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Global Tax Alert

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OECD

On 21-23 October 2015, the OECD held a regional meeting in Eurasia on BEPS. The focus of the discussion was the outcomes of the OECD BEPS project and how countries can participate in the ongoing work related to implementation and monitoring on an equal footing. The meeting was hosted by the Georgian Ministry of Finance and the Georgian Revenue Service and 15 countries were represented. Also participating in the meeting were representatives of the business community in the region as well as non-governmental organizations.

Czech Republic

On 23 September 2015, the Government of the Czech Republic submitted a bill amending the Income Tax Law that, if approved, would be applicable as of 1 January 2016. The proposed changes include the implementation of the amendment to the European Union Parent-Subsidiary Directive restricting the tax exemption of otherwise qualifying profit distributions when such distributions are tax deductible for the subsidiary. According to the explanatory notes to the bill, the Czech Republic is not implementing the general anti-abuse rule provided in the other amendment to the Directive because the Czech legal system already contains a general abuse-of-law principle established by case law.

European Union

On 21 October 2015, the European Commission rendered its final decisions in two State aid investigations, concluding that Luxembourg and the Netherlands granted illegal State aid to resident subsidiaries of multinational groups. These decisions conclude two of the four investigations that the Commission launched last year involving Ireland, Luxembourg and the Netherlands. The Commission found that the two tax rulings at issue applied methods which in the Commission's view did not reflect "market conditions." The Commission ordered both Member States to recover the alleged advantage from the taxpayers. The Dutch Government, in an initial statement, said that the decision by the Commission comes as a surprise as it believes that international standards were adhered to when concluding the tax ruling. The Luxembourg Ministry of Finance commented that Luxembourg disagrees with the conclusions reached by the European Commission and that it reserves all its rights.

See EY Global Tax Alert, *EU Commission finds Luxembourg and the Netherlands granted illegal State aid and orders recovery*, dated 22 October 2015.

Honduras

On 18 September 2015, Honduras issued new transfer pricing regulations that increase the reporting burden on taxpayers. Under the new regulations, taxpayers are required to file a transfer-pricing information return on an annual basis. In addition, all related-party transactions are subject to the transfer-pricing regulations. The new regulations refer to the OECD Transfer Pricing Guidelines as a technical reference.

See EY Global Tax Alert, *Honduras issues new transfer-pricing regulations*, dated 15 October 2015.

Indonesia

On 9 September 2015, Indonesia's Minister of Finance issued regulations introducing thin capitalization rules. Under the regulations, any "borrowing expenses" (including, among others, interest expense, discount on a loan, and guarantees paid by a debtor) associated with a liability that exceeds a 4:1 debt to equity ratio will not be tax deductible. Indonesian permanent establishments of nonresident entities and certain taxpayers (e.g., banks, financial institutions and insurance companies) are not subject to this debt to equity ratio rule. In addition, if the debtor's equity is zero or negative, none of the "borrowing expenses" will be deductible. Furthermore, a corporate debtor that has debt from an offshore private lender is required to report the offshore debt to the Directorate General of Tax. Failure to report the debt will result in a full denial of deductions. The regulations will apply to taxable years beginning in 2016.

See EY Global Tax Alert, *Indonesia issues debt-to-equity regulations*, dated 11 October 2015.

Ireland

On 22 October 2015, Finance Bill 2015 was published by the Irish Government primarily to implement the tax measures announced as part of Budget 2016 on 13 October 2015. The Finance Bill includes draft legislation on Ireland's new intellectual property (IP) regime - the Knowledge Development Box - following the OECD's recommendations. The regime would provide for an effective corporation tax rate of 6.25% on income arising from qualifying assets, where some or all of the related research and development is undertaken by the Irish company. The assets qualifying for the regime would include patented inventions, copyrighted software and other specified forms of IP such as patents pending. The relief would be provided through a tax deduction and would apply for accounting periods commencing on or after 1 January 2016 and ending before 1 January 2021.

The Finance Bill also includes country-by-country (CbC) reporting for Irish headquartered groups based on the recommendations issued by the OECD under BEPS Action 13. The proposed legislation would require Irish headquartered groups with consolidated annualized group revenue of greater than €750 million to comply with the new requirements. Under the proposed legislation, Irish headquartered groups would be required to prepare a CbC report that contains specific financial data including income, taxes and other key measures of economic activity by jurisdiction. The first CbC report would be required to be prepared for fiscal years beginning on or after 1 January 2016 and would be required to be filed with the Irish tax authorities within 12 months of the year end. A secondary filing mechanism would include the potential for "surrogate parent entity" filing, as well as local filing in accordance with additional instructions to be made by the Revenue Commissioners. Penalties may be imposed by the Irish Tax Authorities if the CbC reporting requirements are not met.

On 15 October 2015, Ireland published a document, *Update on Ireland's International Tax Strategy*, reaffirming Ireland's commitment to address BEPS and to continue to actively engage with working groups in seeking a multilateral response to aggressive tax planning. The update reiterates Ireland's commitment to the 12.5% tax rate which will continue to form the cornerstone of Irish tax policy. The update is clear that the focus on BEPS will not impact the 12.5% tax rate and that Ireland will maintain the position that taxation (including the tax rate) should remain the competence of each individual Member State and will disagree with any proposal for harmonization of tax rates or minimum taxation levels. In addition, Ireland continues to be fully committed to negotiating multilateral instruments and pursuing binding arbitration for Mutual Agreement Procedure processes. On transfer pricing, Ireland does not intend to update its domestic laws to reflect the revised OECD Transfer Pricing Guidelines until the OECD Council has approved the BEPS report on Actions 8-10 (which is expected in 2016). Finally, Ireland is not proposing any changes relating to BEPS Actions 2-4.

See EY Global Tax Alert, *Irish Government announces Budget 2016 and publishes update on international tax strategy*, dated 16 October 2016.

Norway

On 7 October 2015, the Norwegian Government published its proposal for the 2016 Fiscal Budget. The Government proposes to limit the deductibility of intra-group interest to 25% (currently 30%) of taxable EBITDA (earnings before, interest, taxes, depreciation and amortization), with effect from 2016. Note that third party interest payments are currently – in principle - fully deductible even though total net interest costs exceed the fixed EBITDA ratio. However, the Government has now stated that it is determined to extend the interest deduction limitation rule to third party interest payments in accordance with the OECD BEPS recommendations. At the same time, the Government maintains that it will work toward avoiding limitations on genuine third-party interest payments by specifically targeting the interest limitation rule to profit shifting arrangements. The Government also has proposed to restrict the application of the Norwegian participation exemption with respect to dividends received by a Norwegian company to the extent that the distribution has been tax deductible at the level of the distributing entity.

In addition, the Norwegian Government published a white paper for the Parliament outlining a tax reform to be enacted over the course of 2016-2018. In the white paper, the Government proposes amending the permanent establishment threshold under Norwegian domestic law, amending the controlled foreign company rules, and introducing country-by-country (CbC) reporting for income and taxes paid by multinational enterprises. Although the CbC reporting proposal has yet to be published for public consultation, it is likely that the first reporting would be required to be done in 2018 based on figures for 2016.

See EY Global Tax Alert, *Norwegian Government issues Fiscal Budget for 2016 and white paper on tax reform* dated, 9 October 2015.

Slovak Republic

On 22 September 2015, the Slovakian Parliament approved changes to the Income Tax Act which will become effective as of 1 January 2016. The changes include implementation of the amendment to the European Union Parent-Subsidiary Directive restricting the tax exemption of otherwise qualifying profit distributions when such distributions are tax deductible for the subsidiary. The changes also include a new general anti-abuse rule under which the profit distributions received will be subject to taxation in Slovakia if a transaction, or series of transactions, is carried out without sufficient business reasons or if the transaction's main purpose or one of the main purposes is to gain a tax advantage.

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