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WORLD WIDE TAX NEWS

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INTERNATIONAL
THE LATEST BEPS DEVELOPMENTS

The main developments in the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project since the previous edition of WWTN have been the issue of:

– A Public Discussion Draft on BEPS Action 3: Strengthening CFC rules

– A Revised Discussion Draft on BEPS Action 6: Prevent Treaty Abuse

– A Revised Discussion Draft on BEPS Action 7: Preventing the artificial avoidance of PE status

– A Public Discussion Draft on BEPS Action 11: Improving the analysis of BEPS.

We briefly summarise the main points in each Draft below.

BEPS ACTION 3: STRENGTHENING CFC RULES
The Draft considers the constituent elements of CFC (controlled foreign company) rules ("building blocks") necessary for them to be effective, with recommendations for most (but not all) of the elements, as summarised below:

Building block	Recommendations
Definition of a CFC	– Entities within the scope should be broadly defined, so that in addition to including corporate entities CFC rules would also apply to partnerships, trusts, and permanent establishments (PEs) when those entities are either owned by CFCs or treated in the parent jurisdiction as taxable entities separate from their owners. – A modified hybrid mismatch rule should be included, to prevent entities from circumventing CFC rules by being treated differently in different jurisdictions.
Threshold requirements	A low-tax threshold, where the tax rate calculation is based on the effective tax rate, should be included. The low-tax threshold should also use a tax rate that is meaningfully lower than the tax rate in the country applying the CFC rules.
Definition of control	– CFC rules should at least apply both a legal and an economic control test so that satisfaction of either test results in control. Countries may also include de facto tests where they achieve the same effect. – A CFC should be treated as controlled where residents hold, at a minimum, more than 50% control, although countries that want to achieve broader policy goals or prevent circumvention of CFC rules may set their control threshold at a lower level. This level of control could be established through the aggregated interest of related parties or unrelated resident parties or from aggregating the interests of any taxpayers that are found to be acting in concert. – CFC rules should apply where there is either direct or indirect control.

CONTENTS

EDITOR'S LETTER

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

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INTERNATIONAL – continuation
THE LATEST BEPS DEVELOPMENTS

Building block	Recommendations
Definition of CFC income	Several options discussed, but no recommendations made pending the outcome of consultation.
Rules for computing income	– The rules of the parent jurisdiction should be used to calculate a CFC's income. – Jurisdictions should have a specific rule limiting the offset of CFC losses so that they can only be used against the profits of the same CFC or against the profits of other CFCs in the same jurisdiction.
Rules for attributing income	– The attribution threshold should be tied to the minimum control threshold when possible, although countries can choose to use different attribution and control thresholds depending on the policy considerations underlying CFC rules. – The amount of income to be attributed to each shareholder or controlling person should be calculated by reference to both their proportion of ownership and their actual period of ownership or influence. – Jurisdictions can determine when income should be included in taxpayers' returns and how it should be treated so that CFC rules operate in a way that is coherent with existing domestic law. – The tax rate of the parent jurisdiction should be applied to the income.
Rules to prevent or eliminate double taxation	– Where the attributed CFC income is also subject to foreign corporate taxes, and where CFC rules in more than one jurisdiction apply to the same CFC income, a credit for foreign taxes actually paid, including CFC tax assessed on intermediate companies, should be allowed. – Where a CFC actually distributes dividends out of income that has already been attributed to its resident shareholders under the CFC rules or a resident shareholder disposes of the shares in the CFC, dividends and gains on disposition of CFC shares should be exempt from taxation if the income of the CFC has previously been subject to CFC taxation, but the precise treatment of such dividends and gains can be left to individual jurisdictions so that provisions are coherent with domestic law.

BEPS ACTION 6: PREVENT TREATY ABUSE

This revised Discussion Draft reflects the conclusions and proposals that resulted from a public meeting in January 2015 to discuss the original Draft.

Part 1 reflects the outcome of the discussion of a new proposal for an alternative "simplified" limitation-on-benefits (LOB) rule and on how the LOB rule should be presented in the OECD Model Tax Convention. It is proposed that the simplified LOB rule could be incorporated into the Model Tax Convention by describing the main features of the LOB in the Articles of the Model and presenting the alternative formulations of each paragraph in the Commentary.

Part 2 presents the outcome of the discussion of each of the 20 issues for follow-up work that were identified in the discussion draft of 21 November 2014, including new proposals for treaty rules intended to address concerns related to special tax regimes and to changes to domestic law made after the conclusion of a treaty.

Further comments are now invited.

INTERNATIONAL – continuation
THE LATEST BEPS DEVELOPMENTS

BEPS ACTION 7: PREVENTING THE ARTIFICIAL AVOIDANCE OF PE STATUS

This revised Discussion Draft narrows down the various options outlined in the previous Draft to a smaller number of proposals, in particular to:

– Broaden the scope of dependent agent PE to include situations where a person "negotiates the material elements of contracts"

– Narrow the exemption for independent agents

– Limit all the specific activity exemptions to situations where the activity is "preparatory or auxiliary"

– Amend the Commentary relating to anti-fragmentation and splitting up of contracts.

If these proposals are adopted in the final report due in September 2015, and implemented through negotiation of a multilateral instrument in 2016, they are likely to result in many more overseas companies having PEs in countries in which they operate. However, it is not yet clear whether significant levels of profit will be attributable to such PEs, as the working group has deferred consideration of profit attribution until after September 2015.

BEPS ACTION 11: IMPROVING THE ANALYSIS OF BEPS

The BEPS Action Plan states that improving the availability and analysis of data on BEPS is critical, including monitoring the implementation of the Action Plan.

The discussion draft includes consideration of the following issues:

– What is the currently available data to analyse BEPS and BEPS countermeasures?

– What are best practices in governments collecting and making available for research available data?

– Whether there are additional indicators of BEPS that might be provided.

– Whether the proposed indicators could have their "signal-to-noise" ratio enhanced.

– Whether there are additional empirical analyses of BEPS and BEPS countermeasures, particularly in developing countries.

– Whether there are alternative approaches or refinements of the two proposed approaches to estimating the scale of BEPS.

The draft outlines options that are intended to provide stakeholders with substantive options for analysis and comment.

SUMMARY

In summary, the recent BEPS developments (particularly the proposals to lower the PE threshold and limit entitlement to Treaty benefits), together with other BEPS discussions and recommendations (for example in relation to transfer pricing and hybrids), mean that international groups will need to continue to review and in many cases amend their legal structures, trading models and pricing arrangements over the coming months to preserve benefits, reduce risk and remain compliant.

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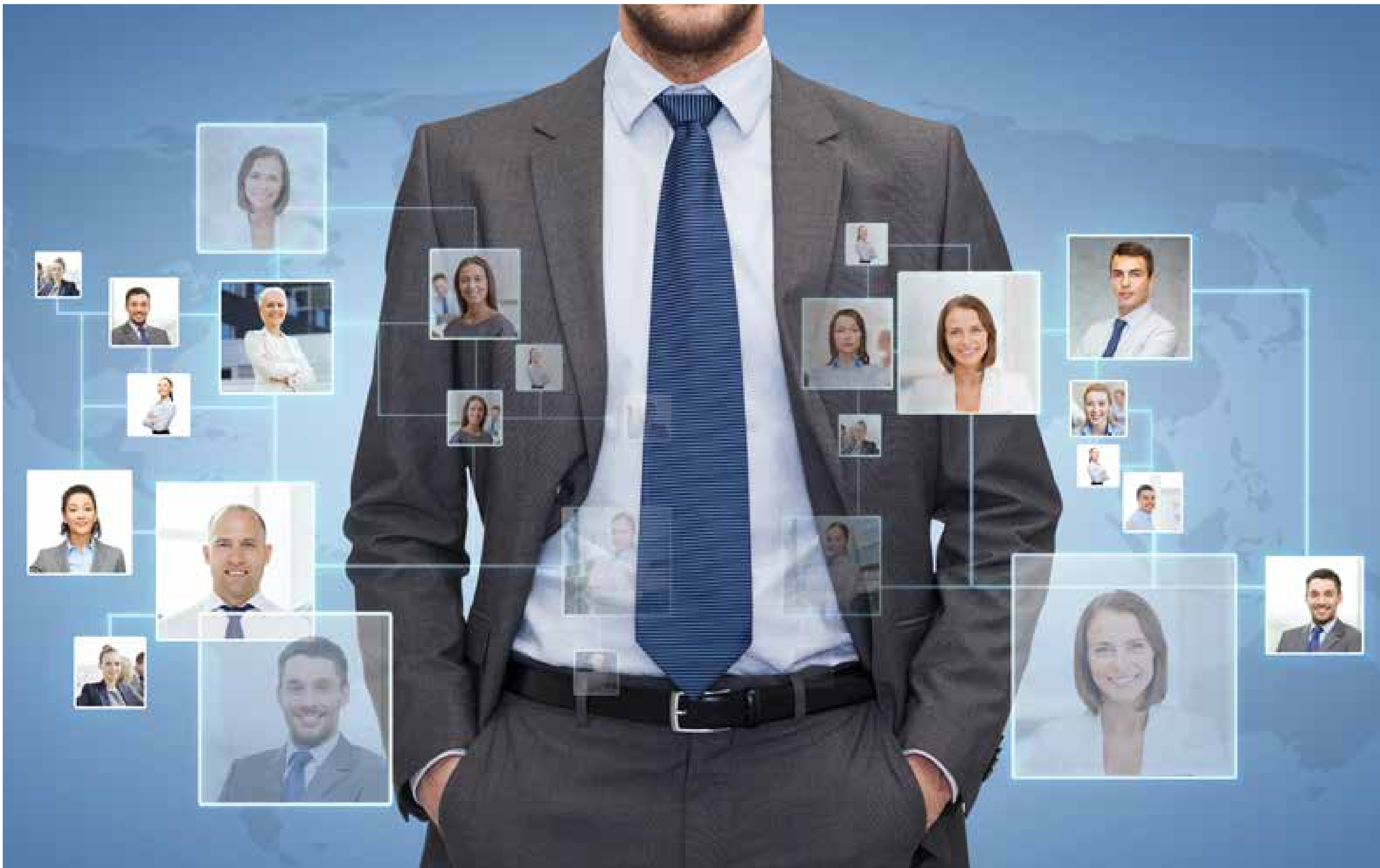

CHINA

NEW RULES ON INDIRECT TRANSFERS OF ASSETS BY NON-RESIDENT ENTERPRISES

On 6 February 2015 China's State Administration of Taxation (SAT) issued new guidance (Bulletin No. 7, 2015) on the tax treatment of an indirect transfer of assets by a non-resident enterprise.

Bulletin 7 does not entirely replace Circular 698 (issued by the SAT in December 2009), which contained the previous rules, but it abolishes certain provisions and provides more comprehensive guidance on a number of issues. It should improve the administration of the indirect transfer rules and potentially provide taxpayers with more certainty.

The main changes introduced by Bulletin 7 are as follows:

– The scope of the rules has been widened to cover a broader range of Chinese taxable property.
– A withholding tax has been introduced in respect of gains on the transfer of immovable Chinese property or shares in an enterprise which is tax resident in China, if the assets are not those of a Chinese establishment or place of business.
– Two new 'safe harbours' have been introduced, for listed shares and treaty exemption.
– Reporting is now voluntary (under Circular 698 there was a mandatory reporting requirement for certain transactions).
– Transactions can be reported by either the transferor or transferee (under Circular 698 the transferor was obliged to report).
– More guidance has been provided on factors to be considered when determining a bona fide commercial purpose of a transaction.
– There is a list of blacklisted transactions.
– Harsher penalties will apply if an agent fails to withhold tax.

Further details in respect of some of the changes are given below.

MORE EXPLICIT CRITERIA FOR DETERMINING TRANSFERS WITH REASONABLE BUSINESS PURPOSES

The seven factors listed in the circular will be given priority when analysing and determining whether an indirect equity transfer or arrangement of Chinese resident enterprises by non-resident enterprises has “reasonable business purposes”.

EXPLICIT CONDITIONS FOR BEING REGARDED AS TRANSFERS WITH REASONABLE BUSINESS PURPOSES

Equity transfers meeting the following conditions will be regarded as transactions with reasonable business purposes:

– The transferor and the transferee are related in any of the following ways:
  a) The transferor directly or indirectly owns at least 80% of the equity of the transferee;
  b) The transferee directly or indirectly owns at least 80% of the equity of the transferor;
  c) At least 80% of the equity of both the transferor and the transferee is owned, directly or indirectly, by the same shareholder.

  If over 50% of the equity value of the foreign enterprise comes, directly or indirectly, from real estate in China, the shareholding ratio mentioned in items a), b), and c) above will be 100%.
– The Chinese tax burden of the subsequent indirect transfer by the transferee must not be less than that of the indirect transfer under the same or similar circumstances, assuming that this indirect transfer does not take place.
– The consideration paid by the transferee consists of only the equity of the transferee or that of the controlling corporation of the transferee (excluding the equity of listed companies).

EXPLICIT CONDITIONS FOR NOT BEING REGARDED AS TRANSFERS WITH REASONABLE BUSINESS PURPOSES

Equity transfers under the following conditions will be regarded as transactions without reasonable business purposes:

– At least 75% of the equity value of the foreign enterprise comes, directly or indirectly, from the Chinese taxable property;
– At any time within the 12 months preceding the indirect transfer of the Chinese taxable property, at least 90% of the total assets (excluding cash) of the foreign enterprise comprises, directly or indirectly, the investments in China, or within the 12 months preceding the indirect transfer of the Chinese taxable property, at least 90% of the income of the foreign enterprise comes, directly or indirectly, from China;
– Although the foreign enterprise and its subsidiaries directly or indirectly holding the Chinese taxable property have registered in foreign jurisdictions to meet legitimate requirements in organisational terms, they undertake limited functions and assume limited risks which are insufficient to establish their economic substance;
– The foreign income tax burden on the indirect transfer of the Chinese taxable property is less than the possible Chinese tax burden if the Chinese taxable property is transferred directly.

EXPLICIT CIRCUMSTANCES UNDER WHICH RECHARACTERISATION OF AN EQUITY TRANSFER IS NOT REQUIRED (I.E. THERE IS NO NEED TO PAY ENTERPRISE INCOME TAX ACCORDING TO THIS CIRCULAR)

The following indirect transfers of Chinese taxable property are not required to be recharacterised:

- If a non-resident enterprise purchases and sells, in a public market, the equity of an overseas listed company holding Chinese taxable property, income from indirect transfer of the Chinese taxable property will not be subject to tax in China;
- Where a non-resident enterprise directly transfers the Chinese taxable property under its ownership, the income from the transfer is exempt from enterprise income tax if it is applicable to the tax treaty or arrangement.

REVISED REGULATIONS ON THE COLLECTION AND ADMINISTRATION PROCEDURES

Where both the transferor and the transferee are non-resident enterprises and the transaction is conducted in a foreign jurisdiction and is subject to the enterprise income in China pursuant to related tax regulations, the transferor must declare and pay enterprise income tax to the tax authority in charge of the transferred resident enterprise pursuant to Circular 698 and Guo Shui Fa [2009] No. 3.

However, the entity or individual that is obliged to pay relevant proceeds will act as the withholding agent and withhold enterprise income tax accordingly. Circular 698 requires the transferor to report the indirect equity transfer to the competent tax authority when certain criteria are met. However, the transferor and the transferee as well as the indirectly transferred Chinese resident enterprise can choose to voluntarily report the indirect transfer to their competent tax authorities.

MORE EXPLICIT REGULATIONS ON THE LEGAL LIABILITY OF THE TRANSFEROR AND THE TRANSFEREE

If the withholding agent wholly or partly fails to withhold tax, the transferor must declare and pay the tax. If the withholding agent fails to withhold tax, and the transferor also fails to pay the tax, the competent tax authority is qualified to pursue the tax payment, with late payment interest levied on a daily basis.

The applicable late payment interest rate will be equal to the loan benchmark interest rate for the tax payment period plus five percentage points. However, if the transferor has reported the indirect transfer to the competent tax authority, the interest rate could be lowered to the benchmark interest rate. If the withholding agent had reported the indirect transfer and submitted related documents to the competent tax authority, the liability may be mitigated or exempted.

The withholding agent will also face a penalty ranging from 50% to three times the tax amount not withheld.

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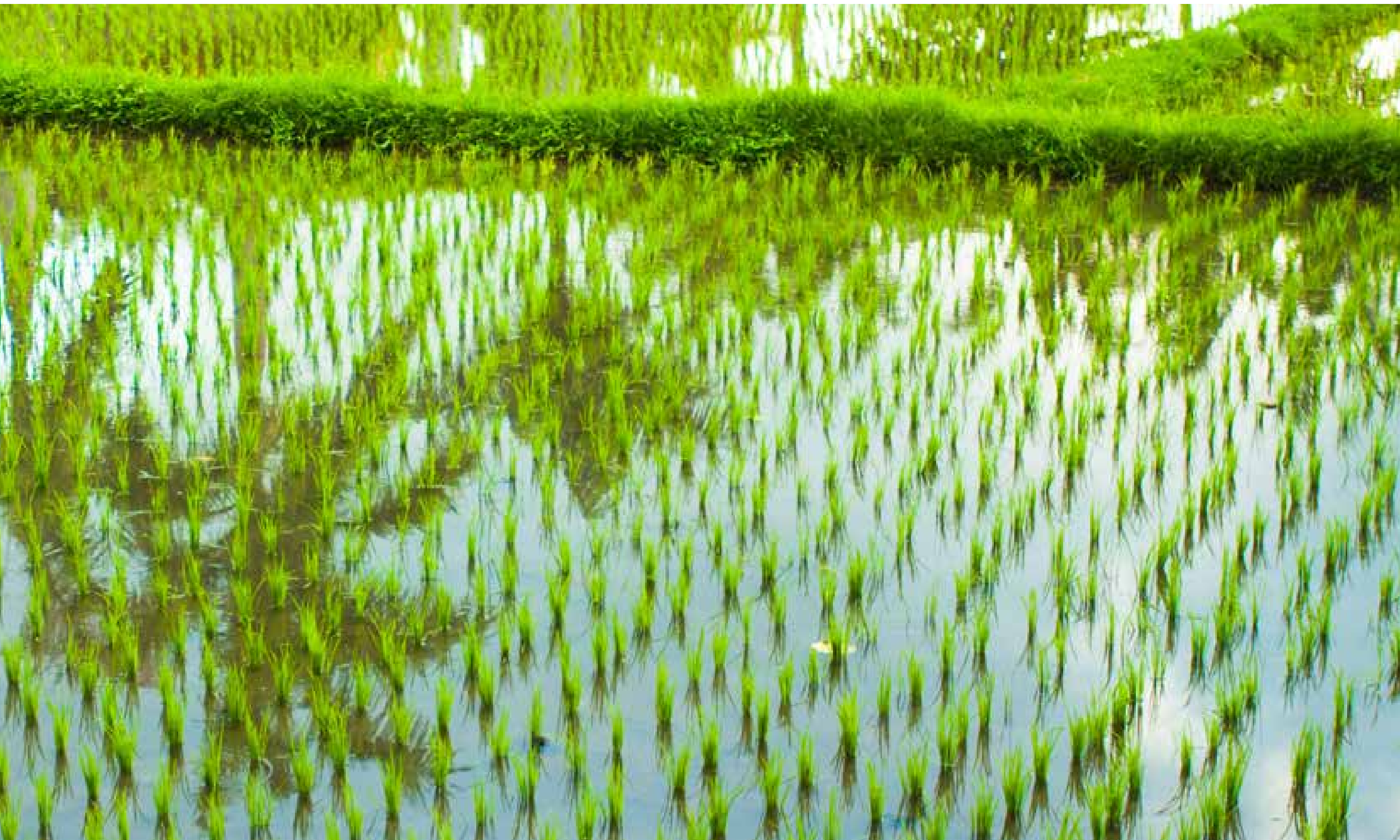


INDIA

AMENDMENTS INTRODUCED BY FINANCE ACT 2015

India's budget for fiscal year 2015-2016 was announced on 28 February 2015 by the Finance Minister, who stated that his vision for the budget was to improve India's business environment by improving the ease of doing business.

The proposals included a number of foreign investment and tax reforms with prime focus on growth, reinstatement of investor confidence, and a clear and non-adversarial tax regime. The budget, subject to some additions/ amendments to original proposals, was passed by the Parliament. The changes in tax law have been enacted after it received the assent of President of India on 14 May 2015.

Some of the key business tax amendments applicable from fiscal year 2015-2016 are summarised below:

CORPORATE TAX RATES

The tax rates for fiscal year 2015-2016 for corporate tax payers are:

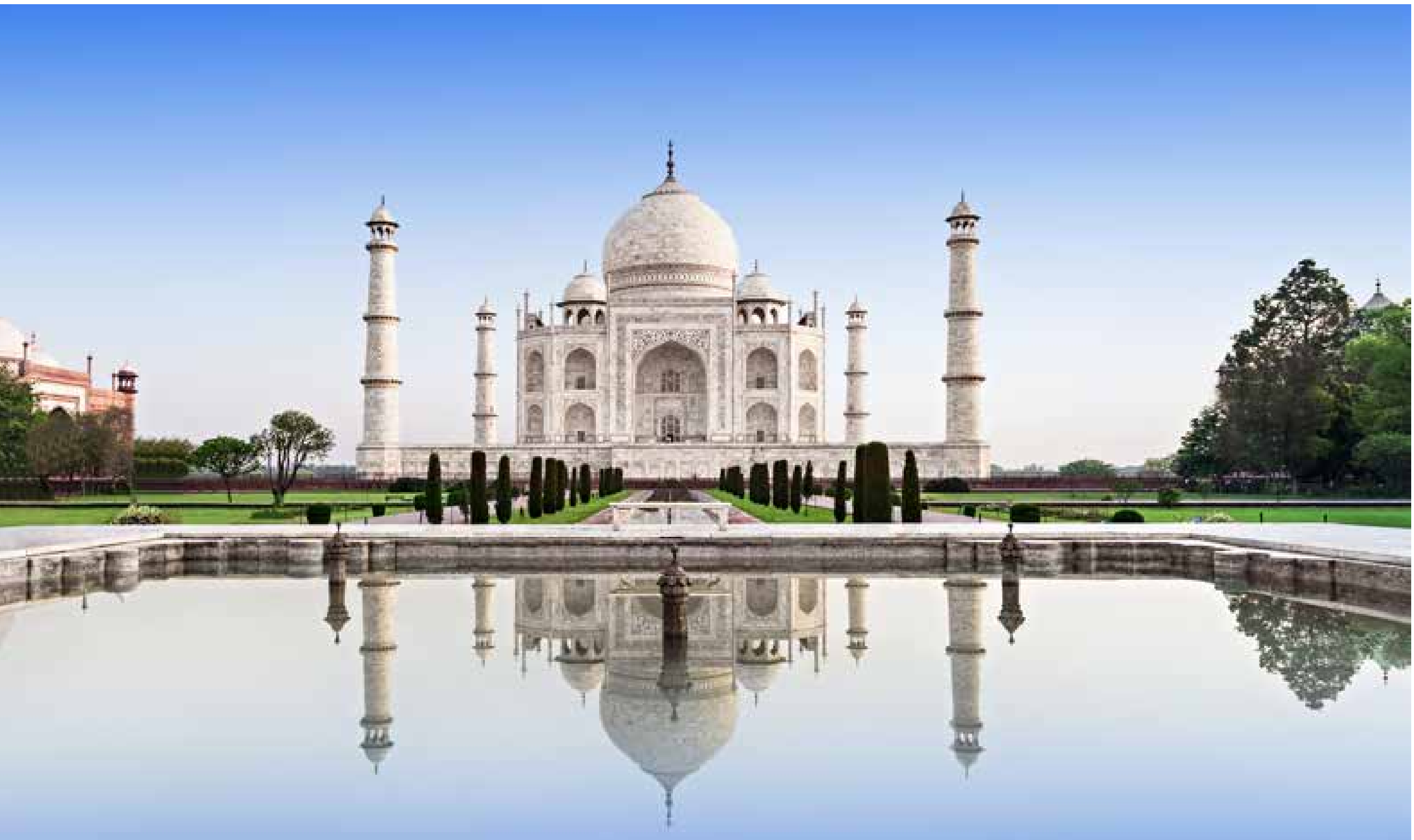
Residential Status	Resident Company			Foreign Company		
Income Threshold (INR Mn)	Up to 10 Mn	Above 10 Mn up to 100 Mn	Above 100 Mn	Up to 10 Mn	Above 10 Mn up to 100 Mn	Above 100 Mn
Basic	30%	30%	30%	40%	40%	40%
Surcharge	-	7%	12%	-	2%	5%
Cess	3%	3%	3%	3%	3%	3%
Effective Tax Rate	30.90%	33.06%	34.61%	41.20%	42.02%	43.26%

The corporate tax rate for domestic companies will be reduced from 30% to 25% over a period of 4 years beginning from 1 April 2016.

INDIRECT TRANSFERS OF INDIAN ASSETS

In 2012, a retrospective amendment was enacted whereby a transfer of shares or interest in a foreign entity was considered to be taxable in India if such share or interest derives its value substantially from assets located in India. The following amendments introduced through Finance Act 2015 have clarified certain aspects relating to indirect transfers:

- The provisions will apply only if the value of Indian assets exceeds INR 100 Mn and represents at least 50% of value of all assets owned by the foreign entity
- 'Value of asset' will mean the fair market value of asset without any reduction for liabilities in respect of the asset
- The taxation of gains will be on a proportional basis
- An exemption will be available to a transferor not holding a right of control or management or not holding voting power or share capital or interest exceeding 5%
- An exemption is also provided in respect of a transfer of shares of a foreign company in a scheme of amalgamation or demerger, subject to certain conditions
- Rules will be prescribed for the manner of determining the fair market value of assets and the method of determining proportionality
- There will be a reporting obligation on Indian concerns to furnish information relating to offshore transactions which have the effect of directly or indirectly modifying the ownership structure or control of an Indian concern.



GENERAL ANTI-AVOIDANCE RULES (GAAR)

GAAR provisions were introduced in 2013 aimed at countering tax avoidance through transactions structured in a way to deliberately avoid tax. These provisions allowed tax authorities to deny tax benefits if a transaction is undertaken without any commercial purpose other than obtaining tax benefits. These provisions were to come into effect from 1 April 2015.

In light of contentious issues and the need to accelerate momentum on foreign investment flow, the implementation of GAAR has been deferred by two years to 1 April 2017. Accordingly, the GAAR provisions will be applicable from fiscal year 2017-2018.

The provisions are likely to be implemented as part of a comprehensive regime that deals with the OECD's Base Erosion and Profit Shifting (BEPS) project and aggressive tax avoidance. Furthermore, investments made up to 31 March 2017 will be protected from GAAR applicability.

TAX RATES OF ROYALTY AND FEES FOR TECHNICAL SERVICES (FTS)

To promote the inflow of technology, the tax rate on royalties and FTS received by non-resident taxpayers has been reduced from 25% to 10%. This in effect reverses the increase in tax rates introduced in 2013. This is expected to promote the 'Make in India' initiative of new Government, and will reduce costs for Indian businesses that are required to pay royalties and FTS net of tax to foreign companies.

PLACE OF EFFECTIVE MANAGEMENT (PoEM) – RESIDENCY TEST FOR FOREIGN COMPANIES

The tax law prior to Finance Act 2015 considered a foreign company to be resident in India if control and management of its affairs is situated wholly in India. In an effort to align current tax law with internationally recognised principles, the concept of PoEM has been introduced by the Finance Act 2015. The Finance Act provides that a company will be treated as resident in India if its place of effective management in that year is in India. PoEM has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance, made. For the benefit of taxpayers as well as the tax administration, a set of guiding principles for determining PoEM will be issued.

This enactment is expected to impact the tax residency of multinational companies where management/commercial decisions are taken by the management in India.

PRESENCE OF A FUND MANAGER IN INDIA NOT TO CONSTITUTE BUSINESS CONNECTION FOR AN OFFSHORE FUND

Under earlier tax provisions, the presence of a fund manager in India could potentially create sufficient nexus of the offshore fund in India, and could constitute a business connection in India. As a result, income of offshore funds from investments made outside India could be taxed in India due to fund management activity undertaken in and from India constituting a business connection.

To encourage fund management activity, the Finance Act 2015 provides that fund management activity carried out through an eligible fund manager for an eligible fund will not, by itself, constitute a business connection in India, provided certain conditions are satisfied. The conditions include:

- The fund being resident of country with which India has a tax treaty
- The fund having at least 25 members who are unconnected persons
- 95% of the investors are non-residents
- Specified limits on investment in any entity
- The fund manager to be registered under specified regulations (SEBI, etc.)

Some of the eligibility conditions are relaxed for an investment fund set up by the Government or Central Bank of a foreign State, or a sovereign fund, or any specific funds to be notified in due course.

Though a welcome move, given the key conditions, the amendment appears to be beneficial for large institutional fund investors and less relevant for small private equity funds.

APPLICABILITY OF MINIMUM ALTERNATE TAX (MAT) TO FOREIGN COMPANIES

The Indian tax law provides that if the tax payable by companies under the normal rules (at the rate of 30% for domestic companies) is less than the tax payable at the rate of 18.5% on book profits, the company is liable to pay tax on book profits. This is referred to as the Minimum Alternate Tax (MAT) provision. The application of the MAT provision to foreign companies not having a presence in India has been a matter of debate.

The Finance Act 2015 has provided relief to foreign companies from MAT provisions. With effect from fiscal year 2015-2016, MAT provisions do not apply to a foreign company if the tax (at concessional rates applicable to non-residents) on income from capital gains, interest, royalties and fees for technical services is less than the tax on book profits (at the rate of 18.5%).

This provision is expected to attract more foreign investment in India and assure foreign companies of treaty protection in respect of beneficial tax provisions.

INVESTMENT IN ALTERNATE INVESTMENT FUNDS RECEIVES A BOOST

In an effort to encourage foreign investment through Alternate Investment Funds (AIFs), the investment process, as well as grants limited tax transparency status, has been relaxed by the Finance Act.

RATIONALISATION OF THE REAL ESTATE INVESTMENT TRUST (REIT) REGIME

Similarly, REITS received limited tax transparency status last year. To improve this tax regime, the Finance Act has provided that rental income received by a REIT on properties directly held by a REIT (not through special purpose vehicles) would not be subject to withholding tax and would also enjoy tax pass-thru. Furthermore, there would be no minimum alternate tax on book gains on the value of units received in exchange of shares of the SPV in the hands of the Sponsor entity.

SHARES ACQUIRED ON REDEMPTION OF GLOBAL DEPOSITORY RECEIPTS (GDRS)

Under new provisions introduced by the Finance Act, the period of holding of shares acquired by a non-resident taxpayer on redemption of GDRs will be considered from the date on which the request for the GDR redemption was made. The acquisition cost of shares acquired on redemption of GDRs will be the price of prevailing on any recognised stock exchange on the date on which the request for redemption was made.

UNDISCLOSED FOREIGN INCOME AND ASSETS (IMPOSITION OF TAX) BILL

The large amounts of undisclosed money in offshore tax havens has dominated discussions in civil society, Government institutions and judicial forums for the past couple of years. As promised in the budget speech, the Government has introduced the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill to tackle this issue. The bill has been passed by both houses of Parliament and awaits the President's assent as on 25 May 2015.

The Bill proposes to tax undisclosed foreign income and assets under the stringent provisions of this legislation and not under the existing Indian tax law. It is proposed to apply the provisions of this Bill to all taxpayers resident in India, with effect from 1 April 2016. Some of the salient features of the Bill are:

- Assets including a financial interest in any entity outside India are covered
- Undisclosed foreign income or assets are to be taxed at the flat rate of 30%
- No exemption or deduction or set off of any carried forward losses will be allowed
- The penalty for non-disclosure of foreign income and assets will be equal to three times the tax payable
- Failure to furnish a return in respect of foreign income or assets will attract a penalty of INR 1 Mn
- Punishment for the wilful attempt to evade tax will be rigorous imprisonment from 3 to 10 years
- Wilful failure to furnish a return in respect of foreign income or assets will be punishable with rigorous imprisonment for a term of 6 months to 7 years
- The provisions relating to penalties and prosecution will apply to beneficial owners or beneficiaries of foreign assets
- Safeguards are provided to protect taxpayers holding foreign accounts with minor balances
- Failure to report bank accounts with maximum balance of up to INR 0.5 Mn at any time during the year will not entail penalty or prosecution
- Principles of natural justice and the due process of law are embedded in the legislation by laying down the requirement of mandatory issue of notices for initiating proceedings, granting the opportunity of being heard, etc.

The Bill has provided a one-time compliance opportunity for a limited period to taxpayers who have any foreign assets that to date have not been disclosed for Income tax purposes. Such taxpayers may file a declaration before the specified tax authority within a specified period, followed by payment of tax at the rate of 30% and an equal amount by way of a penalty.

OTHER IMPORTANT UPDATES

INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS)

In view of different interpretations and the diversity in applying accounting standards, the tax treatment of certain items in tax computations was uncertain, leading to tax litigations. To remove uncertainty and maintain uniformity in tax treatments, the Central Board of Direct Taxes (part of the Department of Revenue, responsible for administration of tax laws) has introduced ICDS, with effect from the fiscal year 2015-2016.

These standards are to be adopted by all taxpayers (corporate and non-corporate) maintaining the mercantile (accrual) system of accounting. ICDS are to be followed for the purposes of computing income chargeable to tax as 'Profits and gains of a business or profession' or 'Income from other sources', and are not for the purposes of maintenance of books of account.

The following ICDS are introduced:

- Accounting Policies
- Valuation of Inventories
- Construction Contracts
- Revenue Recognition
- Tangible Fixed Assets
- Effects of Changes in Foreign Exchange Rates
- Government Grants
- Securities
- Borrowing Costs
- Provisions, Contingent Liabilities and Contingent Assets.

It is provided that in the event of conflict between provisions of tax law and ICDS, provisions of tax law will prevail.

With the introduction of ICDS, taxable profits would need to be determined after making appropriate adjustments to the financial statements. The corresponding changes to the form of tax return and tax audit are awaited. While separate books of accounts are not mandated for ICDS, taxpayers may in essence be required to maintain additional records and reconciliations as the basis for the computation of taxable profits.

TAX TRIBUNAL RULING IN RESPECT OF WITHHOLDING AT TAX TREATY RATES DESPITE FAILURE TO FURNISH INDIAN TAX IDENTIFICATION NUMBER (PAN)

Under Section 206AA of Indian tax law, any person entitled to receive any amount or income which is liable to withholding tax is required to furnish their PAN to the person making payment. In the case of failure to do so, withholding tax is to be applied at the higher of:

- The rate specified in the relevant provision of the Indian tax law or
- Rates in force or
- 20%.

As a result, non-residents not holding a PAN were subject to withholding tax at a rate higher than that prescribed under the tax treaty. In a ruling on this matter, the Tax Tribunal has held that where taxes have been withheld under the beneficial provisions of a tax treaty, the Section 206AA provisions cannot be invoked by the revenue authorities to insist on tax deduction at the rate of 20%. The Tax Tribunal held that Section 206AA does not override the provisions of Section 90(2) of the Indian tax law which entitles the non-resident taxpayer to access the beneficial provisions of a tax treaty or Indian tax law.

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GST CONSTITUTIONAL AMENDMENT BILL – AN UPDATE

With the passage of the GST Constitutional Amendment Bill, 2014 ("the Bill") in the Lower House ('Lok Sabha') on 6 May 2015, it seemed almost certain that the dual GST Regime would be implemented from April 2016. However, in a significant development, the Bill has now been referred to a 21-member Select Committee of the Upper House ('Rajya Sabha') for consultation before being taken up for voting. The select committee is expected to table its report in Monsoon Session of Parliament, which is generally held in the month of August.

POSSIBLE OUTCOME OF THE SELECT COMMITTEE REPORT AND WHETHER THE CENTRAL GOVERNMENT CAN STILL IMPLEMENT GST BY 1 APRIL 2016

The two proposals (a levy of 1% additional tax on inter-state supplies of goods which is to accrue to the originating state, and the flexibility to the States to fix the tax rates between the rate bands) were always an aberration to the GST system originally envisaged. While those provisions were proposed to address the concerns of the manufacturing States, it may result in cascading of taxes and add a compliance burden on the industry, which are the two primary challenges sought to be addressed by the GST system.

It is expected that the Select Committee may look at these two proposals in detail and suggest an alternative mechanism to ensure that the genesis of the GST mechanism is not diluted, and the concerns of the States also stand addressed and they support the proposed GST System. The Central and the State Governments will have to walk on a very tight rope for GST to be implemented from 1 April 2016. Considerable backend efforts are already underway around various preparatory steps such as the Place of Supply Rules under GST, GST Laws, IT Infrastructure, Tax Rates under GST, etc. Upon the expected passage of the GST Bill in Rajya Sabha in the Monsoon Session, the Bill would need to be ratified by at least 50% of the State Legislatures to come into effect.

Even if there is a delay of a quarter or so in implementing GST due to the reference to the Select Committee, one should not lose sight of the backend developments. Draft GST Place of Supply Rules had already been sent to the States for comments around two months ago. All such backend developments would allow the Government to move on the GST implementation schedule at a very fast pace post the Constitutional amendments.

SUMMARY

Against this backdrop, and considering the magnitude of the reform, it is imperative for the industry to start making serious preparations for GST. If all the stakeholders contribute to the whole preparatory exercise, then the Government could make a genuine attempt to meet the deadline set for the proposed implementation in the interim period of 3 months, and act swiftly as soon as the constitutional amendments are in place.

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INDONESIA

IMPLEMENTATION OF THE MUTUAL AGREEMENT PROCEDURE

The Indonesian Director General of Tax (DGT) has recently undertaken a number of action points as part of the commitment of G20 Communique members to the Base Erosion and Profit Shifting (BEPS) initiative, which we have covered in detail elsewhere in World Wide Tax News.

With regard to dispute resolution, the DGT has released Minister of Finance (MoF) Regulation No. 240/PMK.03/2014 (PMK 240/2014) on the Mutual Agreement Procedure (MAP) which took effect from 22 December 2014. PMK 240/2014 is applicable to all outstanding and prospective MAP applications. One of the key provisions includes confirmation on the possibility of filing an MAP application in parallel with the tax objection and tax appeal process.

The new regulation provides some clarifications of the procedure, including:

- Use of MAP to process Bilateral or Multilateral Advance Pricing Agreement (APA) applications
- Conditions under which a MAP cannot be filed
- Involvement of local taxpayers or permanent establishments in determining the content of a draft mutual agreement
- Assignment of the Director of Tax Regulations II and the Quality Assurance team to process MAP requests.

Under the new regulation, bilateral and multilateral APAs are conducted through MAP on a voluntary basis. In the event of a MAP being requested by a treaty partner, the local taxpayer has the obligation to file a corresponding MAP application; otherwise, the MAP filed by the treaty partner will not be considered by the DGT.

PMK 240/2014 provides that a MAP cannot be filed when the Tax Court concludes that it has sufficient information on the case and decides to end the hearing sessions. The MAP process will subsequently cease when the Tax Court issues a decision.

The Director of Tax Regulations II has to request the approval of a local taxpayer, permanent establishment and/or Indonesian resident that is a taxpayer of a treaty partner pertaining to discrimination issues, in executing the draft of the mutual agreement, except in particular conditions where the MAP is initiated by the DGT or where an interpretation of the double taxation agreement may potentially lead to double taxation or tax avoidance.

All MAP applications must now be submitted to Director of Tax Regulations II instead of through the local tax office as previously provided under the previous MAP regulation (DGT Regulation No. 48/PJ/2010). MAPs are now undertaken by an execution team under the DGT which will prepare the draft position paper for the Director of Tax Regulations II, who in turn will submit the draft to the DGT for further analysis together with the quality assurance team. With input from the competent authority of the treaty partner, the Director of Tax Regulations II may have discussions with the quality assurance team on amendment of the draft of the mutual agreement. PMK 240/2014 now requires the DGT to issue written notifications of the MAP status and progress, providing more transparency to MAP applicants.

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SINGAPORE

BUDGET 2015 HIGHLIGHTS

Singapore Deputy Prime Minister and Finance Minister Tharman Shanmugaratnam delivered the 2015 Budget Speech on 23 February 2015. We summarise below some of the highlights of international interest.

CORPORATE INCOME TAX REBATE

The Corporate income tax (CIT) rebate which was due to expire in Year of Assessment (YA) 2015 has been extended for another two YAs (YA 2016 and YA 2017). The rebate will be at 30% of tax payable, but up to a lower cap of SGD 20,000 per YA (compared to SGD 30,000 previously).

EXTENDING AND ENHANCING THE MERGER & ACQUISITION (M&A) SCHEME

The M&A Scheme has been extended until 31 March 2020.

In an effort to increase support for Small and Medium Enterprises (SMEs), the M&A allowance rate is increased from 5% to 25% of the value of qualifying acquisitions, capped at SGD 20 million per YA. Stamp duty relief on the transfer of unlisted shares has been correspondingly capped at SGD 20 million on the value of qualifying M&A deals.

To provide more flexibility in the scheme, the shareholding eligibility tiers have been revised and enhanced as follows:

– If the acquiring company owns less than 20% of ordinary shares in the target company, the acquisition must result in the acquiring company directly or indirectly holding at least 20% of the ordinary shares in the target company, subject to conditions.
– If the acquiring company owns less than 50% of ordinary shares in the target company, the acquisition must result in the acquiring company holding at least 50% of the ordinary shares in the target company.
– The existing 75% shareholding eligibility tier will be removed. Hence, an acquiring company will no longer qualify for the M&A scheme if it already owns more than 50% of ordinary shares in the target company.

Any unutilised M&A allowance is not available for transfer under the group relief system or for carry back.

The above changes are effective for qualifying acquisitions made from 1 April 2015. The Inland Revenue Authority of Singapore will release further details soon, including transitional arrangements arising from the above changes.

ENHANCING THE DOUBLE TAX DEDUCTION FOR THE INTERNATIONALISATION SCHEME

The Internationalisation Scheme has been expanded to allow businesses to claim a 200% tax deduction on qualifying manpower expenses incurred for Singaporeans posted to new overseas entities, subject to a cap of SGD 1 million per approved entity, per year, subject to conditions.

The double tax deduction is subject to application and approval by International Enterprise Singapore, and will apply to qualifying manpower expenses incurred from 1 July 2015 to 31 March 2020.

International Enterprise Singapore will release further details soon.

INTRODUCING THE INTERNATIONAL GROWTH SCHEME

To encourage companies in Singapore to expand into overseas markets while anchoring their key functions in Singapore, the International Growth Scheme (IGS) has been introduced.

Under the IGS, qualifying Singapore companies will enjoy a concessionary tax rate of 10% for a period not exceeding 5 years on their incremental income from qualifying activities. Such companies are expected to engage in internationalisation activities and provide opportunities for Singaporeans to gain greater international exposure.

The IGS is effective from 1 April 2015 to 31 March 2020.

International Enterprise Singapore will administer the Scheme and will release further details soon.

EXTENDING AND ENHANCING THE TAX DEDUCTION FOR DONATIONS

To encourage philanthropy, and in line with celebrations for Singapore's golden jubilee, tax deduction for donations made in the year 2015 to Institutions of Public Character (IPCs) and other approved recipients will be increased from 250% to 300%.

The tax deduction for qualifying donations made from 1 January 2016 to 31 December 2018 will revert back to 250%.

EXTENDING AND ENHANCING THE ANGEL INVESTORS TAX DEDUCTION (AITD) SCHEME

The AITD Scheme encourages eligible individuals to invest in start-up companies and help them grow in return for a 50% tax deduction of the cost of qualifying investment, subject to a cap of SGD 500,000 and other conditions.

The AITD Scheme which was to expire in 31 March 2015 has been extended until 31 March 2020.

Further, new qualifying investments made between 24 February 2015 and 31 March 2020 that are co-funded by the Government SPRING's SEEDS and BAS will now qualify for the AITD Scheme.

EXTENDING THE INVESTMENT ALLOWANCE – ENERGY EFFICIENCY (IA-EE) SCHEME

To continue recognising that energy efficiency remains a key national priority for Singapore, the existing IA-EE Scheme and IA-EE for Green Data Centres Scheme will be streamlined into one scheme known as the IA-EE Scheme with effect from 1 March 2015, and the Scheme will be extended until 31 March 2021. These schemes accord investment allowance on capital expenditure incurred in energy efficient or green data centre projects which results in more efficient energy utilisation.

The Scheme will be administered by the Economic Development Board (EDB), which released details of the Scheme on 2 April 2015.

EXTENDING THE DEVELOPMENT EXPANSION INCENTIVE FOR INTERNATIONAL LEGAL SERVICES (DEI-LEGAL) SCHEME

The DEI-Legal Scheme, which provides for a 10% concessionary tax rate for approved law practices incorporated as companies on income from qualifying services for five years, has been extended until 31 March 2020.

All other conditions of the Scheme remain unchanged.

EXTENDING THE TAX CONCESSIONS FOR LISTED REAL ESTATE INVESTMENT TRUSTS (REITs)

The existing income tax concessions for REITs, which amongst others provide for a concessionary income tax rate of 10% for non-tax resident non-individual investors, the tax exemption on qualifying foreign-sourced income, stamp duty remissions on transfer of Singapore immovable property to a REIT, etc. will be extended until 31 March 2020. With the extension, tax exemption on qualifying foreign-sourced income will apply as long as the overseas property is acquired by the REIT or its wholly-owned Singapore tax resident subsidiary company on or before 31 March 2020.

However, given that REITs have obtained a rather critical mass of Singapore assets from which they can expand abroad, the stamp duty remission will lapse after 31 March 2015, and therefore property transfers to a REIT will be subject to stamp duty.

All other conditions remain the same. The Monetary Authority of Singapore will release further details soon.

ENHANCED-TIER FUND TAX INCENTIVE SCHEME

On satisfying certain economic conditions, an approved fund may be eligible for tax exemption on specified income derived from designated investment. As a concession, the master-feeder fund structures can meet the economic conditions on a collective basis. The existing concession for master-feeder fund structures is now extended under this Budget to Special Purpose Vehicles (SPVs) held by the master fund, subject to conditions.

With the enhancement, master and feeder funds as well as SPVs within a master-feeder fund structure may apply for the Scheme and meet the economic conditions on a collective basis.

The change is effective for applications submitted from 1 April 2015. Further details will be released by the Monetary Authority of Singapore soon.

REFINING THE TAX INCENTIVE FOR VENTURE CAPITAL

To recognise the importance of venture capital activity in supporting entrepreneurship, a 5% concessionary tax rate will be accorded for approved venture capital fund management companies managing funds that are granted exemption under Section 13H of the Singapore Income Tax Act.

The new incentive will be effective from 1 April 2015 to 31 March 2020. With the introduction of this incentive, the Pioneer Service Incentive for venture capital fund management companies will be withdrawn from 1 April 2015.

EXTENDING AND REFINING THE MARITIME SECTOR INCENTIVE (MSI)

The automatic withholding tax exemption on payments made for qualifying loans to finance construction or purchase of ships or containers, will be extended to loans taken on or before 31 May 2021.

The above exemption has been expanded to include finance leases, hire-purchase arrangements and loans to finance equity injection into wholly-owned SPVs or intercompany loans to the wholly-owned SPVs for the SPVs' purchase/construction of vessels, containers and intermodal equipment.

The approval window to award MSI-Approved International Shipping Enterprise (AIS), MSI-Maritime Leases (ML) (Ship), MSI-ML (container) and MSI-Shipping related Support Services (SSS) incentives is extended until 31 May 2021.

To keep pace with changes in the industry, the definition of qualifying ship management activities under the MSI-Singapore Registry of Ships (MSI-SRS), MSI- AIS and MSI-SSS awards have been updated.

Other changes introduced:

Type of MSI Scheme	Changes
MSI-SRS and MSI-AIS	Expanded to include: – Mobilisation fees – Demobilisation fees – Holding fees – Incidental container rental income.
MSI-AIS	Qualifying profits remitted from approved foreign branches will also be eligible for tax exemption.
MSI-SSS	Existing recipients can renew their award tenure for another five years, subject to qualifying conditions and higher economic commitments.
MSI-ML	Expanded to include income derived from finance leases treated as sales.

Further details will be released by the Maritime and Port Authority of Singapore.

WITHDRAWAL OF APPROVED HEADQUARTERS INCENTIVE

The approved headquarters incentive which confers tax exemption or a concessionary tax rate of 10% on income derived from qualifying headquarter services will be withdrawn from 1 October 2015.

Henceforth, companies performing qualifying headquarters activities or services in Singapore to network companies may qualify for the Development and Expansion Incentive, subject to meeting conditions.

SIMPLIFYING PRE-REGISTRATION GST CLAIM RULES

To simplify current rules, businesses that are GST-registered from 1 July 2015 can claim pre-registration GST in full on the following goods and services acquired within six months before the date of GST registration:

- Goods held by the business at the point of GST registration; and
- Property rental, utilities and services, which are not directly attributable to any supply made by the business before GST registration.

Apportionment of the pre-registration GST on the above goods and services would no longer be required even if the goods or services have been used to make supplies straddling GST registration or if the goods were partially consumed/onward supplied.

The Inland Revenue Authority of Singapore will release further details by June 2015.

GST REMISSION FOR LISTED REITS AND SPECIFIC LISTED REGISTERED BUSINESS TRUSTS (RBTs)

Existing rules that allow listed REITs and listed RBTs in the infrastructure business, ship leasing and aircraft leasing sectors to claim GST on their business expenses via a GST remission will be extended to 31 March 2020.

In addition, qualifying REITs and RBTs will be allowed to claim GST on business expenses incurred to set up SPVs that are used solely to raise funds for the REITs or RBTs, and which do not directly or indirectly hold qualifying assets of the REITs or RBTs.

The changes will take effect for GST incurred from 1 April 2015 to 31 March 2020. Further details have been released by the Inland Revenue Authority of Singapore on 31 March 2015.

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SRI LANKA

CHANGE IN TAX TREATMENT OF ROYALTY PAYMENTS AND FEES FOR TECHNICAL SERVICES

BACKGROUND

There has been significant growth in the information technology (IT) and business process outsourcing (BPO) sectors in Sri Lanka in the recent past, especially with the Government promoting the industry through various benefits. The policy-makers are attempting to drive the economy from being agriculture-based to being knowledge-centric. This sector is being strengthened by the competitive education system in the country, where students and graduates are very knowledgeable about the latest technologies and are skilled in meeting the demands of the global market. Technology plays a crucial role in these sectors, and the use of the right technology is vital in providing services globally. The increase in use of technology is linked with the increase in royalty and license fees payments made by businesses.

Technology transfers between nations are inevitable, and royalty payments have to be made across borders. Any royalty payment borne directly or indirectly by a person resident in Sri Lanka is deemed to be profits and income arising in or derived from Sri Lanka, and liable to tax in the hands of a non-resident person. Any non-resident person receiving any royalty payments from a person resident in Sri Lanka will therefore suffer income tax at the rate of 15% unless the double tax treaty between Sri Lanka and the recipient's country of residence stipulates a maximum rate of tax which is lower.

"Royalty" is a payment in respect of the granting of rights in intangible property. The law does not define the term "royalty", and the general idea is that it is a "payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work."

RECENT CHANGE

The recent amendment proposed to the charging section of the income tax law on royalty payments replaces the word "royalties" with the words "royalties or fees for technical services". This in effect widens the scope of the chargeability of income tax on any technology transfers made to Sri Lanka.

Fees for technical services has been defined as "payments of any kind, received as consideration for managerial or technical or consultancy services including the provision of services of technical or other personnel other than employment or professional services performed through a fixed base." This definition will now cover even the subsequent services that may be provided in connection with intellectual property used by a Sri Lankan entity. For example, many software providers provide subsequent updates and maintenance services, and sometimes even provide telephone and help desk services. The definition of "fees for technical services" allows the taxing authorities to charge income tax on payments made for such ancillary services as well.

TAX TREATY IMPLICATIONS

Most double tax treaty agreements with Sri Lanka have an article to provide for the maximum rate of tax to be imposed on any "royalty" payments. In such cases there is an issue as to whether this cap will also apply to "fees for technical services", as the two words clearly mean two different things. Royalties are for the letting of intellectual property or for imparting certain exclusive information and knowledge, and the consideration is connected with licensing of rights, whereas consideration for services connected with intellectual property not falling into the above category will be considered as fees for technical services. When earning "Royalties" the owner allows the user to use a technology, whereas when providing technical services the owner uses technology to perform the services. This clearly shows that there is a clear distinction between "royalties" and "fees for technical services". Providing technical services will fall more in line with business profits, or even fall within independent personal services.

However, certain double tax treaties with Sri Lanka have brought the concession for both royalties and fees for technical services under the same article. The Revenue Authorities in Sri Lanka also do not strictly identify the two types of payments independently. The practice is to apply the article on Royalties in any double tax treaty to payments in the nature of "fees for technical services" as well. Therefore, in practice the rate of tax to be imposed on fees for technical services will also be capped at the maximum rate stipulated in the double tax treaty agreement.

Therefore any non-resident person receiving any royalties or fees for technical services will be subject to income tax in Sri Lanka. The law provides that this tax will be deducted as a withholding tax at the time of payment. Any person in Sri Lanka making a payment in the nature of a royalty fee, license fees, payment for computer software or information services is required to obtain a tax clearance certificate after making the payment of tax prior to remitting the net payment overseas.

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THAILAND

INCENTIVES FOR INTERNATIONAL HEADQUARTERS AND TRADE CENTRES

The Thai cabinet has approved new incentive packages for international headquarters (IHQ) and international trade centres (ITC), with the purpose of promoting Thailand as a trade and investment hub and to take advantage of the formation of the ASEAN Economic Community (AEC).

The new incentives have been introduced as an alternative to the existing Regional Operating Headquarters (ROH) scheme. The IHQ and ITC schemes relax some conditions that currently apply to an ROH and expand on the tax and non-tax benefits provided.

IHQ SCHEME

An IHQ is defined as a Thai incorporated company providing management or technical services, support services or financial management services to its affiliates or branches located either in Thailand or foreign countries. The definition also covers an international trading business. To qualify for the tax benefits, an IHQ must have paid-up capital of at least THB 10 million, provide services to affiliates or branches located in at least one foreign country, and have administrative expenses in respect of the IHQ paid in Thailand of not less than THB 15 million in each accounting period.

An IHQ would be entitled to tax benefits for 15 years, including a tax exemption on qualifying net profits derived from a foreign associated company or branch, and a reduced tax rate of 10% (instead of 20%) on qualifying net profits derived from a Thai associated company or branch. Expatriates of an IHQ will be taxed on their earnings at a reduced rate of 15%.

ITC SCHEME

An ITC is defined as a Thai incorporated company conducting international trade, i.e. procuring goods, raw materials and parts for manufacturing and providing services relevant to international trade to foreign entities. It is not required to procure goods or provide services to associates.

To qualify for the tax benefits, an ITC must have paid-up capital of at least THB 10 million and have associated enterprises or branches located in at least one foreign country.

An ITC would be entitled to tax benefits for 15 years, including tax exemption on qualifying net profits derived from the procurement and sale of goods in foreign countries, provided that the goods are not brought into Thailand, and a reduced tax rate of 10% (instead of 20%) on net profits derived from the procurement of raw materials or parts in Thailand and sold to affiliates or branches in foreign countries for production purposes. Expatriates of an ITC will be taxed on their earnings at a reduced rate of 15%.

EXISTING ROH COMPANIES

When the incentives become law, existing ROH companies will be allowed to file an application to register as an IHQ and terminate their ROH registrations, with no impact on the ROH tax benefits received prior to termination.

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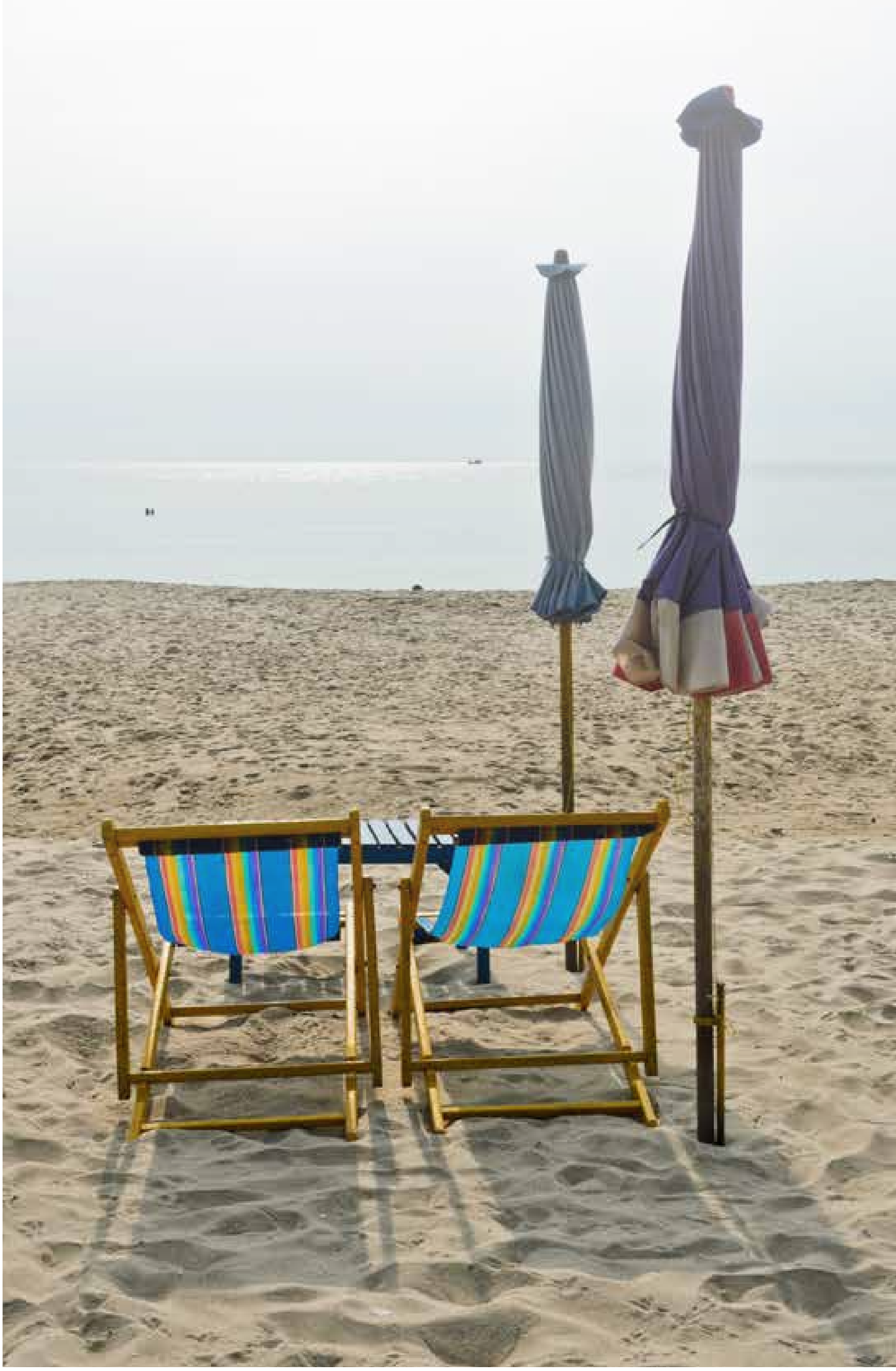

EUROPEAN UNION

DIRECTIVE ON AUTOMATIC EXCHANGE OF TAX RULINGS

On 18 March 2015, the European Commission presented a proposal to introduce an automatic exchange of information between Member States (MS) concerning their tax rulings.

Based on the current Directive on Administrative Cooperation, a MS has to share information spontaneously, notably when it has grounds for supposing that there may be a loss of tax in another MS, or when a person obtains a reduction or an exemption which would increase a tax liability in another MS. Due to the fact that the current spontaneous exchange of information is uncertain in its scope and allows a MS to refuse a request for information on the basis of commercial secrecy laws or public policy, it seems that tax rulings are not often exchanged.

To change this situation, the Commission's proposal is to require MS to automatically exchange information on their advance cross-border tax rulings and advance pricing agreements (APAs). Cross-border tax rulings that exclusively concern the tax affairs of individuals are not within the scope of the automatic exchange of information.

The proposal also limits itself to advance tax rulings and APAs with a cross-border element. However, the cross-border element does not seem to be restricted to EU countries. Moreover, based on the definition given, it is not always clear when a transaction is a 'cross-border' one. This definition needs to be better defined.

A two step-approach is proposed by the Commission:

1. A basic set of information (identity of taxpayer, group to which it belongs, content of the ruling or APA, MS likely to be concerned, identity of any person other than a natural person in another MS likely to be affected) would have to be provided to all MS and the EU Commission.
2. MS that can demonstrate that the information is foreseeably relevant would be allowed to request more detailed information.

The proposed changes are summarised as follows by the European Commission:

In order for the proposal to be implemented the next step is agreement by all MS. Each MS would then need to implement domestic legislation to bring the agreed directive into their law, and the intention is that this process would be concluded by all states by 31 December 15, so that the exchanges would happen from 1 January 16.

This timing is very optimistic, as it is proposed that the automatic exchange takes effect on 1 January 2016 and that information is communicated within one month following the end of the quarter during which the ruling or APA has been issued or amended.

The proposal would have a retrospective element, as information on rulings and APAs issued within a period of 10 years before the entry into force of the Directive, but still valid on that date, would have to be provided before the end of 2016.

BDO can assist with reviewing existing rulings and APAs before the Directive enters into force (i.e. on the 20th day following that of its publication in the Official Journal of the E.U.).

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Current framework	New proposal
Obligation : **weak** *Member States choose what information to send, when, and to whom*	Obligation : **strong** *Member States must send information on all tax rulings to all other Member States*
Discretion : **some** *Member States have discretion to assess whether their tax rulings are relevant for other Member States*	Discretion : **none** *Member States have no discretion to withhold information on tax rulings*
When : **discretionary** *Information to be exchanged whenever rulings are issued*	When : **regular reporting** *Common framework sets strict timeline to share information*
Scope : **not clearly defined** *Rulings are not defined*	Scope : **clearly defined** *Definition of rulings on which exchange shall take place*

BELGIUM

TAX UPDATE

IS THE FAIRNESS TAX INCOMPATIBLE WITH INTERNATIONAL TAX STANDARDS?

The Belgian Constitutional Court has asked the European Court of Justice (CJEU) for a preliminary ruling with regard to the Belgian Fairness Tax (Court ruling number 11/2015 of 28 January 2015) to determine if this tax does not constitute a violation of EU law.

The Fairness Tax is a separate tax of 5.15% (no tax attributes can be offset), on dividends distributed by large Belgian companies (article 15 of Belgian Company Law) or Belgian branches of foreign companies, if notional interest deduction or tax losses have reduced the taxable basis for the period concerned.

The Belgian Constitutional Court had the following concerns:

- Does the Fairness Tax constitute a violation of the freedom of establishment?
- Does the Fairness Tax constitute a violation of the European Parent-Subsidiary Directive, as it could be seen to constitute a tax on profit distributions?

The European Commission has unofficially informed the Belgian government that it does not see the fairness tax to impose an infringement of the European Parent-Subsidiary Directive, but the final say in this respect lies with the CJEU.

Furthermore it can be argued that the Fairness Tax is subject to tax treaty exemptions and reductions.

We await the CJEU's ruling in due course.

AMENDMENTS TO THE SECRET COMMISSIONS TAX

Certain costs need to be reported in individual tax sheets in order to guarantee tax deductibility, including:

- Commission fees, brokerage fees, attendance fees, fees and gratifications qualifying as taxable professional income (in Belgium or outside Belgium) in the hands of the beneficiaries. Purchase invoices (goods or commodities) are not taken into account;
- Salaries and benefits in kind granted to employees, directors, suppliers or clients;
- Costs paid by employees or directors on behalf of their employer;
- Discounts granted via a separate credit note.

Non-compliance with this requirement was in the past sanctioned with a tax, referred to as the 'secret commissions tax', at a rate of 309%.

This regulation has now been replaced. The main features of the new regulation are:

- The secret commissions tax still applies as a sanction for non-compliance with the requirement to file individual tax sheets. The tax is however not applied if:
  - The taxable income or benefits in kind were timeously included in the beneficiary's (Belgian or foreign) income tax return; or
  - The beneficiary can still be identified within 2 years and 6 months following 1 January of the assessment year concerned;
- The special tax remains deductible as a business expense;
- The secret commissions tax is intended as an exceptional measure: it will only be applied if the income cannot be taxed on the beneficiary;
- Smaller expenses that are in the twilight zone between the private and professional worlds will no longer fall within the scope of the special tax. Under the new scheme, restaurant expenses, reception expenses, modest ICT expenses, etc. that are not adequately justified will not qualify as deductible business expenses.
- The new regime is applicable with effect from 29 December 2014.

Rates of the secret commissions tax:

- If the beneficiary is subject to personal income tax: 103%.
- If the beneficiary is subject to corporate income tax: 51.5%.

NEW LIQUIDATION RESERVE FOR SMES

Since 1 October 2014, the withholding tax rate for liquidation bonuses has risen from 10% to 25%. To counter this drastic tax increase, transitional measures have been provided.

These transitional measures temporarily allowed a distribution of taxed reserves as they existed at the company on 31 March 2013, at the former 10% withholding tax rate, provided that they were immediately re-incorporated into the paid-up capital. This part of the paid-up capital could be distributed afterwards (after a fixed period of time) to the shareholders free of tax as if it had always been part of the paid-up capital.

This temporary secure arrangement for reserves has now become a permanent regulation for SMEs, with effect from assessment year 2015.

Each year they can transfer some or all of their accounting profit after tax to an unavailable equity account. This transaction is subject to a 10% withholding tax. On liquidation, the accumulated liquidation reserve can be paid out tax-free to shareholders. If these reserves are paid out after 5 years, an additional withholding tax of 5% will be charged, but if they are paid out as dividends within 5 years, an additional withholding tax of 15% will apply.

The position is summarised in the following table:

Action	Requirements	Taxation
Conversion of reserves into capital (SMEs)	Transfer of profits after taxation to a separate account	10% WHT No taxation upon liquidation
Distribution of reserves within 5 years		15% WHT
Distribution of reserves after 5 years		5% WHT
Distribution of reserves on the occasion of a liquidation (without timing limitation)	10% WHT is paid and the reserves are booked on a separate account	No WHT
Distribution of reserves on the occasion of a liquidation (without timing limitation and no previous transfer to a separate account)		25% WHT

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IRELAND

TAX UPDATE

IRISH COLLECTIVE ASSET MANAGEMENT VEHICLE (ICAV) ACT 2015 ENACTED

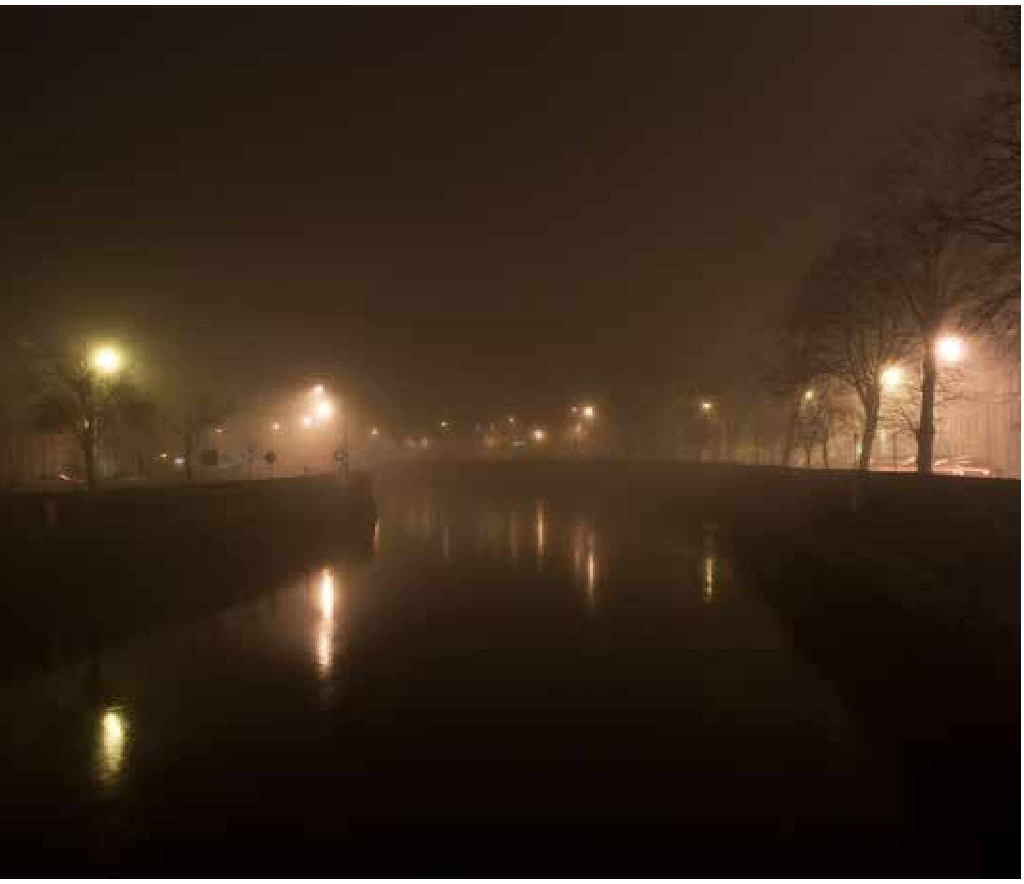
A new Irish corporate investment fund vehicle, the ICAV, is now available for Undertakings for Collective Investment in Transferable Securities (UCITS) and alternative investment funds (AIFs).

A key feature of the ICAV is that it should be possible to elect for classification under the US "check the box" rules as a transparent entity for US federal income tax purposes.

The ICAV is established under specific company law, which distinguishes it from traditional company structures. It is therefore not subject to those aspects of companies' legislation that are neither relevant nor appropriate to a collective investment scheme. This trims the legal and administrative time and costs associated with the ICAV, and should 'future-proof' it against further Irish or EU changes to company law.

ICAVs also benefit from Ireland's attractive tax regime for investment funds. The ICAV is exempt from tax on its income and gains, and there is no hidden wealth tax. Non-Irish resident investors receive distributions from Irish domiciled funds free of any withholding taxes.

Click here for further information.



IRELAND'S BETTING LAWS EXTENDED TO REMOTE BOOKMAKERS & EXCHANGES

Remote bookmakers and betting exchanges which offer services such as online and telephone betting for Irish customers have been brought within the remit of Ireland's regulatory and betting duty systems.

Regardless of the location of the remote bookmaker or exchange, an Irish-issued licence is now required and will cost in the region of EUR 10,000, renewable every two years.

The legislation provides for remote bookmakers to pay a (1%) betting duty on bets entered into with persons in Ireland, and for remote betting intermediaries to pay betting intermediary duty (15% of commission) in respect of commission charges levied on persons availing of betting intermediary facilities within Ireland. These duties will take effect from 1 August 2015.

IRISH TONNAGE TAX: OPPORTUNITIES FOR THE INTERNATIONAL SHIPPING INDUSTRY

The Irish Maritime Development Office has released a report on Ireland's Tonnage Tax regime ("the regime") which finds that it compares well with other international shipping regimes.

The regime provides for taxable profits to be calculated by reference to the tonnage of the ships used in a company's shipping trade, as opposed to the profits earned by the business.

When combined with the low rate of corporate tax in Ireland (12.5% on trading profits), it generally allows for a very low effective rate of corporation tax for shipping businesses based in Ireland.

Key features of the regime include:

- It is flag blind
- There is no ownership requirement, so ship management companies can qualify
- There is no requirement to have an Irish registration on the ships
- There is no Capital Gains Tax on the disposal of ships
- There is no exit tax on ceasing to carry out shipping activities from Ireland.

Coupled with Ireland's attractive securitisation regime which allows securitisation vehicles to hold plant and machinery such as real assets used in leasing activities, it makes Ireland an attractive location for big ticket ship leasing activities and shipping management.

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LUXEMBOURG

REVISION OF INTELLECTUAL PROPERTY REGIME

In response to a parliamentary question, the Luxembourg Finance Minister Pierre Gramegna shed some light on the evolution of the Luxembourg intellectual property (IP) regime, which will have to be adapted in order to comply with the new Organisation for Economic Co-operation and Development (OECD) standards and to be in line with the EU Code of Conduct.

The OECD Action 5 report "Agreement on Modified Nexus Approach for IP Regimes", published earlier in 2015, contains new rules that will have a real impact on the Luxembourg IP regime, including:

- Marketing-related IP should not benefit from a preferential tax regime. This means for instance that income related to trademarks should no longer benefit from the favourable Luxembourg IP regime. The OECD will produce further guidance on the exact scope of eligible IP assets, e.g. the treatment of copyrighted software or innovations from technical innovative development or scientific research that do not benefit from patent protection.
- Eligible income should benefit from a preferential treatment only to the extent that a significant proportion of the R&D activities have been undertaken by the company owning the patent (or other eligible IP asset). Therefore, a Luxembourg-based company will be able to benefit from a preferential regime only to the extent that the R&D took place in Luxembourg. It seems that this "nexus approach" has been considered EU-compatible by the EU Commission and EU Council legal services.

As the changes proposed by the OECD are substantial, several countries such as the UK and the Netherlands are reluctant to implement them rapidly.

Discussions between Germany and the UK led to a proposal that was accepted by the OECD and the G20. Under this consensus, current IP regimes will benefit from a generous grandfathering period, which means that the new regime will only be phased in gradually. Indeed, in order to give protection for taxpayers benefiting from existing regimes, countries will be allowed to introduce grandfathering rules. Under such rules, all taxpayers benefiting from an existing regime may keep such entitlement until 30 June 2021. After that date, no more benefits stemming from old regimes may be given to taxpayers. Countries will also have to close the old regimes to new entrants. The consensus provides that there should be no new entrant to any existing regime after 30 June 2016.

In light of this, M. Gramegna has undertaken to align the current Luxembourg IP tax regime with the international standards. He also stated that Luxembourg will introduce a grandfathering period for the existing IP regime.

Moreover, as the tax base of Luxembourg companies will be broader in the near future, it is expected that Luxembourg will reduce its corporate income tax rate which is currently at 29.22% (in Luxembourg city). There is much speculation about the new rate. It is clear that Luxembourg needs to have a rate that is very competitive, which means lower than the UK rate, but probably not as low as the Irish rate.

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SPAIN

COUNTRY-BY-COUNTRY REPORTING REGULATIONS DRAFTED

A draft of new regulations regarding Country-by-Country (CbC) reporting obligations has been published by the Government.

COUNTRY BY COUNTRY REPORTING OBLIGATION

The CbC reporting obligation is aligned with Action 13 of the OECD's Base Erosion and Profit Shifting (BEPS) project. The regulations will require the parent company of a corporate group resident in Spain, with consolidated group revenue of at least EUR 750 million in the immediately preceding fiscal year, to deliver a comprehensive report to the tax administration reflecting the activity and taxes paid in each country where the group operates. The information must be provided in the local currency and must include:

- Revenues obtained in each country, from both related and unrelated party transactions;
- Profits before corporate income tax (or similar tax);
- Corporate income tax paid (including withholding taxes);
- Current year's corporate income tax accrual (including withholding taxes);
- Capital and other equity at the year-end;
- Average number of employees;
- Tangible assets and real estate investments;
- A list of entities and permanent establishments in each country, as well as the principal activity they carry out; and
- Any other information considered relevant and an explanation, if necessary, of the data included in such information.

The information will also be required for:

- Subsidiaries resident in Spain under the control, directly or indirectly, of qualifying non-resident parent companies, and
- Permanent establishments in Spain of non-resident entities, provided (i) a similar CbC reporting obligation does not exist in the foreign jurisdiction concerned, and (ii) there is no exchange of information agreement applicable with the other country or territory with respect to the above mentioned information.

MASTER FILE

Additional information on the group has to be included in the master file as follows:

- Description of the principal activities, the main geographical markets, principal sources of profit, and the supply chain for material products and services that represent at least 10% of the turnover of the group;
- Description of business restructuring transactions, relevant acquisitions and divestments occurring during the fiscal year;
- Description of the overall strategy for the development, ownership and exploitation of intangibles, including location of principal research and development (R&D) facilities, and location of R&D management;
- Description of how the group is financed, including identification of important financing arrangements with unrelated lenders;
- Identification of the entities of the group that carry out the financing function, including the country and place of effective management of those entities; and
- List and brief description of the applicable unilateral advance pricing agreements (APAs) and other relevant tax rulings related to the allocation of income to specific jurisdictions.

Entities with an annual turnover not exceeding EUR 45 million will be excluded from the obligation of submitting the master file.

LOCAL FILE

The Bill introduces the obligation of reporting more detailed information with respect to the following items:

- Description of the management structure;
- Description of the business, policy and restructurings, as well as on intangibles transfers;
- The main competitors;
- Copy of the unilateral, bilateral and multilateral APAs and other advance rulings to which the local authority is not a party; and
- Reconciliation of the financial information applied in the transfer pricing policy with the financial statements.

Entities with an annual turnover not exceeding EUR 45 million will, subject to certain exceptions, be entitled to submit simplified information.

VALUATION METHODS

When the taxpayer uses transfer pricing methods which are different from the five transfer pricing methods accepted by the OECD (e.g. discounted estimated future effective cash flow), it will be necessary to detail the chosen method and the reasons for its election.

COMPARABILITY ANALYSIS

In order to determine the market value of transactions between related parties, it will be necessary to focus on the true nature of the transactions and the conduct of the parties. The regulations refer to relevant circumstances that may affect the market value, such as the existence of losses, decision-making of public bodies and the existence of location savings.

TAX REVIEW OF THE RELATED TRANSACTIONS

The regulations eliminate the possibility of using counter-valuations by appraisal experts to adjust the price reviewed by the tax authorities.

APAs

The Bill will develop the procedure derived from the rollback effect on APAs up to the statutes of limitation period (up to 4 years back in time) introduced by the Corporate Income Tax Law (in force since 1 January 2015).

According to the Bill, the regulations will enter into force the day following its publication in the Official Gazette, except for the CbC reporting obligations and other specific information and documentation requirements for certain taxpayers which, in general, will apply from 1 January 2016.

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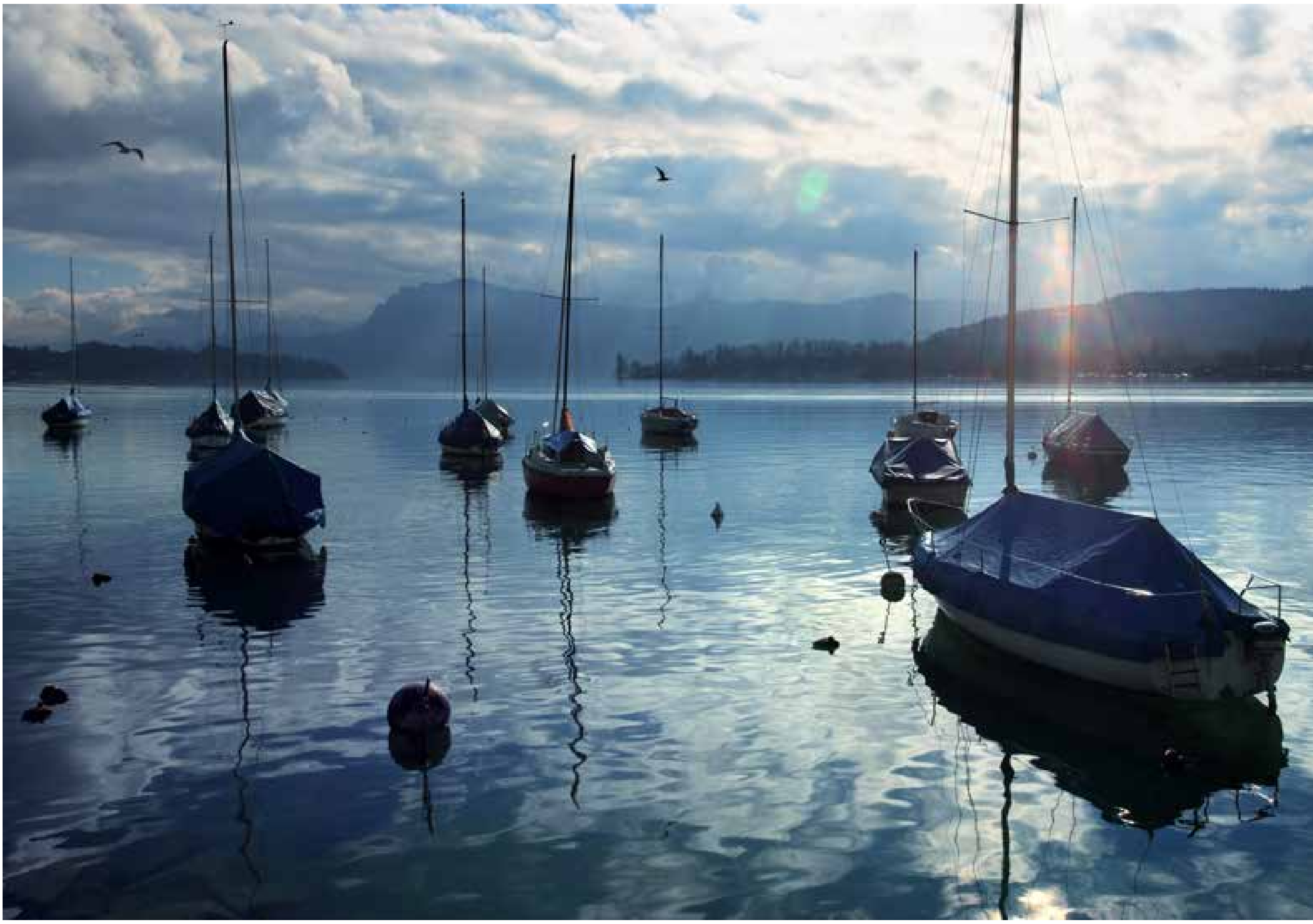
SWITZERLAND

CORPORATE TAX REFORM III – PROGRESS UPDATE



On 1 April 2015 the Federal Council took note of the results of the consultation procedure on the Corporate Tax Reform III (CTR III), made various adjustments to the consultation draft bill based on the findings and has instructed the Federal Department of Finance (FDF) to prepare a report for the Parliament by June 2015.

As we noted in the previous edition of World Wide Tax News, the aim of the CTR III is to consolidate international acceptance of Switzerland as a business location and secure the legal framework. Further measures are designed to improve the system of corporate tax legislation and its balance. The reform will thus ensure that companies continue to make an important contribution to financing the tasks of the federal government, the cantons and the communes in the future.

The Federal Council is proposing to abolish existing arrangements that are no longer in keeping with international standards. These primarily include the cantonal tax statuses for holding, domiciliary and mixed companies. These amendments are supported by the vast majority of the consultation participants.

The introduction of an *IP Box* at the cantonal level met with broad approval. With regard to the final tax bill, this instrument will still undergo modifications that take the latest international developments into account. Because of corresponding requirements raised during the consultation, the cantons should also be given the possibility of applying a higher deduction for research and development expenditure. Moreover, the FDF will examine whether a *Tonnage Tax* is to be introduced.

The consultation participants considered the introduction of a *Notional Interest Deduction* to be controversial; in particular, it was opposed by a clear majority of the cantons. The Federal Council will thus abandon this measure. In contrast, the possibility for the cantons to introduce *Capital Tax* (annual tax on the net equity of companies) reductions was generally undisputed.

In addition, the Federal Council agreed to the abolition of *Stamp duty* on the issue of equity capital, and on comprehensive rules for the *Disclosure of Hidden Reserves* for the transition from a privileged to an ordinary taxed company. In contrast, the Federal Council no longer intends to pursue the proposed changes for the *Participation Exemption* (direct exemption method) and the *Unlimited Loss Carry Forward Period*.

To accomplish the aim of a more balanced taxation of individual shareholders, the relief associated with the *Partial Taxation of Dividends* is to be harmonised for the Confederation and the cantons, and limited to 30%. The minimum stake of 10% will be maintained. In contrast, the Federal Council will refrain from proposing the *Taxation of Private Capital Gains* in view of the clear results of the consultation.

The FDF will prepare a report and draft bill by June 2015. Once it has been adopted, the bill will be ready for parliamentary deliberation. Progress made in the international arena will also have to be taken into consideration as work continues.

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ARGENTINA

BRANCHES OF FOREIGN COMPANIES SHOULD NOT PAY PERSONAL ASSETS TAX

The Supreme Court of Justice recently ruled in the Bank of Tokyo case that branches of foreign companies should not be required to pay the personal assets tax. This has resolved an issue which has affected branches of foreign companies incorporated in the country.

The controversy was generated because the law requires companies incorporated in Argentina to pay 0.5% of their net equity as a personal assets tax on equity investment, on the assumption that the end holder of the shares is a natural person, but does not specifically indicate that branches of foreign companies are responsible for the tax.

The problem arose when the regulatory decree regarding this law stated: "*The determination of the tax […], will be settled and paid as sole and final payment by companies included in the Corporate Law, including the permanent establishments belonging to **foreign companies** mentioned in article 118 of this law, de facto partnerships and joint ventures*" (emphasis added).

This regulation therefore held branches responsible for the tax. This was opposed from the outset, on the basis that it was taxing something not expressly indicated by the law; it was argued that it was invalid to include an item in the tax by regulatory means.

The Supreme Court has now settled the matter in favour of the branches, stating that it is inappropriate for a foreign branch to be obliged to pay the tax on equity investments when – on the facts – a branch does not issue shares.

On this basis, disregarding the analysis set out by the Regulatory Decree, the Court ruled that branches are not included in the scope of the tax.

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EGYPT

RECENT TAX CHANGES

There have been several recent tax law amendments in Egypt, including changes in the Income Tax rate, depreciation treatment, VAT law, and investment law.

INCOME TAX RATE

After introducing a temporary annual additional 5% Income Tax rate on income in excess of EGP 1 million, and increasing the rate from 25% to 30%, in June 2014, the Egyptian government has announced that the Income Tax rate (including the Corporate Tax rate) will be reduced to a maximum of 22.5%. Accordingly, the new maximum ceiling will be 22.5% instead of 30%. When this takes effect it will cancel the annual additional temporary 5% rate.

DEPRECIATION TREATMENT

Previously, there was an obligatory first year allowance of 30% of the cost of new or used plant and machinery invested in the field of production, in the first fiscal period during which those assets are used. Under a recently issued amendment to the law dated 12 March 2015, this treatment is now optional rather than obligatory.

SALES TAX AND VAT

Under a recent amendment, dated 12 March 2015, the sales tax rate on machinery and equipment used in production is reduced, from 10% to 5%. The sales tax on machinery and equipment used in producing taxable goods or providing taxable services will be refunded in the first sales tax return.

The government is also currently discussing a draft VAT law which may impose VAT on services that were not subject to sales tax, but also allow VAT recovery from VAT on outputs, as in other developed countries. This is still in draft form, so the extent to which it may affect a wide range of services is not yet confirmed.

INVESTMENT LAW

Amendments to the investment law were made on 12 March 2015. The amendments aim to remove obstacles to Foreign Direct Investments (FDI), and facilitate overseas funding of projects in Egypt. The law will also facilitate international, Arab and Egyptian investments in the country. The main points included in the law are summarised below:

- A new system has been introduced for allocation of land to investors.
- A number of non-tax-based incentives will be offered to labour-intensive projects, energy projects and projects established in remote or underdeveloped areas.
- A new mechanism has been set in place for out-of-court settlements of disputes arising between investors and the state. It aims to reduce time, effort, costs and damage to investments resulting from litigation.
- A unified Custom Duty Tax is imposed, at only 2% instead of 5%, on equipment and machinery necessary for the incorporation of entities under the Investment Law.
- The Investment Authority will issue final licences, in a period not exceeding 15 days from the date of issue of all licenses and approvals required by the competent authorities.
- The licence granted by the Investment Authority is sufficient when dealing with various state agencies to obtain necessary services, facilities, and benefits.
- After the liquidator submits, to the relevant authorities, a request for the company's liabilities, accompanied by the necessary documents, the relevant administrative authorities must issue a statement to notify that company with the liabilities that must be settled before the liquidation of this company, within a maximum of 120 business days starting from the date of submission of that request.

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UNITED STATES

PROPOSALS ON TAXATION OF UNREMITTED FOREIGN EARNINGS

The Administration and certain House and Senate members have recently introduced three different proposals with respect to United States taxation of unremitted foreign earnings of United States multinational companies.

This article highlights the repatriation provisions with respect to each of the proposals.

ADMINISTRATION PROPOSAL: 14% BACK/19% FORWARD

President Obama's proposed fiscal year 2016 Budget includes a provision to impose a 14% one-time tax on untaxed, unremitted foreign income. This proposal is intended to work together with another provision in the proposed Budget that would impose a 19% minimum tax on future foreign subsidiary earnings, thereby eliminating the deferral previously available with respect to foreign income.

The foreign income subject to this proposed tax on unremitted earnings would only include income that has not already been subject to tax in the United States, i.e., previously taxed income ("PTI") would be excluded. A foreign tax credit with respect to foreign taxes associated with this income would be available to offset the tax imposed. The tax available for credit would be "haircut" using the following formula: foreign income taxes associated with the income would be multiplied by a ratio of the 14% one-time tax rate to the maximum United States corporate tax rate for 2015. After paying this one-time tax, the associated foreign earnings could be brought back to the United States without additional United States tax. In addition, the 19% minimum tax would be imposed on current foreign earnings (whether or not repatriated), and future repatriation of such foreign earnings would not suffer additional United States taxation.

The proposed 14% one-time tax would be effective as of the date of enactment and would apply to earnings accumulated for taxable years beginning before 1 January 2016. This tax would be payable rateably over five years.

The proposal with respect to the 19% minimum tax would be effective for taxable years beginning after 31 December 2015.

BOXER-PAUL PROPOSAL: 6.5% TAX RATE ON REPATRIATED INCOME

On 16 April 2015, Sens. Barbara Boxer (D-Calif.) and Rand Paul (R-Ky.) introduced the Invest in Transportation Act of 2015.

Unlike the Administration's Budget Proposal, this proposal would be voluntary and require an actual repatriation of the foreign earnings. The repatriated earnings would be taxed at a 6.5% rate, and would apply to pre-2016 foreign earnings. The lower rate would only apply to repatriations that exceed a company's average repatriation in recent years. Companies would have to complete their distributions over a five-year period in order to obtain this rate. A portion of the funds would need to be used for increasing wages and hiring, research and development, capital improvements, and acquisitions, but not for executive compensation. Using the repatriated funds for increased dividends and stock buybacks would be limited for three years. Also, any companies that have taken part in this program would need to repay the tax incentive, with interest, if they inverted within ten years after participating in the program.

DELANEY-HANNA PROPOSAL

On 30 January 2015, Rep. John Delaney (D-Md.) introduced a bipartisan bill, The Infrastructure 2.0 Act, in order to help fund the Highway Trust Fund. Rep. Richard Hanna (R-N.Y.) is a co-sponsor of the bill. Similar to the Administration's proposal, this is a mandatory, one-time deemed "repatriation" of a company's foreign earnings. The unrepatriated earnings would be taxed at a rate of 8.75%, replacing the deferral option and the current rate of 35%.

In addition, the bill will include an 18-month deadline for implementing international tax reform. If no reform is implemented, the bill will provide for a fallback international tax package which, among other things, will end deferral with respect to foreign earnings and decrease taxes for companies paying fair rates abroad but increase taxes for companies in tax havens.

For example, as it relates to what is described as "active market foreign income," a company would pay a minimum tax of 12.25% to the United States on income that is not currently subject to foreign tax, and a 2% tax to the United States if the income is subject to a rate of 25%. A sliding tax-rate scale would be used for income subject to foreign taxes at rates between zero and 25%.

IMPLICATIONS

These proposals could potentially affect all United States multinational corporations with foreign operations that have unrepatriated and previously untaxed foreign earnings.

While there has been continued opposition in Washington to any sort of foreign earnings repatriation relief, the fact that three proposals have been recently put forward indicates that perhaps there may be now broader support for such relief than at any time in the recent past.

BDO's international tax practice has the knowledge and expertise to assist in reviewing an organisation's structure, modelling the various proposals and their potential impact, and provide planning solutions. We will continue to track these proposals and keep you updated on any legislative changes and the impact to United States–based multinational companies.

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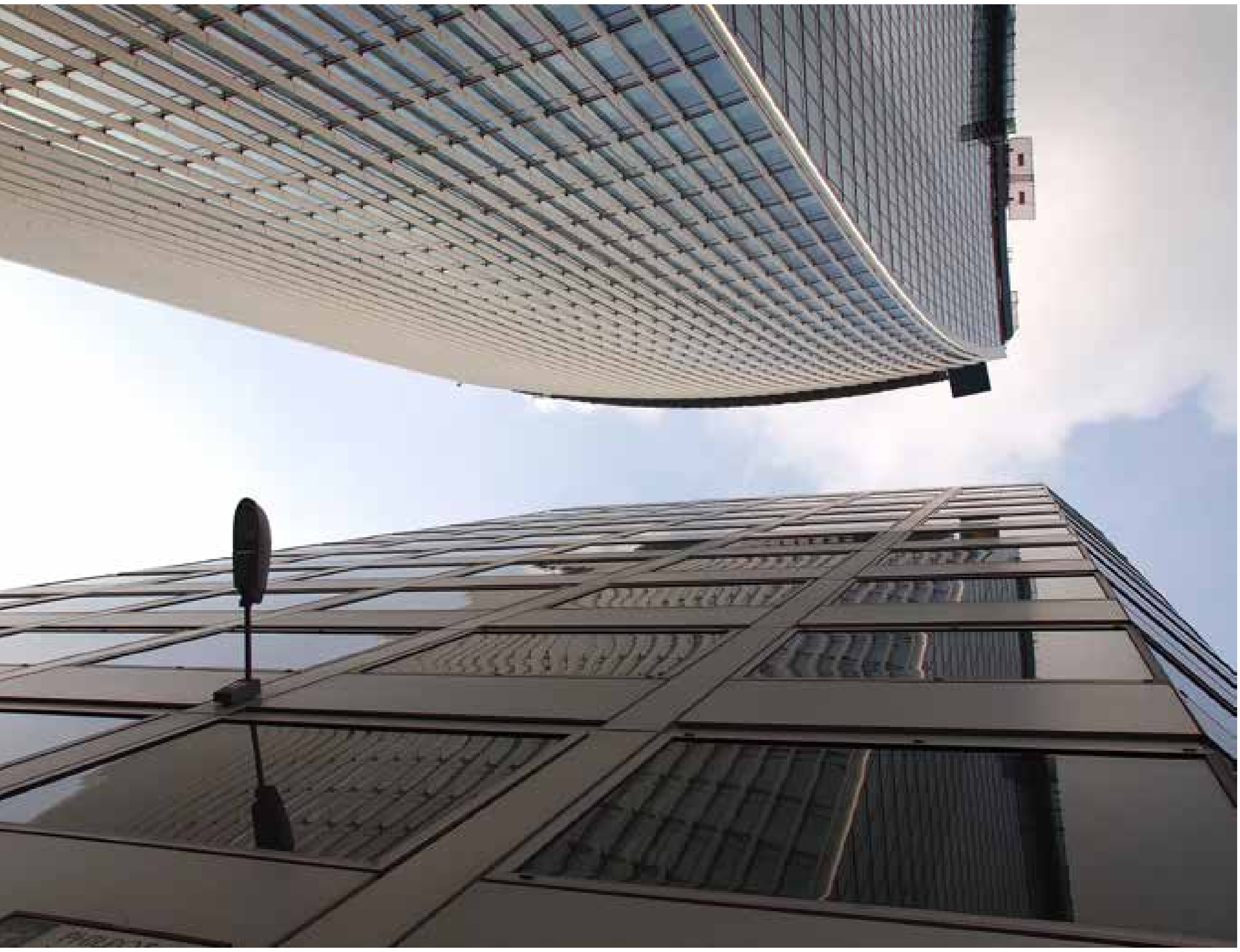

CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 12 June 2015.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Egyptian Pound (EGP)	0.11592	0.13069
Euro (EUR)	1.00000	1.12730
Indian Rupee (INR)	0.01386	0.01563
Singapore Dollar (SGD)	0.65903	0.74303
Thai Baht (THB)	0.02629	0.02964

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