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Introduction to Tax Link

Happy New Year and welcome to the first Tax Link of 2018.

This edition's articles were sourced from a variety of tax professionals from member firms across the network, who provide knowledge and an update on country tax changes and international development.

There are many great articles included in this edition, Australia explains the 'Tax implications of Foreign Superannuation, Pensions and other Retirement Funds', Germany presents its 'Withholding Taxes on Cross-Border Software and Database Licensing' and Switzerland updates on 'Tax Proposal 2017'.

As always I must extend a huge thank you to all of the contributors and publication team for their articles, and commitment in producing this 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. If you wish to contribute to future editions please contact me.

Best wishes,

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Australia

The Australian tax implications of foreign superannuation, pensions and other retirement funds

Tax practitioners with clients who intend to move to Australia for their retirement are recommended to ensure that their clients seek Australian tax advice prior to moving to Australia. In addition, Australian tax advice is required prior to selecting whether to receive a lump sum amount or annuity from a foreign superannuation, pension or other retirement policy. This is because the Australian tax implications of receiving foreign superannuation, pensions and other retirement plans are very complicated.

Australia has a tax advantaged system for Australians to save for their retirement via an Australian superannuation fund. However, foreign superannuation funds such as foreign pension schemes do not attract the same tax advantages as Australian superannuation funds. Furthermore, some retirement savings vehicles such as US Individual Retirement Accounts (IRAs) and Canadian Registered Retirement Savings Plans (RRSPs) are not viewed by the Australian Taxation Office (ATO) as foreign superannuation funds, but instead are treated as foreign trusts.

Australian tax position for foreign superannuation funds

In Australia, foreign superannuation funds (sometimes known as "foreign or personal pensions"), do not attract the same tax advantaged status as Australian superannuation funds. This can mean that your client's foreign superannuation funds could be taxed at a maximum of 47%, on the growth in the underlying investments from the time that your client becomes an Australian tax resident until they withdraw their funds from the foreign superannuation fund via a lump sum.

Fortunately, the Australian tax law provides a grace period of six months in which a foreign resident can transfer their superannuation policy to Australia, without being subject to Australian tax. Even if your client has moved to Australia more than six months ago, there may be ways that we can assist them to manage their Australian tax exposure on their foreign superannuation. In some cases foreign superannuation funds can be transferred into Australian superannuation funds which can be a tax efficient way of managing retirement funds.

Furthermore, when a foreign superannuation fund is converted to an annuity or regular pension payment, the income received from the annuity or pension may be 100% taxable in Australia at the individual's marginal tax rate, depending on the circumstances. Therefore, clients should obtain Australian tax advice before choosing whether to take a lump sum or an annuity from their foreign superannuation fund.

Australian tax position for UK pensions

UK Defined Contribution Pension Funds are taxed as foreign superannuation funds as described above. However, specific complications arise on the exporting of UK Pension funds to an Australian superannuation fund via the UK's Recognised Overseas Pension rules (formerly QROPs). Clients with UK pensions who wish to move to Australia should contact us for specific Australian tax advice.

Australian tax position for US individual retirement accounts

The ATO's interpretation of the relevant Australian tax law (ID 2008/36) treats US IRAs as a form of foreign trust and not a foreign superannuation fund. This view is supported by the 2015 Administrative Appeals Tribunal case of Re Baker and FCT (2015). However, the exact tax position of each IRA should be assessed in conjunction with the terms of the particular IRA account agreement.

The ATO recognises that the distribution of a lump sum from an IRA may consist of multiple components:

- pre-tax contributions made by the taxpayer
- contributions made by the US government
- investment income derived by the fund itself, including dividends, realised capital gains and other income such as interest.

The **investment income** and capital gains components of any payment received from a US IRA are assessable (taxable) income under Australian tax law. The return of the original capital that was invested in a US IRA is **not** assessable income because this is a return of the tax-free corpus of the trust.

Income receipts from US IRAs that would have been assessable income if the individual had earned the income personally as a tax resident of Australia are treated as assessable income in Australia. Therefore, distributions to an individual from their IRA which had their source from investment income e.g. interest, dividends or capital gains form part of an individual's assessable income in the year of distribution.

The application of the above Australian tax law results in accumulated investment income and capital gains that arose within the US IRA during years in which an individual was not a tax resident of Australia, being included in that individual's assessable income on distribution in a latter tax year, when the individual is an Australian tax resident. That is, earnings within the IRA during a period of non-residence are taxable in Australia on distribution if the individual is an Australian tax resident when the distribution occurs.

Australian tax position for Canadian RRSPs

Most regular Canadian RRSPs are not foreign superannuation funds. This is principally because withdrawals are allowed from RRSPs at times that would not be permitted under Australian superannuation legislation. Therefore, whilst RRSPs are "foreign" from an Australian tax perspective, they are not "superannuation" and consequently are not taxed as foreign superannuation funds.

The ATO takes the view that most Canadian RRSPs are foreign trusts, similarly to US IRAs as stated above and therefore the issues raised above regarding US IRAs are equally applicable to most Canadian RRSPs.

Temporary Residents of Australia with US IRAs or Canadian RRSPs

People who are in Australia on temporary visas should obtain Australian tax advice before obtaining permanent residency visa status in Australia. This is particularly the case for persons with US IRAs or Canadian RRSPs. This is because certain Australian tax advantages in relation to the taxation of foreign trusts are lost once an individual changes their visa status from 'temporary resident' to 'permanent resident'.

Conclusion

Therefore, individuals planning to retire in Australia should obtain Australian tax advice regarding the best way to structure their foreign superannuation, foreign pensions and other retirement funds preferably before becoming Australian tax residents. Failing that, individuals who have already moved to Australia are recommended to seek Australian tax advice and especially for those people who have been in Australia for less than six months or are temporary residents of Australia.

I am a UK and Australian Chartered Tax Adviser and an expert in international tax issues for individuals. If you have a client who is affected by these issues, please contact me.

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China

An update to China's withholding tax system

In order to clarify and simplify the withholding tax rules used for collection of taxes in transactions involving non-tax-resident overseas parties, China's State Administration of Taxation (SAT) released Announcement [2017] #37, Issues Related to Withholding Non-resident Enterprise Income Tax at the Source, in October of this year. The new rules took effect on December 1, completely replacing the previous governing rules of Bulletin [2009] #3, repealing the remaining un-repealed clauses of Bulletin [2009] #698 (which controlled the taxation of indirect equity transfers of Chinese entities by offshore parties), and negating a number of clauses found in a variety of bulletins that the SAT has released in the years following the implementation of the 2008 Enterprise Income Tax law. More than ten specific changes are outlined in Announcement 37, some of which indeed bring clarity to the system and some of which leave certain issues unresolved. We examine the most notable of these changes below.

Contract registration and withholding obligation
As in the past, the Chinese party to a contract with an overseas party shall act as the withholding agent (or use a third party withholding agent) in the transaction, and thus has the responsibility to ensure that applicable tax is withheld, properly filed, and paid. However, while under the 2009 SAT Bulletin #3 withholding agents were required to register relevant business contracts to the in-charge tax bureau within 30 days of contract execution, such contract registration is no longer required where the overseas party's income is derived from dividends, royalties, asset transfers, interest and other passive forms of income. Contracts related to the overseas party performing projects and/or providing services must continue to be registered with tax authorities within the 30-day window. In all cases, the Chinese party must maintain complete and accurate records of its cross-border transactions, including copies of contracts.

Under Announcement 37, the Chinese party or third party withholding agent must file and pay the withholding tax on a transaction within seven days after the withholding obligation arises. In most cases, this obligation now arises on the date the payment to the overseas party is made. However, in the case where payments on an asset transfer take place in installments, the first installment(s) may be treated as recovery of the initial investment rather than as taxable gains, until such time that the payments include taxable gains. Note that in all cases where the Chinese party agrees through the transaction contract to pay the cost of the withholding tax on its own, the contract amount must be increased to a tax-inclusive price from which the withholding tax is then calculated and withheld.

Responsability and liability
If a transaction withholding agent does not file the appropriate filing documents and make the tax payment to the in-charge tax bureau within the stipulated 7-day window, the tax filing and payment becomes the responsibility of the overseas party. According to the announcement, the overseas party must pay the tax within whatever time period the Chinese in-charge tax bureau specifies in a notice to the overseas party (rather than the 7-day window prescribed in the previous Bulletin 3). Given that the bureau-prescribed timing is met, no late charges or penalties would apply. However, the tax bureau may fine the withholding agent. Also, in cases where the withholding tax remains unpaid, Announcement 37 prescribes that the tax bureau shall pursue the Chinese entity for the unpaid tax and any related penalties. Under previous rules, the tax bureaus were instructed to pursue the overseas party.

Of note here is that the timing rules outlined in SAT Circular [2015] #7 for the indirect equity transfer of taxable China entities by offshore parties are not affected by Announcement 37. Thus, the buyer in an indirect transfer still has the primary responsibility to withhold and pay tax within 7 days of contract execution, otherwise the seller must immediately do so without waiting for notice from the Chinese in-charge tax bureau.

An un-resolved issue of note with respect to overseas parties filing tax and making tax payments directly to the in-charge tax bureau relates to the actual procedure for doing so. That is, in general, Chinese tax bureaus do not have mechanisms in place for receiving tax payments of any kind directly from overseas. This problem thus increases the administrative burden on the overseas party to enlist the assistance of a tax withholding agent in China through whom the tax payment and filing may be conducted.

Other changes
Announcement 37 and the associated guidelines clarify the calculations related to equity transfer gains, which were previously set out in Circular [2009] #698. Now included are cases where a non-resident enterprise has made several investments at different times in the same target China entity. The current announcement indicates how the tax basis is to be apportioned to the transferred part of the equity. The rules also allow that the tax basis on equity should be adjusted for any asset value write-downs previously recognized for tax purposes.

The remaining rule changes of Announcement 37 relate to Chinese tax bureau jurisdiction over cases where the overseas party income is derived from multiple locations in China. Rather than specifying a "one location may be chosen for all" approach as per previous rules, the new announcement indicates that jurisdiction shall be dependent on the types of income being taxed.

In conclusion
Certainly Announcement 37 is a welcome addition to other recent tax system changes put forward by the China SAT. These new guidelines are consistent with the general agency trend toward simplification, consolidation, and clarification of tax matters that have made tax compliance administratively burdensome for overseas parties and their relevant China withholding agents in a variety of cross-border transaction types. However, as with most new tax rule releases, questions do still remain and it will take time before actual tax bureau practices become relatively uniform throughout the country. As always, it is suggested that local tax professionals be consulted when planning cross-border transactions of any kind into China.

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Cyprus

Extension to the definition of "Cyprus tax resident individual" – Introduction of the "60 days rule"

Earlier this year, the Cyprus parliament voted for a Cyprus tax law amendment **adding a second test, the "60 days rule", for the purposes of determining Cyprus tax residency for individuals.** This amendment of the law applies retroactively as from 1 January 2017.

As per the tax legislation, an individual who spends more than 183 days in Cyprus within a tax year (tax year in Cyprus = calendar year) is considered a Cyprus tax resident.

Now, the new "60 days rule" for Cyprus tax residency applies to individuals who in the relevant tax year:

I. do not reside in any other single state for a period exceeding 183 days in aggregate, and
II. are not tax resident in any other state, and
III. reside in Cyprus for at least 60 days, and
IV. have other defined Cyprus ties. To satisfy this condition the individual must carry out any business in Cyprus and/or be employed in Cyprus and/or hold an office (director) of a company tax resident in Cyprus at any time in the tax year, provided that such is not terminated during the tax year. Further the individual must maintain in the tax year a permanent residential property in Cyprus which is either owned or rented by the individual.

The current "183 days rule" which applies when an individual remains in Cyprus for more than 183 days in the tax year, without any further additional conditions / criteria remains unchanged by the above amendment. As such, as from tax year 2017, an individual will be considered as a tax resident of Cyprus if the individual satisfies either the "183 days rule" or the "60 days rule" within a given tax year.

For the purposes of both the "60 days rule" and the "183 days rule", the days in and out of Cyprus are calculated as follows:

- the day of departure from Cyprus counts as a day of residence outside Cyprus,
- the day of arrival in Cyprus counts as a day of residence in Cyprus,
- arrival and departure from Cyprus on the same day counts as one day of residence in Cyprus,
- departure and arrival in Cyprus on the same day counts as one day of residence outside Cyprus.

Individuals who are Cyprus tax residents, whether this is determined under the "183 days rule" or under the "60 days rule", are subject to tax in Cyprus on their worldwide income, but certain exemptions apply. In particular, such main exemptions are:

The non-domicile rules. A Cyprus tax resident individual is exempt from taxation in Cyprus on his / her worldwide (Cyprus and foreign sourced) dividend and 'passive' interest income, provided the individual is not domiciled in Cyprus for Cyprus tax purposes.

An individual who does not have a "Domicile of Origin" in Cyprus (as defined in the Cyprus Wills and Succession Law) is only considered to be domiciled in Cyprus for tax purposes when the individual has been a tax resident of Cyprus for a period of at least 17 years out of the last 20 years prior to the tax year in question.

"Domicile of Origin" is acquired at birth and as a rule is the same as the domicile of the father at the time of birth, and in exceptional cases of the mother. For individuals with "Domicile of Origin" in Cyprus, other rules are used to determine the individuals' domicile status for tax purposes.

The capital gains exemption. Profit from the sale of securities – which include, inter alia, shares, bonds, debentures and many other financial instruments thereon – is exempt from taxation in Cyprus except in certain cases where the value of the shares derives directly or indirectly from immovable property located in Cyprus.

Employment income exemption for employments exercised in Cyprus. This exemption applies for a period of 10 years and provides a 50% exemption of the remuneration from employment exercised in Cyprus by any individual who was not a tax resident of Cyprus before the commencement of the employment, as long as the annual remuneration exceeds €100.000 i.e. say, if the remuneration is €120.000, only €60.000 will be taxable (this could lead to personal effective tax rates of as low as 9%!). Determining whether an individual was a tax resident of Cyprus prior to commencement of the employment is subject to conditions.

Employment income exemption for employments exercised outside Cyprus. The whole amount of remuneration from salaried services rendered outside Cyprus for more than 90 days in a tax year, to a non-Cyprus resident employer or to a foreign permanent establishment of a Cyprus resident employer, is exempt from Cyprus income tax.

There is **no estate duty, wealth tax, gift tax or inheritance tax in Cyprus.**

Nexia Poyiadjis can assist all interested / impacted individuals in assessing their Cyprus tax position under the aforementioned amendment of the tax law and what relevant action such individuals need to take.

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France

Finance bill for 2018 and amended finance bills for 2017

French tax legislation has not been significantly modified by the French Finance Bill 2018 and the second amended Finance Bill 2017. You will find hereafter the main measures that are currently discussed in the Parliament.

Individual taxation

Set up of a flat tax on the income from capital
As from 2018, this unique lump sum tax will be applicable on income from capital (dividends, interests, other distributions), capital gains, partially life insurances and incomes submitted to the exit tax mechanism. The unique lump rate amounts to 30% (12.8% for income tax and 17.2% for the social security contributions).

Abrogation of the wealth tax (ISF) and setting up of the wealth tax on the real estate (IFI)
The abrogation of the wealth tax is a key measure of this Finance Bill. The draft Finance Bill for 2018 institutes a new tax on the real estate called "impôt sur la fortune immobilière" (IFI) when the taxpayer has a significant real estate asset, i.e. net asset equal or superior to € 1.3 million. Grading scale and allowance rules of the abrogated wealth tax are applicable to the IFI but no debt deduction rules.

French income tax withholding
The French income tax withholding was part of the 2017 budget and should have enter into force on January 1st, 2018 but has postponed to January 1st, 2019. The proposed draft amended finance bill for 2017 specifies some conditions of implementation. In order to avoid a double tax burden in 2019, the 2018 incomes that should be taxed in 2019 will therefore benefit from a specific tax credit under conditions to cancel out the 2018 tax.

Reduced rate of interest for late payments penalties
The rate of interests owed for late payments of taxes, as well as the rate of interests paid to a taxpayer by French tax authorities would be reduced to 0, 20% instead of 0, 40% per month.

Regulations related to the obligations of financial institutions with respect to the Automatic Exchange of Information (AEOI) and Foreign Account Tax Compliance Act (FATCA)
The draft Amending Finance Bill introduces provisions related to the obligations of financial institutions in relation to the AEOI and FATCA concerning financial accounts, notably regarding carrying and archiving information on their clients, as well as their supervision by the French financial regulator (in addition to the tax authority).

Corporate tax

Decrease of corporate income tax rate
As foreseen in the Finance Bill for 2017, the standard corporate income tax rate will be gradually decreased from 33.1/3% to 25% in 2022.

Decrease and future abrogation of the tax credit for competitiveness and employment (CICE)
Rate of CICE is decreased and amounts to 6% for the wages paid as from January 1st 2018.

As from January 1st, 2019, this tax credit will be abrogated and replaced by an employer's costs reduction.

Abrogation of the 3% distribution tax and introduction of two additional taxes
The 3% distribution tax is abrogated as from January 1st, 2018 allowing the French law to be in compliance with the European law.

Following this cancelation of, the Amending Finance Bill for 2017 introduces two additional taxes to the French corporate income tax in order to finance the future refunds. French companies subject to revenue exceeding 1 billion would be submitted to a 15% exceptional contribution computed on the CIT, and to a 15% additional contribution for revenue exceeding 3 billion. These new contributions will lead to a 30% surtax computed on the CIT for entities with revenue exceeding 3 billion.

Abrogation of the acquisition loan interest deductibility limitation – Carrez rule
As from January 1st,2018, suppression of the limitation of the interests on loan subscribed for the acquisition of qualifying participation, unless the company buyer proved that it effectively took the acquisition decision and had the effective control of the target company. This cancellation could apply only to the European company.

Non-deductibility of foreign withholding taxes (WHT) for French tax purposes
Following the recent decisions of the French Administrative Supreme Court, a French company receiving foreign source income, and that cannot offset the foreign tax credit because of its loss-making position, can deduct the corresponding withholding tax provided that the double tax treaty does not expressly prevent the parties from doing so. The draft amended finance bill provides that such tax credit will not be deductible, irrespective of the wording used in the double tax treaty. However, withholding taxes levied in the absence of a double tax treaty or outside the framework of a treaty could still be deducted from the taxable result of the French companies.

Abrogation of the approval procedure for cross-border mergers and New anti-abuse provision
Following the Court of Justice oh the European Union judgement (C-14/16, 17-03-08), the approval procedure required for cross-borders mergers is cancelled. In such operations, French entities would have to file a declaration including basic information concerning the main reasons of the merger.

Moreover, the 3 years holding period required for partial contribution of assets is abrogated.

Following this cancellation, a new anti-abuse provision would be introduced, stating that any "merger, spin-off or contribution of assets operation having as a main purpose, or as one of its main purposes, tax fraud and avoidance" would not benefit from the French favorable merger tax regime. Such transactions must be economically justified by a business purpose i.e. valid business purpose as reorganization or rationalization of the activities. A ruling can be obtained before the operation in order to validate the business purpose.

Tax on video on demand
The tax on video on demand is extended to advertising agency fee. The tax will apply on the price of the subscription, advertising income of the publisher and the price paid by the advertiser to the advertising agency. The advertising agency will have to pay the tax on the price paid by the advertiser. The 4% rebate on the advertising income for agency fee will therefore no longer apply for publishers.

Adjustment of the business contribution on value added (CVAE)
As from 2018, the business contribution on value added rate is calculated on the global turnover of companies which meet the conditions to be a member of the tax group even if in practice they are not member of the tax group.

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Germany

Update: Withholding taxes on cross-border software and database Licensing

Foreign entities earning royalty income from licensing of intellectual rights in Germany are generally subject to limited tax liability in Germany. As income tax from limited liability taxpayers is collected by deduction at the source, the German licensees are generally obliged to withhold taxes and remit the withheld amount to the tax authorities in these cases. In the past there had been a significant amount of legal uncertainty surrounding the cross-border licensing of software and databases and the potentially arising obligation to withhold taxes according to Sec. 50a of the German Income Tax Act (ITA). The German Federal Ministry of Finance has now released a circular addressing the classification of these cross-border transactions, thereby lifting some of the legal uncertainty surrounding the subject. The circular provides guidelines and indicators to determine in which cases the foreign IP owner obtains domestic income according to Sec. 49 ITA and which cases therefore constitute a limited tax liability in Germany and an obligation to withhold taxes.

Classification of licensing transactions

The circular defines the main distinction criterion to be the scope of rights the licensor grants the licensee. The royalty payments are seen as constituting domestic income in cases where the licensee is granted extensive rights of use, more specifically rights of further utilisation. Such extensive rights are generally deemed to be given in cases where the licensee is granted the right to duplicate, modify, distribute or publish the software or database.

Domestic income from the assignment of rights is not deemed to exist in cases where the licensing agreement's main focus is the software or database's functionality. The circular deems this to be the case when the rights of use granted by the licensor merely extend to the software or database's intended use. Examples of a software's intended use are the download, installation, application and in certain cases slight modification or copying of the software to enable the successful application of the software (e.g. modification of the software to a firm's custom IT environment). Examples of rights granted to enable the licensee to make use of a database's intended use are rights enabling the licensee to access, read and print data from the database.

The circular also clarified that whether the licensed software is regarded as standard or individual software does not affect the classification. Furthermore, whether the software can be accessed via data storage device or over the internet (often the case for: Application Service Providing (ASP) and Software as a Service (SaaS)) is insignificant. Lastly, the circular also specifies an approach for hybrid contracts. According to the circular, the full remuneration is subject to withholding taxes where the concession of extensive rights of use is found to be the prevailing aspect of the contract and a splitting of the payment is not possible. In cases where the extensive rights of use granted account for less than 10 % of the remuneration, no taxes are to be withheld.

The following examples are meant to give a practical overview of the classification principles:

Example 1: A German company buys imaging software from a foreign company. The German company is granted modification, distribution and publication rights and furthermore adapts the software to the German market by translating it. The payment to the foreign company is subject to withholding taxes, as the rights go beyond the software's intended use.

Example 2: A German company buys text processing software from a foreign vendor. The German company is granted the right to create 5,000 software copies for its employees. The foreign company is not subject to limited tax liability, as the rights granted do not extend beyond the software's intended use.

Example 3: Same as in Example 2, however the German company needs to adapt the software to fully implement it in its business processes. The foreign vendor has embedded specific adaptation features in the software, therefore enabling customers to adapt the software by themselves. The payment is not subject to withholding taxes, as necessary company-specific software adaption does not go beyond the software's intended use.

Example 4: A German company pays a foreign provider for access to an online scientific journal database. Only reading and printing rights have been granted. The payment to the foreign company is not subject to withholding taxes, as the rights do not go beyond the database´s intended use.

Example 5: A foreign rating agency grants a German company access to a database with financial market data. Besides being able to access real-time and historic data, the company has the right to grant its own customers access to the foreign database. The sublicense agreement goes beyond the intended use of the database and therefore constitutes a limited tax liability of the foreign agency. The German company must deduct withholding taxes from the remuneration.

Example 6: A foreign company provides storage space on a server (infrastructure as a service (IaaS)) through a German subsidiary. The subsidiary is granted the right to use the IaaS, as well as modify the IaaS for redistribution to German customers. Furthermore, the German subsidiary licenses archiving software from the foreign company and is granted the right to continue developing and modifying the software. The remuneration paid needs to be split. The IaaS-related remuneration is not subject to withholding taxes as the granting of storage space is a service rather than the transfer of a right. However, the software-related remuneration is subject to withholding tax as extensive modification rights have been granted.

Exemption clauses for groups and intermediary distributors

The circular provides further exemptions from the classification principles specified above. Firstly, the right to assign or sublicense the software within the licensee's group (in the sense of Sec. 18 of the Stock Corporation Act) is harmless and does not lead to domestic income according to Sec. 49 ITA. Not of importance is whether the sublicensing within the group is cost-covering.

The Ministry of Finance provides another exemption clause for the licensing of software to intermediary distributors. Granting an intermediary distributor redistribution rights, does not constitute a limited tax liability in Germany if the distribution right is tied to a fixed amount of software licenses and the intermediary distributor is not granted any further rights, especially any further duplication or modification rights.

Example 7: A German company procures software from a foreign company, along with the right to sublicense the software to companies within its group (acc. to Sec. 18 SCA). No further rights are granted. The foreign company is not subject to limited tax liability, as the German company is only granted the rights for the software's intended use within the group.

Example 8: A foreign company sells a certain amount of software copies to its German subsidiary and grants them a redistribution right for the acquired copies. The German subsidiary is not granted any rights that allow for duplication or modification of the software. No obligation to withhold taxes arises, as the concession of distribution rights for a fixed amount of copies does not create a limited tax liability.

Implications

The Federal Ministry's circular creates legal certainty for the cross-border licensing of software and databases by emphasizing that the cross-border licensing is commonly not going to lead to a limited tax liability of the licensor. This is a particular positive development for the taxpayer as well as for the foreign IP owner, as erroneously omitting to withhold taxes can lead to the German taxpayer being secondarily liable for the amount of withholding taxes.

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India

Ind-AS

Why Ind-AS?

Globalization, liberalization, signing and review of free trade agreements, increase in the number of cross border transactions, mergers, acquisition, tax treaties, transfer pricing etc, have over the period of time have resulted in converging the various economies throughout the globe into a single and unified market. When the world, by and large, is becoming one economic village, there arose a need for a code which shall be vital for better understanding of the business reporting and consistency in the accounting policies. There is a need to align to one global accounting language. The need for adoption of the Ind-AS was felt due to the rapid dynamism happening across the countries.

What Ind-AS?

The Indian Accounting Standards (Ind-AS) are the International Financial Reporting Standards (IFRS) converged standards issued by the Central Government of India. The Ind AS are named and numbered in the same way as the corresponding IFRS.

Snapshot of the vital benefits of Ind AS

Some of the benefits of adoption of Ind AS are enumerated below:

- It facilitates maintenance of orderly and efficient capital markets and also helps to increase the capital formation and thereby economic growth
- It encourages international investing and thereby leads to more foreign capital flows
- Investors get more information which is relevant, reliable and more importantly comparable across jurisdictions.
- The business houses will be able to raise capital from foreign markets at a lower cost if it can create confidence in the minds of the foreign investors that their financial statements comply globally accepted accounting standards
- Thus, the above is a summary of what is Ind-AS and what are a few benefits from the adoption of Ind-AS.

The below table captures the road-map for the implementation of Ind-AS:

Phase	Companies covered
Voluntary phase	Under phase I, any company had the option to adopt Ind-AS on voluntary basis
Mandatory Phase 1	Adoption of Ind-AS is mandatory for the FY 2016-17 for: 1. Companies listed/in process of listing on stock exchanges in India or outside India having a net worth> INR 500 crores 2. Unlisted companies having a net worth> INR 500 crores 3. Parent, subsidiary, associate and JV of companies listed at (a) and (b).
Mandatory Phase 2	Adoption of Ind-AS is mandatory for the FY 2017-18 for : 4. Companies listed/in process of listing on stock exchanges in India or outside India, 5. Unlisted companies having a net worth INR 500 crores> INR 250 crores, and 6. Parent, subsidiary, associate and JV of companies listed at (a) and (b).
Mandatory Phase 3	Banks and NBFCs would be required to adopt Ind-AS from FY 2018-19. Insurance companies would be required to adopt it from FY 2020-21.

Will the adoption of Ind AS have an impact on the tax cheque of a tax payer?

As per the current tax regime prevalent in India, companies are obligated to compute their tax liabilities in accordance to the normal provisions enshrined in the Income-tax Act,1961(Act). Where the tax liability is less than 18.5% of the book profits of the companies, the companies is then required to pay tax at the rate the 18.5% on the said "book profit". This concept is known as "Minimum Alternate Tax" (MAT) in India. The machinery to compute the "book profits" has been coded under section 115JB of the Act.

The major shift in the Ind-AS form of accounting is recording the fixed assets as well as financial instruments position on a fair value basis. Given the transition to fair value form of recording, various assets-liabilities will have to be restated and a corresponding effect to adjust these assets and liabilities will be through the profit and loss statement of an entity.

In this article, we shall capture only the impact of Ind-AS 109-Financial Instruments on the computation of "book profits". Section 115JB of the Act was amended to align the impacts that were to be given by the Ind-AS compliant companies.

The Ind-AS prescribes a paradigm shift in the way "financial liabilities" are to be recognized and accounted for. Ind AS 109 also introduces the concept of a hybrid or compound instrument. Under this, a single legal instrument maybe split and recorded part as liability and remaining as equity, depending on what are the terms of the issue of the instrument. For example, preference shares issued with a fixed coupon rate but convertible at the option of the issuer has the characteristics of a debt component (i.e. fixed interest) and an equity component (convertible at option of the issuer). Hence, such an instrument is accounted for as a liability to the extent of the debt component and for the residual part as equity – accounted for under "Other Equity" in the Balance Sheet of the company.

Given the above accounting policy, let us understand what could be the possible impact while computing the "book profits" for income tax purposes.

The financial liabilities can be recognized as per the following categories:

- Fair Value through Profit and loss account (FVTPL)
- Amortized Cost Method (ACM) .

The issuer company has to select an option for the classification of the financial liability. From a tax standpoint it shall be pertinent to note where such liabilities are classified as FVTPL, they are supposed to be recognized at fair value at each balance sheet date which means that the difference between the fair value and FVTPL liabilities have to be routed through the profit and loss account.

In case of initial recognition, under both the options, the difference between the actual transaction value and fair value of financial liability is recognized in the profit and loss account. This shall lead to additional MAT liability on the increased book profits.

In case of subsequent measurement of a FVTPL financial liability, the difference between the carrying amount in the books of account and the fair value on the balance sheet date is adjusted to the Profit and Loss account, and is therefore MAT exposed.

Concluding thoughts

In the need for adapting to the global accounting practices, the government of India will also have to strive to align the tax computations and equip the existing tax laws to the new Indian Accounting Standards.

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Italy

Italy's 2018 Stability Law: R&D incentives for business growth confirmed

On 27 December 2017 (published in the Italian Official Gazette no. 302 dated 29 December 2017), the Italian Parliament has definitely approved the 2018 Budget Plan, so-called "Stability Law", which entered into force as of January 1, 2018. The Budget Law defines the lines of the public finance for the next year and focuses on important fiscal and spending measures.

Among the provisions of relevant importance to support the economic recovery, especially with reference to the industrial businesses, strategic is the confirmation and strengthening of tax incentives aimed at encouraging R&D investments. Below, an overview of the main measures:

Tax credit for training costs relating to Industry 4.0

With the new budget law, the Italian government puts the program for industry in the foreground and continues to invest billions to extend the concept of Industry 4.0. In particular, incentives for training costs in "activity 4.0" come to the fruition of the businesses, through recognition to all companies which, starting from 2018, invest in innovative training, of tax credit of 40% of the amounts incurred for expenses related to the sole cost of the employee for the period in which he/she is engaged in training activities pertaining to R&D projects.

Therefore, for tax credit purpose are eligible only the activities carried out to acquire or consolidate the knowledge of the technologies provided by the National Enterprise Plan 4.0 such as cyber-security and big data, cloud and fog computing, robotics and internet of things and digital integration of business processes and similar.
The tax credit is recognized up to a maximum annual amount of EUR 300 thousand for each beneficiary.

Extension of super-amortization and hyper-amortization to 2018

Along with the "Industry 4.0" chapter, the 2018 fiscal incentive known as "Super- Amortization" is re-confirmed, which is the third year of application, but at a rate decreased from 140% to 130%.

This incentive facilitates investments in new equipment, plant and machinery investments by that are made by companies (including self-employed workers).The extension to investments made in 2018, providing for the possibility of receiving the goods to be delivered by June 30, 2019, is subject to payment of a deposit of at least 20% of the amount of the asset by 2018.

It also prolongs the "Hyper-Amortization" of 250% for high digitized assets, for purchases made in 2018 and with the obligation of a payment of a deposit of 20% and then get the goods delivered by 2019.

Likewise, also the "Hyper-Amortization" of 140% of intangible assets has been extended to 2018.

This measure aims to promote the technological and/or digital transformation processes in "Industry 4.0" key, and essentially refers to the purchase of functional goods to digitize production processes and to favor technology and digital investments in the technological growth of enterprises.

New 2018 Sabatini Law for the purchase of instrumental goods

The 2018 Stability Law renews the "New Sabatini law", a contribution from the Ministry of Finance to facilitate the purchase of new instrumental goods (tangible assets) aimed at covering interest on bank financing subscribed to buy instrumental goods. In particular, the measure refers to investments related to purchase or lease of machinery, equipment, plant and equipment, hardware and software, and digital technologies. The scope is to facilitate companies to access to business credit and increase the competitiveness of the country's productive system.

The investment must be no longer than five years, between € 20,000 and € 2 million. The Ministry of Finance contribution is 2.75% for ordinary investments, and rises to 3.575% for investments in digital technologies.

In addition to the above mentioned incentives, it is worth reminding that the set of strategic measures to attract and boost R&D expenditures still includes the Patent Box regime. In brief, it is characterized by a 5 year election period (i.e. the election may not be revoked for a period of five fiscal years) and is relevant for both Corporate Income Tax (IRES, ordinary rate of 24%) and Regional Tax on Productive Activities (IRAP, ordinary rate 3.9%).

Furthermore, it grants:

a. a 50% exemption on income derived from the direct or indirect use of qualifying IP assets after the application of the nexus ratio; and
b. the total exclusion of capital gains deriving from the disposal of qualifying assets, provided that at least 90% of the proceeds received are ploughed back into similar investments before the end of the second fiscal year following the relevant sales.

The IP assets admitted to the Patent Box regime have to belong to one of the following categories:

I. Software protected by copyright
II. Industrial patents
III. Models and designs
IV. Business and technical-industrial know-how.

Trademark and brands – admitted until fiscal year 2016 – have been excluded from the regime in order to have Italian IP Box regime fully aligned with the OECD BEPS indications of Action 5.

With respect to the calculation of the tax relief, following the "Modified Nexus approach", the income eligible to benefit from the exemption has to be determined by applying a specific formula which takes into consideration the income linked to the intangible, the so called nexus ratio and the percentage of exemption. In particular, the nexus ratio is calculated as follows: the numerator (i.e., costs for qualifying activities) includes all R&D expenditure carried out i) by the taxpayer, ii) by universities or research institutes and similar establishments, and iii) by companies, other than those that directly or indirectly control the prospective beneficiary, which are controlled by the latter or are controlled by the same company that controls the prospective beneficiary.

The denominator of the ratio consists of the costs referred to in the numerator, increased by (i) the costs arising from transactions with companies that control, directly or indirectly, the prospective beneficiary, that are controlled by the latter or are controlled by the same company that controls the prospective beneficiary, incurred to develop, maintain and enhance qualifying activities (as defined above) and (ii) the cost of acquisition, including those costs incurred through licensing the right to use the IP asset, of the intangible asset supported in the relevant tax year.

Moreover, the Patent Box regime provides the necessity to determine the income subject to exemption through a ruling procedure (APA procedure) in case the taxpayer makes direct use of the qualifying IP assets. Such procedure is merely optional in case of intercompany licencing and in case of capital gains.

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Malta

Malta issues new VAT guidelines in relation to the gaming vat exemption

On the 21st November 2017, the Malta Commissioner for Revenue issued two guideline documents (**"the guidelines"**) in relation to the current exemption without credit in terms of item 9 of Part Two of the Fifth Schedule to the Value Added Tax Act (**"VATA"**) on Government lotto and lotteries, the supply of agency services related thereto, and such other supplies related to gambling as may be approved by the Minister. Both guideline documents are effective as from 1 January 2018.

First guideline document

Background information
Article 135(1) of Council Directive 2006/112/EC of the 28 November 2006 on the common system of VAT provides that Member States shall exempt without a right of deduction of input VAT "betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by each Member State".

The guideline document aims to identify those supplies related to gambling which, when supplied in Malta in terms of the rules for the place of supply of services, shall be treated as exempt without credit.

In summary, the provision of any facilities for the placing of bets and wagers, including the services of bookmakers, betting exchanges and equivalent facilities will remain VAT exempt however excluding gambling on the outcome of casino-type table games such as blackjack, poker and roulette as well as any games of chance, the outcome of which is determined by a random generator. Land-based games and tables for the playing of casino-type games of chance including tables for the playing of roulette, blackjack, baccarat, poker when played against the house, and slot machines shall remain VAT exempt, as well as lotteries and bingo games.

Relevant to note is that supplies which are strictly required, related and essential to, and which form part of an underlying gambling or betting transaction shall remain VAT exempt as long as they fall within the gaming services mentioned in the guidelines themselves.

Second guideline document

The second set of guidelines seeks to provide guidance on the determination of the taxable value of gambling and betting services which do not fall within the VAT exemption. In essence, the guideline document provides clarity of what the 'consideration' should be for VAT purposes in instances where the gambling supplier receives a commission or a participation fee. It also provides that bonuses and other incentives provided by the gambling supplier should be excluded from the taxable value.

The guideline also provides for a periodic determination of the taxable value and the VAT Department acknowledges the particular nature of gambling and betting services, and the practical difficulties that could arise in determining the taxable value of a supply on a transaction per transaction basis. Hence, the guideline provides that the taxable value of gambling shall be determined on the last day of a given tax period.

Nexia BT observations

The shift of certain gambling services to being a vatable supply and no longer VAT exempt should be seen in the context of VAT recoverability, apart from suppliers now having an output VAT to account for. Following the 2015 VAT changes, which have affected suppliers of electronically supplied services (ESS), ESS providers already might have had some right to recover input VAT. Following these guidelines, those gambling operators which supply their ESS services to non-Malta established players might now have an extended right of input VAT recoverability and also possibly a change in their Malta VAT registration type.

The switch to an Article 10 VAT registration type will bring with it new compliance obligations, and if applicable, the right to recover VAT on a partial attribution basis, if the gambling supplier is engaged in both vatable and exempt supplies. VAT registration might be obligatory or optional and hence other considerations linked to such VAT registration must also be considered.

To view the full guidelines as issued by the Malta VAT Department please follow this link.

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Switzerland

Swiss Value Added Tax 2018

As of 1 January 2018, amendments to the partial revision of the Value Added Tax Act (VAT Act) entered into force. Also Swiss VAT rates changed.

As of 1 January 2018, Swiss VAT registered persons have to adapt IT systems to the new VAT rates. Foreign enterprises performing business in Switzerland need to check what implications may result from the new VAT registration rules and should evaluate the compliance duties as well as the optimisation potential.

Tax rates 2018

On 24 September 2017, Swiss voters rejected the pension reform package "Pension reform 2020". As a result, the following VAT rates apply as of 1 January 2018:

Standard rate	Special rate accommodation services	Reduced rate
7.7% (formerly 8%)	3.7% (formerly 3.8%)	2.5% (unchanged)

Due to the partial revision of the VAT Act, the reduced rate newly also applies to **electronic media** without advertising character, such as e-newspapers, e-magazines and e-books.

The determining date for the applicable tax rate is not the date of the invoice or the date of payment, but the date or period of supply. Thus, work in progress as per 31 December 2017 must be accrued and partial payments must be invoiced correctly. Advance payment invoices can already carry the lower tax rate in 2017, depending on when the supply will be carried out. In line with the principle "tax declared equals tax owed", VAT provisions in permanent contracts may also need to be adjusted.

Extended Swiss VAT liability from 2018

The partial revision results in an increasing number of domestic and foreign enterprises liable for Swiss VAT. As of 1 January 2018, enterprises with a worldwide – and no longer Swiss – turnover exceeding CHF 100,000 p.a. are liable to register for Swiss VAT if they perform taxable supplies in Switzerland. The supplies not to be included in this turnover limit are only those that are exempt from tax without credit, such as financial income, property turnover not opted for and certain sales in the healthcare sector.

A timely analysis of the business transactions of domestic and foreign associated enterprises with regard to a potential VAT liability as of 1 January 2018 is therefore required. In the case of a tax liability, account must also be taken of the fact that the so-called "company duty" in accordance with the Radio and Television Ordinance (RTVO) will in future be collected by Swiss VAT authorities. This duty will therefore affect all VAT registered persons.

Impact on Swiss domestic enterprises

In particular, internationally active trading companies with minor trading volumes in Switzerland or service companies with taxable sales predominantly from abroad, are liable to pay tax from 2018 as soon as their worldwide turnover exceeds the limit. Until the end of 2017, voluntary registration was open to these companies.

Holding companies will continue to be exempt from tax, if they mainly realize dividend or financial income and the earnings from supplies such as, e.g., management fees do not exceed the limit of CHF 100,000 p.a. The right to input tax deduction can be secured as before by voluntary VAT registration.

Impact on foreign enterprises

Foreign enterprises with a worldwide turnover exceeding CHF 100,000 p.a. will be liable to register for Swiss VAT with their first taxable turnover generated in Switzerland. In case a Swiss VAT registration is mandatory, the internal processes, i.e. IT, customer/supplier master data and if necessary, the end-consumer prices need to be adjusted and a fiscal representa-tive has to be engaged.

In particular, supplies not being subject to reverse charge mechanism in Switzerland may lead to a VAT liability in Switzerland, such as

- work labour contracts (e.g. installation, fittings or repairs on movable or immovable goods) in Switzerland
- services related to a property in Switzerland, passenger transportation as well as cultural, artistic or sporting activities in Switzerland.

Business activity	VAT registration duty 2017	VAT registration duty 2018
Maintenance, repair, installation, construction industry	Swiss turnover > KCHF 100	Global turnover > KCHF 100 + 1 Swiss taxable supply
Telecommunication & electronical services B2C	Swiss turnover > KCHF 100	Global turnover > KCHF 100 + 1 Swiss taxable supply
Energy B2C	n/a reverse charge applicable	Global turnover > KCHF 100 + 1 supply used/enjoyed in Switzerland
Services B2B or B2C (recipient of supply principle)	n/a reverse charge applicable	
Services B2B or B2C (recipient of supply principle not applicable)	Swiss turnover > KCHF 100	Global turnover > KCHF 100 + 1 Swiss taxable supply

Further implications of the partial revision

The following additional changes may require VAT planning:

- Place of supply for electricity, gas, district heating
  As an exception, the place of supply for energy is deemed to be the place of use and enjoyment, if there is no place of economical activity or PE of the recipient in Switzerland (e.g. supply of energy to Swiss holiday homes and holiday apartments)
- Extension of the notional input VAT deduction on means of production and goods used for an entrepreneurial activity
- Reintroduction of margin taxation on collectors' items, such as works of art, antiques and the like
- Assessment of the tax liability of political bodies only on the basis of the turnover limit of CHF 100,000
- Tax exemption for services rendered between political bodies and the organisations exclusively held or established by them
- Extended definition of the term "related party": Foundations – with the exception of pension schemes – and associations to which particularly close economic, contractual or personal relationships exist are considered to be related parties. As a result, trans-actions between such parties need to be in line with the arm's length principle. The qualification of "related party" is also relevant to the question of whether the so-called notification procedure is compulsory for the transfer of a going concern.

The introduction of new place of supply rules for distance selling is however postponed to 2019.

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Tax proposal 17

On 12 February 2017, the Corporate Tax Reform III (CTR III) was rejected by the Swiss voting population. Subsequently, the tax proposal 17 (TP 17) was launched. The consultation proposal for the TP17 was published on 6 September 2017.

Background

The process to reform the Swiss corporate tax system was initiated several years ago. The CTR III was launched against the background of a tax dispute with the EU as well as the OECD and G20 member states. In this context, the preferential tax regimes were reviewed which led to the conclusion that these regimes were no longer in line with international best practice. As a consequence, it was the purpose of the CTR III to abolish the preferential tax regimes and to introduce countermeasures to preserve the international competitiveness of Switzerland (cf. Taxlink – September 2016: Issue 112).

The overall direction and objective of the tax reform was and is still undisputed. As a result, the TP 17 has the same objectives as the CTR III but should be more balanced to ensure a broad(er) acceptance. At the same time, since the CTR III was rejected, the current tax legislation remains in force until a new law is implemented, i.e. preferential tax regimes for holding companies, mixed companies and domiciliary companies are available until then.

Content of the TP 17

The starting point and the conditions for the new reform were unchanged. One measure, the notional interest deduction was removed from the proposal. However, it remains to be seen whether it will find its way into the proposal again during parliamentary consultation. The TP 17 includes the following measures (incl. changes to the CTR III):

- **Tax privileges:** Cantonal tax privileges for status companies as well as federal tax privileges for principal companies and Swiss finance branches will be abolished (no changes to CTR III). The realization of hidden reserves generated under a tax privilege will be taxed separately after the privileges have been abolished.
- **Patent box:** Income from patents and comparable rights are excluded from the taxable base to the extent of 90 percent on cantonal level (non-patented inventions of small and medium sized enterprises and copyrighted software are not covered by the patent box anymore).
- **R&D incentives:** Cantons can introduce R&D incentives in the form of excess R&D deductions of up to 150 percent. Qualifying expenses are basically limited to personnel expenses incl. a premium (the limitation on R&D personnel expenses, incl. a premium is new).
- **Limitation:** The maximum tax relief on profits from the measures patent box and R&D incentives is limited to 70 percent (CTR III: 80 percent). Amortizations of hidden reserves from a step-up under previous law are also part of the limitation.
- **Taxation of dividends:** Taxation of dividends from qualifying shareholdings of individuals is increased to at least 70 percent (CTR III: 60 percent for cantons provided that the notional interest deduction was introduced).
- **Reduction of cantonal income tax rates:** The cantons should have the option to reduce their corporate income tax rates. Certain cantons have already communicated reduced combined effective income tax rates of 12-14 percent in the context of the CTR III. It can be assumed that the cantons stick to those reductions.
- **Family allowances:** The minimum family allowance amounts will - as a sociopolitical measure - be increased by CHF 30 per month (new measure of the TP 17).
- **Capital tax:** Cantons can allow a reduction in the calculation of capital taxes on equity relating to participations as well as patents and similar rights (no changes to CTR III).
- **Hidden reserves:** A tax-neutral step-up of hidden reserves upon migration to Switzerland will be allowed (no changes to CTR III).
- **Transposition:** All transfers of shares held as private assets to a self-controlled company shall be taxable, provided that the consideration exceeds the sum of share capital and capital contribution reserves (new measure of the TP 17). According to current law, only participations of at least five percent were concerned.
- **Extension of the lump sum tax credit:** Swiss permanent establishments of foreign companies shall be entitled to the lump sum tax credit (new measure of the TP 17).

Timetable

The consultation ended on 6 December 2017. The Federal Council plans to submit the legislative proposal to parliament in spring 2018. The reform is - after the expiry of the referendum period or after the proposal has been accepted by the Swiss voters - expected to enter into force by 2019 at the earliest.

Outlook

The new version of the reform of the Swiss corporate tax system is provided by the TP 17. The proposal contains several adaptations which take into account the results of the popular vote from February 2017 and make the proposal more balanced overall. Still, it can be assumed that the proposal will become subject to a controversial debate in parliament.

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United States

US Tax reform

On December 22, 2017, President Trump signed into law the most sweeping reform of the US tax system in over 30 years – the Tax Cuts and Jobs Act (PL 115-97) (the "Act"). Both chambers of Congress reconciled their own versions of a tax reform bill in December, making some notable changes to the draft legislation, which became the final version of the Act. Here is an overview of significant changes made to the US Tax Code under the Act:

Individual taxes

The Act lowers the marginal income tax rates for individual taxpayers, reducing the top marginal rate to 37%, and applying this rate to income over $500,000 for individual taxpayers ($600,000 for married taxpayers). The Act provides new tax benefits for families, such as increased child tax credits, while taking away others, such as repeal of personal exemptions.

The exemption amount for the estate and gift tax is increased to $11 million; the estate tax is not repealed, even though the House originally included a repeal of the estate tax in its draft legislation.

Mortgage interest deductions are limited. The Act eliminates the deduction for interest paid on home equity loans and limits the deduction for home mortgage interest to the interest attributable to up to $750,000 of mortgage debt. The deduction for state and local income or property taxes is limited to $10,000.

The Act expands the availability of the medical expense deduction by lowering the threshold for its applicability for 2 years; the 10%-of-AGI floor would be lowered to 7.5% until 2019, when it would revert to 10%.

It should be noted that many of the tax reductions for individuals in the Act are subject to a "sunset" provision, which provides that these reductions will be removed as of January 1, 2026. Also noteworthy is that the Act repeals the individual mandate under the Affordable Care Act or "Obamacare," which is a penalty paid by individuals who do not obtain health insurance.

Business taxes

Beginning in 2018, the corporate tax rate is reduced to 21%. The alternative minimum tax system ("AMT"), which applies to corporate taxpayers with income over certain thresholds and limits the deductions of these taxpayers, is repealed under the Act.

For businesses operating as flow through entities (e.g., partnerships), which do not pay tax on their income but pass income directly to their owners, a deduction equal to 20% of "qualified business income" would be available to the owners.

The section 179 expense deduction for business purchases would be expanded under both bills. Conversely, new limitations on deductions for interest expense are imposed on businesses with gross receipts over $25 million (limited exceptions apply for certain types of businesses). Net operating losses (NOLs) are subject to new limitations as well, with no ability to carry NOLs back to earlier years and the deductibility of NOLs limited to 80% of taxable income.

The international tax provisions include a "dividend participation exemption" system for US corporate shareholders of foreign corporations, along with a mandatory deemed repatriation provision that would tax 10% shareholders on the profits of offshore corporations. There is a global minimum tax regime meant to capture income from intangibles held outside the US. Foreign tax credit rules are adjusted accordingly with respect to these provisions. Deductible expenses made to foreign affiliates are subject to new limitations.

The speed with which the Act was passed has left many taxpayers and advisors unsure of the application of some of these new provisions. It is anticipated that Congress will need to issue a corrections bill to address mistakes and unintended consequences in the Act, and that the IRS will issue guidance on the implementation of the new rules.

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