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Contents

Introduction to Tax Link

Welcome to the Autumn edition of Tax Link.

This edition of Tax Link presents articles sourced from Nexia International's network of tax experts to provide insight into global issues, topics and trends. Due to the nature of the network the articles are diverse and offer current information for discussion and provide knowledge for practice.

With OECD BEPS being an ever trending topic a number of the articles cover the specifics and general views from different country perspectives. The articles see China's latest effort to incorporate OECD BEPS concepts into its special tax investigation and adjustment procedures, India's journey in the adoptions of BEPS and the Swiss outlook on transfer pricing and development of BEPS procedures amongst others articles. The UK discusses the updates from the Finance Bill and recent tax updates, whilst the US provides an overview of Trump and taxes.

Once again I must extend a huge thank you to all the contributors and the publication team for their commitment in producing this Tax Link publication.

If you would like any further information on the topics in this edition, the contributor's details are provided for each article and they are happy to give further detail.

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China

Update to China Special Tax Adjustment Regulations

China's latest effort to incorporate OECD BEPS concepts into its special tax investigation and adjustment procedures are detailed in the new State Administration of Taxation (SAT) Announcement 6, which took effect on May 1, 2017. Following on the BEPS-inspired transfer pricing compliance requirements released in Announcement 42 last year, Announcement 6 consolidates a number of previously released regulations related to outbound payments for royalties or service fees, and introduces many of the BEPS Actions 8 - 10 concepts into the regulations. The scope of the announcement includes transfer pricing, thin capitalization, controlled foreign companies (CFCs) and general anti-avoidance rules (GAAR), and also details the rationale and methods to be used in transfer pricing audits and tax investigations. Regulations have been expanded to include inbound royalty or service payments as well, targeting Chinese companies that participate in outbound investment. The regulations also clarify that any foreign company doing business in China may be investigated, especially where cases involve CFC or GAAR issues. Given the comprehensive nature of Announcement 6, taxpayers in China should find a clearer understanding of SAT interpretations and practices. In this article we outline several highlights of the announcement.

Parties at Risk

The announcement specifies that special tax investigations may be targeted at taxpayers who:

1. Engage in a large number and/or varied types of related party transactions;
2. Incur long-term losses, low profits or non-linear profits;
3. Report profits lower than the industry norm;
4. Have profit levels that do not match the functional risks borne, or where the earnings shared do not match the shared costs;
5. Engage in transactions with related parties located in low tax countries/regions;
6. Fail to declare related party transactions or prepare contemporaneous documentation where required;
7. Exceed the stipulated standards for debt to equity ratio;
8. Are controlled by a CFC with actual tax burden lower than 12.5% and do not distribute profit without reasonable business needs; or
9. Implement tax planning or other arrangements that do not have reasonable business objectives.

Transfer Pricing Methods

Announcement 6 states that in any comparability analysis, acceptable transfer pricing methods include the comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the transactional net margin method (TNMM), the profits split method, and other arm's length methods which reflect the principle that "the place where profit and economic activities occur matches the place of value creation." Each of the methods is described in detail with respect to when a given method should be used, the factors that should be considered in choosing, and how prices shall be calculated.

Intangible Assets

According to Announcement 6, any royalties or licensing fees collected or paid by an entity and its related parties for transfer or use rights of intangible assets must be commensurate with the economic benefits brought by the intangible assets to the entity or its related parties. Thus if the licensing fees do not match the economic benefits, but do reduce the taxable income of the entity, special tax adjustment may be implemented. Consistent with previous practices, the SAT also considers that the value of intangible assets like technical know-how or marketing intangibles is enhanced by the activities of Chinese subsidiaries engaged in sales or manufacturing. Again, in such cases special tax adjustment may be implemented. Unfortunately, the announcement does not provide details as to how Chinese entities may add to the value of intangibles, and in spite of an apparent adoption of the BEPS approach in the document, it is assumed that future SAT interpretations in specific cases will be necessary for better understanding of how intangible assets shall be handled.

Service Fees Between Related Parties

Reasonably consistent with previous regulations and the SAT's general position that any related party service transaction is high risk, Announcement 6 reiterates that service transactions between related parties must be both beneficial to the recipient and be conducted under the principle of independent transactions. That is, the service must be such that an independent entity would willingly pay for it or perform the service on its own, and the service must bring direct or indirect economic benefits to the recipient. Furthermore, the pricing of services must be carried out at arm's length, using an appropriate pricing method as listed above. Absent these required features, a related party transaction may be subject to special tax adjustment. The following services are automatically considered as being non-beneficial to the recipient:

1. Any service that has already been purchased or performed by the recipient;
2. Any service through which the provider controls, manages, or supervises in order to ensure or protect direct or indirect investment interests (such as board activities, financial report preparation or analysis, fund raising, etc.);
3. Any service not specifically implemented for the recipient, but which may derive additional profits for being affiliated with the related parties, such as group restructuring activities;
4. Any service that is compensated in other related party transactions, such as patent rights or loan services;
5. Any service unrelated to the functions performed and risks borne by the recipient; and
6. Any service that does not bring direct or indirect economic benefits to the recipient, or for which an independent party would be unwilling to purchase or provide on its own.

Unfortunately, Announcement 6 does not include descriptions of documentation that may be used to prove the economic benefits to the service recipient. It is therefore recommended that related party service recipients at a minimum enter into detailed service agreements that include the specific services and descriptions of the economic benefits derived from them.

Conclusion

While not perfect, SAT Announcement 6 goes a long way toward providing unambiguous regulatory guidance with respect to transfer pricing and related issues for both taxpayers and in-charge tax officials throughout China. As a result, it is predicted that tax investigation and adjustment practices in transfer pricing cases will be increasingly standardized from one tax bureau to the next. Likewise the reasonably close adherence to the related BEPS deliverables should help global businesses better understand how to plan and implement transfer pricing policies and practices so as to avoid special tax adjustment investigations in most types of related party transactions.

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France

Transfer pricing – the assessment of intangibles, the end of the tunnel?

Within the framework of the latest updates related to the Transfer Pricing Guidelines published in July 2017 by the Organization for Economic Co-operation and Development (OECD) in the Base Erosion and Profit Shifting (BEPS) project, France and the other OECD jurisdictions have been working on future steps to develop effective rules in accordance with the location of value creation in transactions within Multinational Enterprises (MNE) and Small and Medium Enterprises (SME).

As illustrated by the French jurisprudence on the eBay case[1], due to their value creation, intangible assets constitute one of the most challenging transfer pricing issues. Yet, since the release of the final report of the OECD on the tax challenges of the digital economy notably in October 2015, it seems that OECD jurisdictions still have difficulty transposing them to their national context. The current situation is unsatisfactory for both taxpayers and tax authorities since this legal uncertainty can create double taxation or double exemption.

However, by means of current thoughts on a suitable profit split method to valuate intangible assets, there are reasons for hope. Indeed, this wide project needs a general coordination (if not a harmonization) among countries on the definition and the valuation of intangibles, which seems to be triggered to some extent.

A definition of the intangibles to be outlined by OECD jurisdictions

It is noteworthy that transactions with intangibles are the core of the BEPS project. Nonetheless, most jurisdictions did not implement explicit definitions and rules regarding transactions with intangible assets. Sometimes, there are definitions covering specific areas like intellectual property, civil law or accounting. In France for instance, the provisions of section 38 quarter of Annex III of the French tax code refers to general accounting rules describing them as non-monetary assets without any physical substance.

In that sense, one of the purposes of the BEPS project is to provide a clear and uniform definition. According to the OECD report on actions 8-10, an intangible asset is "something which is not a physical asset or a financial asset, which is capable of being owned or controlled for use in commercial activities, and whose use or transfer would be compensated had it occurred in a transaction between independent parties in comparable circumstances". In that sense, the substance-over-form approach implies that tax is levied according to the economic substance (i.e. referring to the member of the MNE supporting costs, investments, risks and other burdens), ignoring the legal conditions of the transaction (i.e. the legal owner).

1 Highest French Administrative Court, 7 December 2016, n° 369814

France seems to go that route already, notably through the provisions of the article L. 64 of the French Tax procedure handbook related to the abuse of law in the event of the discovery of a legal agreement hiding a sole purpose of avoiding tax. This simple appearance can be set aside by the French Tax Authorities (FTA) to proceed with tax adjustments.

The implementation difficulties of the profit split method

The profit split method remains one of the transactional profit methods provided by the OECD, aiming at splitting profits or losses arising from transactions between affiliated enterprises on an economically valid basis, approximating the division of profits that would have been reflected in an agreement under the arm's length principle.

In the context of the intangibles, the profit split method requires integrated transactions, as well as unique and valuable contributions for MNE and SME. Plus, the value creation of intangible assets depends on functions with respect to their development, improvement, maintenance and protection by each incorporated enterprise. Besides, the input related to risk-taking and the legal/economic ownership must not be overpriced. In this way, services providers' remunerations of the intangible owner have to be determined precisely.

For their part and as can be expected, the FTA do not recommend any specific valuation method regarding intangibles, which creates an uncertain environment for enterprises. In 2006 in their transfer pricing guidelines and until now, the FTA approved any method as long as it is justified by the taxpayer. Nevertheless, the FTA recommend to make use of the profit split method as a last resort, meaning that the enterprise must have proved that the other pricing methods are not suitable (i.e. comparable uncontrolled price method, cost plus method, resale price method and transactional net margin method). In that sense, the profit split approach would be a "price checking method" (i.e. useful to confirm the main method of transfer pricing), more than a "price setting method". This position is shared by Germany, Australia, Spain and South Africa notably[2].

This current situation reveals the lack of data and/or data management at the level of tax authorities and their difficulty to provide practical solutions to the principles set out by the OECD. Indeed, the arm's length principle requires that affiliated parties determine their prices like unrelated parties.

2 General reports for « The future of transfer pricing », the International fiscal Association, 71st Congress, Rio de Janeiro 2017

In fact, the information on market practises is not necessarily available between unrelated parties and it is almost impossible to obtain information on the profitability level of a third party, resulting in a certain subjectivity of the method. In this way, allocation keys used by enterprises can easily be called into question by the FTA, which may lead to significant tax adjustments.

At the French level, it could be contemplated to make use of the country-by-country reporting (CbCR) codified at the article 223 quinquies C of the French tax code for MNE. This reporting uses similar indicators as the ones required for the profit split method like the turnover and salary costs. Moreover, the exchange of information between tax authorities provided by the CbCR notably may enhance transfer pricing data.

The need of coordination among countries, a way of ensuring fiscal security and really avoiding double taxation for MNE?

As explained above, due to the subjectivity and practical difficulties of the profit split method at an international level, a coordination among countries should be contemplated. It is noteworthy that a significant number of countries do not have profit split provisions or even do not have any position related to this method (e.g. Austria, Hungary, Argentina, Bolivia, Brazil, South Korea, New Zealand and Turkey).

At the European Union level, the work to be carried out on intangibles has been postponed until now. If the common consolidated corporate tax base (CCCTB) is finally set up, the tax environment of intangibles may be improved, which should have secondary effects on other BEPS projects like the adjustment of the concept of the permanent establishment on the basis of a digital presence. Concerning MNE themselves, identifying factors that contribute to value creation and creating appropriate cost contribution agreements may make progress too.

Without any coordination, one cannot avoid the fear of an increased risk of disputes and double taxation, which could have a significant impact. Indeed, tax audits are expected to be reinforced to prevent international tax avoidance, as much as the coordination between tax authorities to obtain reliable data on taxpayers. This situation can explain the shift in the BEPS project. In this context, making use of rulings, even unilateral, seems still to be the best way to secure transfer pricing methods in 2017.

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Update on Forfeiture of Tax Losses

Background: Change of Ownership Rules (Sec. 8c CTA)
For years from 2008 onwards a new rule came into force for the reduction of loss relief on change of shareholder in Sec. 8c Corporation Tax Act (CTA). Under this provision, loss carry forwards are permanently lost if more than 25 % of shares in a German corporation are transferred indirectly or directly to an acquirer or a related party within a period of five years. For transfers between 25 % and 50 % of shares within a period of five years, the carry forward amount is only forfeited proportionally to the percentage of shares transferred (Sec. 8c (1) sent. 1 CTA). Acquisitions of more than 50 % within the five year period result in the complete forfeiture of the loss carry forward (Sec. 8c (1) sent. 2 CTA). An "acquirer" can also be constituted by a group of acquirers with converging interests (Sec. 8c (1) sent. 3 CTA). If such a group of is deemed to exist, the shares acquired by the individual acquirers are aggregated for purpose of Sec. 8c (1) sent. 1 and 2 CTA. Since 1 January 2010 two exemptions have been introduced: Firstly, group internal reorganization scenarios are exempted from the loss curtailment provisions, if the vending company and the acquiring company are wholly owned, directly or indirectly, by the same ultimate shareholder. Secondly, the loss forfeiture rule does not apply to the extent that hidden reserves (difference between the shareholders' equity and the market value of the shares), which are taxable in Germany, cover the tax loss.

New Rule on Survival of Tax Losses by Election (Sec. 8d CTA)
Sec. 8d CTA provides that tax losses remain deductible despite a change of ownership if the company in question has carried on the same business for the last three tax periods before the harmful share transfer or since its foundation if it was founded less than three tax periods prior to the transaction. This rule applies to all changes of ownership as of 1 January 2016.

The abstract term "business" covers the entire business activity of the company with its consistent profit motivation and is determined by the following qualitative characteristics:

- offered services and products,
- customers and suppliers' base,
- markets served and
- qualification of the employees.

The tax losses will be forfeited after the transaction if any of the following harmful events occurs:

- termination of business activities
- change of business purpose
- taking up an additional or new business activity
- participation of the corporation in a co-entrepreneurship (trading partnership)
- corporation becomes parent in a German tax group
- contribution of assets into the loss corporation below fair market value.

Taxpayers should be aware of the fact that the entire losses are forfeited if such a harmful event takes place and not only pro rata in case of a partial share transfer. Also this rule contains an exception concerning the hidden reserves which could rescue the tax loss in case of harmful events.

Change of Ownership Rules in part unconstitutional
The Federal Constitutional Court (Bundesverfassungsgericht) has ruled in its decision of 29 March 2017 that the Change of Ownership Rules as they stood up to 31 December 2015 are in part unconstitutional. The Court argues that the pro rata loss forfeiture in case of transfers between 25 % and 50 % of shares (Sec. 8c (1) sent. 1 CTA) is incompatible with the general principle of equality under Art. 3 (1) Constitutional Law. The court ruling deems there to be no admissible justification for the pro rata loss forfeiture, especially under consideration of the fact that the mere transfer of shares does not imply a change in the corporation's economic capacity. The Introduction of the intra-group and hidden reserve exemptions in 2010 doesn't lead to another judgment.

The legislator is now forced to complete a revision of the rules in question in compliance with the constitution by 31 December 2018. The revised rules are then retroactively to be put into effect for the time period from 1 January 2008 until 31 December 2015. The legislator's failure of compliance with the court's deadline will result in the pro rata loss forfeiture being retroactively rendered invalid as of the date of its entry in force. Whether the total loss forfeiture in case of share transfers of more than 50 % (Sec. 8c (1) sent. 2 CTA) is constitutional or not remains unanswered by the court.

Requirements for Qualification as Group of Acquirers
Despite the decision of the Federal Constitutional Court concerning the unconstitutional rule in Sec. 8c (1) sent. 1 CTA, numerous legal questions regarding the Change of Ownership Rules remain. The German Federal Tax Court (Bundesfinanzhof) judges in its decision of 22 November 2016 when a group of acquirers with convergent interest in terms of Sec. 8c (1) sent. 3 CTA exist.

The Federal Ministry of Finance already assumes the existence of such a group of acquirers with convergent interest if an agreement has been reached between the parties. The convergent interest does not necessarily have to be concerned with the survival of the tax loss. The possibility of joint control of the corporation by the acquirers should also be an indicator of a group of acquirers.

The German Federal Tax Court's judgement does not coincide with the Federal Ministry's broad interpretation concerning a group of acquirer's arrangements. Arrangements concerning the acquisition date, purchase price and percentage of shareholding alone are deemed to be harmless according to the Federal Court. Furthermore, the Federal Court regards the simple possibility of control as insufficient. Rather, provisions for a uniform exercise of voting rights or the pooling of voting rights in the article of association can be seen as merely an indication of a group of acquirers. This also applies for an arrangement which rules the acting as a group after the date of the acquisition.

No Deduction of Final Permanent Establishment Losses Pursuant to EU Law
In a ruling of 22 February 2017 the German Federal Tax Court decided that final losses of foreign permanent establishments are not deductible despite the freedom of establishment under EU law. In the case at hand, a German corporation (GmbH) sold its shares of a German partnership (KG), which maintained a permanent establishment in Italy (PE-I), to another partner of the KG. Because of the expectation of future losses for the KG the GmbH had to pay a compensation to the acquiring partner. Under the Double Tax Treaty Italy (DTT-I) the exemption method applied to the income of the PE-I. The Court denied the deduction of the compensation to the extent that it related to the PE-I. The exemption method applies under the principle of symmetry to the positive and negative income of the PE-I. In light of the most recent judgment of the Court of Justice of the European Union (CJEU) in the Timac Agro case on 17 December 2015 the exemption of the deduction does not constitute a breach of the freedom of establishment anymore. Prior to the CJUE's ruling the BFH advanced the view that final permanent establishment losses had to be granted in Germany, as it would otherwise constitute an unconstitutional discrimination compared to losses of domestic establishments.

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India

Multilateral instrument: an ambitious step to tackle treaty shopping / BEPS

A step towards the adoption of BEPs

Developing countries like India often becomes a prey to the complex tax planning strategies adopted by MNC's which exploit the gaps and mismatches in the tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. Governments, tax authorities and social groups have been voicing their concern over the past decade that multinational enterprises are shifting profits to low tax jurisdictions where there is no or little value- creation, and consequently not paying their fair share of taxes. A need was felt globally to address and check the revenue leakage that were caused due to the rampant misuse of the existing principles enshrined in the domestic as well as the international tax laws.

The OECD Committee on Fiscal Affairs (CFA) conceptualized the Base Erosion and Profit Shifting (BEPS) project and which was endorsed by the G20 leaders in September in 2013. The OECD had formulated 15 Action Plans (AP) to accomplish the object of avoiding 'double non-taxation or lower taxation' opportunities being capitalized by MNC's based on the current bilateral tax treaties. Some of the APs required changes in the Domestic laws of the countries, some required changes in bilateral treaties and some require changes in both the domestic laws as well as the treaties.

India and BEPs

As a member of the G20 nations, India is an active participant in the BEPS project. The most common practices and structures identified by India from a BEPS perspective are:

1. Excessive payments to foreign- affiliated companies in respect of interest, service charges and royalties
2. Aggressive transfer pricing, including supply chain restructuring that contractually allocates risks and profits to affiliated companies in low tax jurisdictions
3. Digital enterprises facing zero or no taxation in view of the principle of residence based taxation;
4. Artificial avoidance of permanent establishment status
5. Treaty shopping: Incentives in the tax laws for attracting investment
6. Assets situated in India but owned by companies located in low tax jurisdictions with no substance.

The BEPS project is extremely relevant for India, especially the APs dealing with treaty abuse (AP 6), permanent establishment (AP 7), intangibles (AP 8-10), digital economy (AP 1), and transfer pricing documentation (AP 13) including the country-by-country reporting. While India is in its constant endeavor to modify its existing laws with pace of the global and dynamic nature of modern business models, it has already amended its domestic laws to give effect to two APs which are:

1. Action Plan 1 on digital economy
2. Action Plan 13 on country by country reporting.

In addition to the above, India has been actively renegotiating tax treaties with several jurisdictions with a sole purpose of avoiding the situation of "Double non-taxation". Fructified effort therein can be witnessed with the drastic amendments in the India-Mauritius tax treaty as well as India-Singapore tax treaty. Such amendments have caused seismic changes in the tax world.

Though the above amendment only highlights the mismatches that were evidently present in the domestic tax laws of India and the tax treaties entered by India, there exists, globally, a conscious need to ensure swift, coordinated and consistent implementation of treaty-related BEPS measures in a multilateral context. Amending more than 3,000 bilateral treaties would have taken numerous years by when the objectives of the BEPS project would be obsolete and the entire exercise of development of BEPS action plans would have become futile. Therefore, a need to formulate an instrument which could in one shot implement the tax-treaty related BEPS measures arose. This one shot tool to implement the tax-treaty related BEPS measures is the "Multilateral Instruments", AP-15.

Multilateral Instrument: The fastest way to strength Tax Treaties

The Multilateral Instrument (MLI) allows jurisdictions to swiftly implement measures to strengthen existing tax treaties to protect governments against tax avoidance strategies that inappropriately use tax treaties to artificially shift profits to low or no-tax locations. The MLI aims to put an end to treaty abuse and "treaty shopping" by transposing in existing tax treaties jurisdictions' commitment to minimally include in their tax treaties tools to ensure these treaties are used in accordance with their intended object and purpose.

Thus, MLI is an innovative mechanism that would allow a more coordinated approach with immediate effect, while retaining the flexibility required to implement these changes in a broadly consensual framework to tackle base erosion. Standardisation of choices within the MLI and obviating the need to individually renegotiate each treaty bilaterally are the biggest gains in effecting a quick solution to BEPS.

MLI, however, mandates meeting of certain minimum standards by the signatories. MLI consists of VII parts and 39 articles. The articles along with their corresponding BEPS AP and positions adopted by India are tabularized below:

Part of MLI	Description	Article of MLI	Corresponding BEPS Action Plan	Minimum Standard	India's Positions, being provisional in nature
I	Scope and Interpretation of Treaties	1 & 2	Not Applicable	Not Applicable	Not Applicable
II	Hybrid Mismatch Arrangements	3 to 5	Action Plan 2	No	Reserved the right not to apply it in entirety
III	Prevention of Treaty Abuse	6 to 11	Actiona Plan 6	Yes, along with option to adopt Simplified Limitation of Benefits (SLOB)	Opted for Principal Purpose Test (PPT) + SLOB
IV	Artificial Avoidance of PE	12 to 15	Action Plan 7	No	Opted for specific activity exemption and aggregation of contracts by closely related entities
V	Improving Dispute Resolution	16 & 17	Action Plan 14	Yes	Reserved the right not to apply it as existing countries contain similar provisions
VI	Arbitration	18 to 26	Not Applicable	No	Exercised the option to not to apply the part
VII	Final Provisions	27 to 39	Not Applicable	Not Applicable	Not Applicable

How the MLI will function?

MLI does not amend the tax treaties just like a protocol to a tax treaty. It acts as an instrument parallel to the existing tax treaties which the countries have till date entered into for avoidance of double taxation. Each country has to give list of the tax treaties to which intends to modify through MLI. The tax treaty shall get modified only if the other country has also listed its tax treaty with the first country as a "covered agreement". In order to apply the MLI, one would have to check the following documents: -

1. The MLI
2. Specific tax treaty so "covered" by the countries
3. The Position of one country under the MLI provisions
4. The Position of the other country under such MLI provisions

With respect to the optional provisions, for application of MLI, both the countries should adopt the same optional provision. However, a unilateral reservation made by a country would block the application of MLI provisions.

Present Position of MLI

As on July 11th 2017, the MLI has been signed by 69 signatories, covering 70 jurisdictions. These jurisdictions include United Kingdom, Canada, Germany, India, Italy and Russia, with their separate reservations, significant jurisdictions such as the United States and Brazil have not signed the MLI.

Overall impact of MLI on businesses

With various options and reservations accorded to the countries, the interpretation of the MLI would be subjective and more prone to litigation. MNCs operating across the jurisdictions may have to reconstruct/restructure their existing transactions/deals. A thorough analysis would be required as the claiming of the treaty benefits has become more and more of a factual exercise.

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Malta

Malta's tax aspects of yachting and aviation

Whilst retaining its largest shipping register in Europe, Malta has in recent years also become a jurisdiction of choice in the fields of aircraft maintenance, registration and also aircraft leasing.

A number of factors have contributed to Malta's success, one of which is the attractive, flexible and efficient tax system, which was formally sanctioned by the EU Commission. Apart from the robust tax regime, Malta is also a Member of the European Union and has adopted the Euro currency. These factors have made Malta a reputable centre for international business in the Mediterranean region.

Malta's tax refund system
As part of its tax system Malta has a system of tax refunds in its fiscal legislation. This apart from Malta's full imputation system which eliminates economic taxation on dividend income.

Maltese resident companies, including a foreign company with a branch in Malta, are subject to tax on their profits at the corporate tax rate of 35%. With Malta's tax refund system, upon a subsequent distribution of these taxed profits, whether derived from local or foreign sources (other than from immovable property situated in Malta), the shareholders of the Malta company would be entitled to a full or partial refund of the tax paid by the company, generally resulting in an effective Malta tax charge of between 0% and 6.25%.

Malta's yacht leasing structures
The Malta VAT Department issued guidelines which set out that the VAT rate on the lease payments in an approved yacht leasing structure will be reduced by a predetermined percentage depending on the size of the yacht. The VAT Department must give its consent to a yacht lease agreement in order for the guidelines to apply. Whether the yacht is acquired locally, from another EU member state or imported into Malta, VAT due would be refundable on the basis that the yacht will be used for an economic activity. Yacht leasing is considered as a supply of services for VAT purposes and hence, where the yacht is put at the disposal of the customer in Malta, Maltese VAT would be due.

The benefit of Malta's VAT leasing structure is that the standard rate of VAT of 18% is only applied on the established percentage of the lease, deemed to be related to the use of the craft in EU territorial waters. For a yacht of 24 meters or bigger, the 'vatable' portion is established at 30% with an effective rate of VAT going down to 5.4%. If the lessee exercises an option to purchase the boat at the end of the lease term, a VAT paid certificate will be issued to the lessee by the Maltese VAT authorities.

The lessor may take advantage of the beneficial Maltese tax system, leading to a maximum effective Malta tax incidence of 5%.

VAT reductions on short-term chartering of pleasure yachts
For VAT purposes, the short-term charter of a pleasure yacht which is to be used for leisure purposes is a supply of a service which is taxable at the standard rate of VAT. The place of taxation is the place where the yacht is physically placed at the disposal of the customer. Subject to certain conditions, this supply is taxed according to the use of the boat insofar as that portion of its use within the territorial waters of the European Union (EU). In terms of the guidelines issued by the Malta VAT Department, where the yacht in a short-term chartering arrangement is put at the disposal of the customer in Malta, the percentage of the lease which is subject to Malta VAT is determined in accordance with the length of the yacht. The minimum rate is established at 30% of the charter income applicable for short term chartering of pleasure yachts of 24 meters in length or over.

Malta's aviation leasing structures
Malta's VAT department has also issued guidelines on how VAT is to be levied for aviation leasing arrangements concerning privately operated aircrafts, whereby the portion of the lease which should be subject to VAT in Malta is based on the flight range of the aircraft. Similar to the yacht leasing arrangements, an effective VAT rate of a minimum of 5.4% can be achieved.

For VAT purposes, except for aircrafts used by airline operators in international traffic, the lease of an aircraft is a supply of a service which is subject to VAT with the right of deduction of input VAT by the lessor. This service is taxable according to the use of the aircraft attributed within the airspace of the European Union. Since it is rather difficult to identify the time spent in European Union Airspace in advance, the guidelines issued by the Malta VAT Department establish the proportion on which VAT is levied.

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.

Other aviation planning opportunities
In terms of Malta's source rules, any income derived from the ownership, leasing and operation of aircraft or aircraft engines, which is used for or employed in the international transport of passengers or goods, is deemed to be income arising outside of Malta. In this regard, for aircraft leasing arrangements where the lessor or lessee is a company that is resident but non-domiciled in Malta i.e. although incorporated outside Malta it is managed and controlled in Malta, it would only be subject to tax in Malta upon its income and gains which arise in Malta, and on any income arising outside Malta which is received in / remitted to Malta.

Therefore, a resident non-domiciled company will only be taxable in Malta if it receives its income in Malta. Where the income is not received in Malta there would be no tax liability in Malta.

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Spain

What is the new VAT immediate supply of information?

Within the framework of the Comprehensive Annual Tax Control Plan for 2017 in Spain, a new VAT system – based on Immediate Supply of Information (SII) – has recently been implemented and **entered into force on 1 July,** improving a tax control, and further assisting the taxpayer in meeting their obligations.

This is a new and innovative tool by which the billing records from **VAT Books are electronically submitted – real invoices are not required** –, providing information, almost in real time, about invoices issued, invoices received, investment goods and certain EU VAT transactions. In case of simplified bills, either issued or received, they may be grouped and submitted following certain requirements.

All of this information can be e-filed **through the Tax Agency web services,** either by exchanging XML messages or, if applicable, by filling out the online form.

The new SII is mandatory for the following **collective** of taxpayers:

- Large Businesses, exceeding 6 million euros turnover
- VAT Groups (although they are allowed to be voluntarily deregistered the Special Group of Entities Regime, before the SII system is applied)
- Companies registered with REDEME system, by which they are allowed to VAT refund on a monthly basis (also entitled to be deregistered from this system, before the SII system is applied).

The new SII can also be applied to all other taxpayers who choose to opt in voluntarily.

The billing records must be e-filed within the following **periods** (excluding Saturdays, Sundays and national holidays):

- Outgoing invoices, within four days, counting from the invoice´s date of issuance, and in any event, before the 16th day after the month when the sales of goods/ services rendered were accrued.
- Incoming invoices, within four days, counting from the date of the recording entry of the invoice (regardless of the date of the accounting entry), and, in any event, before the 16th day after the monthly period when the VAT transactions are included for deducting purposes.
- Certain Intra-Community VAT transactions, within the four calendar days of the date of dispatch/transport or, if applicable, from the date of receipt of the goods in question.
- Information on Investment Assets, within the filing period of the last settlement of the year (up to 30 January).

During the second half of 2017 the **four-day term** is extended to **eight calendar days.**

The information over the **first half of 2017** must be updated as well, although with minor information, according to the new requirements of the SII, and submitted by the end of December 2017.

Given the technical infrastructure necessary to manage the volume of information that will go through the system, during the first half of 2017 a series of **pilot trials** have been performed by a sample of businesses, which were backed by the main software companies operating in the country.

Among the **advantages** of this system, it is worth noting the following ones:

- Taxpayers are entitled to file and pay their monthly VAT returns (form 303) ten days later than usual, until the 30th of the following month.
- They will no longer be required to file forms 347 (annual VAT transactions with third parties), 340 (monthly record books), and 390 (annual VAT summary).
- Quality information will be available within the Tax Agency database, and it might be compared with any other third parties.
- Taxpayers will be able to check this information before the end of the monthly VAT return term, as well as correct any error committed in their filed returns without being required to do so by the Tax Agency.
- Reduction of timing of VAT refunds so the Tax Agency has the detailed information on transactions in almost real time.

On the other hand, there are **dissenting voices** from the Spanish Confederation of Employers' Organizations that criticizes the Tax Authorities for having implemented this new VAT system with excessive haste.

It is also argued that benefits for the Tax Authorities are much higher than those ones for the taxpayers, who will have to bear an extra cost and effort to develop their software systems, and train their staff to meet the new requirements, to the detriment of their competitiveness.

Either way, this new VAT system **represents a landmark** in the Spanish Tax System, affecting 63,000 taxpayers, approximately 80% of the total billing in the country.

Moreover, the result of this SII implementation in Spain might be important for other countries, in particular for the European economies, as a practical example of further development in communication between Tax Authorities and taxpayers. For sure, Tax Authorities in other countries will certainly watch closely the Spanish experiment.

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Switzerland

Transfer Pricing Documentation: International developments - from a Swiss perspective

International developments

Background
In November 2012, the G20 called on the OECD to develop an action plan against base erosion and profit shifting (BEPS). The main objective of the BEPS project is the taxation of profits where economic activities take place and value is created, against the background of the three key pillars substance, coherence and transparency. The 13 final reports of the BEPS project were published in October 2015. These contain minimum standards, recommendations and best practices to prevent base erosion and profit shifting. In most jurisdictions, these results require a local country implementation.

The final report on BEPS action 13 covers the topics transfer pricing documentation and Country-by-Country Reporting (CbCR). The action 13 report contains a minimum standard on CbCR (and not on the documentation by master and local file).

Current status
The countries participating in BEPS are pushing to implement the changes triggered by the BEPS project into local legislation or have already done so in recent months. It remains to be seen whether this will help to achieve a level playing field. In any case, documentation requirements have been revised and CbCR regulations have been created and implemented widely. In addition, the Multilateral Instrument (MLI) was signed in June 2017 with the aim of adapting existing bilateral double taxation treaties in order to reflect the results from the final BEPS reports.

OECD transfer pricing documentation

Introduction
The final report on BEPS action 13 contains a revised standard for transfer pricing documentation. For this purpose, Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) has been completely revised. The new version of the OECD Guidelines was published on 10 July 2017. The new three-tiered standardized documentation approach consists of a master file, a local file and CbCR.

It should be noted that the combination of master file and local file is not a new, but an already established concept in the European Union (EU TPD). The fundamentally new part of the three-tiered approach for transfer pricing documentation is the CbCR.

Master file
The master file should contain the information that is relevant to all companies of a multinational enterprise (MNE). It is relatively standardized information, which provides an overview of the business operations and the overall transfer pricing policies within an MNE (so-called "blueprint"), without taking into account individual transactions. Annex I of the revised Chapter V of the OECD Guidelines contains a list of information that should be included in a master file from an OECD perspective. Accordingly, a master file includes, in particular, the following information: (i) organizational structure, (ii) business description, (iii) documentation of intangible assets, (iv) documentation of financial activities, and (v) financial and tax position (incl. consolidated financial statements and tax rulings).

Master and local file are not minimum standards, i.e. the implementation depends on local legislation in individual jurisdictions. Several countries enacted the obligation to prepare a master file as of 1 January 2016 or 2017, respectively. However, in many jurisdictions, an obligation to prepare a master file only applies to enterprises exceeding a revenue threshold.

Local file
The local file is a supplement to the master file which provides information about specific intercompany transactions. Annex II of the revised Chapter V of the OECD Guidelines provides a list of the information to be included in a local file. A local file includes, in particular: (i) a description of the local entity regarding management, organization and business activity, (ii) information on the controlled transactions (description and scope of controlled transactions, intercompany agreements, functional and risk analysis, selection of method, transfer pricing analysis, tax rulings); and (iii) financial information (local financial accounts, reconciliation of financial data used for transfer pricing to financial accounts, and financial data for comparables used).

Again, since the master and local file are not minimum standards, the implementation depends on local legislation. Certain countries put the obligation to prepare a local file into effect as of 1 January 2016 or 2017, respectively. In some countries, an obligation to prepare a local file only applies if a revenue threshold is exceeded. As such, small and medium-sized companies can be exempt from the preparation of a local file.

Country-by-country Reporting (CbCR)
The CbCR contains information about an MNE's allocation of revenues, income, taxes and business activities on a tax jurisdiction-by-tax jurisdiction basis. The CbCR should facilitate a high-level transfer pricing risk assessment for tax authorities (i.e. it should not serve as a means to test the appropriateness of transfer prices). The following model template allowing for a transparent view on an MNE is foreseen for the CbCR.

Table 1. **Overview of allocation of income, taxes and business activities by tax jurisdiction**

Name of the MNE group: Fiscal year concerned: Currency used:										
Tax Jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued – Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2. **List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction**

Name of the MNE group: Fiscal year concerned:																
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)													
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity instruments	Dormant	Other[1]
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

Table 3. **Additional Information**

Name of the MNE group: Fiscal year concerned:
Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.

MNEs with consolidated group revenues exceeding EUR 750 million are required to file a CbCR. The CbCR is to be prepared and filed by the ultimate parent of the MNE. The requirement for the CbCR starts for fiscal years beginning after 1 January 2016 (provided that local country legislation is implemented).

The CbCR is automatically exchanged with tax authorities in which an MNE has operations on an annual basis (provided that there is a basis for such exchange). The information is exclusively addressed to tax authorities and is not to be published.

Implementation in Switzerland

In Switzerland, there is no local transfer pricing legislation. However, as a member of the OECD, Switzerland follows the recommendations set forth by the OECD Guidelines without reservations. As a consequence, the content of a transfer pricing documentation should be aligned with the one outlined in the OECD Guidelines.
Switzerland has actively participated in all the working groups of the BEPS project. However, Switzerland only committed itself to implement the minimum standards of the BEPS actions. As such, local country legislation addressing CbCR was created. This also means that there is currently no obligation to prepare a master file or local file in Switzerland.

MNEs in Switzerland will be required to prepare a CbCR in 2018 based on the assumption that local country legislation has entered into force by then. This results in the first introduction of explicit transfer pricing documentation requirements in Switzerland. However, only MNEs with ultimate parent companies domiciled in Switzerland and consolidated group revenues exceeding CHF 900 million are affected. Based on these criteria, it is assumed that some 200 MNEs will be (directly) affected by CbCR in Switzerland and will be subject to those reporting requirements, respectively. At the same time, however, it should be noted that information on Swiss subsidiaries of foreign ultimate parent companies will also be reported and exchanged as part of the CbCR.

Conclusion

Within the framework of BEPS action 13, BEPS has brought about an adaptation of the OECD Guidelines as well as documentation requirements. The increased transparency caused by CbCR will re-ignite the discussion about a fair distribution of tax revenues and likely also lead to disputes. At least in the first few years of the implementation, it is expected that tax compliance and litigation will tie up more resources.

For that very reason, MNEs are well advised to align their transfer pricing documentation to the OECD Guidelines and to maintain documentation on a contemporaneous basis, in order to be able to submit the documentation in due time at the request of tax authorities domestically and abroad.

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United Kingdom

The post-election Finance Bill

With the move from a spring to an autumn Budget taking place this year, UK taxpayers were faced with the prospect of two Finance Bills in 2017. When the first of these was published in late March, it was the longest Finance Bill on record, with some 776 pages, and it contained significant provisions both for businesses – with changes to corporation tax loss relief and a new corporate interest restriction – as well as individuals (with major changes to the tax rules for non-UK domiciles).

The announcement of an unexpected UK general election meant that much of the content in the Bill was dropped, with a drastically shortened 155 pages making it onto the statute books before the dissolution of Parliament. Since then, matters had been uncertain – when would the dropped clauses be reintroduced, and (with many of the key measures set to take effect from April 2017) would there be a knock-on effect on implementation dates?

A third Finance Bill

The government has now clarified the position, and provided welcome certainty for both businesses and individuals on the timing of changes. A further Finance Bill will be published after Parliament returns from summer recess, and will contain all the measures dropped from the original Bill. Furthermore, those measures originally announced as taking effect from April 2017 will still do so. These include:

- Corporate interest restriction. The corporation tax deduction for interest costs will (broadly) be restricted to a maximum of 30% of a group's UK EBITDA (although this ratio can be increased where the worldwide group's interest to EBITDA ratio is higher).
- Extension of substantial shareholding exemption (SSE). This will see a significant widening of SSE, with disposals of and by investment companies potentially qualifying for the first time.
- Reform of corporation tax loss relief. Companies will have increased flexibility in how they can offset losses arising from 1 April 2017. The advantages this will offer are tempered for larger companies and groups: those with profits of more than £5 million will only be able to offset losses against 50% of their profits over £5 million.
- Extension of cash basis. The current cash basis for unincorporated businesses will become available to those businesses with turnovers under £150,000, and a new cash basis for unincorporated property businesses will be introduced
- Changes to the domicile rules. A new deemed domicile status will be introduced for UK tax purposes and will apply to non-domiciled individuals who are long-term UK residents (more than 15 of the last 20 years) and to those who were born in the UK with a UK domicile of origin which they have since lost
- Changes to the inheritance tax (IHT) treatment of UK residential property. Previously, non-UK domiciled individuals had been able to hold such property via an offshore company or trust structure without a potential UK IHT charge arising. Such offshore structures will now come within the UK IHT net
- Extension of Business Investment Relief (BIR). BIR allows non-domiciled individuals to remit funds to the UK tax-free for qualifying investment purposes. The changes relax the existing BIR rules, allowing more investments to qualify
- Museums and galleries tax relief. The new relief will be available for eligible exhibitions (both permanent and touring) at museums and galleries.

It seems likely that much of the legislation will be introduced unchanged from the version published in March. Revised draft clauses have been published for some measures – including domicile, the corporate interest restriction and the SSE – but the changes are intended to tighten up the previous drafting and ensure that the legislation works as intended rather than making any substantive policy change. There remains, however, the possibility that there will be changes as the legislation passes through Parliament, particularly given the fact that the UK government has only a small working majority.

Making Tax Digital

One significant change is the government's announcement that it will be delaying the implementation of mandatory quarterly reporting for business (part of its Making Tax Digital (MTD) programme). The September Finance Bill is expected to include the provisions which underpin the proposed reporting regime, but there will now be no quarterly reporting for income taxes until 2020 at the earliest. The government intends to use VAT reporting (due to move to a MTD platform in April 2019) as, in effect a test for the wider system: a welcome move for businesses and landlords operating in the UK, who will now benefit from a more comprehensively tested system and time to prepare their own systems and processes.

The Bill timetable

Once introduced, the new Bill faces a tight Parliamentary timetable ahead of an expected Autumn Budget in November. The House of Commons has only seven sitting days in September before it rises again for the party conferences. The government may well look to push through the Second Reading debate during that window, with the detailed Committee consideration taking place when the House of Commons returns in early October. We would then expect Royal Assent before Parliament rises again for its November recess (on 7 November). The precise timetable will become clearer in early September, when Parliament is expected to agree a Programme Motion setting out deadlines for the various stages of the Bill.

Looking forward

The September Bill offers very welcome certainty, particularly for those businesses and individuals affected by changes taking effect from April 2017. It will not, however, answer the significant outstanding questions about the direction future tax policy might take as the UK heads into the detailed Brexit negotiations. The autumn Budget (and the Finance Bill which will follow it) is likely to set the tone here, as well as signal how the Chancellor intends to deal with the holes in the budget forecasts caused by the delay to MTD quarterly reporting and the decision earlier this year not to go ahead with a rise in National Insurance for the self-employed.

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Significant changes in UK taxation for both non-doms and UK residential property confirmed

Summary
Significant UK tax changes for non-UK domiciled individuals that were due to take effect from 6 April 2017 were withdrawn at the last minute prior to the recent election. In mid-July, it was confirmed that they will be enacted later this year and be effective from 6 April 2017.

Affected individuals and trusts should take detailed advice both to optimise the benefit of any reliefs and to ensure compliance with UK tax legislation.

This article assumes that the legislation will be enacted as currently drafted. Action may need to be deferred until the final rules are available, we hope in September.

Changes affecting individuals
There are no changes for non-UK domiciled individuals who have only been resident in the UK for a few years. They can continue to be taxed on the remittance basis, making the UK an attractive place to be located as, with pre-arrival planning, funds can be remitted to the UK at little or no tax cost.

Non-UK domiciled individuals, however, are now deemed UK domiciled for all tax purposes once they have been UK resident for 15 out of the past 20 tax years. They will no longer be able to pay the Remittance Basis Charge (RBC) in order to exclude unremitted foreign income and gains from UK taxation. In addition to an increase in tax liabilities, there will be also be higher compliance costs, as foreign income and gains needs to be calculated, in sterling, on a UK tax basis. Taxable foreign capital gains will include the foreign currency gains in addition to asset gains.

For income tax and capital gains tax (CGT), long-term UK resident non-domiciled individuals need to be non-UK resident for six complete tax years to 'break' their UK deemed domiciled status. In contrast, for inheritance tax (IHT), such individuals lose their deemed domiciled status at the start of their fourth consecutive tax year of non-residence.

Those who were born in the UK with a UK domicile of origin are now treated as UK domiciled whenever they are resident in the UK, subject to a one-year grace period for IHT. It makes no difference if they have acquired a domicile of choice elsewhere. These we call 'formerly domiciled residents'. In some cases, the full effect of the new rules may be modified where the individual is also resident in a country with a tax treaty with the UK.

Transitional reliefs for individuals

Unmixing
Those who have previously elected to be taxed on the remittance basis (or qualified for the automatic remittance basis) for any tax year on or after 2008/09, whether or not they have paid the RBC, will be able to separate their offshore bank accounts containing capital, gains and income into separate accounts in either 2017/18 or 2018/19. This will include untaxed income or gains arising prior to 6 April 2008.

We do not yet have final details of how unmixing will actually work. There may need to be different strategies for unmixing depending on whether the taxpayer is currently paying tax on the arising or remittance basis and if rebasing (see below) also applies.

Rebasing
Those who became deemed domiciled on 6 April 2017 and who have paid at least one RBC will have their directly-held offshore assets automatically rebased as at 6 April 2017. Hence only the increase in value since 6 April 2017 will be taxable.

The asset must not have been situated in the UK at any time between 16 March 2016, or the date of acquisition, if later, and 5 April 2017. They may elect that this does not apply to specific assets once sold.

Individuals who become deemed domiciled after 6 April 2017 will not have their assets rebased and nor will trustees.

Given the current political uncertainty in the UK, individuals may wish to wait until the legislation has been enacted before realising assets with substantial pre-6 April 2017 gains.

Neither of these reliefs is available to formerly domiciled residents.

Changes relating to non-UK resident trusts
Trusts settled by non-UK domiciled individuals continue to be excluded from IHT provided that they do not hold any UK situs assets. The settlor will only be liable to income tax on non-UK income and CGT on trust gains to the extent that distributions or benefits are received, provided the trust is 'protected'. Broadly speaking 'protection' requires the settlor or any other trust that they have settled not to add further funds to the trust once they have become deemed domiciled. Offshore trustees will need to ensure that they have the appropriate controls in place to ensure that 'protection' is not lost at any time on or after 6 April 2017 as, by doing so, all future foreign income and capital gains could be taxable on the settlor. In addition, there may be IHT entry charges on the added property which will potentially also be subject to IHT moving forwards. Interest-free loans from the settlor have until 5 April 2018 to be rearranged, which is helpful.

Protection from IHT, income tax and CGT will not apply to trusts settled by formerly domiciled residents.

New benefit valuation rules for benefits received from offshore trusts will apply, although final details are not available. Of note is that the benefit arising for the free use of art work and chattels is being codified and may result in higher compliance costs and tax charges than before. These rules will apply to all offshore trusts including those settled by UK domiciled individuals.

It is expected that new rules relating to the ability to 'wash out' trust capital gains to non UK residents may be introduced from 6 April 2018 or a later date and trustees may therefore wish to consider making such distributions during 2017/18.

UK residential property held in offshore companies/ partnerships
All UK residential property is now within the scope of UK IHT from 6 April 2017 even if held within an offshore corporate structure. Shares in non-UK companies and partnership interests are no longer treated as 'excluded property' to the extent that their value derives from UK residential property. UK commercial property is not affected.

Any debts incurred by the company are deductible on a pro-rata basis against the value of the UK residential property even if the debt was entirely taken out to finance the UK residential property.

No UK tax relief has been made available for unwinding property holding structures.

Loans relating to UK residential property
All loans made to help the borrower acquire, maintain or enhance UK residential property are now within the scope of IHT for the lender. This also applies to collateral security for such a loan, up to the value of the loan.
For example, where a non-UK domiciled parent lends funds (either directly or indirectly) to a UK resident child to acquire a UK home, there may now be an IHT charge on the death of that parent if the loan remains in place or is forgiven in the seven years prior to the death.

Offshore trustees with UK residential property or loans relating to such property should check the date of the next ten year periodic charge, as IHT may now apply. IHT may also arise on the death of the settlor if they can benefit from the trust.

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United States

Trump and Taxes - an update

President Trump recently published his tax reform outline, “2017 Tax Reform for Economic Growth and American Jobs” – and his outline proposes tax cuts as well as tax simplification.

Although the provisions in Trump’s outline is his wish list for tax reform, it is not certain at all whether much or anything that he is promoting will be able to withstand the legislative process. The Wolf Group expects that the President will lobby Republicans in the House of Representatives, since all tax bills must begin their journey in the House and work their way to the Senate. Finally, when both legislative bodies pass a tax reform bill, it will ultimately be either signed into law by the President or vetoed. This process is likely to take many months and according to Dale Mason, The Wolf Group International Tax Director, “I don’t expect the final tax reform bill – if any – to look much like the President’s outline proposal and I expect the bill’s final push to run up against the Christmas recess.”

Nevertheless, The Wolf Group shares some of the President’s reform items below to keep its clients abreast of potential tax changes that may impact them.

Accordingly, the President would replace and lower the current individual tax rates reducing them from seven brackets to three. Under the proposal, the three brackets would be 10%, 25% and 35%. Currently, the highest individual income tax rate is 39.6%

The President also proposes to double the standard deduction.

Itemized deductions
Under the White House proposal, all itemized deductions would be eliminated except for the mortgage interest and the charitable contributions deductions.

Capital gains
The President’s outline appears to keep the current capital gains rate and qualified dividend tax rate at the top rate of 20%.

Net Investment Income Tax
Under current law, the Net Investment Income (“NII”) imposes a 3.8% tax on the investment income of certain higher-income taxpayers. The President’s proposal repeals the net investment income tax.

Estate Tax
The current federal estate tax is 40% of assets transferred at death in excess of a $5.49 million exemption (2017 amount). The President calls for an elimination of the federal estate tax.

Alternative Minimum Tax
Under the president’s proposal, the Alternative Minimum Tax would be repealed. The AMT is a parallel tax regime and is intended to ensure that higher income individuals pay at least some income tax.

International taxation of US citizens
Although calling for a territorial tax regime for corporations, the president has not made any comments regarding the global taxation of U.S. citizens. This area of the law is of particular interest to The Wolf Group and we will keep clients abreast of developments accordingly.

Timing
Treasury Secretary Mnuchin said that the Administration is “going to move as fast as we can” on tax reform. He has also said that tax reform will be accomplished by the end of 2017.

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