Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. International Tax News is a monthly publication that offers updates and analysis on developments taking place around the world, authored by specialists in PwC’s global international tax network.

We hope that you will find this publication helpful, and look forward to your comments.

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Amendments to the Income Tax Act

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Introduction of a new tax bill into Parliament

United Kingdom
New HM Treasury and HMRC Consultations of relevance to multinational businesses

Netherlands
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**News on Brazilian R&D Program**

On April 29, 2016, Interpretative Declaratory Act 3/2016 (ADI 3/2016) was published providing the Brazilian Federal Revenue Authorities’ (RFB) position that the increased progressive tax rates in relation to capital gains derived by individuals (and non-residents) should only apply from January 1, 2017.

- **Expiration of MP 694/15:** The Provisional Measure (MP) No. 694, dated of September 30, 2015, which changed the Law 11.196/2005 (Lei do Bem) and suspended for the calendar year 2016 the ‘super deduction’ of R&D expenses for corporate income tax (CIT) purposes is no longer valid, in view of the expiration of the deadline for its conversion into law. The MP should have been converted into law up to March 8, 2016, but the Senate did not submit the text to polling. Therefore, such MP produced effects just in the first two months of 2016.

- **Private Institute of Science and Technology (CTI):** In January 11, 2016, the Law 13.243 was published and introduced a more transparent and safe regulatory framework for the interaction of actors from the public and private sectors that make up the system of science, technology, and innovation in Brazil, in order to improve the cooperation between these sectors. An important change introduced by the law was the possibility of private companies setting up a CTI, which shall be a non-profit entity.

**PwC observation:**
Due to the expiration of the MP, the R&D super deduction tax benefit was totally restored for the 2016 calendar year. Also, if the company adopts the accumulated taxable income method to calculate the CIT basis (lucro real acumulado), the MP will produce just a cash effect in January and February.

The possibility of a private CTI allows the segregation of the R&D activities into a new entity, which could provide services intragroup and/or to third companies. The expenses paid to a CTI are eligible to an extra super deduction (one time and a half of the amount paid to a CTI, instead of an usual 60 to 80% deduction to non-CTI companies).
Further clarification on tax incentives for software and integrated circuit enterprises

Since 2000, Chinese government released a series of tax incentives for software and integrated circuit (IC) enterprises to boost technological innovation and the upgrading of industrial structure. The corporate income tax (CIT) incentives include two year exemption and three year half CIT rate reduction, five year exemption and five year CIT rate half reduction, reduced CIT rate at 15% or 10%, etc. In the past, to claim the above incentives, enterprises must apply for relevant certificates with the National Development and Reform Commission (NDRC) and the Ministry of Industry and Information Technology (MIIT). However, in order to echo the move of Chinese government to streamline administrative power, the approval of the certificate has been removed since 2015, resulting in a temporary suspension of the tax incentives for software and IC enterprises as there was no clear guidance.

In May 2016, to implement the aforesaid simplified procedures after the removal of the administrative approval, a few authorities jointly released Caishui [2016] No. 49 (Circular 49) to clarify how to claim tax incentives for software and IC enterprises. Highlights of Circular 49 include:

Implementation of the record-filing system
Under the new mechanism set out by Circular 49, relevant software and IC enterprises should file a record with tax authorities before the annual CIT filing to enjoy the tax incentive. With the previous approval procedure, relevant enterprises should self-assess their eligibility for the tax incentives in advance.

Clarification on certain criteria for tax incentive entitlement
Except for an additional criterion on safety and quality, the criteria for software and IC enterprises set out in Circular 49 basically remain unchanged compared with previous requirements. However, Circular 49 stipulates more stringent criteria for qualifying as ‘key IC design enterprises and key software enterprises within the National Plan’ (Key IC Design and Key Software Enterprises), requiring enterprises to meet a combination of criteria based on sales, annual taxable income, percentage of research & development (R&D) personnel, and percentage of R&D expenditures incurred in China, with different thresholds depending on whether the relevant business falls in the key software/IC design domain.

Further guidance on the calculation of R&D expenditures
Circular 49 provides that starting from 2016, R&D expenditures should be calculated following the new approach set out in a prior circular Caishui [2015] No. 119, which emphasised the fundamental role of technical analysis during the assessment of R&D activities.

Establishment of the post-record filing examination mechanism and enhancement of post-administration
One noteworthy change in Circular 49 is the post-filing administration of the relevant tax incentives. The tax authorities will forward the relevant information submitted by the enterprises to the equivalent departments of NDRC and MIIT at the provincial level for examination. If the enterprises are assessed not to be eligible for the tax incentive, the relevant reduced or exempted tax will be clawed back and the enterprises could be subject to tax surcharges and penalties.

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PwC observation:
On one hand, it can be anticipated that Circular 49 will benefit more enterprises in claiming the relevant tax incentives and has profound impact on the development and restructuring of the software and IC industries. On the other hand, Circular 49 also requires enterprises to improve their capabilities in self-assessment, monitoring the eligibility for the incentives, and integrating both technology and accounting/tax expertise, etc. Enterprises should consider these factors so as to leverage on the incentives and mitigate relevant risks.
Ordinance on corporate treasury centre and regulatory capital security

The Inland Revenue (Amendment) Ordinance (No. 2) Ordinance 2016 was gazetted on June 3, 2016.

The Ordinance gives effect to the following tax measures:

- A concessionary profits tax rate of 8.25% for certain profits of qualifying corporate treasury centres (CTCs).
- New deduction rules for interest expenses incurred by an intra-group financing business and new deeming provisions on interest income and certain profits arising from such business.
- Profits tax and stamp duty treatments in respect of regulatory capital securities issued by financial institutions.

The 8.25% tax rate applicable to CTCs and the new interest expense deduction rules for intra-group financing business will apply retrospectively from April 1, 2016, whereas the other provisions will apply from the commencement date of the Ordinance (i.e. June 3, 2016) or the transitional year of assessment (i.e. the year of assessment corresponding to the basis period within which the commencement date falls).

PwC observation:

The new CTC tax regime puts Hong Kong in a competitive position when multinational corporations (MNCs) consider where in Asia to set up or relocate their regional CTCs. In considering where the best location is, MNCs should take into account both tax considerations and non-tax factors such as their own business needs and mode of operation as well as the regulatory environment, the financial and capital markets, and the availability of finance talents in different locations.

Introduction of Standard Audit File for Tax in Poland

As of July 1, 2016, enterprises will be obligated at the request of tax authorities (during tax audits) to transmit data of tax register and accounting evidence (sales, purchasing, invoices, stock records etc.) in electronic, unified, and detailed specified form – Jednolity Plik Kontrolny (JPK), recommended by the Polish Minister of Finance (MoF). JPK is a Polish name of Standard Audit File for Tax (SAF-T), which is an international standard for electronic exchange of reliable accounting and tax data format. Given standard has been defined by the Organisation for Economic Co-operation and Development (OECD).

The final version of SAF-T was published by Polish MoF and comprises of seven structures:

- accounting records
- bank statement
- warehouse
- VAT register
- invoices
- tax register of revenues and expenses, and
- evidence of revenue.

As of July 1, 2016, new rules will apply to the so-called large enterprises (enterprises that have at least 250 employees or generate annual turnover amounting to at least 50 million euros (EUR) and annual balance sheet amount equals to at least EUR 43 million). For small and medium sized enterprises (SMEs), the SAF-T rules will come into force later – as of July 1, 2018.

Obligation to generate VAT reports in a SAF-T

According to the bill adopted by the Parliament, the obligation to generate value-added tax (VAT) reports in a SAF-T data format and their monthly reporting to the tax authorities will apply initially only to the largest enterprises for each month begun on or after July 1, 2016. This means that large enterprises will be obliged to file VAT reports in the SAF-T data format already on August 25, 2016. The obligation to generate VAT reports in the SAF-T data format will apply to SMEs since January 2017. As for Micro enterprises, the obligation will come into effect on January 2018.

PwC observation:

The taxpayers covered by the new regulations will be forced to apply IT solutions to comply with SAF-T requirements.

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Amendments to the Income Tax Act

Legislation of 2015 Budget changes
The Income Tax (Amendment) Act 2016 was published on April 11, 2016. It mainly legislates changes announced during the 2015 Budget Speech, including those relating to the Mergers and Acquisitions (M&A) scheme, the International Growth Scheme, the Double Tax Deduction for Internationalisation and the enhanced tax deduction for qualifying donations.

Non-Budget tax changes are mainly refinements to existing tax policies and tax administration arising from on-going reviews of the income tax system.

Exchange of Information
Singapore ratified the Convention on Mutual Administrative Assistance in Tax Matters (CMAA) on January 21, 2016. Internationally, the CMAA will provide the basis on which tax authorities cooperate in various aspects of tax administration, including the exchange of information (EoI). The CMAA became operative from May 1, 2016 and expands Singapore’s network of partners for EoI on request by 34 jurisdictions. It should, however, be noted that Singapore has made various reservations in implementation in accordance with local laws, including not providing assistance in the recovery of foreign taxes.

The Income Tax (Amendment No. 2) Bill 2016 was published on April 14, 2016. The proposed amendments to the Income Tax Act are intended to allow Singapore to implement its international commitment to adopt the Common Reporting Standard (CRS) and commence automatic exchange of financial account information (AEOI) in 2018. The Ministry of Finance (MoF) has announced that AEOI exchanges will be carried out on a bilateral basis with jurisdictions with which Singapore has signed Competent Authority Agreements. This will be subject to the following:

- That there is a level playing field among all major financial centres, including Dubai, Hong Kong, Luxembourg, and Switzerland, to minimise regulatory arbitrage.
- That Singapore’s AEOI partners having strong rule of law, the ability to ensure the confidentiality of information exchanged and prevent its unauthorised use.
- That there is full reciprocity with AEOI partners in terms of information exchanged.

In this regard, the MoF has indicated that Singapore will prioritise the implementation with jurisdictions with strong rule of law, such as the UK and France.

Amendments to the Economic Expansion Incentives (Relief from Income Tax) Act
The Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2016 was published on April 19, 2016. The amendments relate mainly to the manner in which the maximum tax relief period under the Pioneer Incentive and Development and Expansion Incentive (DEI) is applied. Currently, the maximum tax relief period under each incentive is applied to the company as a whole. This is amended to apply the maximum tax relief period to each incentivised product or activity.

The Act also introduces sunset clauses for various schemes, and other changes to facilitate tax administration.

PwC observation:
Reflecting its role as a financial centre and trading hub, Singapore is taking proactive steps to align with the new norms in international taxation. Proposed amendments to the Economic Expansion Incentives (Relief from Income Tax) Act – The proposed amendments will encourage companies that are already enjoying the Pioneer incentive or DEI schemes to continue to anchor more pioneering products and activities in Singapore, and to continue to invest in advanced technology. The changes also reflect the government’s commitment to monitor the effectiveness of the tax incentive regimes and to keep them competitive and relevant as economic conditions change.
Proposed Tax Legislative Changes
Brazil

Brazilian tax authorities release a public consultation on the understanding of significant economic activities

On May 30, 2016, the Brazilian tax authorities (RFB) released Public Consultation n. 007/2016 expressing their initial understanding on what should be viewed as ‘significant economic activities’ for the purpose of article 2 of Normative Instruction n. 1,037/2010 (which provides a list of low tax and privileged tax regime jurisdictions from a Brazilian tax perspective).

As per the content of the Consultation, holding companies with significant economic activity should be those having, in its domicile, operational capacity to manage the group. That is, the holding company should have the ability to decide how to manage its assets and investments. Operational capacity should be tested by the existence of a fixed place (i.e. physical place of business) as well as having qualified employees to effectively manage the group.

According to the consultation, Brazilian taxpayers should have until June 10, 2016 to provide comments on this subject before the enactment of the Normative Instruction by the RFB.

PwC observation:
Multinationals are encouraged to monitor the progress of this consultation and to analyse how this will impact their specific structures.

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New Zealand

Introduction of a new tax bill into Parliament

On May 3, 2016, the New Zealand government introduced the Taxation (Annual Rates for 2016-17 Closely Held Companies and Remedial Matters) Bill to Parliament. The Bill covers a range of issues that have been subject to consultation over the past year and expected to be introduced in draft legislation.

Non-resident withholding rules/AIL regime
The Bill proposes several changes to the application of the non-resident withholding tax (NRWT) and approved issuer levy (AIL) rules to interest paid by New Zealand borrowers to non-residents who are not associated with the borrower. Broadly, the NRWT/AIL proposals cover three key areas:

- alignment of the NRWT and financial arrangement rules
- prescription of requirements for the eligibility for the 2% AIL, and
- changes to the onshore and offshore branch exemptions.

We comment on each area below:

- NRWT rules for related party debt

Aligning NRWT and financial arrangement rules
In general, under current rules, interest expense is deductible to a New Zealand borrower on an accruals basis, whereas NRWT is deductible when interest is 'paid'. The proposals require the NRWT liability to arise in line with interest deductions claimed by the New Zealand borrower if the borrower and lender are related.

Where there is a deferral of the NRWT payment of at least 90% relative to the interest deduction claimed by the New Zealand borrower, the related party lender will be deemed to have derived 'non-resident financial arrangement income', on which NRWT will be payable.

These changes will be effective from the date of enactment for new related party debt arrangements or from the start of the next income year following enactment for existing related party debt arrangements.

Who is a related party?
The Bill also seeks to define circumstances in which a borrowing is viewed as a related party debt arrangement. This includes back-to-back financing arrangements (including certain cash pooling arrangements) or where a group of non-resident shareholders are acting together to control and fund the New Zealand borrower. This concept expands the inability to pay AIL instead if NRWT from associated party lending to the wider concept of related party debt arrangements.

- Proposals on the AIL registration process

The tighter AIL registration proposals are aimed at reducing Inland Revenue's perceived risk that borrowers will pay AIL (rather than NRWT) on interest payments to non-residents that they are actually associated with. To this end, the Bill proposes changes which will restrict securities that issuers will be able to register and qualify to pay AIL on. Instruments that are eligible for AIL will generally need to fall within prescribed categories for the type of borrower, lender, and/or the size of the borrower's interest payments to non-residents. These proposals are intended to increase the integrity of the AIL rules while minimising additional compliance costs on borrowers.

The Bill also proposes to allow the Commissioner to issue determinations for certain categories (not taxpayer-specific) of borrower, lender or transaction types that will mean a security is eligible to be a registered security.

The proposed amendments will apply to securities registered on or after April 1, 2017. Securities registered before this date will apply the proposed rules on April 1, 2018.

- Proposals on branch lending

Off-shore branch exemption
Changes to the source rules will mean that NRWT or AIL will apply to an interest payment from the offshore branch of a New Zealand resident to a non-resident to the extent that the offshore branch lends money to New Zealand residents.

On-shore branch exemption
Changes to the NRWT rules will apply NRWT or AIL to an interest payment from a New Zealand resident (or branch of a non-resident) to a non-resident if that non-resident has a New Zealand branch, unless the interest is derived by the New Zealand branch. These changes will not apply to a New Zealand resident (or a branch of a non-resident) that pays interest to a non-resident that they are not associated with and that has a New Zealand branch that holds a banking licence.

The application date of the changes to the branch lending rules varies depending on the arrangements/entities involved (e.g. corporate vs banking industries).
Related parties debt remission
The Bill introduces long awaited legislation to amend the debt remission rules to address the current asymmetric tax outcome that can arise when debt is remitted between related or associated parties referred to as an ‘economic group’. As indicated by the Minister of Revenue in September 2015, tax relief will be available not only for domestic debt but also for cross-border debt. The proposed amendment will treat the debt as fully repaid to ensure there is no debt remission income where the debt remission is within an economic group.

The core proposals will apply when:
- the debtor is a company or a partnership (including look-through companies and limited partnerships)
- the creditor is a member of the ‘creditor group’ of the debtor (which includes the creditor’s associates), and
- the debt forgiven is pari passu debt (being debt that is held and forgiven in proportion to ownership).

In addition, debt remission within a wholly owned group of companies will not cause a deemed dividend to arise. Further, the remitted amount will be deemed to create “available subscribed capital” for a corporate debtor and increase the cost of the creditor’s investment in the debtor. This ensures the benefit of the proposed changes does not get clawed back on a subsequent liquidation of the debtor company.

As originally proposed, the legislation should apply retrospectively from the 2006 – 2007 tax year once enacted.

General anti-avoidance rules (GAAR)
The Bill has a new rule that provides that New Zealand’s double tax treaties (DTT) do not prevent domestic general anti-avoidance provisions from applying. That is, the general anti-avoidance provisions can potentially apply where a structure or arrangement has been established to obtain treaty benefits. The commentary to the Bill notes that the existing legal position on this issue is debatable and this change has been made for ‘clarification’ purposes.

PwC observation:
The proposed changes on the NRWT were signalled last year and broadly consistent with Inland Revenue’s previous consultation papers. The proposals are symptomatic of Inland Revenue’s overarching objectives to close perceived gaps in the New Zealand tax system, and the global momentum relating to base erosion profit shifting (BEPS) provides the necessary foundation. The NRWT/AIL proposals and drafting are complex and are likely to create additional compliance costs for a number of taxpayers. This appears contrary to Inland Revenue’s recent efforts to reduce and streamline tax complexity and compliance. All New Zealand entities with borrowing sourced from non-resident lenders should review the potential impact of these changes on their financing.

We believe the proposals on related party debt remission achieve a sensible policy outcome and it is pleasing to see that Inland Revenue Officials have consulted with interested parties to make the rules more certain for taxpayers. Taxpayers should review their domestic and cross-border funding structures and consider the impact of the related party debt remission proposals.

The Inland Revenue has had considerable success in the New Zealand Courts in recent years in invoking the general anti-avoidance provision in a range of cases. This proposed ‘clarification’ (which we consider is a change in law rather than merely a clarification of existing law) will bolster Inland Revenue’s ability to argue that even though a tax treaty prescribes a specific outcome, the New Zealand general anti-avoidance provision can still be applied to override that tax treaty provision. This is not an insignificant change.

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Poland

Draft law on the exchange of tax information published in Poland

On May 23, 2016, the government Legislation Centre published a draft law on the exchange of tax information with other countries.

As indicated in the explanatory memorandum of the Act, the draft law regulates the principles and procedure for the exchange of tax information with other countries, the obligations of financial institutions for the automatic exchange of tax information and control of their execution and the obligations for the automatic exchange of information with regards to companies included in one holding group.

The project was submitted to public and inter-ministerial consultations. The law will enter into force on September 1, 2016.

PwC observation:
The bill is an adaptation of Polish law to European Union (EU) requirements and the Organisation for Economic Co-operation and Development (OECD) recommendations.

Singapore

2016 Budget updates

The 2016 Budget Statement was delivered by Finance Minister Heng Swee Keat on March 24, 2016. Proposed changes include:

- An increase in the corporate tax rebate for Years of Assessment (YAs) 2016 and 2017 (income years 2015 and 2016) from 30% to 50%. The rebate amount remains capped at 20 thousand Singapore dollars (SGD) per year.
- The introduction of a new investment allowance for automation equipment which will allow taxpayers to claim an additional 100% tax allowance for approved capital expenditure (net of grants) incurred on qualifying projects, subject to a cap of SGD 10 million per project.
- Enhancement of the existing mergers and acquisitions (M&A) scheme which allows a qualifying Singapore company to claim a deduction for 25% of the cost of acquisition, capped at SGD 20 million, for qualifying share purchases. The cap on the cost of acquisitions is increased to SGD 40 million. The cap on stamp duty relief available under the scheme for the acquisition of Singapore shares is likewise increased from SGD 20 million to SGD 40 million.
- The acquisition cost of qualifying intellectual property rights (IP) can be claimed over five years. Taxpayers will now be given the option of electing to claim the allowance over five, ten or 15 years. An anti-avoidance rule has also been proposed which will allow the Singapore tax authority (IRAS) to substitute the open market value of the IP for the acquisition price or disposal price (as the case may be) for the purpose of computing the writing down allowance.
- A new Business and Institution of a Public Character (IPC) Partnership Scheme is introduced to allow companies a 150% deduction for specified expenses when they send their employees to volunteer and provide services to an approved charity (IPC), subject to certain caps.
- Certain incentives have been renewed and/or enhanced. Renewed incentives include the safe harbour rule on exemption of gains on divestments of ordinary shares, the double tax deduction for internationalisation, the exemption for Not-for-Profit Organisations, and the Land Intensification Allowance which was extended with minor tweaks to the qualifying conditions.
- Renewal and enhancement of the Finance and Treasury Centre incentive including reduction of the concessional tax rate from 10% to 8%, although the business requirements to qualify for the scheme will be increased.
- The tax incentives for approved trustee companies, marine hull and liability insurance, specialised insurance business and captive insurance have been renewed and subsumed under broader umbrella incentive schemes for the financial and insurance sectors respectively. In general, the concessional tax rates will be aligned accordingly with those provided for under the respective umbrella schemes.
- Expansion of the scope of qualifying income under the Maritime Sector Incentive and Global Trader Programme.
- In contrast, it was announced that the Productivity and Innovation Credit scheme will not be extended beyond YA 2018. The Approved Investment Company scheme and tax exemption on income derived by non-residents trading specified commodities in Singapore via consignment arrangements have also been withdrawn.

PwC observation:
The 2016 Budget proposals are targeted and reflect the Minister’s priorities of encouraging businesses to create value through innovation and to grow by expanding overseas.

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HM Treasury consultation – design and implementation of tax deductibility of corporate interest expense regime

Following an initial consultation in October 2015 on the Organisation for Economic Co-operation and Development’s (OECD’s) recommendations under Action 4 of its base erosion and profit shifting (BEPS) project concerning interest deductions and other financial payments, the government announced key policy design features for a restriction on the tax deductibility of corporate interest expense at Budget 2016 and in the Business tax road map. On May 12, 2016, the government issued a second consultation seeking views on the detailed policy design and implementation of the new regime which is scheduled to take effect in the UK from April 1, 2017.

The new rules will include:

- an initial net interest restriction based on 30% of UK taxable EBITDA
- a group ratio test allowing deductions above the 30% fixed ratio where the overall group is more highly geared
- an overall cap will also apply, limiting UK net interest deductions to the worldwide group’s net interest expense; this replaces the current ‘debt cap’ rule but will generally give less favourable results
- a limited ability to carry forward disallowed interest and excess EBITDA capacity
- a 2 million pounds (GBP) per group net interest de minimis allowance, and
- a tightly defined public benefit infrastructure exclusion.

There will be separate consideration for banking and insurance groups.

PwC observation:
The consultation provides welcome clarity on Her Majesty’s Revenue & Custom’s (HMRC’s) current intentions in certain areas. The proposals are sufficiently detailed that in many cases groups will now be able to evaluate how the rules may apply. However, the rules are complex and care should be taken in evaluating the consequences.

However, it is evident that some aspects of the new rules are still being considered and they might change during the course of the consultation process. This consultation is open until August 4, 2016 and the government will consider responses in the drafting of the legislation for Finance Bill 2017.

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New HM Treasury and HMRC Consultations of relevance to multinational businesses

In May 2016, Her Majesty’s Treasury and Her Majesty’s Revenue & Customs (HMRC) issued four consultation documents of relevance to multinational businesses (in addition to the consultation on tax deductibility of corporate interest expense covered in a separate item in this edition).

Reforms to corporation tax loss relief – consultation on delivery

To provide a more flexible loss relief regime for the majority of UK businesses, that is internationally competitive and better aligned with how businesses operate, Budget 2016 announced two reforms to the loss relief rules:

• Losses arising from April 1, 2017 can be carried forward and set against the taxable profits of different activities within a company and the taxable profits of its group members (pre April 2017 losses retain their character and will remain subject to more limited offset).

• The amount of annual profit that can be relieved by carried forward losses will be limited to 50% from April 1, 2017, subject to a 5 million pounds (GBP) allowance per group. The 50% restriction applies to all losses, including pre April 2017 losses. The government is now seeking views (until August 18, 2016) on the detailed design and implementation of the new rules. Draft legislation will be included in Finance Bill 2017.

Reform of the substantial shareholding exemption (SSE) – consultation

The government announced at Budget 2016, it would consult on possible reform of the SSE, with a view to considering whether there could be changes to make it simpler, more coherent and more internationally competitive. The consultation presents a number of options for possible reform, ranging from technical changes to the existing SSE legislation (in particular to relax the trading requirements) to a more comprehensive corporation tax exemption for gains on substantial share disposals that corresponds with other countries’ regimes. There is also consideration of the treatment of funds. Comments are invited by August 18, 2016.

Double taxation treaty passport (DTTP) scheme – consultation

The DTTP was introduced as an administrative simplification in 2010 and is available to corporate-to-corporate lending into the UK, in order to reduce the burden of accessing reduced withholding tax (WHT) rates under tax treaties. This consultation will enable HMRC to review the DTTP scheme to ensure that it still meets the needs of UK borrowers and foreign investors. It also seeks views on extending its scope to investors entitled to sovereign immunity from UK tax, pension funds, and other entities. Comments are invited by August 12, 2016.

Introduction of secondary adjustments into the UK’s transfer pricing legislation – consultation

Secondary adjustments represent an internationally recognised method to realign the economic benefit of a transaction with the arm’s-length position. The government is considering the introduction of a secondary adjustment rule into the UK’s transfer pricing legislation and is seeking views on policy design and implementation issues. The deadline for representations is August 18, 2016.

PwC observation:
The proposals may alter as the consultation process progresses. Multinational businesses should consider how the proposals will impact them, whether they wish to make representations, and whether they need to take any action to prepare for the introduction of the proposed reforms, should they be enacted in their current form.
R&D Cloud: Online R&D claims processing

Following the Mount Owen and Innovation Australia Administrative Appeals Tribunal (AATA 573), the Australian Taxation Office (ATO) has been active in enforcing some of the key observations, chief amongst these was that there must be credible documentary evidence of the purpose of conducting the research & development (R&D) activities. In the case of Mt Owen, the decision notes stated that ‘the contemporaneous material and other records do not approach the level of precision which would be expected of a systematic investigative process or a well-documented research and development program.’ It is against this background that companies must now make sure that they have the systems and processes in place to ensure that good documentation is created and captured from before the start of the R&D project as well as during the project.

PwC observation:
Our observation is that better use of digital tools will mitigate the compliance risk associated with capturing adequate documentary evidence to substantiate the R&D activities. We designed R&D Cloud with this in mind, and harnessed digital tools to enable more effective identification of R&D projects and improve substantiation of the R&D claim to:

- achieve assurance through digital traceability to promote substantiation and clarity of company R&D
- facilitate easier contemporaneous compilation of documentary evidence, and
- provide real-time transparency to all levels of the business regarding claim substantiation.

Brazil

Computer software included in the concept of copyrights for the purposes of the Double Tax Convention between Brazil and Finland

On May 13, 2016, the Brazilian Federal Revenue (RFB) issued Tax Ruling COSIT n. 4/2016, allowing the application of a 10% withholding tax (WHT) rate on payments for the use of computer software as provided by the double tax treaty (DTT) between Brazil and Finland.

By way of background, under the DTTs Brazil has in place with both Finland and France, taxation on royalties at source is limited as follows:

a. 10% on the royalties which refer to copyright
b. 25% on royalties which refer to industry and commercial trademark use
c. 15% on royalties which do not qualify as either (a) or (b).

Although the provisions contained in both DTTs are similar, the RFB expressed different positions in the past. Under Tax Ruling n. 52/2007, the RFB determined that payments for the use of computer software were subject to 15% WHT (as provided by the DTT between Brazil and Finland), whereas under Tax Ruling n. 262/2003, the position was that such payments were subject to 10% WHT (as provided by the DTT between Brazil and France).

Now, Tax Ruling COSIT n. 4/2016 solves the divergence by clarifying that licenses for computer software should be included in the concept of copyright licenses and that a 10% WHT rate should apply on payments for the use of computer software under the DTT between Brazil and Finland.

PwC observation:
As the ruling resolves the contradictory positions, companies have now solid arguments to support that WHT on payments for the use of computer software should be limited to 10% under the DTT between Brazil and Finland.
Dutch Court of Appeal ruled in favour of a cross border fiscal unity with a non-EU parent

The Dutch Court of Appeal of Arnhem-Leeuwarden has ruled that it is possible to form a fiscal unity between Dutch sister companies if their common parent company is a non-European Union (EU) resident. Should this decision be confirmed by the Dutch Supreme Court, the scope of the Dutch fiscal unity regime would be further broadened.

Earlier developments
The Dutch fiscal unity regime allows under certain conditions for the consolidation of income of Dutch resident member companies. Initially, the fiscal unity could only be formed by Dutch resident companies which were held by a Dutch resident company. As described in the July 2014 edition of International Tax Services (ITS) news, the European Court of Justice (ECJ) ruled in Case C-40/13 that the Dutch fiscal unity rules are in breach of the EU freedom of establishment. A fiscal unity between two Dutch sister companies held by a joint EU parent company should be possible. In response to the ECJ rulings, the Dutch Ministry of Finance (MoF) issued a decree on December 30, 2014 (Decree) followed by a legislative proposal on October 16, 2015. On this basis, cross-border fiscal unity requests are being granted to Dutch companies owned by a EU parent company.

Extension to (non-EU) third-countries
The case at hand concerned a group structure involving Dutch resident sister companies held (in)directly by an Israeli tax resident company. As this latter entity is a non-EU resident, the Decree does not provide for a solution.

However, the double tax treaty (DTT) between Israel and The Netherlands (1973) contains a non-discrimination provision. This provision prohibits a different or higher taxation of Dutch resident companies held by Israeli residents than Dutch resident companies held by Dutch residents. The non-discrimination provision in this tax treaty is almost similar to Article 24 (5) of the Organisation for Economic Co-operation and Development (OECD) Model Convention. The Dutch Court of Appeal ruled that, on the basis of the wording of this clause and the accompanying OECD Commentary, a cross border fiscal unity between Dutch sister companies held by a non-EU parent company residing should be allowed. It is expected that the Dutch (MoF) will appeal against this court decision.

The main advantages of forming a fiscal unity between Dutch sister companies owned by a non-EU parent company are the possibility of offsetting profits and losses between the Dutch members of the fiscal unity, and the fact that transactions within the fiscal unity are ignored for Dutch corporate income tax (CIT) purposes. In addition, filing obligations are more straightforward in the sense that only one tax return has to be filed.

PwC observation:
We recommend reviewing existing structures to assess whether a cross border fiscal unity as mentioned above is possible and beneficial. If such a fiscal unity with a non-EU parent is beneficial for a company, we recommend filing a request for such a fiscal unity immediately. With such a request, the company retains its right for the formation of a fiscal unity if the Dutch Supreme Court rules in favour of the decision of the Court of Appeal. The formation of the fiscal unity should then take place retroactively.
United Kingdom

Court of Appeal judgment in double tax relief booster case

On May 20, 2016, the UK Court of Appeal delivered its judgment in the case of Peninsular & Oriental Steam Navigation Company v Her Majesty’s Revenue and Customs (HMRC) which concerned an arrangement to boost the rate of underlying tax on dividends paid from an Australian sub-group to the UK group parent company. The taxpayer argued that the double tax relief (DTR) legislation allowed it to claim deemed tax credits in respect of a dividend paid by a lower tier UK subsidiary, although that UK subsidiary had not paid any UK tax on the profits out of which the dividend was paid due to group relief. The DTR provisions provided that credit relief for underlying tax was allowed for foreign tax borne on the relevant profits by the company paying the dividend to the UK which were attributable to the proportion of the relevant profits represented by the dividend.

Dismissing the taxpayer’s appeal, the Court of Appeal ruled that the tax borne was not limited to tax actually paid and could include deemed tax. However, it concluded that the dividend from the UK subsidiary was not represented in the dividend paid by the Australian sub-group to the UK parent because of the timing of the dividend payments and because only part of the UK subsidiary’s dividend flowed through to the UK parent.

PwC observation:
Whilst the judgment in this case is largely of historical interest because the relevant legislation has since been amended, the decision is important in a wider context. Firstly, it highlights the importance of the timing and sequence of transactions; in this case the scheme had failed because of the way that it had been implemented. Secondly, it provides useful guidance on statutory interpretation.

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**Treaties**

**Bahrain**

*Protocol to the Double Tax Treaty between China and Bahrain entered into force*

China and Bahrain signed a Protocol to the China-Bahrain double tax treaty (DTT) (the Protocol) on September 16, 2013. In May 2016, China’s State Administration of Taxation (SAT) issued SAT Public Notice [2016] No.31 to announce that the Protocol entered into force on April 1, 2016 and will be applicable to the income derived on and after January 1, 2017.

The Protocol revises certain articles set out in China-Bahrain DTT signed in 2002. Key changes include:

- re-defining relevant concepts in the DTT, such as ‘chinese tax’, ‘competent authorities’, ‘resident of a contracting state’, etc.
- raising the restricted income tax rate levied on dividend derived by corporate beneficial owners from 5% to 10%
- clarifying the provisions of eliminating double taxation in China, and
- updating the Article of ‘Exchange of Information’ (EoI).

**PwC observation:**
Via the amendments contained in the Protocol, it seems China intends to put the China-Bahrain DTT on par with other tax treaties concluded or renegotiated by China in recent years, but the increased income tax rate on dividend might not be good news to relevant investors.

Given the Protocol will be applied to income derived on and after January 1, 2017, investors are suggested to assess the impact and adjust their profit distribution plan accordingly.

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**Singapore**

*Tax treaty updates*

**Update India-Singapore treaty**

The 2005 Protocol to the India-Singapore treaty (the ‘2005 Protocol’) provides for exemption of Indian tax on gains from the alienation of shares in an Indian company by Singapore residents, subject to certain conditions being met. However, this exemption is contingent upon the availability of similar benefit to a tax resident of Mauritius under the India-Mauritius treaty.

The government of India issued a press release on May 10, 2016, announcing that India and Mauritius had signed a protocol amending the India-Mauritius treaty. This protocol will give India the right to tax capital gains on the alienation of shares in an Indian company, subject to certain grandfathering provisions during the transition period from April 1, 2017 to April 1, 2019.

Given the amendment to the India-Mauritius treaty, there is uncertainty over the capital gains tax treatment under the 2005 Protocol.

**Other treaty updates**

- Ecuador – A new tax treaty with Ecuador was ratified and entered into force on December 18, 2015.
- Luxembourg – A revised treaty with Luxembourg was ratified and entered into force on December 28, 2015, which replaces the existing agreement. However, the tax sparing relief provisions of the 1993 treaty will continue to apply for five years from the date the new treaty takes effect.

**PwC observation:**
Given the exemption from Indian taxation in the 2005 Protocol is linked to a similar exemption under the India-Mauritius treaty and the latter exemption will no longer be available (subject to certain grandfathering provisions), there is uncertainty how the 2005 Protocol will operate for Singapore residents.

We understand that the 2005 Protocol will be renegotiated between the Singapore and Indian authorities so as to give clarity to the position.

These other updated treaties provide clarity on tax matters and eliminate double taxation relating to cross-border transactions between Singapore and the respective jurisdictions.

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United Kingdom

New UK Protocols and Double Taxation Conventions

Protocols amending the Double Taxation Treaties (DTTs) between the UK and the Isle of Man, Guernsey, and Jersey were entered into by an exchange of letters and take effect from March 16, 2016. They will enter into force when each territory has completed its necessary legislative procedures. The Protocols replace the capital gains Article of the relevant DTTs and are intended to prevent non-UK resident property developers from avoiding UK income tax or corporation tax on trading profits derived from UK land.

Further, the UK signed a DTT with Uruguay on February 24, 2016 and with the United Arab Emirates (UAE) on April 12, 2016.

Uruguay

Uruguay continues expanding its international treaty network and compliance with international standards on transparency

On May 20, 2016, the Double Tax Treaty (DTT) with United Arab Emirates (UAE) was approved by Uruguay Parliament through law No. 19.393. The aim of the agreement is to avoid double taxation and to prevent fiscal evasion with respect to taxes on income and on capital. The DTT will enter into force once internal formal procedures in both countries culminate and notes are exchanged.

On the same date, Uruguayan government passed law No. 19.391, approving the Tax Information Exchange Agreement (TIEA) signed with Chile in September 2014. The TIEA will apply to fiscal periods beginning on or after the date of entry into force (once the Contracting States exchange the corresponding ratification notes in the diplomatic arena). When there is no fiscal period, the TIEA will be applicable for tax obligations that arise after the date of entry into force.

In line with the above-mentioned news and with the aim to implement the commitment made as a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, on June 1, 2016, Uruguay signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention). The Convention provides for all forms of administrative assistance in tax matters: exchange of information (EoI) on request, automatic exchange, spontaneous exchange, tax examinations abroad, simultaneous tax examinations, and assistance in tax collection, seeking extensive safeguards of taxpayers’ rights protection.

PwC observation:
These events are part of the path Uruguay has followed since 2009 in the fulfilment of international standards on tax transparency.

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Worldwide Tax Summaries:
Corporate taxes 2015/16

If you're operating globally, are you aware of changes to the myriad tax rates in all the jurisdictions where you operate? If not, we can help – download the eBook of our comprehensive tax guide, or explore rates in over 150 countries using our online tools, updated daily.