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UNITED STATES

TRUMP ADMINISTRATION ANNOUNCES PRESIDENT'S OUTLINE FOR TAX REFORM

On 26 April 2017, Treasury Secretary Steven Mnuchin and National Economic Council Director Gary Cohn announced President Donald Trump's outline for individual and business tax reform, which includes new federal income tax rates and repeal of the estate tax.

Personal tax

Describing a broad framework for individual tax reform, Director Cohn discussed the Administration's proposal to reduce the current seven individual tax brackets (currently 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%) down to three brackets at rates of 10%, 25%, and 35%. The standard deduction would be doubled to approximately USD 24,000 for those married taxpayers filing joint returns. Relief for child and dependant care costs would also be included.

The top rate for capital gains would be 20%, and the 3.8% net investment income tax that applies to income above a certain level would be repealed. Most tax deductions would be eliminated, except for those related to mortgage interest, charitable contributions, and retirement. The President's plan would also repeal the estate tax and individual alternative minimum tax.

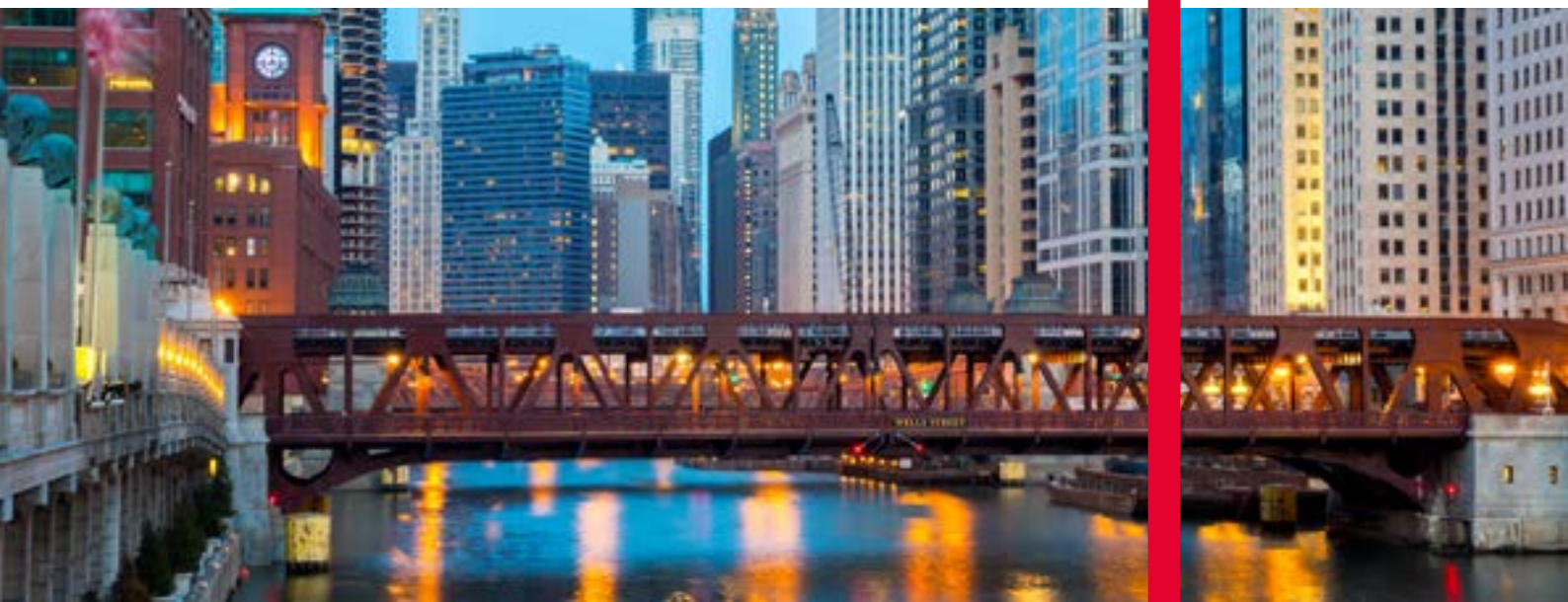
Business tax

Secretary Mnuchin described the proposed business tax reform provisions, which would include a reduction of the corporate or 'business' tax rate from 35% to 15% for businesses of all sizes. In addition, the United States would move from its worldwide tax system to a territorial tax system, which would tax U.S. businesses only on what they earn within the United States rather than on profits earned around the world. Finally, the Administration would include a one-time tax (rate unspecified) on overseas profits, which the Treasury Secretary indicated would return money back to the United States for investment by U.S. businesses. President Trump has since indicated in a 4 May 2017 interview with *The Economist* that his administration is considering a 10% repatriation rate.

No detail or proposed legislative language was provided during the Administration's announcement. A white paper was distributed to the press noting these items.

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EDITOR'S LETTER

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

BDO insights

- No detailed description of the legislative proposal or proposed legislative language was provided during the Administration's announcement, which leaves open many questions regarding the application and scope of the President's reform proposals. For example, it is unclear from the proposal what would be the one-time overseas profits tax rate, although President Trump has since indicated his administration is considering a 10% repatriation rate. Moreover, the proposal does not clarify how the 15% business rate would apply to income from pass through entities. The proposal also does not indicate whether the 20% capital gains rate would also apply to qualified dividends.
- Some of the concepts announced by the Administration have both bipartisan and bicameral support, such as some reduction in the corporate tax rate. For example, former House Ways & Means Chairman Dave Camp and former Senate Finance Chairman Ron Wyden in recent years each proposed a corporate rate cut.
- The House Republican leadership released its tax reform '**Blueprint**' in June 2016¹, which contains a host of tax reform proposals with some more detail, which is an indication of what a future House tax reform proposal package may look like.
- The Administration's proposal does not include many of the provisions in the House Blueprint, such as a border adjustment tax, which would tax imports and exempt exports, the deduction of interest expense against interest income with excess interest expense carry forward, or a current deduction for the cost of certain tangible and intangible assets. In his 4 May 2017 interview with *The Economist*, the President reiterated that his administration is not considering the House Blueprint border adjustment tax, at least as proposed by the House GOP. During the interview, Treasury Secretary Mnuchin noted that the Administration would prefer to maintain a business net interest expense deduction.
- The Administration's proposal is one of many steps in the process of possible future tax reform legislation. In the near future, we can expect the House and Senate to each consider their own tax reform packages, which may lead to a tax reform package that the House, Senate, and President must each agree to.
- Under current Senate rules, 60 votes generally are needed to pass any tax cuts that would add deficits beyond 10 years. A bill could be passed with 51 votes, but only if it does not add deficits beyond the 10-year budget window, which would essentially require that any tax cut package expire after 10 years, similar to the Economic Growth and Tax Relief Reconciliation Act of 2001.



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▶ Read more at www.bdo.global

¹ Read more on this topic at: [https://www.bdo.com/insights/tax/international-tax/international-tax-alert-february-2017-\(3\)](https://www.bdo.com/insights/tax/international-tax/international-tax-alert-february-2017-(3)).

INDIA

AMENDMENTS TO TAX LAW BY FINANCE ACT 2017

The Finance Bill presented by the Indian Finance Minister on 1 February 2017 has been passed by both Houses of Parliament and received Presidential assent on 31 March 2017. Some of the key amendments introduced by the Finance Act 2017 are summarised below:

Corporate tax rate

In line with the roadmap announced to reduce corporate tax rates from 30% to 25%, the headline tax rate for the fiscal year 2017-18 for small and medium sized domestic companies (turnover or gross receipts not exceeding INR 500 million during fiscal year 2015-16) is reduced to 25%.

Thin capitalisation

Following the measures announced in the OECD's BEPS Action Plan 4, the Finance Act 2017 has enacted provisions seeking to limit deductions for interest payable to non-resident associated enterprises (AE) in respect of debt issued (or guarantees given). Under the new law, in computing the taxable business income of an Indian company or permanent establishment of foreign company (borrower), a deduction for interest expenditure (or expenditure of a similar nature) exceeding INR 10 million will be capped at 30% of earnings before interest, taxes, depreciation and amortisation. The excess interest can be carried forward to be claimed as a deduction for up to 8 subsequent years, subject to the above limit.

Transfer pricing – secondary adjustment

To remove imbalances between cash profit and actual profit allocations, secondary adjustment provisions have been introduced in Indian tax law. The taxpayer is required to make a secondary adjustment if a primary adjustment is made to the transfer price:

- By the taxpayer in the tax return; or
- By revenue authorities, and accepted by the taxpayer; or
- Pursuant to an Advance Pricing Agreement or Mutual Agreement Procedure; or
- On opting for safe harbour rules.

Where excess money available with the AE (pursuant to a primary adjustment) is not repatriated to India within the prescribed time, the amount involved will be deemed to be an advance made to the AE. Interest on the advance will be computed in a prescribed manner, which would then be taxed as income in the hands of the Indian entity.

For an analysis of other amendments, please refer to BDO India's publication 'INDIA UNION BUDGET 2017, An Overview' at www.bdo.in.

Guiding principles for determining place of effective management

With effect from the fiscal year 2016-17, a company (other than an Indian company) is treated as tax resident in India if its place of effective management (PoEM) in that year is in India.

The Indian tax administration body (CBDT) has issued a circular¹ stating that the PoEM test applies to companies with turnover or gross receipts exceeding INR 500 million in a fiscal year.

The tax law defines PoEM 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. The CBDT has issued guiding principles² for determining the PoEM of a company that are largely aligned with the internationally available guidance under the OECD, UN Model commentaries. The parameters/guiding principles have been provided for companies engaged in active business outside India and other sets of companies. The guidance clarifies that no single principle is decisive, and that the activities performed over a period of time need to be considered in determining the PoEM.

Income Computation And Disclosure Standards

A separate set of tax standards 'Income Computation and Disclosure Standards' (ICDS) are applicable to taxpayers following the mercantile system of accounting, for computing business/professional income and income from other sources. These standards are applicable from fiscal year 2016-17.

Some of the ICDS provisions are at variance with Indian GAAP/Ind AS (Indian version of IFRS) followed by corporate taxpayers, and thus may require adjustments to account for the relevant differences. The effect on profits in complying with ICDS must be reported in the tax return as well as the tax audit report. The CBDT has also clarified³ that where ICDS has dealt with transactional issues (and thus has provided tax certainty), this will override judicial precedents on the relevant issues. Further, ICDS would also apply to non-residents taxable on the gross basis in respect of income from interest, royalties, etc.

Tax tribunal upholds capital gains tax liability in indirect transfer case

With retrospective effect from 1962, the Finance Act 2012 enacted indirect transfer provisions, thereby taxing transfers of shares of a non-resident entity that derive their value substantially from Indian assets.

Recently, the Delhi Tax Tribunal has ruled in favour of the revenue authorities taxing Cairn UK Holding Ltd (the taxpayer) under the indirect transfer provisions for its group restructuring undertaken in 2006, which involved the following transactions:

- Cairn Energy Plc (the parent entity of the taxpayer) transferred shares in its nine Indian wholly owned subsidiaries to the taxpayer for the issue of shares;
- Such shares were transferred by the taxpayer to a subsidiary in Jersey, which then held investments in Indian subsidiaries and derived its value substantially from the assets located in India;
- Shares of the Jersey subsidiary were transferred to a newly incorporated Indian company.

The observations and ruling of the Tax Tribunal that held the transfer of shares of the Jersey subsidiary to be liable to tax in India are summarised as follows:

1. The Indian subsidiaries, which control the oil and gas sector in India, were regarded as the 'property' i.e. the right to manage and control the business by virtue of the shareholding;
2. The Tribunal is not the right forum to challenge the constitutional validity of indirect transfer provisions. It rejected the argument that the provisions of the tax treaty and Indian tax law existing at the time of transaction are to be considered;
3. The Tribunal disregarded the taxpayer's contention that no real income accrued in the business re-organisation process, by noting that an exceptional gain was accounted for in the financial statements and that the re-organisation created wealth, considering the funds raised through an IPO in India;
4. The Tribunal cancelled interest levied for non-payment of advance tax in the year of the transaction, considering this to be a retrospective levy of a tax liability which could not have been foreseen by the taxpayer at that point in time.

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¹ Circular No. 8 of 2017.

² Circular No. 6 of 2017.

³ Circular No. 10 of 2017.

INDONESIA

NEW TRANSFER PRICING DOCUMENTATION REQUIREMENTS

On 30 December 2016, Minister of Finance Regulation No. 213/PMK.03/2016 (PMK-213) on the new Transfer Pricing Documentation (TPD) requirements was finally released. This regulation is intended to position the Indonesian transfer pricing regime to be in alignment with Base Erosion Profit Shifting (BEPS) Action Point No. 13 (AP13) on Country-by-Country Reporting (CbCR). PMK-213 is in force from 30 December 2016.

New transfer pricing documentation

PMK-213 presents the same three-tiered structure to transfer pricing documentation as AP13, i.e:

- A Master File (MF), containing general information on the group;
- A Local File (LF), containing specific information on operations in Indonesia; and
- A Country-by-Country Report (CbCR), containing detailed financial and other information on each member of the group.

PMK-213 also introduces new materiality thresholds to determine:

- a) Their transfer pricing documentation obligation; and
- b) Whether there is a requirement to file CbCR.

Preparation of a MF and LF is mandatory for taxpayers with related party transactions and who:

- a) In the previous year have an annual gross operating revenue that exceeds IDR 50 billion; or
- b) In the previous year have a related party transaction with a value that exceeds:
 - 1) IDR 20 billion for tangible goods transactions; or
 - 2) IDR 5 billion for each transaction involving services, interest, intangible goods, or other related party transactions; or
- c) Have transactions with a related party that is domiciled in a country or jurisdiction with a corporate income tax rate that is less than the prevailing Indonesian corporate income tax rate (25%).

The above thresholds are applied to prior years' data. For example, in determining the transfer pricing documentation obligation for Fiscal Year (FY) 2016, taxpayers will have to refer to FY2015 data.

Preparation of a MF, LF and CbCR is **mandatory** for taxpayers who:

- In the previous year have consolidated annual gross revenue exceeding IDR 11 trillion; and
- Are the ultimate parent company (of a group).

Master File required contents

The Master File is focused on providing a broader overview of a business group's operations. The MF must, at a minimum, include the following information about the business group:

1. Ownership structure and chart as well as country/jurisdiction of each entity;
2. Type of business activities performed;
3. Intangible assets owned;
4. Financial and financing activities; and
5. Consolidated financial statements of the Parent entity and tax information in relation to the related party transactions.

Local File required contents

The Local File is focused on providing information on the Indonesian taxpayer. The LF must, at a minimum, include the following information about the Indonesian taxpayer:

1. Taxpayer's identity and description of the business activities;
2. Information on related party transactions and independent transactions respectively;
3. Application of the arm's length principle;
4. Financial information; and
5. Non-financial events or occurrences or facts that affect price determination or profit level.

Country-by-Country Report required contents

The CbCR is intended to provide a snapshot of a group's global allocation of the income, the taxes paid, and the business activities undertaken by each entity within the group in each country/jurisdiction where it operates. The main report (working paper) of CbCR will contain the following information:

1. Name of country or jurisdiction;
2. Name and Tax ID number of each entity;
3. Type of business activities;
4. Gross revenue divided between independent and related party transactions (not including payments deemed as dividends in the payer's jurisdiction);
5. Profit(loss) before income tax (non-operating income and expense are included);
6. Income tax that has been withheld/collected/self-paid;
7. Income tax payable as reported in the financial statements, not including deferred tax;
8. Registered capital;
9. Accumulated retained earnings;
10. Number of permanent employees (which may include independent contractors); and
11. Net book value of tangible assets other than cash and cash equivalent.

The information from the main CbCR will be presented in a:

- CbC-1 report, which mainly provides per-country information as referred to in points (4) to (11);
- CbC-2 report, which provides type of business activities per-country; and
- CbC-3 report, which provides any other information which is not referred to in the CbC-2 report.

Reporting format and deadlines

Transfer pricing documentation must be prepared in Bahasa Indonesia. If a taxpayer has obtained approval to maintain bookkeeping in English, the documents can be prepared in English, but with a Bahasa Indonesia translation.

The MF and LF are not required to be attached to the Annual Corporate Income Tax Return (CITR), but instead taxpayers must fill out a Summary form ('*ikhtisar*') and attach it to the CITR.

Both the MF and LF must be available at the latest by the end of the fourth month following the closing of the book year. The CbCR must be available at the latest by the end of twelfth month following the closing of the book year.

Conclusion

Under PMK-213, the necessary documentation will require more coordinated efforts between taxpayers and their affiliates to gather the necessary information and ensure consistency in disclosing information. Taxpayers are advised to take this opportunity to examine and revisit their transfer pricing policies to proactively manage transfer pricing and related exposure issues to ensure compliance with the new TPD requirements.

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JAPAN

2017 JAPAN TAX REFORM

The 2017 Japan tax reform proposal was passed in the House of Councillors on 27 March 2017 and the amended tax laws were published on 31 March 2017. The new laws are effective from 1 April 2017, and in this article we focus on the 2017 tax reform relating to corporate tax laws.

Tax reform related to corporate tax laws

The 2017 tax reform is aimed at helping to support investments and the local economy through 'local Abenomic' policies, and reward companies for raising employee salaries. It also includes revisions and amendments aligned with the BEPS recommendations, designed to support the healthy expansion of Japanese companies into international markets while limiting tax avoidance. This article summarises some of the major tax amendments, but does not cover certain areas such as revised rules on reorganisations, controlled foreign companies and small and medium-sized companies.

Research and Development (R&D) tax credits

The following revisions are made to the R&D tax credit incentives:

- The gross-type credit percentage will increase by reference to an increase in R&D expenditure.
- The scope of the R&D tax credit includes R&D expenditure to develop certain kinds of new service-type businesses to support the development of new business opportunities from the 'Internet of Things (IoT)', 'Big data', Artificial Intelligence (AI), etc.
- The criteria for claiming the 'Open Innovation' type of R&D credit are relaxed. For example, types of costs eligible for tax credits are expanded, flexibility in the case of additions or changes to cost items due to a contractual change is improved, and the confirmation process for expenses by a counterparty is simplified.

This amendment will encourage Japanese companies to spend more on R&D to strengthen their international competitiveness.

Wage increase tax credit

The 2017 tax reform provides further incentives for companies to increase salary payments, with small and medium-sized companies (SMEs) receiving more incentives than large companies. For example, a maximum total tax credit of 12% of the increase in employer's salary payments may be available for companies other than qualified SMEs, compared with 22% for qualifying SMEs. Companies who increase employees' salaries and meet certain conditions can therefore further reduce their corporate tax burden.

Directors' bonuses and stock compensation

In Japan, directors' remuneration which meets certain conditions is an allowable tax deduction, but otherwise is not tax-deductible. In this regard, the 2017 tax reform gives more flexibility to Japanese companies – especially Japanese listed companies – to utilise the tax deduction for directors' remuneration:

- Revisions to 'Performance-linked compensation': Previously, an operating company under a holding company was not entitled to a tax deduction for 'Performance-linked compensation'. The amended rule expands the scope of 'Performance-linked compensation', and companies that are 100% controlled by a non-family company are able to apply for this compensation method. In addition, the types of indicators for deductible directors' compensation linked to profit are expanded to add indicators based on the stock market and revenues.
- Revisions to 'Pre-determined compensation': Directors' compensation on which a pre-determined number of shares or stock options are issued in a designated period is included into the scope of 'Pre-determined compensation'. This is limited to those issued by a company receiving the service or a company that directly or indirectly holds more than 50% of the outstanding shares of the company. In addition, certain restricted stock is excluded from the scope of 'Pre-determined compensation'.
- Revisions to 'Regular and Fixed compensation': Regular compensation is considered as 'Regular and Fixed compensation' if the net pay after withholding social security premiums and taxes is regular. This means that the scope of 'Regular and Fixed compensation' rule is broadened to include net salary schemes, and compensation for the included net salary schemes is allowed for tax deduction.

Extension of filing due date for corporate tax returns

A Japanese company is required to file its corporate tax returns within two months from its financial year end under the current tax law. However, if the company cannot finalise its financial statements within two months due to a financial audit by external auditors etc., it can apply for a one-month extension of the filing due date (i.e. tax return due within three months from the financial year-end).

In this regard, if a company, which is subject to the audit of the financial statements by an external independent auditor, cannot hold an annual general shareholders' meeting within three months from its financial year end due to a clause in the articles of incorporation etc., a maximum of a four month extension of the filing due date (i.e. tax return due within six months from the financial year-end) may be granted by a District Director of the tax office. Similar measures will also be introduced for local business tax purposes.

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MALAYSIA

WIDENING OF THE SCOPE OF WITHHOLDING TAX ON PAYMENTS FOR ROYALTIES AND SERVICES

Malaysia's income tax system has a territorial scope whereby only income accruing in or derived from Malaysia, or received in Malaysia from outside Malaysia, is subject to income tax. The determination of the location of a source of income is therefore particularly important, especially in the current digital age where business models are constantly evolving. The traditional methods for determining a source of income based on case law principals may seem to have become obsolete.

The Malaysian Inland Revenue Board (MIRB) is concerned about the threat of these changing global business models to its territorial income tax base. As a result, the Malaysian Government recently made significant changes to its income tax legislation under the Finance Act 2017 (gazetted on 16 January 2017) to protect its ability to collect tax on royalties and service fee income derived by non-residents via the withholding tax mechanism.

Redefinition of royalty

The new legislation amends the definition of 'royalty' as follows:

- The new definition includes the 'use of, or the right to use **software**'. There is some concern that the MIRB may interpret this broadly, to apply even to payments for the purchase of a software product, or where there is no exploitation of copyright involved. Such an interpretation appears contrary to tax case decisions and the **Commentaries to the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital**. The MIRB has stated that it intends to align the provisions of the Income Tax Act 1967 (ITA) with advancements in technology, and that it does not subscribe to the stand of the OECD, but instead refers to the United Nations Model Tax Convention.
- New paragraphs have been added to the definition, mainly affecting broadcasters, music/video streaming services and telecommunications service providers.
- A new paragraph closes what may be viewed as a potential loophole, whereby payments for forbearance (which means the act of not exercising a legal right) were previously not regarded as royalties.

As a result, a wider range of payments made to non-residents by Malaysian entities would be caught within the definition of Royalty and subject to the 10% domestic rate of withholding tax.

However, the MIRB appreciates that the definition of Royalty and/or a reduced withholding tax rate under international tax treaties signed with Malaysia will take precedence, where applicable.

Services performed outside Malaysia

Previously, only payments to non-residents for services performed **in** Malaysia were deemed to be derived from Malaysia. Section 15A of the ITA has been amended so that payments to non-residents for services performed **outside** Malaysia are now deemed to be derived from Malaysia. This change reverses the earlier statutory position, but the MIRB sees this as a necessary evolution in the tax legislation to cater for a globalised economy.

Malaysia imposes a 10% withholding tax on payments for services made to non-residents that are deemed to be derived from Malaysia. The MIRB considers that this withholding tax applies to payments for all types of services other than payments for day-to-day administrative and routine services provided by a parent company or head office outside Malaysia.

Relief from the above withholding tax may be available in some of the Malaysian tax treaties through a 'technical fees' article, which provides a definition of 'technical services' for the purposes of the tax treaty, where such fees may be taxed, and the maximum withholding tax rate that may be applied on such fees.

However, most of the Malaysian tax treaties do not have a 'technical fees' article. In the past, the MIRB has taken the position that the provisions of the 'business profits' article in the Malaysian tax treaties do not apply, as payments for services made to non-residents are classified as 'special classes of income' in the ITA. The 'business profits' article in the tax treaties would generally give taxing rights to Malaysia in respect of business profits only if it is attributable to a permanent establishment in Malaysia.

It is understood that the MIRB will be updating its Public Ruling No. 1/2014 Withholding Tax on Special Classes of Income, and will clarify the transitional rules for services performed outside Malaysia spanning the effective date in a Practice Note to be issued in due course.

Implications for international businesses

The widening of the scope of withholding tax on royalties and services could have cost implications to foreign businesses in Malaysia and Malaysian businesses with overseas operations. For example, Malaysian withholding tax (assuming no treaty relief) would apply to:

- A foreign investor who receives royalties, or technical fees from its Malaysian subsidiary for head office services performed from the home country; and
- A Malaysian business paying royalties, or service fees for advertising and promotion conducted outside Malaysia.

Therefore, it is crucial for Malaysian residents and permanent establishments in Malaysia to review carefully their payments to non-residents to determine whether the expanded scope of withholding tax is applicable. Careful identification of the transitional tax treatment for royalty or service contracts spanning the effective date of 16 January 2017 is also critical to ensure compliance with the expanded withholding tax provisions and to mitigate the exposure to penalties.

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SINGAPORE

REVISED TRANSFER PRICING GUIDELINES ISSUED

On 12 January 2017, the Inland Revenue Authority of Singapore (IRAS) issued a fourth edition of its transfer pricing guidelines. The revised edition largely reflects Singapore's commitment back in 2016 to implement the four minimum standards of the 15-action plan under OECD's Base Erosion and Profit Shifting (BEPS) project.

Key changes

Arm's length principle

The revised guidance supports the BEPS principle that profits should be taxed where the real economic activities generating the profits are performed and where value is created. It seeks to achieve profit allocation to locations where real functions are performed, as opposed to profit allocations based on mere contractual risk allocation and legal ownership of intangibles.

Taxpayers should therefore revisit their existing structures and profit allocations to ensure that profits follow functions and value creation, in accordance with the revised arm's length principle for related party transactions.

Risk allocation

The profit distribution between related parties is dependent on the functions each enterprise performs, taking into account assets used and risks assumed. The new guidelines now devote three pages to risk analysis, in contrast to a short paragraph in the earlier guidelines. Risks are the effect of an uncertainty on the objectives of the business. The actual assumption of risks by a taxpayer to a transaction can significantly affect the pricing of that transaction at arm's length. Accordingly, when analysing risks under the revised guidelines, taxpayers should consider:

- a) The effect of the risks assumed, though not apparent in the financial statements;
- b) Risk assumption vis-à-vis risk management – a taxpayer who assumes a risk is entitled to the upside benefits and incurs the downside costs with the result that the party assuming a risk will also bear the financial and other consequences if the risk materialises; whereas risk management should not be thought of as necessarily encompassing a separate function, requiring separate remuneration, distinct from the performance of the activities that optimise profits;
- c) To assume a risk for transfer pricing purposes, the taxpayer needs to control the risk and have the financial capacity to assume the risk.

Safe harbour for inter-company loan transactions

The revised guidelines have introduced a safe harbour in the form of an 'indicative margin' to price related party loans obtained or provided from 1 January 2017. The indicative margin can be applied to an appropriate base reference rate such as a swap rate or the Singapore Government Securities yield for fixed rate loans, or SIBOR and LIBOR for floating rate loans. IRAS will publish the indicative margin on its website and update it at the beginning of each year for taxpayers to price their Singapore-dollar denominated and foreign currency denominated loans. The indicative margin is set at 250 basis points (2.50%) for the 2017 calendar year.

Documentation thresholds – guarantees

Transfer pricing documentation is required in respect of guarantee income and guarantee expense reaching the threshold of SGD 1 million. No definition is provided for the term 'guarantee' as to whether it only refers to an explicit or implicit guarantee, or both. In addition, no safe harbour is provided, unlike the indicative margin for related party loan transactions, and detailed steps on undertaking comparability analysis for guarantee transactions are also not provided.

Advance pricing agreements

In order to implement Singapore's commitment to one of the four minimum standards of the 15 point action plan under the BEPS project – Countering harmful tax practices, Action 5 – IRAS will spontaneously exchange information on cross border unilateral advance pricing agreements (APAs) within three months after the date of an agreement (for unilateral APAs issued on or after 1 April 2017) and by December 2017 (for unilateral APAs issued before 1 April 2017). The unilateral APAs will be exchanged, subject to satisfaction of certain safeguards, with (a) jurisdictions of residence of all related parties with whom the taxpayer enters into transactions that are covered by the unilateral APAs; and (b) jurisdictions of residence of the taxpayer's ultimate parent entity and the immediate parent entity.

Key points

Under the revised arm's length principle, taxpayers will have to demonstrate where real economic activities generating profits are performed and where value is created, in contrast to a contractual separation of risks and intangibles from functions. At the same time, taxpayers should be mindful of which entity within the group assumes risks compared to an entity performing risk management, given that only the former is entitled to upside benefits.

Further, with the introduction of a safe harbour for related party loans, IRAS has struck a fine balance in ensuring that the arm's length principle is applied for related party transactions whilst keeping the overall costs of compliance low and helping taxpayers in these difficult times.

All in all, the revised guidelines are a step in the right direction, reflecting Singapore's commitment to the BEPS project by ensuring that it provides the world's most efficient and transparent business environment, and is not seen as a tax haven despite its low corporate tax rate. Singapore does not condone harmful and abusive tax practices which undermine its sovereignty as the world's best place to do business which is protected through these guidelines.

Please contact us for further details on how we can support you in riding this new wave of change.

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BELGIUM

NEW DEDUCTION FOR INNOVATION INCOME

Introduction – R&D incentives

With the introduction of the notional interest deduction and the patent income deduction in 2007, Belgium has become a prime location for attracting R&D (Research and Development) activities.

Besides the above-mentioned measures, Belgium offers a wide range of other incentives to structure the R&D activities of multinationals. It is one of the few countries that in addition to offering an enhanced deduction on qualifying intellectual property also offers tax credits, cash incentives and (tax exempt) subsidies for R&D-related activities.

New Deduction for Innovation Income

On 9 February 2017, a new law was published that introduced the 'Deduction for Innovation Income'. This new deduction has a broader application than the patent income deduction, while at the same time meeting the modified nexus approach of the OECD and the EU.

The new regime for the deduction of innovation income has a broader scope than the patent income deduction that was abolished by the law of 30 June 2016 (although a grandfathering period will enable qualifying patent income to benefit from the old regime until 30 June 2021). Apart from patents and supplementary protection certificates, the following intangible assets or intellectual property rights (IPR) could also be eligible for this deduction:

- Breeder rights and orphan drugs;
- Copyrighted software developed by the taxpayer in a research project; and
- Market exclusivity rights based on European directives or other international legislation in the field of medicine and food regulation of which the company is the (co-)owner, usufructuary, license holder or even right holder.

In addition to the broadening of the IPR, the scope of the qualifying income has also been broadened to include:

- License income such as royalties, but also milestone fees, signing fees, etc.;
- Embedded license fees included in the sale price of goods and services;
- Process innovation fees in relation to qualifying IPR;
- Amounts received on the disposal of an IPR (on the condition that the proceeds are reinvested in qualifying R&D within a period of 5 years).

Calculation of the deduction

The deduction percentage has also been increased to 85%. However, the deduction no longer applies to gross income, but to qualifying net income after deduction of the R&D costs. Furthermore, the tax benefit is made dependent on the scope of the R&D activities of the Belgian corporate taxpayer (new nexus approach). The following formula is used to determine the innovation income tax exemption for each qualifying IPR¹:

$$\text{income from IP} \times \frac{\text{qualifying R\&D expenditure}}{\text{global R\&D expenditure}} \times 85\%$$

For the qualifying R&D expenditure the cost of outsourcing to a related party has to be excluded, contrary to the (qualifying) cost of outsourcing to unrelated parties. In addition, there is a lift-up of 30% to a maximum of the figure of the numerator.

The global R&D expenditure includes the qualifying R&D expenses, development costs incurred by affiliated companies, and costs for the acquisition of intellectual property.

Costs that are not directly related to the qualifying IPR, e.g. interest costs and expenses in relation to buildings, are excluded. However, costs that do not qualify as R&D costs in the accounts, (e.g. employment costs), but that are related to qualifying IPR, should be included in the (qualifying and/or global) expenses.

Administrative implications

Needless to say, increased documentation is expected in the context of tracing and tracking qualifying IP, income and costs. A specific royal decree is expected with more details.

Unused deductions can be carried forward, and taxpayers can already claim the benefits of the regime while a patent is still pending approval (subject of course to repayment if the patent application is later denied).

In order to benefit from the innovation deduction a specific annex will need to be filed together with the Belgian tax return.

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¹ However, if the company is, from a practical point of view, unable to determine the income per IPR, the taxpayer can report and document for a group or type of products or services.

GEORGIA

NEW CORPORATE INCOME TAX REGIME

A new Corporate Income Tax regime came into force in Georgia on 1 January 2017. The purpose of this new regime is simplification of the tax administration, promotion of business development, and economic growth.

The main amendment under the new regime is the postponement of taxation of corporate income until net income is distributed. This will increase availability of funds and promote reinvestment of earned profits into the same or new activities.

The Corporate Income Tax rate remains the same as before – 15%. Technically, the 15%/85% rate will be applied to the taxable amount. In addition, instead of an annual charge, Corporate Income Tax will be charged on a monthly basis, no later than the 15th day of the following month.

The new regime will apply to all types of businesses registered in Georgia and having a legal form, excluding commercial banks, insurance companies and micro-finance organisations, credit unions, pawn brokers, companies receiving income from oil and gas prospecting, exploration and extraction activities, and bookmakers operating with systematic-electronic forms.

Payment of dividends

Dividends are taxed at the time of payment, when distributed to individuals, non-profit entities, non-residents, or entities exempt from Corporate Income Tax. Dividend distributions to resident enterprises subject to the new tax regime are not taxable. The same rules apply to the re-distribution of dividends.

At the time when distributed dividends are taxed, the year in which the distributed profit was earned is irrelevant. However, to avoid double taxation, the enterprise is entitled to fully or partially offset Corporate Income Tax accrued and paid in the past period while distributing net income of years from 2008 to 2016.

Differences between contract price and market price

Differences between contract price and market price are subject to Corporate Income Tax, for transactions with interdependent persons, companies registered in offshore jurisdictions and companies exempt from Corporate Income Tax.

The difference in relation to a purchase transaction will be taxed at the time of payment of a price in excess of market price. The difference in relation to a sale transaction will be taxed at the time of delivery of the goods/service at a price lower than the market price.

The difference between the contract price and market price is not subject to Corporate Income Tax if the party to the transaction is an enterprise subject to the new tax regime or a state organisation.

Expenses and payments not related to economic activity

Expenses not related to economic activity, or not deemed to be such, will be subject to tax.

Several types of payment are deemed not to be related to economic activity for tax purposes under the new legislation, and will be subject to tax:

- Issuing loan principal to natural persons or non-residents or enterprises exempt from Corporate Income Tax;
- Payments for share or increases of capital of a non-resident enterprise, or the capital of an enterprise exempt from Corporate Income Tax;
- Advance payments or liquidated damages to persons registered in an offshore jurisdiction or enterprises exempt from Corporate Income Tax.

It should be noted that reimbursement of the above-mentioned payments, e.g. a refund of loan principal or procurement of goods in exchange for an advance payment, are subject to Corporate Income Tax credit and due a refund from the tax authority.

Taxation of free-of-charge supplies and gifts

Free of charge delivery of goods/services, and transfers of funds as a gift will generally be subject to tax. However, some of these transactions will not be taxed, including:

- Free of charge delivery of goods or services or transfers of funds as a gift, which are subject to personal income tax, withheld at source;
- Free of charge delivery of goods or services or transfers of funds as a gift to the public authorities;
- Donations made to charitable organisations during a calendar year, within the limit of 10% of the financial profit of the previous fiscal year;
- Delivery of goods or services free of charge, which are not related to economic activities.

Representative expenses

Representative expenses (i.e. expenses related to hosting guests of the company, including accommodation expenses, transport costs, lunch etc.) will be subject to tax if they exceed 1% of the generated revenues or expenses incurred in the previous calendar year.

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IRELAND

FINANCE ACT 2016 – INTERNATIONAL BUSINESS MEASURES

Ireland's budgetary cycle concluded in December 2016 with the signing into law of Finance Act 2016 ('the Act'). Below is an overview of a number of matters which are relevant to international business.

Ireland's 12.5% corporate tax rate unaffected

The Finance Act 2016 has reiterated Ireland's commitment to retaining the 12.5% corporate tax rate and ensuring Ireland's corporate tax regime continues to meet international standards through compliance with the OECD's BEPS project and EU initiative.

Section 110 securitisation regime

As detailed in [Issue 42 of BDO World Wide Tax News](#), the Finance Act amends the existing legislation, referred to as 'section 110', which governs the treatment of asset securitisation vehicles. The aim of the amendment is to address the perceived misuse of section 110 and to ensure that the tax provisions are ring-fenced for bona-fide securitisation purposes. The 'perceived misuse' is the use of section 110 by companies set up to hold distressed loans and mortgages to avoid paying tax on Irish property-related transactions.

The Finance Act contains updated wording to the legislation, with some key changes. Most notable is the exclusion of market standard securitisations such as Collateral Loan Obligations, Commercial Mortgage Backed Securities and Residential Mortgage Backed Securities, as well as loan origination businesses.

The amendment provides that where specified mortgages (i.e. loans or swaps (or similar derivatives) relating to Irish property) are held by a section 110 company, the interest on Profit Participating Loans (PPLs) will not be deductible in calculating the taxable profits of the company to the extent that the interest exceeds a reasonable commercial return which is not dependent on the result of the section 110 company.

The Act provides that the denial of the tax deduction will not apply where Irish withholding tax has been deducted on the payment of the PPL interest, or where the PPL interest is paid to:

- An individual or company who is within the charge to Irish tax;
- An Irish or EEA pension fund; or
- An EEA citizen or company who will pay tax on receipt of the interest, without any deduction for profit participating interest, provided that the payment of the interest to the EEA citizen or company is not for tax avoidance purposes and, if the recipient is a company, it must carry on genuine economic activities, relevant to the holding of the PPL, in an EEA state.

It is important to note that the vast majority of Irish section 110 companies are not impacted by the proposed changes. The Irish Minister for Finance has acknowledged the importance of the securitisation and funds industries to the Irish financial services sector, and stated that the aim of the changes is to ensure that the section 110 regime is ring fenced for bona fide securitisation purposes.

Irish Real Estate Funds

Irish domiciled funds are exempt from tax on their income and gains, and instead payments made by funds to investors are subject to exit tax. This is referred to as the 'gross roll-up regime'. In addition, non-resident investors, and certain Irish investors (for example, pension funds) are exempt from the exit tax.

Finance Act 2016 includes new measures for the taxation of 'Irish Real Estate Funds' (IREFs). An IREF is an investment undertaking where at least 25% of the value of the fund is made up of Irish real estate assets. The aim of the new rules is to ensure that the Irish tax base is protected where Irish property transactions are taking place within collective investment vehicles.

IREFs must now deduct a 20% withholding tax on distributions to non-resident investors, or on the redemption of units to the extent that the amount of the redemption is attributable to IREF profits. IREF profits include profits from dealing in or developing land, rental income, chargeable gains from land and properties and assets which derive their value from Irish land and property, and profits from trading in land and property. Where certain conditions are satisfied, gains on Irish land and property that is held for at least five years will be excluded from the withholding tax provisions.

Withholding tax does not apply to payments made to the following categories of investors:

- An Irish pension fund;
- Another Irish investment undertaking;
- Irish life assurance companies; or
- EEA pension funds, life assurance companies or investment funds which are subject to the same level of supervision and regulation as their Irish equivalents.

Special Assignee Relief Programme (SARP)

SARP is a partial relief from Irish income tax for high earning personnel re-located into Ireland by foreign employers. SARP was first introduced in 2009 and since then has been through a number of changes in order to improve the attractiveness of the regime. Finance Act 2016 extends SARP for a further three years until the end of 2020.

Foreign Earnings Deduction (FED)

The FED allows a deduction from Irish income tax for Irish resident personnel making visits to develop business in designated countries. The BRICS countries, Mexico, the UAE, and Japan are among the jurisdictions which qualify. Finance Act 2016 extends FED until the end of 2020 and adds Colombia and Pakistan as qualifying countries.

Country-by-Country Reporting

Finance Act 2015 introduced into Irish law the OECD Base Erosion and Profit Shifting (BEPS) project recommendations for Country-by-Country (CbC) Reporting. Finance Act 2016 introduces amendments in order to transpose DAC 4 into Irish law. DAC 4 aims to bring the OECD BEPS recommendations for CbC Reporting into EU legislation. While the requirements of DAC 4 in relation to CbC Reporting are very similar to the OECD standards on CbC Reporting, as contained in the BEPS action plan, there are differences and the amendments contained in the Act aim to take account of these differences. The Act also makes a number of minor amendments to existing Irish CbC Reporting requirements.

Penalties for offshore tax defaulters

A reduced penalty regime is currently available to a tax defaulter who makes a qualifying disclosure of their under-declaration of tax to the Revenue Commissioners, and/or co-operate fully in Revenue interventions.

Finance Act 2016 removed the ability of tax defaulters to avail of this reduced penalty regime, with effect from 1 May 2017, where the disclosure relates directly or indirectly to 'offshore matters' (which broadly means any offshore tax defaults).

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ITALY

AUTOMATIC EXCHANGE OF INFORMATION CONCERNING CROSS-BORDER RULINGS AND ADVANCE PRICING AGREEMENTS BECOMES MANDATORY

On 15 March 2017, the Italian Government issued Legislative Decree no. 32 (the Decree), implementing into Italian tax law Directive 2015/2376/EU (so-called DAC 3) of 8 December 2015. The Decree came into force on 23 March 2017 and its provisions are effective from 1 January 2017, the date on which the Italian Revenue Agency was required to exchange information with the tax Authorities of the other EU Member States on cross-border rulings and advance pricing agreements (APAs).

Object of the information exchange

The Decree sets out the obligation to communicate cross-border rulings and APAs, amending Article 2 of Legislative Decree no. 29 of 4 March 2014 which implemented Directive 2011/16/EU into Italian tax law.

With regard to cross-border rulings, the new rules apply to:

- Tax rulings different from those reported under Article 31-ter of Presidential Decree no. 300 of 29 September 1973, issued in accordance with the provisions of this article;
- Tax rulings related to access to the patent box regime as provided under Article 1 of Stability Law no. 190 of 23 December 2014, where related to cross-border transactions;
- Tax rulings related to cross-border transactions, as provided under Article 11 of Italian Law no. 212 of 27 July 2000 'Provisions regarding the Taxpayer's Rights Statute';
- Tax rulings related to cross-border transactions as provided under Article 6 of Legislative Decree no. 128 of 5 August 2015 'Provisions on legal certainty in relationships between the taxpayer and the Italian Revenue Agency';
- New investment rulings as provided under Article 2 of Legislative Decree no. 147 of 14 September 2015, where related to cross-border transactions;
- All other tax rulings with similar effects to the above, contained under provisions enacted at a later date than that in which the Decree entered into force.

The Decree also extended the application of the mandatory exchange of information to APAs and rulings on permanent establishments (PEs). In this regard, under Article 31-ter of Presidential Decree no. 600 of 29 September 1973, an advance pricing agreement aims to determine, in advance, the methodologies to apply for specific cross-border controlled transactions, to ensure their consistency with the arm's length principle, as provided by paragraph 7 of Article 110 of the Italian Consolidated Income Tax Act. In contrast, tax rulings on PEs aim to define the allocation of profits and losses to a PE in another jurisdiction different from the Italian jurisdiction of a resident company or to a PE of a non-resident in Italy.

Furthermore, Article 1 of the Decree provides for the automatic exchange of information for tax rulings related to cross-border transaction, i.e. an operation or a series of operations, where:

- Not all the parties involved are tax residents in Italy;
- One or more parties involved are simultaneously tax resident in Italy and in one or more other European jurisdictions;
- One of the parties carries out its activity in another jurisdiction through a PE, and the operation or the series of operations is part of the activity or constitutes the majority of the PE's activities. A cross-border operation or a series of cross-border operations also includes transactions carried out by a legal person with respect to the activities which that legal person carries out in another European jurisdiction through a PE; or
- Which has a cross-border impact.



Terms and conditions

Rulings issued, modified or renewed with effect from 1 January 2017 and rulings issued, upgraded or renewed in the previous five years are both subject to the exchange of information, taking into account that:

- For rulings issued, amended, or renewed between 1 January 2012 and 31 December 2013, the automatic exchange applies only if they were still valid on 1 January 2014;
- For rulings issued, amended, or renewed between 1 January 2014 and 31 December 2016, the automatic exchange applies irrespectively of whether they are still valid or not.

In relation to the timing of the communication, for rulings issued, amended and renewed five years prior to 1 January 2017, information must be communicated before 1 January 2018. For rulings issued, modified or renewed with effect from 1 January 2017, the deadline is three months following the end of the half of the calendar year during which the cross-border ruling or APA has been granted.

Concerning the conditions which regulate the relations between the parties involved in the information exchange, the Decree attributes to Italian liaison services offices the task of providing the requesting Authority of an EU Member State all the ruling information at their disposal. Likewise, Italian liaison services offices can require additional information, such as the full text of cross-border rulings or APAs. In addition, all the information to be communicated must be sent to the central registry established by the European Commission.

Rulings excluded from the information exchange

The Decree excludes the following types of ruling from the mandatory automatic exchange of information:

- Bilateral or multilateral rulings on APAs with third countries, where the international tax agreement under which the APA was negotiated does not permit its disclosure to third parties;
- Cross-border rulings exclusively concerning the tax affairs of one or more physical persons.

In addition, as provided under paragraph 2 of Article 8-bis of Directive 2011/16/EU, Member States may exclude information on cross-border rulings and advance pricing arrangements issued, amended or renewed before 1 April 2016 to a particular person or a group of persons, excluding those conducting mainly financial or investment activities, with an annual net turnover of less than EUR 40 million (or the equivalent amount in any other currency) in the fiscal year preceding the date of issue, amendment or renewal of those cross-border rulings and advance pricing agreements.

Abolition of paragraph 4 of Article 31-ter

The Decree abolished paragraph 4 of Article 31-ter of Presidential Decree no. 600 of 29 September 1973, which required the Italian Revenue Agency to forward a copy of rulings to the tax Authority of the States of residence or establishment of companies whose taxpayers had implemented operations, as required by Community legislation.

Conclusion

The introduction in Italy of this obligation represents a further tool in the fight against tax avoidance and aggressive tax planning, promoting the transparency of the tax system in accordance with the OECD BEPS Project provisions.

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LATVIA

PLANNED TAX REFORM

Following the World Bank and OECD review of the Latvian tax system, the Ministry of Finance (MoF) of the Republic of Latvia published its plan for tax reform in Latvia at the end of February. The reform is now open to public discussion, and it is proposed that the tax changes will be implemented from January 2018. The planned reform is discussed in more detail below.

Tax reform from the view of the Ministry of Finance

Why does Latvia need the tax reform?

The MoF and other authors of the proposals agree that there is a high tax burden on the labour force in Latvia, especially for low wage earners. In this area Latvian tax rates considerably exceed the average indicators in the EU, reducing the competitiveness of Latvian companies and creating an additional stimulus for outflow of the workforce. Also, the MoF believes that corporate tax reform is needed, taking into account transparency and substance.

By introducing the tax reform, the Latvian tax system should be competitive on the regional level on all aspects, at least by 2020. The MoF believes that the tax reform will give a motivation to starting businesses, investing in the development of companies, attracting investors, paying taxes, and promoting residents' economic activity and wish to return to the job market.

Details of the proposed tax reform

The MoF proposes to reform labour taxes, introducing a personal income tax rate of 20% for income of up to EUR 45,000 a year, and a tax rate of 23% on income above EUR 45,000 a year (currently the personal income tax rate is 23% regardless of the amount of income). Also, the MoF plans to make adjustments to the application of reliefs and to raise the minimum wage.

The MoF proposes to apply a 20% corporate tax rate on distributed profits and 0% on reinvested profits (the current corporate tax rate is 15% on profit, adjusted by certain corrections). It includes significant changes in comparison to the existing regime – for example, existing CIT rebates and incentives will be abolished (e.g. relief for large investment projects, supported investments in R&D, and use of tax losses), CIT monthly reports will be introduced instead of an annual report, and other changes that are still being discussed. In addition, it is planned that all expenses not directly related to economic activity will be taxed at 20%.

The MoF has also prepared proposals in relation to microenterprise tax – to retain the microenterprise tax system, reducing the maximum turnover from the current EUR 100,000 to EUR 40,000 a year.

Value added tax (VAT) should be retained at 21%, but it is planned to expand the use of the reverse charge mechanism. The MoF also wants to start discussions on gradual increases in excise tax.

Next steps

The MoF has agreed on the tax reform guidelines. From May until September 2017 it, together with the Cabinet of Ministers, will develop the reforms and lead them to adoption in the Saeima (Parliament). The new tax reforms are due to enter into force in 2018, but until then they are still open to many changes.

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POLAND

TAX AUTHORITIES REORGANISATION WILL RESTRICT TAXPAYERS' RIGHTS

On 1 March 2017, the new National Tax Administration (KAS) came into being. New provisions change not only the organisation of the tax administration regime, but modify the rules for carrying out inspections of taxpayers, tax withholders and tax collectors.

Revolutionary reorganisation of the Polish Tax Authorities

The KAS Act and the act introducing it provide for the consolidation of the current Customs Service, Tax Authorities and Tax Audit Authorities. The KAS is subordinate to the Minister of Finance, and its head is Marian Banaś, who also acts as Secretary of State.

New tax offices with wider powers

The reform replaced existing tax offices with the new customs-tax offices. The functions of all the tax offices are now consolidated and performed by the National Tax Administration. The tasks of the head of the newly created customs-tax office include: tax and duty inspections, collecting taxes, fees and non-taxable dues (and other charges), and placing goods under a customs procedure.

New, less favourable tax inspection rules for taxpayers

The most important changes stemming from the KAS Act do not concern the organisation of the tax authorities, but their tax inspection powers. Previously, each tax office carried out checks on companies dealt with by that office. This principle is now changing, and a company can be inspected by any head of a customs and tax office (of which there are 16 – one for each province).

The duration of an audit cannot be longer than three months. The time allowed to a taxpayer to prepare for tax inspection activities is shortened, which e.g. will affect auditors' hearings and expert opinions. Tax audits will take place without notice, and will be carried out by officially authorised auditors.

The manner in which inspections are completed is also changing. Previously, the tax inspection protocol allowed objections to be raised, and then a tax decision could be issued. Now, the tax inspection will be finalised by the inspection result (equivalent to the decision), to which no objections can be raised or explanations requested. It will still be possible to appeal post-audit decisions, but instead of appealing to another authority, as previously, it will be possible to appeal the decision to the same authority. However, the case will not be settled by the same employee of the authority who issued the decision.

The rule that accounts can be automatically adjusted by taxpayers as a result of an audit is also changing. A correction can still be made, but this will now be done within 14 days after reporting the audit results.

Powers of officials

Officials participating in the audit gain wider powers. They will have access to all documents of the business, including confidential documents, and not just those relating to the tax audit period. They will also be able to move freely around the premises and assets of the taxpayer. In addition, they will be able to legitimise each person, verifying their identity. They also have the right to search dwellings and request that means of transport and communications and technical equipment (e.g. telephones and computers) are made available to them. The activities specified in the Act in relation to carrying out the tasks of the KAS may also be conducted in the form of operational and reconnaissance activities.

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SWITZERLAND

CORPORATE TAX REFORM III PROPOSAL REJECTED BY SWISS VOTERS

In mid-February, the Swiss people voted against the corporate tax reform III (CTR III) proposal. Only 40.9% of the Swiss voters and 3.5 (of 26) states approved the very complex proposal which would ensure that the Swiss corporate tax system remains in line with Organisation for Economic Co-operation and Development (OECD) expectations and competitive at the same time.

The referendum was launched by Swiss left wing parties, which claimed that the proposal was too expensive, the measures too beneficial for and too focused on multinational enterprises. They also argued that the refinancing of the expected tax losses was not defined and therefore the voters were afraid that the middle class would be forced to pay the potential huge loss of tax income. Obviously, these populist arguments have convinced an impressive majority of the Swiss voters.

However, it is still necessary to abolish the existing tax privileges for certain companies (holding, principal, mixed companies etc.). The European Union (EU), OECD and other international organisations have already threatened to put Switzerland on a black list for its tax system, which increases the pressure on Switzerland to abolish the tax privileges as announced until 2019.

Therefore, it would be common sense to abolish the tax privileges no later than 31 December 2018, and only 10 days after the vote, the Swiss Federal Council published a press release stating that the Federal Finance Department will prepare a new proposal. The new proposal should consider the following main aspects:

- Strengthening Switzerland's competitiveness and attractiveness with regard to taxes;
- Protecting tax revenues on a federal, cantonal and communal level; and
- Abolishing the current tax privileges (according to Switzerland's commitment to the OECD and the EU).

The Swiss Federal Council has initiated new consultations, and the parameters for a new bill should be published until June 2017. The definition of the key points for the new proposal should be worked out together with the cantons and communes. In addition, business and labour umbrella organisations are invited to present their view.

It is common sense in Switzerland that the abolition of the current tax privileges should not jeopardise Switzerland's attractiveness in terms of taxes. Therefore, it seems likely that the new proposal will also include measures to remain internationally competitive. The main questions is what these measures will be and which of them are suitable to be accepted by all (or at least a majority) of the political parties.

It seems that a patent box will be part of a new proposal. However, the definition of the intangible assets which qualify for the patent box might be narrower than in the first proposal. In particular, the inclusion of software as a qualifying intangible asset appears to be a significant point of discussion.

It also remains likely that most of the cantons will reduce their ordinary tax rate. In order to compensate for this tax loss, it is likely that the reduction granted on qualifying dividend income for individual shareholders will be reduced. It appears very unlikely that a capital gains tax on movable assets will be implemented. In all probability, the notional interest deduction will no longer be included in the new proposal.

However, Switzerland's tax system will remain attractive. In Switzerland, fiscal sovereignty remains mainly with the cantons which, within the boundaries of the tax harmonisation law, are free to set their own rules. In particular, each canton can determine its own tax rate. Consequently, the cantons compete not only with other countries but also with other cantons which results in very competitive tax rates in certain regions.

Once the new proposal is published, it will be highly recommended to analyse the new situation. It is also important to bear in mind that Switzerland agreed to exchange tax rulings if they remain valid as at 1 January 2018. Moreover, it is necessary to assess whether it could be an option to keep a current tax privilege without a ruling (the privileges are explicitly governed by cantonal tax law) or whether the company should waive its status and apply for a step-up of its hidden reserves. We are happy to assist with the respective tax planning.

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UNITED KINGDOM

SNAP GENERAL ELECTION DEFERS IMPLEMENTATION OF TAX CHANGES

On 18 April 2017 Prime Minister Theresa May announced that there would be a general election on 8 June 2017. The immediate tax effect was that many proposed measures were dropped from the 2017 Finance Bill to enable it to proceed through Parliament and be enacted before Parliament was dissolved.

The Government has stated that it intends, if re-elected, to include the measures in a Finance Bill in the next Parliament, but there is uncertainty about whether the proposed commencement dates for some measures will now change, and it is possible that some proposals may be amended or further deferred.

We summarise below the main personal, corporate and administrative tax changes that are affected.

Corporate tax

The following measures, which had been due to take effect from 1 April 2017, were entirely dropped from the Finance Bill 2017, but are expected to be introduced at some point (although not necessarily with the originally proposed effective dates) if the Government is re-elected:

Loss reforms

The main features of the proposed corporate loss reforms are:

- Tax losses carried forward would only be able to offset 50% of taxable profits arising after 1 April 2017 (subject to a GBP 5 million group de minimis where 100% can be offset);
- Tax losses which arise after 1 April 2017 could be carried forward and set against profits of both the company and other companies in the group (generally, without streaming, ie they need not be set against profits from the same type of activity).

Corporate interest relief restriction

New rules (which would replace the Worldwide Debt Cap) implementing the OECD's BEPS Action 4 would limit relief for tax purposes on interest paid by groups on an aggregated UK basis. In broad terms, relief for interest would be restricted to the higher of a fixed ratio of 30% of tax-EDITDA, or a Group Ratio of 'tax-EBITDA' multiplied by the Group's ratio of external interest to EBITDA. Even if these restrictions do not bite, the allowable interest may still be limited by reference to the group's overall net interest expense. A de minimis amount of GBP 2 million would be allowable. Excess interest expense may be carried forward to later periods.

Substantial shareholdings exemption

The substantial shareholdings exemption exempts gains on disposal of shares in subsidiaries from corporation tax if qualifying conditions are met. It was proposed to relax the rules so that:

- Investor companies would no longer have to meet a trading status requirement;
- Investee companies owned by investor companies which are themselves owned by qualifying institutional investors would no longer have to meet a trading status requirement;
- Investee companies would no longer need to be a trading company or the holding company of a trading group immediately after its disposal, unless purchased by a connected person;
- The investing company needs to have held a substantial shareholding in the investee company for at least 12 months – this qualifying period will be met by reference to any 12 month period within six years before disposal (previously up to two years before disposal).





Personal tax

The most important personal tax change to be deferred is the introduction of a new regime for non-UK domiciled individuals from 6 April 2017, of which the main features were:

- Any non-domiciled individual who has been resident in the UK in at least 15 of the past 20 tax years (including split years) would become 'deemed' UK domiciled for income, capital gains and inheritance tax (IHT) purposes, with the result that – for the first time – long term non-domiciled individuals would be taxable on a worldwide basis.
- Assets held personally outside the UK by individuals who became deemed domiciled on 6 April 2017 (and no later) under the 15/20 rule would be revalued for capital gains tax purposes provided a number of conditions were met (effectively exempting earlier gains).
- Any non-domiciled individual who had been taxed on the 'remittance basis' would have a two-year window, in which to segregate 'mixed funds', to allow more tax-efficient remittances to be made in future.
- Individuals who were born in the UK with a UK domicile of origin, but who later acquired a domicile of choice elsewhere, would be treated as UK domiciled for all tax purposes at all times if they are already resident or if they are non-resident but later come to the UK and become resident, subject to a grace period for inheritance tax (IHT) purposes. Trusts that are established offshore by such individuals would cease to be excluded

property for IHT purposes during the period the settlor is UK-resident.

- The charge to UK IHT on UK residential property would be extended to include property held indirectly by non-domiciled individuals through an offshore entity (e.g. a company, overseas partnership or a trust). The new rules would apply both to non-domiciled individual shareholders or partners and to trusts with non-domiciled settlors.

Once again, this new regime is expected to be introduced if the Government is re-elected, but commencement dates are now uncertain.

Tax administration

The first steps in 'Making Tax Digital' – a radical reorganisation of the record-keeping and reporting requirements of the UK tax system – were also dropped from the Finance Bill. It was proposed to implement the first stage of this process from April 2018, when most unincorporated businesses and residential landlords would have been required to:

- Keep their tax records digitally using software compatible with HMRC systems and capable of making submissions to HMRC;
- Submit basic information on their income and expenses quarterly to HMRC using this software; and
- Prepare and confirm an annual statement via the digital system.

The Government is still committed to introducing these changes in a future Finance Bill.

Conclusion

The deferral of these important tax changes has caused uncertainty both for individuals and companies – especially those who had planned to take action based on the proposals.

Unfortunately the Government and HMRC are unable to provide further clarification at present, due to the pre-election 'purdah' which prevents announcements being made, so taxpayers will simply have to await events after the election. If the Government is re-elected, it is expected that the various measures will be included either in a further Finance Bill in summer or autumn 2017 or, in some cases, possibly amended and deferred until 2018.

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ARGENTINA

NET OPERATING LOSSES DERIVED FROM ARGENTINE SOURCE PAYMENTS

Until the end of 2015, as a consequence of the so-called 'currency exchange control', companies (and other entities) resident in Argentina found difficulties in settling their obligations abroad.

This situation resulted in an increase in companies' taxable income for those fiscal years, because although the general criterion for the recognition of results is the accruals basis, the Income Tax Law provides an exception for charges in relation to foreign related entities. In particular, it provides that such charges will be deductible in the year in which they are paid, or until the due date for filing the tax return for the fiscal year of their accrual.

The intention of the Tax Authority was for the expense to be deductible in the fiscal year in which income tax was withheld from the foreign beneficiaries.

This situation implied that companies resident in Argentina paid tax on a higher income than that which would have resulted if such charges could have been deducted, therefore the amount paid did not reflect the real activity of the companies.

This situation has now significantly changed because the restrictions have been abolished, and local companies are able to settle debts with foreign entities which accumulated over several years.

It is important to point out that the foreign currency transactions being carried out by local companies to settle debts allow the deduction of the accrued charges in the tax year in which they are paid, so significant tax losses are arising to the companies.

The tax losses that might arise in the current year in consequence of the deduction of such charges could be wholly or partly lost if they cannot be used in the following five fiscal years.

It is therefore important to remember that the Argentine Income tax law provides that tax losses expire in the five fiscal years following the year in which they were generated.

Companies in this situation should therefore plan the payment of debts abroad in such a way that they are able to deduct part of the charges in subsequent fiscal years and avoid generating tax losses or, if they arise, ensure that they are of a smaller amount, avoiding expiry.

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THE GULF COOPERATION COUNCIL STATES

VAT TO BE INTRODUCED IN 2018 – UPDATE

The Member States of the Gulf Cooperation Council (GCC), comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE), will introduce VAT in 2018 – with most states opting for 1 January as the implementation date. However, at this stage, neither the framework agreement, which will establish the common principles of the tax, nor the detailed national legislation has been released. This is causing some concerns for businesses in the region, which will have a limited time to prepare.

Although no official version of the framework agreement (formally, 'The Unified Agreement for VAT') is available, unofficial copies are circulating. In addition, the UAE Ministry of Finance has held a number of VAT workshops in Dubai and Abu Dhabi. As a result, a good picture of how the framework will operate is starting to appear.

It is clear, for example, that the Unified Agreement is heavily based on the European model and many basic principles such as time of supply, place of supply, reverse charge and partial exemption follow the European Union principles very closely. It is important to remember, however, that the individual GCC countries will have discretion on how the principles from the Unified Agreement are implemented.

Key features

Some of the key features of the Unified Agreement are as follows:

Zero-rating will be possible for:

- The oil and gas sector;
- Medicines and medical equipment;
- International and intra-GCC transport and related services;
- Exports of goods to outside the GCC;
- Supply of investment gold, silver and platinum;
- Certain food items;
- Supply of maritime, air, and land transportation; and
- Supply of rescue planes, rescue ships, assistance at air and sea, and ships designated for fishing.

Member States have a choice of exemption or zero-rating for the following sectors:

- Education;
- Medical;
- Real estate (the UAE has said that residential accommodation will be exempt, with zero-rating for the first supply, and that non-residential accommodation will be standard-rated); and
- Local transport.

Financial Services will be exempt. This may include some insurance services and the UAE, for example, has stated that life insurance will qualify for exemption.

Registration

- Entities with an annual turnover of USD 100,000 or more will be required to register for VAT.
- Entities with an annual turnover of USD 50,000 to USD 100,000 will have the option to register for VAT.

Registration is likely to open in autumn 2017, in advance of implementation in 2018.

Returns

The Unified Agreement states that return periods should not be less than one month.

Records

Tax invoices and accounting records must be kept for a period of not less than five years. Such documents should be kept for a period of fifteen years if they relate to real estate.

VAT grouping

VAT grouping will be allowed.

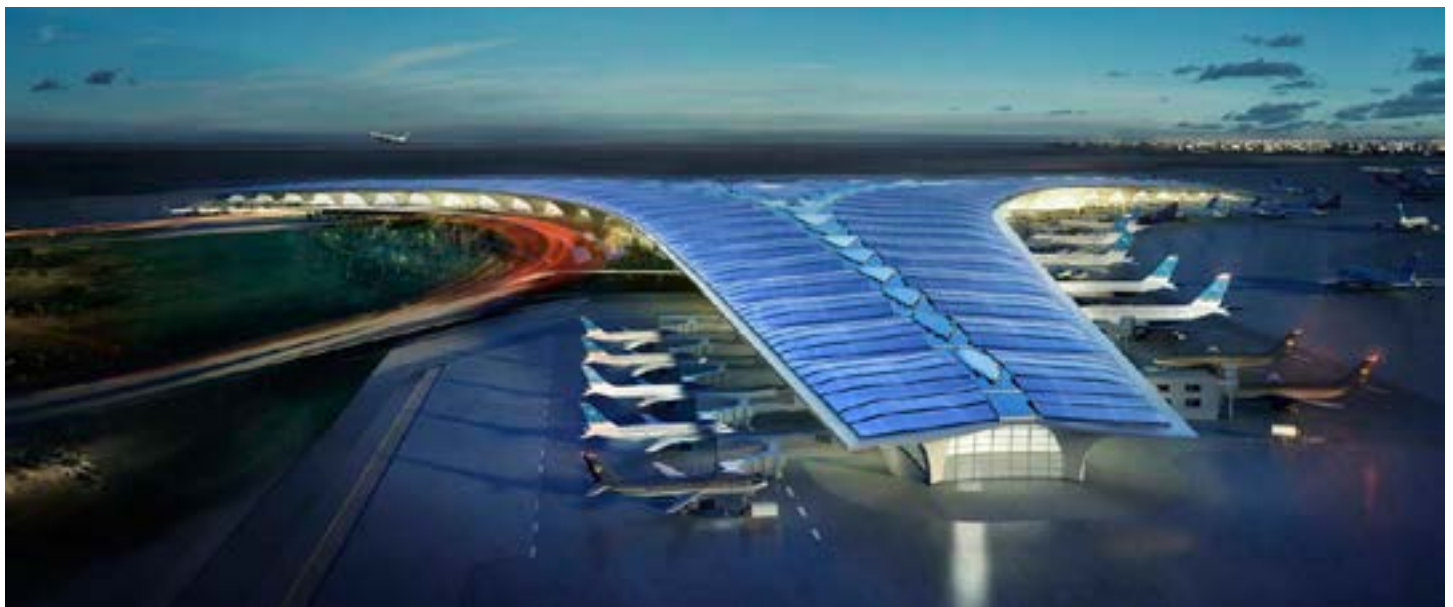
Free zones

The Agreement does not lay down any rules for the VAT treatment of supplies between free zones and other areas. This is something that will be down to Member States to decide on. It is a hot topic in Dubai where free zones are widely used – and where some zones provide a promise of no taxes for 50 years. This does not sit easily with a general application of VAT in the region, and it is difficult to see how all free zones can be carved out of the scope of VAT without undermining the tax base.

Further news on the scope of the law and the final release of the law is expected in the coming weeks.

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OMAN

CORPORATE TAX CHANGES

The Income Tax Law which became effective from 1 January 2010 has been amended by Royal Decree No. 9/2017 issued on 19 February 2017 and published in the Official Gazette on 26 February 2017.

Changes announced in the Royal Decree

The Corporate Tax rate has increased from 12% to 15% for any tax year beginning on or after 1 January 2017. However, certain entities which meet the definition of a small or medium sized enterprise (SME) will be taxed at a rate of 3% on their taxable income. In addition, the exemption of OMR 30,000 that was previously allowed has been removed, and all income is now taxable.

The new law has also amended the definition of a Permanent Establishment (PE), and provides for a 90 days threshold limit of presence in Oman during a period of twelve months for creating a PE for foreign persons engaged in activities of either providing services or holding any building site, place of construction or assembly project.

Tax exemptions

All tax exemptions to companies previously allowed by the Income Tax Law are now abolished, except for companies in the manufacturing sector, which will be granted exemption for a non-renewable period of five years beginning with the date of commencement of production, subject to compliance with certain conditions.

New scope of Withholding Tax (WHT)

The scope of WHT has been extended to include services, interest and dividends, which will effectively apply for all transactions that take place starting from 26 February 2017.

Accordingly, any payment of dividends by listed companies to non-Gulf Cooperation Council (GCC) nationals, board remuneration paid to non-Omani residents, interest and services paid to non-Omani residents will attract WHT of 10%. However, if there is a Double Taxation Agreement (DTA) between Oman and the country where the non-Omani residents are domiciled, and the WHT rate is lower than 10%, the rates specified in the DTA between the countries will apply.

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CANADA

2017 FEDERAL BUDGET

On 22 March 2017, the Honourable Bill Morneau presented his second Budget as Minister of Finance entitled 'Building a Stronger Middle Class'. Similar to last year's Budget, this Budget focused on providing fairness to the middle class through spending and tax changes. In this article we summarise the main business and international tax proposals.

Business tax

Billed-basis accounting for professionals

Taxpayers are generally required to include the value of work in progress in computing their income for tax purposes. However, certain professionals (including accountants, dentists, lawyers, medical doctors, veterinarians and chiropractors) may elect to exclude the value of work in progress in computing their income. This election effectively allows income to be recognised when the work is billed ('billed-basis accounting').

The Budget proposals would eliminate the ability for designated professionals to elect to use billed-basis accounting. This change will have a significant short-term impact on affected taxpayers. This measure will apply to taxation years that begin on or after 22 March 2017, and to mitigate the effect on taxpayers, a transitional period will be provided to phase in the inclusion of work in progress into income.

For the first taxation year that begins on or after 22 March 2017, 50% of the lower of the cost and the fair market value of work in progress will be taken into account for the purposes of determining the value of inventory held by the business under the Income Tax Act (ITA). For the second, and each successive taxation year that begins on or after 22 March 2017, the full amount of the lower of the cost and the fair market value of work in progress will be taken into account for the purposes of valuing inventory.

Tax planning using private corporations

The Government review of federal tax expenditures highlighted a number of issues regarding tax planning strategies using private corporations, which can result in high-income individuals gaining tax advantages. A variety of tax reduction strategies are available to these individuals that are not available to other Canadians. These strategies include:

- Income splitting by way of dividends paid to lower-income family members;
- Building a passive investment portfolio inside a private corporation by taking advantage of generally lower corporate tax rates; and
- Receiving distributions from private companies as capital gains as opposed to salaries or dividends that are taxed at a higher rate.

The Government intends to release a paper in the coming months setting out the nature of these issues in more detail as well as proposed policy responses.

Meaning of factual control

Canadian tax rules recognise two forms of control of a corporation: de jure (legal) control and de facto (factual) control. The concept of factual control is broader than legal control. The factual control test is used for the purpose of determining whether two or more Canadian-controlled private corporations are 'associated corporations'. Associated corporations must be considered together in determining whether certain thresholds are met, such as the CAD 500,000 small business deduction limit and the limit on qualifying expenditures relating to the refundable 35% scientific research and experimental development tax credit.

While a significant body of case law has developed concerning which factors may be used in determining whether factual control exists, a recent court decision limited the scope of such factors.

In the Budget it is proposed that the ITA be amended to clarify that, in determining whether factual control of a corporation exists, all factors that are relevant to the determination be taken into consideration. However, the determination need not include consideration of whether a taxpayer has a legally enforceable right or ability to effect a change in the board of directors of the corporation, or the board's powers, or to exercise influence over the shareholders who have that right or ability. This measure is to apply in respect of taxation years that begin on or after 22 March 2017.

Clean energy generation equipment: Geothermal energy

This Budget includes a proposal to expand the availability of faster tax write-offs to investments in geothermal technologies and equipment. Specifically, it is proposed that eligible geothermal energy equipment under Class 43.1 and 43.2 be expanded to include geothermal equipment that is used primarily for the purpose of generating heat or a combination of heat and electricity. In addition, amendments have been proposed to ensure that geothermal heating will be made an eligible thermal energy source for use in a district energy system. Finally, expenses incurred for the purpose of determining the extent and quality of a geothermal resource and the cost of all geothermal drilling, for both electricity and heating projects, will qualify as Canadian renewable and conservation expenses.

These proposals will generally apply in respect of property acquired for use on or after 22 March 2017.

Canadian exploration expense: Oil and gas discovery wells

In the Budget it is proposed that expenditure related to drilling or completing a discovery well (or in building a temporary access road to, or in preparing a site in respect of, any such well) generally be classified as Canadian development expenses (CDE) instead of Canadian exploration expenses (CEE).

This proposed change will apply to expenses incurred after 2018 (including expenses incurred in 2019 that could have been deemed to have been incurred in 2018 because of the 'look-back' rule). The proposed change will not apply to expenses actually incurred before 2021 where the taxpayer has, before 22 March 2017, entered into a written commitment (including a commitment to a government under the terms of a license or permit) to incur those expenses.

Reclassification of expenses renounced to flow-through shares

The Budget contains a proposal to no longer permit eligible small oil and gas corporations to treat the first CAD 1 million of CDE as CEE. This measure will apply in respect of expenses incurred after 2018 (including expenses incurred in 2019 that could have been deemed to be incurred in 2018 because of the look-back rule), with the exception of expenses incurred after 2018 and before April 2019 that are renounced under a flow-through share agreement entered into after 2016 and before 22 March 2017.

International tax**Extending the base erosion rules to foreign branches of life insurers**

The Budget includes a proposal to amend the ITA to ensure that Canadian life insurers are taxable in Canada with respect to their income from the insurance of Canadian risks. This rule will be modelled on the existing anti-avoidance rule in the foreign accrual property income regime and will apply where 10% or more of the gross premium income (net of reinsurance ceded) earned by a foreign branch of a Canadian life insurer is premium income in respect of Canadian risks. Where the proposed rule applies, it will deem the insurance of Canadian risks by a foreign branch of a Canadian life insurer to be part of a business carried on by the life insurer in Canada and the related insurance policies to be life insurance policies in Canada.

It is additionally proposed that complementary anti-avoidance rules be introduced to ensure the integrity of the proposed rule. This measure will apply to taxation years of Canadian taxpayers that begin on or after 22 March 2017.

For more information, please contact BDO Canada.

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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 26 May 2017.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
US Dollar (USD)	0.89106	1.00000
Indian Rupee (INR)	0.01379	0.01547
Indonesian Rupiah (IDR)	0.00007	0.00008
Singapore Dollar (SGD)	0.64347	0.72214
Euro (EUR)	1.00000	1.12213
British Pound (GBP)	1.15528	1.29647
Omani Rial (OMR)	2.30611	2.58806
Canadian Dollar (CAD)	0.66355	0.74467

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