www.pwc.com/its

Edition 54
August 2017

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.

Shi-Chieh 'Suchi' Lee
Global Leader International Tax Services Network
T: +1 646 471 5315
E: suchi.lee@us.pwc.com

pwc

In this issue

Tax legislation

Proposed Tax Legislative Changes

Tax Administration and Case Law

OECD and EU Updates

Tax Legislation
Austria

Austrian research premium increases to 14%

The Austrian Council of Ministers has decided to increase the research and development premium from 12% to 14% beginning in 2018.

The federal government's increase to the Austrian R&D premium, which is in line with the OECD's Nexus approach, demonstrates its efforts to stimulate Austrian research activities as well as safeguard and generate qualified jobs.

The increased premium rate of 14% will apply for financial years which begin in 2018, and on a pro-rata basis for 2017/2018 fiscal years. For these 2017/2018 fiscal years, the assessment basis must be divided proportionally according to the calendar months, and the increased rate of 14% applies to only the months of the fiscal year which fall in 2018.

In addition, depending on the size of the company, an investment growth premium of 10-15% of the qualifying investment cost can be funded ('de minimis aid'). This benefit is only available until December 31, 2017, or until December 31, 2018 depending on certain criteria.

PwC observation:
The Council of Ministers' decision to increase the research premium from 12% to 14% enhances Austria's allure as a business location thereby strengthening Austria's competitiveness. As a result, Austria should attract more international companies for structuring R&D activities. Furthermore, the Austrian research premium supports the protection and the promotion of highly qualified jobs.

Rudolf KRICKL
Vienna
T: +43 1 501 88 3420
E: rudolf.krickl@at.pwc.com

Daniela STASTNY
Vienna
T: +43 1 501 3430
E: daniela.stastny@at.pwc.com

Hungary

Hungary introduces a more beneficial capital gains tax exemption

The Hungarian Parliament recently approved the bill that abolishes the minimum ownership ratio criteria for the registered shareholding regime in Hungary.

Under the current regime, if a Hungarian tax resident entity acquires a shareholding of at least 10% in any company, it must register it with the Hungarian tax authority within 75 days after the acquisition in order to qualify as a registered shareholding. If a registered shareholding is continuously held for at least one year, the capital gains from the sale or contribution-in-kind generally are exempt from corporate income tax in Hungary, while losses are non-deductible.

Beginning on January 1, 2018, a newly acquired shareholding may be treated as a registered shareholding for Hungarian tax purposes irrespective of the ownership ratio, provided that the participation is registered with the Hungarian tax authority within 75 days following the acquisition.

PwC observation:
Beginning on January 1, 2018, this amended Hungarian regulation may benet Hungarian entities holding portfolio investments.

Dora Mathe
Budapest
T: +36 1 461 9767
E: dora.mathe@hu.pwc.com

Gergely Juhasz
Budapest
T: +36 1 461 9359
E: gergely.juhasz@hu.pwc.com

Hungary

Hungary amends its CFC regime

The Hungarian regulation with respect to controlled foreign corporations (CFCs) has been amended as of June 20, 2017.

The Hungarian CFC rules stipulate that a foreign entity may be considered a CFC in Hungary if a Hungarian taxpayer company holds more than 50% of its voting rights or registered capital, or if it is entitled to obtain more than 50% of its after-tax profit, provided that the corporate tax paid abroad by the foreign person is less than half of what the corporate tax due would have been in Hungary. A foreign branch of a Hungarian resident company also may qualify as a CFC along the same lines. The latest amendment to this definition prescribes that the aforementioned shareholding ratio has to be maintained in the majority of the tax year in order to qualify as a CFC.

Furthermore, the stock exchange exemption rule regarding CFCs has also been amended. Previously, this rule stipulated that a foreign entity could not be treated as a CFC in the financial year during which such entity had a shareholder or any related party that held at least 25% of its shares, provided that the shareholder company had been listed on a recognized stock exchange for a period of not less than five years (effective on the first day of the financial year). Pursuant to the amended definition, foreign branches are also included in the stock exchange exemption rule.

Finally, the amended rules also specify the calculation of a CFC's undistributed income which is subject to tax in the hands of the parent entity. Previously, a Hungarian resident company had to include all of a CFC's income that is considered tainted when applying the legislation to its tax base. This is required even if the Hungarian entity held less than 100% of the CFC's shares, or was entitled to less than 100% of the CFC's profits. The amendment updates this by making only the CFC's tainted income, which is proportionate to the shares held or to the entitlement to the profits, subject to tax in the hands of the parent entity.

PwC observation:
The current Hungarian CFC regime entered into force on January 18, 2017. The amendments listed above update the existing legislation, creating a more transparent regulation and facilitating its interpretation. However, the new Hungarian CFC regime still contains uncertainties. Therefore, we suggest that Hungarian taxpayers potentially affected by these rules review this issue in order to avoid non-compliance.

Dora Mathe
Budapest
T: +36 1 461 9767
E: dora.mathe@hu.pwc.com

Gergely Juhasz
Budapest
T: +36 1 461 9359
E: gergely.juhasz@hu.pwc.com

Proposed Tax Legislative Changes

Turkey

Turkey introduces legislative provisions affecting Technology Development Zones

Turkey published Law No: 7033 on Amendment of Certain Laws and Executive Orders for the Development of Industry and Subsidization of Production (Law No: 7033) in the Official Gazette on July 1, 2017. The law introduces legislative provisions that affect Technology Development Zones (TDZs). The main points are below.

- An amendment has been added to Law No: 4691 on TDZs that will provide special salary incentives for R&D personnel who graduated with natural sciences (mathematics, physics, chemistry and biology) degrees for the companies operating in these zones. These R&D personnel are limited to 10% of the total number of R&D or Design Centre personnel and will be paid by the government for two years.
- The new amendments affect the corporate tax exemption. Gains derived by taxpayers operating in TDZs exclusively from software, R&D and design activities are exempt from income and corporate tax until December 31, 2023. The Council of Ministers is authorized to determine the conditions of corporate tax exemptions pertaining to gains from the sale, purchase, and transfer of intellectual property rights. Furthermore, the Ministry of Finance and Ministry of Science, Industry and Technology are authorized to determine policy and instructions for implementing the corporate tax exemption that will align with future decisions.
- The Council of Higher Education (YÖK) is authorized to enforce half-year long training programmes for engineering and science seniors (fourth-year undergraduate students) of public higher education institutions in the offices of private sector, science parks, research infrastructures, R&D centers and industrial enterprises. This amendment will be confined to certain institutions, faculties and departments and will align with the future decisions taken by YÖK.

Transactions regarding land allocations at science parks will be exempt from stamp duty, land registry cadaster fee, and real estate tax.

PwC observation:
Companies at TDZs have been waiting for the amendment of certain laws and executive orders for the development of industry and subsidization of production after the implementation of the 'R&D Reform Package'. Based on the amendment, YÖK is authorized to determine the procedures and principles regarding training programs for students at technology parks and R&D centers. Moreover, taxpayers operating in TDZs and performing transactions and issuing papers pertaining to land rental activities are exempt from stamp duty. With the expansion of support and incentives in Turkey, the amendments encourage companies to make or increase investments to R&D, innovation, and design activities.

Ozlem Elver Karacetin
Istanbul
T: +90 212 326 64 56
E: ozlem.elver@pwc.com

Kaan Memisoglu
Istanbul
T: +90 212 326 6730
E: kaan.memisoglu@pwc.com

United Kingdom

The UK Summer Finance Bill 2017

In her speech at the opening of the UK Parliament on June 21, 2017, Her Majesty the Queen set the government's policies and its proposed legislative programme for the 2017-2019 Parliamentary session. The programme will include three Finance Bills to implement budget decisions; although not specifically stated, we expect these to be Summer 2017, Spring 2018 and Spring 2019. The Summer Finance Bill is expected to introduce a number of measures to tackle tax avoidance, as well as reintroducing a number of changes that were originally planned for inclusion in Finance Act 2017. These were subsequently dropped in order to speed up the progress of that Act through Parliament prior to the General Election.

The legislative programme also includes a number of bills geared towards effecting the UK's withdrawal from the EU following the Brexit referendum. In particular, a bill to repeal the European Communities Act 1972 and convert EU law into UK law (the 'European Union (Withdrawal) Bill').

PwC observation:
Her Majesty's Treasury Press Release, issued on July 13, announced that the Summer Finance Bill 2017 will be introduced to Parliament as soon as possible after the Summer Recess. It also confirmed that all policies originally announced to start April 2017, including the clauses introducing corporate loss reform, interest deductibility and the substantial shareholdings exemption will be effective from this date, providing welcome certainty for taxpayers. Amended versions of those measures have now been published.

The House of Commons returns from its Summer Recess on September 5, but there is a further adjournment of Parliament a week later, on September 14 for the UK Party Political Conferences. Therefore, while the Finance Bill is expected to be published in September, scrutiny of its clauses is likely to be delayed until Parliament returns on October 9.

Similarly, while the European Union (Withdrawal) Bill was published on July 13, 2017, Parliamentary debate on its clauses will be delayed until September at the earliest.

As reported previously, the Chancellor of the Exchequer is expected to present the next UK Budget in November 2017.

Robin G Palmer
London, ML
T: +44 0 2072 13 5696
E: robin.g.palmer@pwc.com

Sara-Jane Tovey
London, EP
T: +44 2072 12 2507
E: sara-jane.tovey@pwc.com

Tax Administration and Case Law
China

China clarifies criteria for small and medium-sized technological enterprises

China recently issued a circular that increases the percentage of R&D expense super deduction for small and medium-sized technological enterprises (SMS TEs). Subsequently, China's Ministry of Finance (MOF), State Administration of Taxation (SAT), and Ministry of Science and Technology (MOST) jointly released Guokefazheng [2017] No. 115 (Circular 115) to further clarify the evaluation criteria, evaluation procedure, and management for enterprises applying for the incentive.

Features of Circular 115 include:

Technology-driven approach
To qualify as SMS TEs, enterprises must either achieve an 'integrated evaluation' score of at least 60 (out of 100), with the score of science and technology personnel above nil, or obtain one or more of the R&D-related qualifications (e.g., High and New Technology Enterprise status) listed in Circular 115. This is in addition to meeting the basic requirements (e.g., Chinese tax resident enterprises with no more than 500 employees).

Indicators of the 'integrated evaluation' include:

- Science and technology personnel (20 scores)

Proportion of science and technology personnel to the enterprise's total workforce.

- R&D investment (50 scores)

Proportion of R&D expenses to total sales revenue or to total amount of costs and expenses.

- Science and technology achievements (30 scores)

Types and quantity of IP rights owned that are related to the enterprise's main products or services.

Self-assessment mechanism
Circular 115 requires enterprises to self-assess whether they qualify as SMS TEs. If they qualify, then the enterprise must complete a SMS TEs information form in order to register as an SMS TE on a national information service platform.

Implement post-administration
Circular 115 stipulates that registered SMS TEs must update their 'SMS TEs information form' and perform an annual self-assessment by March 31st of each year. If an enterprise commits certain acts listed in Circular 115, then its qualification as an SMS TE for that year will be revoked. Also, provincial administrative departments of science and technology will perform random inspections of registered SMS TEs.

PwC observation:
Circular 115 further regulates and enhances the support to SMS TEs and will play an active role in stimulating their innovation vitality. While the self-assessment mechanism and post-administration reduces enterprises' registration workload, it simultaneously increases the enterprises' responsibilities for their compliance risk management. SMS TEs should:

- adopt a technology driven approach
- improve internal management, and
- carry out systematic planning of research and development incentives

Roger Di
Shanghai
T: +86 21 2323 2268
E: roger.di@cn.pwc.com

Hong Kong

Hong Kong has expanded list of reportable jurisdictions for automatic exchange of financial account information

The Inland Revenue (Amendment) (No. 2) Ordinance 2017 was gazetted on June 16, 2017 and came into operation on July 1, 2017.

The Ordinance expands the list of reportable jurisdictions for the automatic exchange of information (AEOI) from two jurisdictions (Japan and the United Kingdom) to 75 and specifies the first reporting year for each of these 73 additional reportable jurisdictions.

Financial institutions will be required to collect financial account information for the 75 reportable jurisdictions. They must furnish the data collected to the Inland Revenue Department according to their respective first information period and first reporting year.

PwC observation:
The Ordinance's enactment enables Hong Kong to expand its AEOI network more swiftly and to conduct AEOI with respect to financial account information for 2017 when requested. However, automatic exchange of the collected information (i.e., information from July 1, 2017 and with respect to the prospective AEOI partners) will take place only after the necessary AEOI agreements and competent authority agreements on AEOI have been put in place.

Fergus WT Wong
Hong Kong
T: +852 2289 5818
E: fergus.wt.wong@hk.pwc.com

Hong Kong

Ordinance on tax regime for aircraft leasing business in Hong Kong

The Inland Revenue (Amendment) (No. 3) Ordinance 2017 was gazetted on July 7, 2017. The Ordinance created a concessionary tax regime for the aircraft financing and leasing businesses in Hong Kong by:

- introducing a concessionary profits tax rate of 8.25% for the assessable profits derived from qualifying aircraft leasing activities and qualifying aircraft leasing management activities carried out in Hong Kong
- deeming the taxable amount of qualifying profits derived by a qualifying aircraft lessor from leasing an aircraft to an operator as 20% of the gross lease payments less deductible expenses, excluding tax depreciation allowance
- introducing various qualifying conditions for the above concessionary tax treatments and certain anti-abuse rules
- allowing aircraft lessors and aircraft leasing managers to elect to be assessed according to the above concessionary tax regime, which is irrevocable, and
- deeming the profits of a corporation carrying on an aircraft leasing business or aircraft leasing management business in Hong Kong to incur tax in Hong Kong even if the aircraft concerned is used outside Hong Kong.

The above concessionary tax treatments apply to sums received or accrued on or after April 1, 2017, whereas the deeming provision on profits of a corporation carrying on an aircraft leasing business or aircraft leasing management business in Hong Kong applies to sums received or accrued on or after July 7, 2017.

PwC observation:
The Hong Kong government took a significant step in introducing the concessionary tax regime to promote Hong Kong as a premier aircraft financing and leasing centre. The '8.25% plus 20%' tax concession for aircraft leasing and financing businesses will generally result in a significantly lower effective corporate income tax rate when compared to other aircraft leasing hubs. International aircraft lessors should consider the potential benefits of this new tax regime and assess the feasibility of establishing a business presence in Hong Kong.

Fergus WT Wong
Hong Kong
T: +852 2289 5818
E: fergus.wt.wong@hk.pwc.com

United States

Treasury to review debt reclassification, international, partnership regulations

The Treasury Department has identified eight regulations that it states will be modified or repealed to implement an Executive Order (EO) issued by President Trump that calls for reducing tax regulatory burdens. The April 21, 2017 EO had set a 60-day deadline for Treasury to issue an interim report on regulations deemed to (i) impose an undue financial burden, (ii) add undue complexity, or (iii) exceed the statutory authority of the internal revenue service (IRS).

According to Notice 2017-38 (released July 7), Treasury determined that of the 105 regulations issued between January 1, 2016 and April 21, 2017, 52 regulations were potentially 'significant tax regulations' subject to review for purposes of the EO. After examining those regulations, Treasury concluded that the following six regulations either 'impose an undue financial burden' and/or 'add undue complexity':

- Treatment of certain interests in corporations as stock or indebtedness (Section 385)
- Income and currency gain or loss (Section 987)
- Treatment of certain transfers of property to foreign corporations (Section 367)
- Liabilities recognised as recourse partnership liabilities (Section 752)
- Certain transfers of property to RICs and REITs (Section 337(d))
- Restrictions on liquidation of an interest for estate, gift, and generation-skipping transfer taxes (Section 2704)

Treasury stated that it will propose reforms ranging from streamlining problematic provisions to fully repealing the regulations. Comments are requested by August 7 on whether and how the identified regulations should be rescinded or modified. A final Treasury report recommending specific actions to mitigate the regulatory burden is due September 18.

PwC observation:
While many items remain in question, companies should stay abreast of current regulatory and legislative developments and evaluate the potential implications that these developments may have on their business, including financial reporting, to ensure they are prepared to account properly for these changes.

Bernard E. Moens
New York, NY
T: + 646 471 6787
E: bernard.moens@pwc.com

Marty Collins
Washington, DC
T: +202 414 1571
E: marty.collins@pwc.com

Charles S Markham
Washington, DC
T: +1 202 312 7696
E: charles.s.markham@pwc.com

OECD and EU Updates
EU

European Commission proposes mandatory disclosure for advisers and taxpayers

The European Commission has proposed a draft Directive that would impose mandatory disclosure obligations on tax advisers or, in certain circumstances, on taxpayers. The disclosure would be required for cross-border arrangements that involve at least one European Union (EU) Member State and carry one or more 'hallmarks'.

A list of the proposed 'hallmarks', only one of which must be satisfied in order for the reporting obligation to apply, is annexed to the draft Directive. This includes, for example:

- an arrangement involving deductible cross-border payments between related parties where the recipient is resident in a jurisdiction that has a tax rate of less than half of the average tax rate in the EU or benefits from a preferential tax regime, or
- an arrangement whereby the taxpayer uses losses to reduce its tax liability and the main benefit of the arrangement is to obtain a tax advantage if it can be established that the advantage is the outcome that one would expect to derive from the arrangement.

The initial obligation rests with the 'intermediary' (the tax adviser in most circumstances) but in certain cases, for example when the intermediary does not have a presence in the EU, the responsibility falls on the taxpayer to disclose the relevant information. Once disclosed, the information will be shared with other Member States via automatic exchange of information (AEoI).

Note that currently, this is still a proposal. It requires formal adoption by unanimous vote of the Council, after consultation from the European Parliament.

PwC observation:
In light of the current environment and the speed of adoption for other recent tax-related Directives, it is essential that advisers and taxpayers are aware of this development and continue to monitor its progress.

Calum M Dewar
New York, NY
T: +646 471 5254
E: calum.m.dewar@pwc.com

Maarten P Maaskant
New York, NY
T: +646 471 0570
E: maarten.p.maaskant@pwc.com

Trudy Armstrong
New York, NY
T: +646 471 0514
E: armstrong.trudy@pwc.com

Germany

German Federal Fiscal Court refers § 6a RETT Act to CJEU as potential State aid

The German Federal Fiscal Court has expressed its doubts as to the compatibility of the German real estate transfer tax (RETT) exemption pursuant to § 6a German RETT Act with the State aid provisions. Therefore, the German Federal Fiscal Court referred preliminary questions to the Court of Justice of the European Union (CJEU) (decision of May 30, 2017, II R 62/14).

In the underlying case, the plaintiff was the sole shareholder of a property holding subsidiary company for more than five years. In 2012, the subsidiary was merged into the plaintiff. The German tax authorities considered this as a taxable acquisition for which a tax exemption pursuant to § 6a German RETT Act could not be granted.

On the basis of domestic law, the German Federal Fiscal Court is inclined to decide the case in favour of the plaintiff. The German Federal Fiscal Court takes the view that:

- It is questionable whether the tax exemption under § 6a RETT Act is State aid pursuant to Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU).
- It is necessary to clarify whether § 6a German RETT Act provides a selective advantage to certain undertakings because it requires (i) a restructuring in the sense of the German Restructuring Act, (ii) a 95% shareholding between a controlling and a dependent company, and (iii) a minimum holding period of five years before and five years after the restructuring.
- It is furthermore essential to decide whether § 6a RETT Act is justified by the nature of the tax system as the rule simply carves out the general definition of taxable events in § 1 RETT Act, which appears too broad with regard to reorganisations.

PwC observation:
German and international group restructurings that avoided German RETT through application of § 6a RETT Act are exposed to a recovery risk if the law is found to constitute State aid, which is incompatible with the internal market. It remains unclear what the CJEU will decide.

Arne Schnitger
Germany
T: +49 30 2636 5466
E: arne.schnitger@de.pwc.com

Björn Bodewaldt
Germany
T: +49 40 6378 1023
E: bjoern.bodewaldt@de.pwc.com

OECD

OECD releases BEPS discussion drafts on attribution of profits to permanent establishments and transactional profit splits

The Organisation for Economic Co-operation and Development (OECD) on June 22, 2017, released two public discussion drafts providing further guidance on the Final Reports on Base Erosion and Profit Shifting (BEPS) published in October 2015, both replacing previous drafts released on July 4, 2016.

The first discussion draft provides practical guidance on how to attribute profits to permanent establishments (PEs) following the finalisation of the BEPS Action 7 report, while re-emphasising that the principles of the Authorised OECD Approach (AOA) to attributing profits to PE remain unchanged. The paper sets out high-level general principles for the attribution of profits to PEs, including no double taxation in the source country as a result of Articles 7 and 9; risk allocation between the intermediary under Article 9 MTC and the non-resident enterprise or the PE under Article 7 Model Tax Convention (MTC) and the possibility of a zero-profit PE. The discussion draft also addresses administrative approaches to simplifying compliance. The discussion draft includes four examples addressing issues concerning commissionaire structures under the revised Article 5(5) OECD MTC and the anti-fragmentation rules in the newly added Article 5(4.1) MTC, providing qualitative guidance on the underlying principles of the profit attribution.

The second discussion draft provides revised guidance on profit split methodologies (PSM). This discussion draft links with BEPS Action 10 and serves to clarify and strengthen the guidance in Chapter II of the OECD Transfer Pricing Guidelines (TPG). Focus areas are situations in which PSM is appropriate on either an anticipated profits base or an actual profits base. The discussion draft further contains guidance on the split factors to use under PSMs, illustrated in 10 practical examples.

PwC observation:
The new discussion drafts begin to address many issues previously left unresolved in the Final Reports on BEPS, as well as respective previous discussion drafts on the Attribution of Profits to PEs (Action 7) and the Transactional PSM (Action 10).

The discussion drafts generally result in simplified guidance compared to the previous drafts released in July 2016, and provide valuable insights into the underlying principles for applying both the TPG and the AOA. Some key issues remain either unresolved or should be clarified further, such as the absence of any priority between Article 7 and Article 9 MTC, or the emphasis on risks in the determination of whether the PSM is the most appropriate method.

Multinationals should consider how the additional guidance in the discussion drafts could impact their business operations. Responding to the OECD with specific examples is an effective means to highlight the consequences of the implementation guidance should it be adopted. The OECD has invited comments by September 15, 2017 with public consultations planned in November 2017.

Pam Olson
Washington DC
T: +202 414 1401
E: pam.olson@us.pwc.com

Stef van Weeghel
Amsterdam
T: +31 88 7926 763
E: stef.van.weeghel@nl.pwc.com

William H Morris
London
T: +44 20 7213 8693
E: william.morris@uk.pwc.com

Glossary

Acronymn	Definition
AEoI	automatic exchange of financial account information
AOA	Authorised OECD Approach
BEPS	base erosion and profit shifting
CFC	controlled foreign companies
CJEU	Court of Justice of the European Union
EO	Executive Order
EU	European Union
IP	intellectual property
IRS	Internal Revenue Service
MOF	Ministry of Finance
MOST	Ministry of Science and Technology
MTC	Model Tax Convention
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishments
PSM	profit split methodologies
R&D	research and development
RETT	real estate transfer tax
SAT	State Administration of Taxation
SMS TEs	small and medium-sized technological enterprises
TDZ	Technology Development Zones
TPG	Transfer Pricing Guidelines
YÖK	Council of Higher Education

Contact us

For your global contact and more information on PwC's international tax services, please contact:

Shi-Chieh 'Suchi' Lee
Global Leader International Tax Services Network

T: +1 646 471 5315
E: suchi.lee@us.pwc.com

Geoff Jacobi
International Tax Services

T: +1 202 414 1390
E: geoff.jacobi@us.pwc.com

www.pwc.com/its

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with more than 223,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

© 2017 PwC. All rights reserved. "PwC" refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

Design Services 30810 (08/17).