

The National Bank of Ukraine, the Cabinet of Ministers of Ukraine and the Parliament of Ukraine apply a number of measures, especially in the fields of currency regulation and taxation, in order to stabilize the financial and economic situation of the country after the political crisis in 2014 and current military actions against the Russian army forces in the Eastern part of Ukraine. At the same time, the new President and Government elaborated a number of changes to the tax legislation in order to facilitate tax administration and improve the economic situation. As a result Ukraine improved its place in the Worldwide Doing Business ranking for the last 3 years by 29 (!) points, having gained position 83 in 2015.

Currency control

Among the major changes in currency regulation there are:

- payments involving foreign economic transactions on export and import shall be done within a period that does not exceed 90 calendar days;
- 75% of foreign exchange earnings from abroad in favour of legal entities and individual persons - entrepreneurs - (with few exceptions) shall be sold on a compulsory basis on the interbank currency market of Ukraine. The remaining foreign exchange earnings shall remain at the disposal of the entities. The foreign exchange earnings that are subject to mandatory sale include: income from export contracts, loans, borrowings, etc. in the following currencies: AUD, GBP, DKK, USD, ISK, CAD, NOK, SEK, CHF, JPY, EUR and RUB;
- prepayment of loans granted to a resident from a non-resident is prohibited;
- it is forbidden to purchase and/or transfer foreign currency with the aim of:
  –returning dividends abroad to a foreign investor;
  –returning the funds abroad received by foreign investors as a result of the following transactions: a) reduction of the charter capital of legal entities, b) exit from the business partnerships, c) sale of legal entities' corporate rights that are not formed in shares.

Corporate income tax (CIT)

From 1 January 2015, the reporting tax base is Net Profit Before Tax (NPBT) as per the accounting records, either Ukrainian statutory or IFRS, adjusted for tax differences:
NPBT – Tax losses of previous periods +\– Differences, determined by Tax code of Ukraine = CIT base
Tax for the tax reporting period is calculated using the following formula:
CIT base × Tax rate (basic 18%) – Amount of accrued and paid immovable property tax = CIT

As a result Ukraine improved its place in the Worldwide Doing Business ranking for the last 3 years by 29 (!) points, having gained position 83 in 2015.

Generally the reporting period for 2016 is a calendar quarter. Agricultural producers can choose an annual reporting period that begins from July 1st of the current year and finishes on June 30th of the next year.
The Annual tax (reporting) period is set for the following taxpayers:

- newly established company;
- agricultural producers;
- taxpayers, whose annual revenue for the previous year does not exceed UAH 20 million.

As of 1 January 2016, the basic CIT rate is 18%. The reduced rates of 0% or 3% apply to qualified insurance activities.

Value Added Tax (VAT)

Taxpayers are residents, both individual persons and legal entities, which operate in Ukraine (including a permanent establishment of a non-resident) and persons who import goods into the customs territory of Ukraine. This tax is also paid by persons who are receiving consulting, engineering, legal, advertising and other services from a non-resident with a place of supply within the customs territory of Ukraine.

The "Threshold" of mandatory registration of an entity as a VAT payer is set at the amount of UAH 1 million of taxable supplies during the last 12 calendar months.

The VAT base is determined as the contractual value of goods or services, but it should not be lower than the purchase price (or lower than market prices) of such goods/services or the book value of fixed assets. The taxable amount shall include all state taxes, with some exceptions.

For imported goods, the tax base is the contractual value, but it should not be lower than the customs value of the goods

(that includes import duties and excise tax).
There are three possible tax rates: standard (20%), reduced (7%) and zero (0%).

The tax invoice is electronically formed by the supplier (counterparty) for each supply and shall be registered in the tax authority database. The VAT return should be submitted only in electronic form.

Since 2015, VAT amounts – that shall be paid as tax – should be accumulated in the relevant taxpayers' accounts at the State treasury service of Ukraine. The system also provides a special order of funds spent from this account. All tax payer transactions that have an impact on the VAT records shall be registered in the electronic database of the State fiscal service of Ukraine.

Transfer pricing

Controlled business transactions include transactions of companies:

- where the annual income from any activity (on the basis of the accounting data) exceeded UAH 50 million;
- where the volume of business transactions with each counterparty exceeded UAH 5 million.

In order to be considered as controlled, a business transaction must be carried out:

- with a counterparty - non- resident - related to the Ukrainian company;
- with a counterparty - non-resident who is a resident of a low-tax jurisdiction and Crimea (regardless of any connection with the Ukrainian company);
- with a counterparty - non-resident-commissioner, regardless of any connection with the Ukrainian company;
- with a counterparty - non-resident - related to the Ukrainian company, if between them there exists a number/chain of unrelated persons that do not carry out significant functions\risks.

TP regulations apply to corporate income tax only.

Taxpayers which performed controlled transactions in 2015:

- and the volume of business with one contactor exceeds UAH 5 million - shall submit a Report on controlled transactions (by the 1st of May 2016),
- shall maintain and keep TP documentation.

Taxation of individuals

Unified social contribution (USC)
USC is a consolidated insurance fee and is paid under the system of compulsory state social insurance.
The employer calculates the fee on the basis of the payroll fund. The USC rate has decreased significantly to 22%; for disabled workers the rate is 8.41%. The USC accrued by the employer is deductible for CIT purposes.

USC is not deducted from the wages of foreign citizens who work in the representative offices of foreign companies located in Ukraine.

Immovable property tax
Tax rates and additional benefits, as established in the Tax Code, are set by the local authorities at the location of the property. The maximum tax rate for the year 2016 is UAH 41.34 per square meter.
Individuals do not pay tax if the size of the real estate does not exceed:

- 60 square meters for an apartment/apartments regardless of their quantity;
- 120 square meters for a house/houses regardless of their quantity;
- 180 square meters for various types of residential property, including all of their parts.

Tax on real estate (except the land plot) is paid by owners of residential and non-residential property, including non-residents.

If an individual owns a property which size exceeds 300 square meters (for an apartment) and/or 500 square meters (for a house) then tax liabilities increase by UAH 25,000 per year for the each mentioned above object of residential property (and their parts).

Transport tax
The tax base is the cars that were produced not more than five years ago with an average market price in the year 2016 of more than UAH1,033,500. The annual tax rate is UAH 25,000 for each car.

Contributed by
Taras Polianskyi, Nexia DK
TarasPolianskyi@dk.ua

Events Planned for 2016 (so far)

- 8 – 11 June: International Tax Conference, Boston, USA
- 7 – 9 July: International tax training course, Leiden, The Netherlands
- 7 – 9 July: Asia Pacific Regional Conference, Seoul, Korea
- 29 September – 1 October: Annual Conference, London, UK
- 20 – 21 October: EMEA Tax Group meeting, Berlin, Germany
- Early June 2017: International Tax Conference, Cologne, Germany

Notes

Notes

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CHARTERED PROFESSIONAL ACCOUNTANTS

Contact us

1200 - 609 Granville Street,
PO Box 10372, Pacific Centre
Vancouver, B.C. Canada V7Y 1G6

Tel: (604) 687-0947

Davidson-Co.com