International Tax News

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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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In this issue

Tax Legislation

Hong Kong

New stamp duty measures enacted and applied retrospectively

The Stamp Duty (Amendment) (No.2) Ordinance 2014 was gazetted on July 25, 2014, and will be applied retrospectively to immovable property transactions executed on or after February 23, 2013.

The Ordinance gives effect to two measures previously proposed by the Hong Kong government, namely:

- Introducing a set of higher ad valorem stamp duty (AVD) rates, ranging from 1.5% to 8.5% on the consideration or market value of property (whichever is higher), on the transfer of immovable property in Hong Kong.
- Advancing the charging of AVD on non-residential property transactions from conveyance on sale to the agreement for sale.

There are circumstances under which the original (normal) AVD rates, ranging from 100 Hong Kong dollars (HKD) to 4.75%, will continue to apply (e.g. for residential property acquired by a Hong Kong permanent resident who does not own any other residential property in Hong Kong at the time of acquisition). The Ordinance also provides for a refund mechanism for redevelopment projects such that property redevelopers can apply for a refund of the difference between the AVD paid under the special rates and the normal rates where certain specified conditions are met.

PwC observation:
The new stamp duty measures were introduced by the Hong Kong government to further address the overheated property market in Hong Kong. The increase in the AVD rates, which applies to both residential and non-residential properties, will increase the costs associated with acquiring immovable property in Hong Kong. For property redevelopers, proper planning should be in place in respect of their redevelopment projects taking into account the conditions and procedures for applying a refund of the additional AVD paid.

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Qatar

Key developments in the Qatar Financial Centre tax & regulatory framework

The Qatar Financial Centre (QFC) has recently announced a number of changes to expand and strengthen its existing regulatory and tax framework.

Key amendments include:

- The expansion of permitted non-regulated activities in the QFC to include the provision of non-financial business-to-business services in and from the QFC.
- The introduction of a concessionary tax rate of 0% for entities which are at least 90% Qatari-owned, in relation to their operations within the QFC.
- The possibility of setting up special purpose companies (SPCs) in the QFC as holding, treasury, and/or intellectual property (IP) vehicles that may benefit from special tax exemption status.
- Clearer guidelines on existing tax provisions, including the limitation on the deductibility of remuneration of partners around the 'just and reasonable' test, in addition to the current deductibility cap.

In addition to the above, the limit on foreign ownership of Qatar Stock Exchange (QSE) listed companies has recently been increased to 49%, a liberalisation that could see increased foreign investor activity in the near future.

PwC observation:
The recent developments would increase flexibility, transparency, and clarity in the existing tax and regulatory environment for both domestic and foreign investors looking to operate in and from the QFC.

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Turkey

Cabinet of Turkey agrees to decrease the minimum requirement for establishing an R&D centre

With the Law No. 5746 on Support for Research and Development (R&D) Activities, published on March 12, 2008, companies in Turkey are provided with tax incentives and supports including R&D deduction, income tax exemption, social security premium support, and stamp tax exemption.

To benefit from these incentives and supports, companies must either have an R&D centre licence and carry out the R&D and innovation activity in the R&D centre and/or have R&D and innovation projects supported by governmental institutions or foundations established by law or international funds.

To establish an R&D center and obtain an R&D centre licence, one of the main conditions set by the Turkish ministry of science, industry, and technology required the employment of 50 full-time equivalent R&D personnel. With the new decision taken on May 21, 2014, and entering into force as of July 1, 2014, the minimum R&D personnel number requirement has been decreased to allow companies with 30 full-time equivalent R&D personnel to establish an R&D Centre approved by the Ministry. Other conditions for holding an R&D licence remain unchanged such as carrying on R&D activities in Turkey; having sufficient asset, human resource, intellectual property, project and information sources, managerial skills and capacity; locating the R&D centre as a separate unit in a single physical area; having mechanisms to conduct the physical controls that the R&D and support personnel works inside the R&D centre; having R&D and innovation programmes and projects with a defined topic, duration, budget and human resource; and being established outside the technology development zones.

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PwC observation:
Currently, there are 156 R&D centres established with the approval of the Ministry of the Science, Industry, and Technology in Turkey. The new change in legislation is well anticipated by companies resident in Turkey having difficulties in maintaining the minimum R&D personnel requirement in their R&D centre for keeping the licence and also for the companies employing at least 30 but less than 50 full time equivalent R&D personnel. Therefore, in the following periods this new decision seems to pave the way for a stimulation of the environment for R&D activities in Turkey by encouraging companies to establish a R&D centre and benefit from R&D tax incentives and supports in Turkey.

Proposed legislative changes

Poland

CFC regulations will likely be implemented in January 2015

The Polish Parliament is finalising its work on a bill amending the Corporate Income Tax (CIT) Act, Personal Income Tax (PIT) Act, and other acts containing, inter alia, the introduction of a controlled foreign corporation (CFC) taxation regime.

The changes should become effective on January 2015.

CFC - purpose and scope
The legislative changes endeavour to discourage Polish taxpayers from investing outside of Poland purely for tax reasons and to reduce tax planning structures which use CFC subsidiaries and permanent establishments (PEs).

The CFC regulations will apply to:

- Foreign corporations domiciled in a country with which Poland or the European Union (EU) have not concluded any international conventions.
- Foreign corporations, if the following conditions are met (jointly):

a. at least 25% of shares in its the capital, or voting rights, or shares related to the right to participate in profits are owned directly or indirectly by a Polish taxpayer for an uninterrupted period of 30 days

b. it derives at least 50% of income from so called passive income (i.e. dividend, interest, royalty income, etc.), and

c. at least one type of its passive income is subject a nominal tax rate lower than 14.25% or is exempt or excluded from taxation in the country of its domicile (unless the exemption results from the Council Directive 2011/96/UE on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states).

- Respective activities in the form of foreign PEs - the regulations will be applied appropriately.

The CFC regulations will not apply if the foreign corporation conducts real business activities. For purposes of the new rules, a company will be considered as an entity conducting real business activities if:

- It has at its disposal premises, professional staff, and equipment.
- It does not create an artificial arrangement without a link to economic activity.
- There is proportionality between the scope of its actual economic activity and the level of its assets in terms of premises, staff, and equipment.
- Agreements concluded by the corporation are consistent with economic reality, and the agreements have an economic justification and are not manifestly contrary to the general economic interests of the company.
- It carries out its basic economic functions, using its own resources, including the current on-site managers.

Notwithstanding the above, a foreign company will not be subject to CFC regulations if its annual income does not exceed 250,000 euros (EUR).

PwC observation:
Under the envisaged regime the income earned by the CFC subsidiaries or the PEs should be subject to 19% income tax in Poland. The law applies to any foreign subsidiaries, not only ones located in tax havens.

The law will impact Polish individuals and corporations with foreign subsidiaries, but also foreign entities where they have Polish intermediary/holding companies. As the law is new and the wording is not clear, the substantial difficulty in its application in the first years should be expected.

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Poland

New stringent thin capitalisation rules will have substantial impact for Polish businesses with group financing

The Polish Parliament has finalised the act amending the Corporate Income Tax (CIT) Law. One of the most significant changes to be implemented as of January 1, 2015, relates to the 'thin capitalisation' rules including introduction of a new method of determining interest deductibility limit.

It is already clear that these new regulations may substantially affect the tax reconciliations of Polish companies financed through loans received from related parties.

The regulations could also affect currently operating shareholder structures (including indirect ownership which was treated so far as a means of reducing the impact of 'thin capitalisation' restrictions).

We have analysed a set of possible scenarios that might materialise with the introduction of the amendments but in our view it is imperative to perform an impact analysis of the legislation in the specific situation of the Polish operations, in particular:

- Whether the current wording / character of the loan agreements concluded by a Company will not increase liability in CIT from the perspective of the new 'thin capitalisation' rules?
- How the new loans should be structured and what solutions should be introduced to mitigate the impact of the new 'thin capitalisation' rules on tax deduction limitation of interest?
- What steps might be considered in case of tax rulings relating to the provisions of the 'thin capitalisation' rules? Will these tax rulings secure a Company's tax position after December 31, 2014?
- What are the chances for obtaining a positive tax ruling, e.g. relating to the application of the new 'thin capitalisation' rules to cash pooling structures? In practice, the draft regulations may result in increased CIT burdens for taxpayers.

The proposed regulations will:

- Change the current method of determining the amount of interest to be recognised as tax deductible costs.
- Expand the range of companies where 'thin capitalisation rules' will apply.
- Introduce a new, optional method of determining the limit of interest tax deductibility that takes into account not only intra-group debt but also debt to non-related parties.

Change in the existing 'thin capitalisation' rules

In line with the draft versions of the existing rule (Art. 16 sec. 1 p. 60 and 61 of the Polish CIT Law), 'thin capitalisation' restrictions will apply to loans granted by a much broader group of related parties (currently, in simplified terms, this method relates to only 'parent' and 'sister' companies). If the legislation is introduced with the proposed wording, the group of 'qualified lenders' will be expanded to indirectly related parties.

The proposed rules may also significantly limit the interest recognised as tax deductible due to the fact that instead of a 3:1 debt-to-share capital ratio, now the 'thin capitalisation' limit will be 1:1 but with respect to debt vs. equity (instead of share capital).

New optional method

Based on the newly introduced provisions, taxpayers that received loans from 'qualified lenders' can decide to apply the new method of 'thin capitalisation' calculation. The method will be based on the tax value of assets, as well as reference rate of the National Bank of Poland and will apply to costs of loans received from both related and unrelated entities. Based on this rule, interest on loans (including loans from unrelated entities) in the amount not exceeding the tax value of assets multiplied by a specific interest rate (the reference rate of the National Bank of Poland increased by the index of 1.25%) can be recognised as a tax deductible cost for CIT purposes.

Additionally, in this method, during a given tax year, a taxpayer can only treat as tax deductible cost only interest on loans not exceeding 50% of operational profit.

PwC observation:

The new regulations are much more stringent and will be of substantial impact for Polish businesses with group financing. Long term it will mean in many cases an increase of ETR (Effective Tax Rate) in Poland.

Due to the fact that existing rules will apply to loans granted and loans actually transferred this year, we encourage our clients to consider the available options and carry out the respective analysis and calculations as soon as possible to estimate if and how the new regulations impact the effectiveness of the financing. As a result, entities should be able to decide whether to introduce steps aimed at mitigating the possible additional tax burdens.

It should be also considered which of the new methods will be more beneficial in the individual situation of your company - the decision has to be made at the beginning of 2015.

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Administration and case law
Belgium

Clarifications on taxation of cross-border provision of services

On July 23, 2014, a note has been published, providing more clarity on the recently introduced Belgian catch-all provision for cross-border services.

Based on this provision, Belgian companies are required to retain payroll tax on payments made to non-residents located in a jurisdiction with which Belgium has

i. not concluded a double tax treaty ('DTT') (so-called 'tax havens'), or

ii. concluded a DTT which contains a specific provision that gives Belgium taxing powers as regards certain services, e.g. technical assistance.

If no DTT applies, Belgian companies are not required to withhold this payroll tax, provided the non-resident is able to demonstrate that this income is effectively taxed (i.e. included in the tax base) in its own state of residence. If a DTT applies and provides for a reduced rate, the payroll tax due is limited to the rate of the DTT.

The note explains that, notwithstanding the broad wording of the law, only payments for services are in scope. Furthermore, the Belgian Tax Authorities introduced a minimum threshold, i.e. no payroll tax should be retained on the first tranche of 38,000 euros (EUR) per non-resident, per year and per Belgian debtor. Finally, the note provides a template certificate to be provided to the non-resident's tax authorities for getting the confirmation that the income is included in the payee's taxable basis in order to be eligible for the above mentioned exemption.

PwC observation:
This note clarifies some aspects of the catch-all provision regarding the taxation of services provided by non-residents to Belgian companies. In particular, more clarification has been provided on the qualifying services, the relevant amounts and the necessary certificate. We recommend that clients review existing service agreements with vendors to see what vendors are based in countries that could be affected by this payroll tax requirement and to assess the impact of the clarified procedural aspects.

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France

ECJ validates possibility of a tax consolidated regime between sister companies of a common parent established in another member state

In its Papillon decision of November 27 2008 (C-418/07), the European Court of Justice (ECJ) had already ruled that a national legislation, which prohibits tax consolidation of a French parent company and its French lower-tier subsidiaries if those subsidiaries are held indirectly through an intermediary company resident in another member state, is incompatible with the freedom of establishment.

We were waiting for the court to extend its approach to the case of sister companies held by a common parent company established in another member state. This has just occurred through two decisions dated June 12 2014 (C-39/13 and C-41/13) related to the Dutch tax group regime.

As a reminder, under the Dutch tax law regarding the tax group regime, intermediary companies in a group structure must either be established/have their seat in the Netherlands, or have a permanent establishment in the Netherlands. Even in a purely domestic situation, i.e. where the intermediary company or companies are established in the Netherlands, all companies must be included in the tax group. The tax group regime between only a Dutch parent company and a Dutch second tier subsidiary is not permitted unless the Dutch intermediary company is included as well. Also, the tax group regime may be possible if the parent company is established or has a permanent establishment (PE) in the Netherlands.

The issue was whether the requirement that the intermediary and also the parent company (through which subsidiaries or second tier subsidiaries resident in the Netherlands are held) should be established in the Netherlands or have a PE in the Netherlands in order to form a tax group is a restriction to the freedom of establishment.

Here are the facts: A resident parent company, with its seat in the Netherlands, owned shares in companies resident in Germany. In turn, these companies owned, either directly or indirectly (through another company resident in Germany), companies resident in the Netherlands. The parent company wanted to claim the fiscal unity regime only with its second tier subsidiaries resident in the Netherlands. This treatment was denied. In a similar case (X and Others (C-40/13)), a company with its seat in Germany owned, directly or indirectly, by three companies with their seat in the Netherlands. These sister companies requested to be treated as a fiscal unity. This treatment was also denied.

The court observed that the Dutch legislation had the effect of discouraging a resident parent company from holding second tier subsidiaries resident in the Netherlands through a company (intermediary) established in another member state. Also, the legislation creates a difference in treatment between parent companies established in the Netherlands (which may benefit of the tax group regime by setting off the losses of their loss-making subsidiaries against the profits of their profit-making subsidiaries) and parent companies established in another member state which also own subsidiaries in the Netherlands which are excluded from benefitting from the tax group regime. These constitute restrictions of the freedom of establishment as established under Art. 49 of the Treaty on the Functioning of the European Union (TFEU). In addition the court considered that such a restriction could not be justified by the need to preserve the coherence of the tax system and also rejected the justification based on preventing a risk of tax avoidance.

While said decisions concern the Dutch tax group regime, they should impact other similar tax group regimes within the European Union (EU) and in particular, the French one which is close to the Dutch regime in that respect.

In practice, the result from these decisions is that it is contrary to the freedom of establishment to introduce and maintain a system of taxation under which:

- a resident parent company can form a tax group with a sub-subsidiary where the latter is held through a resident intermediary company, while denying this possibility if the intermediary is established outside that member state and does not have a PE in that member state, and
- the tax group regime is granted to a resident parent company with resident subsidiaries, while denying this possibility for sister companies if their common parent company is established outside that member state and does not have a PE in that member state.

PwC observation:
Following these decisions, we can reasonably expect that the French tax group regime will be amended accordingly (the French government had amended the French legislation following the 'Papillon' case of 2008). Of course, at this stage, we cannot anticipate the way such legal amendments will be implemented. In particular, the impact said decisions may have on the French budget which may lead the French government to take this opportunity to introduce other amendments to the French tax group regime than just the ones needed by said decisions, in view of 'compensating' the potential resulting additional costs. This will have to be followed up in the next months.

For the time being, foreign groups holding French subsidiaries which are not held by a common French holding company or a French PE can preserve their rights by lodging a claim. This already raises a certain number of questions: Who should lodge the claim? In which delays? Who should fill in the tax consolidated return? What would be the consequences on group tax losses? All potential consequences of such a claim on the statutory accounts and French tax position should be anticipated in that respect.

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OECD

OECD publishes long anticipated Commentary on Common Reporting Standard

The Organisation of Economic Cooperation and Development (OECD) on July 21, 2014, released the Standard for Automatic Exchange of Financial Account Information in Tax Matters, including the Commentary on the Common Reporting Standard (CRS). CRS seeks to establish the automatic exchange of tax information as the new global standard.

The automatic exchange of information involves the systematic and periodic transmission of 'bulk' taxpayer information from the country which is the source of the payment to the taxpayer's country of residence. The published Commentary is the OECD's interpretative guidance on the CRS model.

Similar to the provisions of the Foreign Account Tax Compliance Act (FATCA) and the various intergovernmental agreements (IGAs) between the Internal Revenue Service (IRS) and partner governments around the world, CRS imposes obligations on financial institutions (FIs) across the financial services market to review and collect information. This information will help identify an account holder's country of residence and then in turn, provide certain specified account information to the home country's tax administration. FIs, such as banks, insurance companies and investment funds in countries adopting CRS likely will be required to undertake the necessary due diligence obligations beginning in 2016 with reporting starting in 2017.

An early adopter group of over 40 jurisdictions announced their commitment to conclude a Competent Authority Agreement (CAA) with an effective date of January 1, 2016. Since then, an additional 25 adopters have joined and there likely will be over 100 adopters in the near future.

An OECD Global Forum meeting is scheduled to take place in Berlin at the end of October. Many of the 120 Global Forum member countries, particularly the early adopter countries, may participate in a signing ceremony for CRS and agree individual CAAs.

Summary of the CRS

CRS provides reporting and due diligence standards to support the automatic exchange of financial account information. Participating jurisdictions are expected to have rules in place that require financial institutions to follow due diligence procedures and report information consistent with the standards established by CRS.

The types of financial institutions covered by CRS include custodial institutions, depository institutions, investment entities and specified insurance companies, with some institutions eligible for exclusion if they are a low risk of being used for tax evasion.

Similar to FATCA, the due diligence procedures distinguish between individual accounts and entity accounts. In addition they provide a distinction between preexisting and new accounts.

Reportable accounts include accounts held by individuals and entities including trusts and foundations. There is also a requirement to look through passive entities in order to report on the relevant controlling persons.

The information to report includes interest, dividends, account balance / value, income from certain insurance products, sales proceeds from financial assets and other income generated with respect to assets held in the account or payments made with respect to the account.

Also included is a description of the rules and administrative procedures expected to be established by an implementing jurisdiction to ensure effective implementation of CRS and compliance with its provisions.

PwC observation:
The release of the CRS Commentary provides clarifications necessary to assess organisational impact. Firms can now begin the required work to prepare for its implementation.

Approximately 40 countries should be ready to formally agree on CRS implementation and start local legislative procedures by the end of 2014. Thus, institutions should begin to mobilise for CRS compliance to implement revised client identification procedures by January 1, 2016, and to report, at least in early adopter countries, in 2017.

Certain institutions that have managed to escape the grasp of FATCA will be abruptly brought back to meet requirements for enhanced due diligence and reporting. This may present many previously avoided operational issues. However, institutions can benefit from industry experience and pursue more efficient approaches to CRS implementation.

For larger financial institutions, the ability to leverage resources, activities and infrastructure related to the existing FATCA and US Qualified Intermediary programs may enable smarter and more efficient CRS implementation. Finally, financial institutions of all sizes will need a strategic approach in order to accommodate the inevitable local law variations as participating jurisdictions will join over time.

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United States

IRS provides guidance regarding events that are dispositions under Section 901(m)

On July 21, 2014, the Internal Revenue Service (IRS) issued Notice 2014-44 to provide guidance regarding the application of the so called disposition rule under Section 901(m).

The Notice sets forth specific rules that the IRS intends to issue in future regulations that explain when an event constitutes a 'disposition' of a relevant foreign asset for purposes of Section 901(m). Companies that made non-US acquisitions since 2010, or are contemplating non-US acquisitions currently, including asset acquisitions or stock purchases, should consider the application of the Notice. The Notice represents the first piece of guidance issued by the IRS under Section 901(m), though more extensive guidance is expected to be issued that will address a myriad of other issues raised by this important statute.

Section 901(m) was enacted to eliminate the foreign tax credit benefit that a US taxpayer may achieve as a result of the difference between basis of certain assets after certain transactions under US tax and foreign tax law.

Specifically, the statute defines these transactions as covered asset acquisitions (CAA), which includes:

- a qualified stock purchase to which Section 338(a) applies
- any transaction which is treated as an asset acquisition for US income tax purposes and is treated as a stock acquisition (or is disregarded) for foreign income tax purposes
- an acquisition of partnership interests for which a Section 754 election is in effect, and
- to the extent provided in future guidance, any other similar transaction.

In these transactions, the basis of the assets held by an entity are increased or decreased to their fair market value for US tax purposes, but typically no adjustment is made for foreign tax purposes. As a result, there is a disparity between the US and foreign tax basis in the assets, and if that disparity is such that the US tax basis exceeds the foreign tax basis, can result over time in less US taxable income, which increases the ratio of foreign taxes to US income.

Section 901(m)(3) limits the foreign tax credit benefit associated with a CAA by disqualifying a portion of the foreign income taxes (the 'disqualified portion').

The disqualified portion is based on a ratio of the aggregate basis differences allocated to the tax year with respect to all relevant foreign assets (RFAs), divided by the income to which the foreign income taxes relate. The basic difference with respect to any RFA is the excess of the adjusted basis of the asset immediately after the CAA over the adjusted basis of the asset immediately before the CAA, and is allocated to each tax year using the applicable cost recovery method.

Under Section 901(m)(3)(B)(ii), in the event of a disposition of any RFA, the remaining basis difference (the 'unallocated basis difference' as defined in the Notice) with respect to such asset, is accelerated into the tax year of the disposition (the 'statutory disposition rule'). However, for purposes of Section 901(m)(3)(B)(ii), the term 'disposition' is not specifically defined in the statute, and no regulations under Section 901(m) have been issued prior to the release of the Notice.

Notice 2014-44 narrows the definition of disposition for Section 901(m) purposes to include only those events that result in the recognition of gain with respect to an RFA for US or foreign income tax purposes (or both). Thus, an event that is a non-recognition transaction for US income tax purposes that is disregarded for foreign income tax purposes cannot be a disposition. Such an event includes, for example, the deemed liquidation via check-the-box (CTB) election described as the government's primary concern.

While an event that is taxable under either US or foreign law constitutes a disposition, the Notice also introduces the new concept of the 'unallocated basis difference'. The term unallocated basis difference is defined as the excess of the basic difference of an RFA over the aggregate basis difference of such asset that has been allocated to all prior tax years. Importantly, Section 901(m) continues to apply to disqualify taxes associated with the RFAs until the unallocated basis difference is fully reversed. The unallocated basis difference is reduced only by the US tax amortisation or depreciation deductions associated with RFAs, or, in the case of a disposition, the US tax losses, or foreign taxable gain on a disposition. These rules have the effect of extending the application of Section 901(m) to the transferee of an RFA where a gain for foreign income tax purposes (or a loss for US tax purposes) was not recognised by the transferor.

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In the case of a disposition that is fully taxable for both US and foreign tax purposes, the entire unallocated basis difference with respect to the RFA is taken into account. If the disposition is not fully taxable for both US and foreign tax purposes, the unallocated basis difference is generally reduced by reference to the reduction in the disparity between the US and foreign tax bases in the RFA.

The Notice also provides that Section 901(m) continues to apply to the RFA to the extent that a basis difference remains following a disposition, even if the RFA has been transferred to an unrelated third party. This rule ostensibly requires a US acquirer of a foreign target to obtain information on the entire history of each foreign asset in order to determine if a pre-acquisition CAA created a basis difference to which the US acquirer could succeed.

Regulations described in the Notice will be effective for dispositions on or after July 21, 2014.

The IRS also issued Notice 2014-45 providing very brief, targeted guidance that supplements Notice 2014-44.

Notice 2014-45 precludes taxpayers from using the statutory disposition rule through a check-the-box election filed on or after July 29, 2014. It provides that the Notice 2014-44 guidance will also determine the Section 901(m) tax consequences of a 'check-the-box' (CTB) entity classification election that is filed on or after July 29, 2014, and is effective on or before July 21, 2014. Notice 2014-45 specifies that the Notice 2014-44 rules will determine whether a disposition results from such a retroactive CTB election for Section 901(m) purposes, as well as the treatment of any unallocated basis difference (as defined in Notice 2014-44) resulting from the election.

PwC observation:
Companies that have acquired foreign targets in CAAs should review their positions with respect to any post-acquisition transactions involving the RFAs in light of Notice 2014-44. The Notice provides new rules that should be considered in the context of post-Notice foreign acquisitions as well as disposition transactions with respect to certain pre-Notice CAAs. The new rules associated with dispositions create significant complexity in monitoring the ongoing effect of Section 901(m) that will affect numerous common business transactions. The government should consider easing the compliance and administration burden in final regulations under the Notice.

Notice 2014-45 addresses the narrow issue of the application of Notice 2014-44's effective date on retroactive CTB elections. It states that the effective date for the guidance described in Notice 2014-44 applies to CTB elections filed on or after July 29, 2014, even if such CTB elections take effect before Notice 2014-44 was issued on July 21.

United States

Affordable Care Act isn't just for US companies

The Patient Protection and Affordable Care Act, or the Affordable Care Act (ACA), imposes new requirements and related penalties for both individuals and employers regarding health insurance coverage.

The ACA was signed into law on March 23, 2010, with phased effective dates for its many provisions. Some of the most significant provisions affecting individuals became effective on January 1, 2014, while the most important employer-related provisions have been deferred an additional year to 2015. The law has implications for foreign individuals on assignment to the US and for foreign companies doing business in the United States.

What is the Affordable Care Act?
Although the ACA has been an all-consuming concern for US companies, it may be cruising below the radar of many US inbound companies on the assumption that it doesn't apply to them. That could be a costly assumption.

Under the ACA, employers face significant penalties (sometimes called the 'pay or play' provisions or the 'employer mandate') if they fail to offer healthcare coverage to their full-time employees or if the coverage offered is not affordable. And the rules don't just apply to US companies, they apply to businesses employing US citizens and residents as well as foreign nationals working in the US.

Here's what you need to consider.
The ACA generally requires individuals to maintain health coverage (called 'minimum essential coverage' or MEC). If not, they face a tax penalty payable on filing their individual US federal income tax return. Under the ACA, insured coverage, governmental coverage such as Medicare, and certain employer-provided coverage are considered MEC.

This requirement is referred to as the 'individual mandate'.

The individual mandate applies to US citizens and permanent residents. It does not apply to non-resident aliens. However, many foreign nationals on assignment in the US do become residents for tax purposes, and therefore, will be subject to the MEC requirement unless another exemption applies.

Generally, US citizens living abroad are subject to the MEC requirement. However, a US citizen who has a tax home outside the US and is a bona fide resident of a foreign country or countries during an uninterrupted period that includes an entire tax year or who is present in a foreign country for at least 330 full days during a period of 12 consecutive months will be deemed to satisfy this requirement.

Under ACA beginning in 2015, an 'applicable large employer' is subject to penalties if it fails to offer 95% of its full-time employees (and their dependents other than spouses) the opportunity to enroll in MEC under an eligible employer-sponsored plan (the 95% test).

An applicable large employer is one that employed at least 50 full-time and full-time equivalent employees during the preceding calendar year. This requirement has been delayed one year for employers with fewer than 100 full-time employees, so employers with between 50 and 99 full-time employees will first be subject to the employer mandate in 2016.

A full-time employee is one who works on average at least 30 hours a week in a month. IRS guidance includes optional administrative safe-harbors for identifying full-time employees.

Penalties apply if the employer fails to offer coverage to its full-time employees and their dependents, defined as children up to age 26, but not spouses.

The annual penalty imposed on an applicable large employer that fails to offer coverage to at least 95% of its full-time employees is 2,000 United States dollars (USD) times the number of full-time employees (less 30, allocated across the controlled group), assessed monthly for any month in which coverage is not offered as required.

Reporting requirements.
Applicable large employers are required to report to the IRS information about the health coverage they have offered employees as well as monthly information concerning each employee's coverage for themselves and their dependents, and to furnish related statements to employees. This reporting requirement will be effective with respect to coverage provided in 2015 with reporting first due early in 2016; compliance for 2014 is voluntary.

PwC observation:
Employers and global mobility program professionals should begin to analyse these rules, which will become effective for most employers in 2015, and consider proactive actions with respect to needed process changes and potential penalties that could be on the horizon. Inbound companies in particular need to consider the numbers of employees with US source income they will have, and how and whether to offer health coverage to these employees and their dependents. Decisions must be made now about methods of counting hours of service and how to identify full-time employees for 2015, what to communicate to employees who may be subject to the individual mandate, and designating the people to be responsible for compliance and reporting with respect to the employer mandate and associated excise taxes. Such decisions may be made in conjunction with benefit plan design and coverage decisions, perhaps including changes in the coverage that is offered to various categories of globally mobile employees to avoid potentially significant penalties.

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Treaties
Switzerland

Switzerland-Cyprus double tax treaty signed

On July 25, 2014, Cyprus and Switzerland signed a new double tax treaty (DTT) with respect to taxes on income and on capital.

This is the first agreement of this kind to be signed between the two jurisdictions.

The most important features of the treaty, relevant for corporate taxpayers, are as follows:

Dividends
Under the new DTT, dividends paid by a company resident in one of the treaty countries to a beneficial owner resident in the other treaty country may be taxed at maximum rates of:

- 0% if the beneficial owner is a company (other than a partnership) the capital of which is wholly or partly divided into shares and which holds for a minimum holding period of one year directly at least 10% of the capital of the company paying dividends. Also, full relief applies if the beneficial owner of the dividend payments is a retirement fund, the government (including political subdivisions and local corporate bodies) or the central bank of the other treaty country. The minimum holding period of one year can also be fulfilled retrospectively.
- 15% of gross dividend amount in all other cases. In this context, however, it has to be noted that according to the domestic Cyprus tax law, currently there is no domestic withholding tax (WHT) levied on dividend distributions.

The new DTT is applicable, provided the shareholder relationship is not only established for treaty abuse purposes.

It is further worth noting that as an alternative to the new DTT, the bilateral agreement on taxation of the savings income with the European Union (EU) is available which also provides for a full exemption from Swiss WHT, if the recipient of the dividend income is a corporate shareholder who has for at least two years held a minimum direct shareholding of 25% of the capital of the company paying the dividend. The minimum holding period of two years can also be fulfilled retrospectively.

Interest and royalties
The treaty provides for a full WHT exemption on royalty and interest payments.

Capital gains
The DTT includes a provision to retain the taxation rights over the alienation of shares of a real estate company. A company is deemed to be real estate company if at least 50% of its value is directly or indirectly attributable to immovable property located in the other treaty country. Exceptions apply for publicly listed shares and in certain other circumstances (i.e. immovable property used for the company's operational activity).

Entry into force
The DTT still has to be approved by both countries before it can come into force. It will become effective as of January 1 of the year subsequent to ratification and exchange of protocols.

PwC observation:
With the newly signed DTT, an important step has been undertaken to further deepen bilateral economic relations between the two jurisdictions.

Multinational corporations with operations in Switzerland and Cyprus should carefully review existing structures and analyse planned transactions, in particular with respect to above outlined aspects.

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United Kingdom

New UK-Tajikistan DTT signed

The new UK-Tajikistan double tax treaty (DTT) was signed on July 1, 2014, and will enter into force once both countries have completed their legislative procedures.

The new DTT provides for the following withholding tax (WHT) rates:

- 5% on dividends if the beneficial owner of the dividends is a pension scheme or a company which directly holds at least 10% of the capital of the paying company. In all other cases the rate is 10% (with the exception of 15% on dividends paid out of income or gains derived from immovable property realised by an investment vehicle).
- 10% on interest (no WHT when the beneficial owner of the interest is, for instance, a pension scheme or a bank).
- 7% on royalties.

The DTT includes the latest Organisation for Economic Co-operation and Development (OECD) exchange of information article, and provision for a mutual agreement procedure.

PwC observation:
This DTT is the first ever agreement between the UK and the Republic of Tajikistan.

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United Kingdom

New protocols to UK-Canada DTT signed

A new protocol and an interpretative protocol to the UK-Canada 1978 double tax treaty (DTT) was signed on July 21, 2014.

The agreements will enter into force once both countries have completed their legislative procedures.

The new protocol provides for an exemption from withholding tax (WHT) on:

- dividends that are beneficially owned by registered pension schemes, and
- interest, when the beneficial owner is dealing at arm's length with the paying company.

The protocol also includes the latest Organisation for Economic Co-operation and Development (OECD) articles on business profits, the mutual agreement procedure with an arbitration provision, exchange of information, and assistance in collection.

The interpretative protocol clarifies the application of the DTT to UK limited liability partnerships, and when persons are considered to be dealing at arm's length, for the purposes of the interest article.

PwC observation:
While arm's-length loans between companies in the same group would appear to be covered by the new WHT exemption on interest, the interpretative protocol specifies that persons are not considered to be dealing at arm's length where, broadly, one person is treated as having control of another person, or the persons are associates or connected persons under UK tax law.

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