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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Brazil

Disclosure of final beneficiaries in Brazilian corporate taxpayer register

On December 29, 2016, the Brazilian tax authorities issued Normative Instruction (NI) 1,684/2016, which postpones the starting date to disclose information related to final beneficiaries in the Brazilian corporate taxpayer register (CNPJ).

As background, the Brazilian tax authorities issued NI 1,634 in May 2016, which established the obligation to disclose information related to final beneficiaries of Brazilian companies in the CNPJ.

According to NI 1,634, the term 'final beneficiaries' refers to (i) an individual who ultimately either directly or indirectly holds, controls or significantly influences an entity or (ii) an individual on whose behalf a transaction is undertaken. A shareholder is deemed to have significant influence if (i) he directly or indirectly owns more than 25% of the entity's capital stock or (ii) has the ability to influence the decision-making and elect or appoint members of the entity's management.

Note that, among others, legal entities set up as listed companies in Brazil, or in jurisdictions which impose the public disclosure of information of relevant shareholders, as well as non-profit entities, were not required to comply with this obligation unless the entities were located in tax havens or privileged tax regimes under the Brazilian tax legislation.

PwC observation:
Although the disclosure of the final beneficiaries was initially set to start on January 1, 2017, NI 1,684/2016 has postponed the general starting date to July 1, 2017. As an exception, companies registered in Brazil before July 1, 2017 will have time until December 31, 2018 to comply with the disclosure obligation, however, note that if a Brazilian company updates its CNPJ before December 31, 2018 for any other reason, the disclosure obligation will arise on the date of such change.

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Brazil

Brazilian tax authorities issue tax ruling confirming taxes on non-resident capital gains upon substitution of shares

On January 25, 2017, the Brazilian tax authorities (RFB, by its Portuguese acronym) issued tax ruling 88/2017 confirming that substitutions of shares (incorporação de ações) trigger taxes on non-resident capital gains.

Under Brazilian legislation, a substitution of shares is a transaction where the whole share capital of a Brazilian entity is transferred into the equity of another Brazilian entity. As a result, the latter becomes the shareholder of the former (new shareholder).

Through the years, there has been debate as to whether the alienation of a transferring entity's shares is actually made by the shareholders. In some cases, administrative decisions have confirmed that the shareholders have made the alienation, whereas, in other instances, the decisions conclude that the transferring entity itself has made the alienation.

In order to address this issue, the RFB recently issued Normative Instruction (NI) 1,664/2016 establishing that this transaction should be viewed as the shareholder made an alienation and that the new shareholder (i.e. the acquirer of the company) is the party responsible for withholding taxes (WHT) on eventual non-resident capital gains.

In line with the above, tax ruling 88/2017 confirms that the new shareholder is responsible for WHT and that non-resident capital gains should be determined by comparing the acquisition cost and the transaction value (net equity of the company).

PwC observation:
Although this tax ruling does not hold 'law' status, it confirms the RFB's position regarding substitutions of shares.

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China

China issues administrative measures for Special Tax Investigation Adjustments and Mutual Agreement Procedures

On March 17, 2017, China's State Administration of Taxation (SAT) issued the Public Notice Regarding the Administrative Measures for Special Tax Investigation Adjustments and Mutual Agreement Procedures (MAP) (SAT Public Notice [2017] No.6, Public Notice 6) to provide rules on risk management, investigations and adjustments, administrative review and MAPs for special tax adjustments, and other relevant issues. Public Notice 6 will take effect from May 2017 and supersede the relevant provisions in the Implementation Measures of Special Tax Adjustments (Guoshuifa [2009] No.2, Circular 2) and certain other regulations. The highlights of Public Notice 6 include:

Strengthening the monitoring of multinationals' profit levels

Public Notice 6 calls for Chinese tax authorities to strengthen the monitoring of enterprises' profit levels and improve enterprises' compliance with tax laws through special tax adjustment monitoring, investigations, and adjustments. This is consistent with the recent trend of risk-based tax audits in China.

Encouraging enterprises to conduct risk assessment and self-adjustments

Public Notice 6 consolidates previous regulations on taxpayers' self-adjustments on transfer pricing. However, taxpayers may not be eligible to seek relief through MAP from double taxation resulted from such voluntary self-adjustment. It should also be noted, that the tax authorities are still entitled to launch special tax investigation adjustments if they consider the self-adjustments made are inappropriate.

Refining the special tax investigation process and standards

- Public Notice 6 lists nine types of enterprises as potential audit targets, which fall in the areas of transfer pricing, cost sharing arrangement, thin capitalisation, controlled foreign corporations (CFCs), etc.
- Public Notice 6 provides further details on the factors considered in comparability analysis, such as considerations on assets employed as part of the functional analysis, location specific factors for the economic analysis, etc., which reflect the outcome of the Base Erosion and Profit Shifting (BEPS) Action Plans. Public Notice 6 also specifies the transfer pricing methods applicable to various related party transactions, in particular the cost approach, market approach, and income approach to analyse related party equity transfers.
- Public Notice 6 provides rules on transfer pricing administrations of intangibles and reinforces the general principles that 'allocation of income generated by intangibles shall be commensurate with the commercial activities and contribution to its value creation' and 'tax authorities may make special tax adjustments on royalties that are not commensurate with the economic benefit and result in a reduction in the taxable gross income or taxable income of enterprises or their related parties'. It is also specified that royalties paid or received between enterprises and their related parties for the right to use intangibles, shall be adjusted in a timely manner, and it is provided guidance on the royalty adjustment mechanism.
- Public Notice 6 also elaborates on further requirements relevant to related party service transactions based on the previous regulations.

Clarification for the MAP of special tax adjustments

Public Notice 6 applies to negotiation on corresponding adjustments with the other contracting state relating to special tax adjustments made in China or the other contracting state. It is worth noting that a Chinese taxpayer cannot initiate a MAP before paying all additional tax as determined by the special tax investigation, which may be inconsistent with the tax treaty provisions.

PwC observation:

Before the issuance of Public Notice 6, the SAT already has released a series of new regulations as part of the revision to Circular 2, including SAT Order 32 regarding administrative measures on the General Anti-Avoidance Rule, SAT Public Notice [2016] No. 64 (Public Notice 64) for administration of Advance Pricing Arrangements and SAT Public Notice [2016] No.42 (Public Notice 42) regarding refining the filing of related party transactions and administration of contemporaneous transfer pricing documentation. These regulations form the basis for the three pillars of the SAT's anti-tax avoidance work in administration (Public Notice 42), investigation (Public Notice 6 and SAT Order 32) and service (Public Notice 64).

In addition to enhancing regulation for anti-tax avoidance, the Chinese tax authorities also are expanding the joint investigation and review process, and identifying internal reviewers at all levels for anti-tax avoidance cases in order to enhance consistency of handling such investigations across the country. It is expected that Chinese tax authorities will further strengthen anti-avoidance administration and transfer pricing audits will become more frequent and sophisticated. Taxpayers are advised to proactively manage their transfer pricing and other international tax risks.

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Costa Rica

Costa Rica imposes new annual tax on corporations

Legal entities registered with the Costa Rican Mercantile Registry will be subject to an annual tax on corporations, accrued annually on January 1 beginning in 2018. For 2017 or newly-registered entities, the tax will apply on a pro-rata basis from the date the law takes effect (i.e. three months after publication of the underlying regulations, currently under discussion) or the date of the registration.

The annual tax liability will depend on whether the entity is registered with the Costa Rican tax authorities as a taxpayer as well as on its prior-year's gross income. The amount of the tax will be a percentage of the Costa Rican monthly base salary, which currently amounts to 426,200 Costa Rican colon (CRC) (approximately 790 United States dollars [USD]). While the amounts of the new tax are very low in absolute terms, not filing the returns and not paying the tax can impact the legal status of the Costa Rican entity (i.e. the Mercantile Registry will not issue certificates and will not register any new legal documents if the new tax is not duly paid) and its ability to conduct business locally. Moreover, if the tax is not paid during three successive years, the entity automatically will be dissolved.

PwC observation:
Multinational enterprises (MNEs) with operations or investments in Costa Rica should consider how this new tax may affect them and should closely monitor compliance.

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Hong Kong

Bill on expanding the list of reportable jurisdictions for AEoI purposes

The Inland Revenue (Amendment) (No.3) Bill 2017 (Bill) was gazetted on March 24, 2017.

The Bill sought to amend:

- the definition of 'reportable jurisdiction' in the Inland Revenue Ordinance (IRO) for the purpose of automatic exchange of financial account information (AEoI), such that an effective tax treaty or tax information exchange agreement (TIEA) between Hong Kong and a jurisdiction is no longer required to be in place before that jurisdiction becomes a reportable jurisdiction and
- the list of reportable jurisdiction in the IRO such that 72 jurisdictions will be added to the list (in addition to Japan and the UK which are already in the current list).

The Bill has to be scrutinised and approved by the Legislative Council before being enacted into law. Once enacted, the Amendment Ordinance will come into effect on July 1, 2017. Financial institutions will be required to collect financial account information in respect of these 72 newly added reportable jurisdictions for the period from July 1, 2017 to December 31, 2017 and furnish the data collected to the Inland Revenue Department in the first reporting year i.e. 2018.

PwC observation:
In addition to the expansion of the list of reportable jurisdictions, the Hong Kong special administrative region (HKSAR) government has indicated that it is seriously considering the possibility of applying the Multilateral Convention on Mutual Assistance in Tax Matters to Hong Kong. These changes will enable Hong Kong to expand its AEoI network more swiftly and to conduct AEoI with respect to financial account information for year 2017 when being requested to do so, which are important for Hong Kong to meet the tax transparency requirements of the Organisation for Economic Co-operation and Development (OECD) or the European Union (EU).

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Proposed Tax Legislative Changes
Canada

2017 Canadian Federal Budget

On March 22, 2017, the Canadian federal government released the budget for the coming year (the 2017 Budget).

The 2017 Budget does not increase personal or corporate income tax (CIT) rates. Also, despite much speculation, it does not increase the capital gains inclusion rate (currently at 50%) nor does it include anti-hybrid proposals.

The 2017 Budget reiterates the federal government's commitment to signing the multilateral instrument in an effort to streamline the implementation of treaty-related Base Erosion and Profit Shifting (BEPS) recommendations, such as those targeted at preventing treaty abuse. The federal government is currently undertaking the necessary steps domestically that are required for the signing of the multilateral instrument.

PwC observation:
The 2017 Budget aims to increase fairness within the Canadian tax system and to improve its efficiency and effectiveness.

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United Kingdom

The UK Finance Bill 2017

The UK Finance Bill 2017 was published by the UK government on March 20, 2017, shortly after the UK Chancellor of the Exchequer presented his Spring Budget to Parliament on March 8, 2017. The bill is now progressing through the various stages of scrutiny and debate in Parliament and it is expected to receive royal assent in the summer of 2017.

The bill contains revised clauses on the following areas relevant to business and international tax (all of which are scheduled to take effect from April 1, 2017):

- the new regime to limit the tax deductions that groups can claim for their UK interest expenses
- the reform of corporate tax loss relief, including a new restriction on the use of a company's carried forward losses to 50% of profits in excess of 5 million Great Britain pounds (GBP), and
- the simplification of the substantial shareholding exemption (SSE).

PwC observation:
The amendments to the Finance Bill 2017 clauses on corporate tax loss relief and the SSE regime are minor and of limited impact. For instance, the corporate tax loss provisions have been revised to accommodate special rules for insurance companies, creative trades and the oil and gas sectors.

However, there are key changes in the updated Finance Bill clauses to the corporate interest deductibility rules, compared with the previous version. There are a number of improvements to the Public Benefit Exemption (PBE) which will enable companies providing UK infrastructure for public benefit to exclude third party debt from the impact of the rules. We recommend that all groups consider how the rules impact them.

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United Kingdom

UK government triggers mechanism for leaving the European Union

The UK Prime Minister, Theresa May, triggered the withdrawal process (under Article 50 of the Treaty on European Union [EU]) for the UK to leave the EU on March 29, 2017. The Great Repeal Bill White Paper was issued by the UK government the following day, setting out its proposals for ensuring a functioning statute book once the UK has left the EU. The government intends to convert the 'acquis' (i.e. the body of EU law) into UK law at the same time the European Communities Act 1972 is repealed so generally the same rules and UK laws will apply on the day after exit as the day before. The UK Parliament will subsequently decide on any changes to that law, after full scrutiny and proper debate.

The UK Prime Minister has started the formal two year period under Article 50, during which the UK, the remaining 27 EU Member States and the EU institutions (Commission, Council, and Parliament) will negotiate the terms of the UK's exit. A majority vote in the European Parliament and a qualified majority vote in the Council of Europe by those members remaining in the union (the EU27) will need to approve any exit agreement.

The UK government would like to complete both the exit agreement and a new trade deal by March 29, 2019. However it should be noted that the President of the European Council for the EU27 issues draft negotiating guidelines and makes clear that no negotiations on a trade deal will commence until substantial progress has been made on the agreement for the UK to exit the EU.

PwC observation:
The UK government has recognised the importance of an implementation phase to help businesses but has confirmed that this phase will last no longer than 2021 and may not be available to all sectors. The UK government has committed to providing as much certainty as possible for businesses through the negotiations. However, we do not expect the government to provide a significant update on their progress until the Autumn of 2018, when the government hopes to have reached agreement on the terms of both an exit agreement and the new trading status with the rest of the EU prior to the necessary vote to approve the deals by the Council of Europe, the European Parliament and the UK Parliament.

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Tax Administration and Case Law

Brazil

Disclosure of Brazilian tax rulings under the information exchange mechanism

The Brazilian tax authorities (RFB, by its Portuguese acronym) issued Normative Instruction (NI) n. 1,689 regarding the compulsory exchange of information on tax rulings.

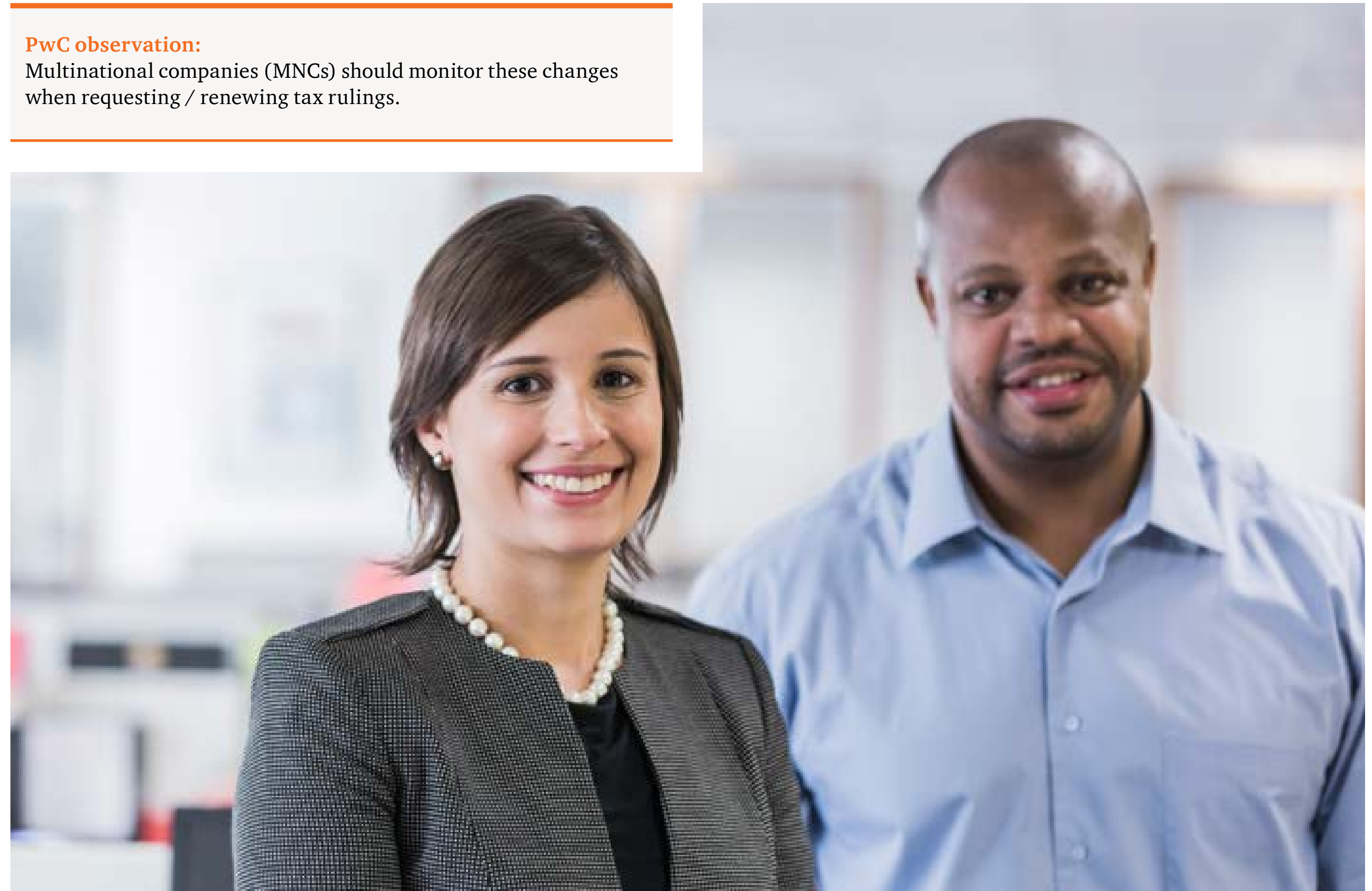
In 2013, the RFB issued NI n. 1396 allowing interested parties to submit consultations in relation to tax legislation, foreign trade and classification of services (tax rulings).

After a public consultation process, the RFB issued NI n. 1,689/2017 on February 20, 2017 (amending NI n. 1396), to align its tax ruling process with the guidance of the project on Base Erosion and Profits Shifting (BEPS) project developed by the Organisation for Economic Co-operation and Development (OECD).

According to the NI n. 1,689/2017, the party interested in requesting a tax ruling on transfer pricing, permanent establishment (PE) or the program for the support and development of the technological industry of semiconductors (PADIS), will be required to identify (i) its direct and ultimate controlling entities, including their domicile (ii) the residence country of the group entities involved in transactions covered by the tax ruling, and (iii) the residence country of the both the group headquarters and PE covered by the ruling.

A summary of the tax ruling will be exchanged with the tax administrations of the jurisdictions where the direct and ultimate controlling entities, of the party requesting the tax ruling, are domiciled, to the extent Brazil has an agreement on exchange of information (EoI) in place with previously mentioned countries.

PwC observation:
Multinational companies (MNCs) should monitor these changes when requesting / renewing tax rulings.



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Brazil

Brazilian tax authorities release guidance related to the triggering event for withholding tax and other transactional taxes imposed on the importation of services

On March 22, 2017 the Brazilian tax authorities (RFB) published Solução de Consulta n. 153/2017 (SC 153/2017) (dated March 2, 2017), which confirms the triggering event for the specified transaction taxes on the importation of services should be considered the moment the income becomes economically or legally available to the foreign creditor.

Among other taxes imposed by the Brazilian legislation on the importation of services, SC 153/2017 confirms the RFB's understanding of the triggering event for income withholding tax (WHT), Contributions for the Intervention of Economic Domain (CIDE) and social contributions (referred to as PIS/COFINS). Per the relevant Brazilian laws, the triggering event for each of these taxes should be the payment, credit, delivery, employment, or remittance of the funds. It should be noted that CIDE should only be calculated monthly and the triggering event is only complete on the last day of the month in which this is incurred.

In the past, there were some discussions if the reference to 'credit', which could be taken to mean the mere accounting 'credit' in the Brazilian entity's accounting books, would be sufficient to act as the triggering event for the relevant transaction taxes. Other opinions were that the tax should only be due upon actual payment/remittance abroad, with an additional alternative being that the triggering event should be considered to be the earlier of the payment being made or the obligation to make payment arising whichever is the earliest.

Pursuant to SC 153/2017, this issue appears to be further clarified, with the RFB confirming that the triggering event should be when the creditor recognises the right to receive the amount, and not the mere registration of an accounting credit (e.g. provision or anticipated recognition of expenses). That is the obligation of the Brazilian importer of services to pay such taxes should only arise when the foreign entity actually has the right to charge the Brazilian company in accordance with the conditions established on the agreement signed by the parties (which should materialise in principle after the rendering of the services). The focus of the RFB is on the income being 'economically' or ´legally' available to the foreign entity with regard to the definition provided in the Brazilian tax legislation.

PwC observation:
Although this document does not represent legal precedent, it does provide further support and guidance for Brazilian entities in relation to how the RFB are treating such arrangements from a transactional tax perspective and the timing for recognition of such taxes.

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United States

President Trump's executive order to review tax regulations

President Trump signed an executive order on April 21, 2017, directing Treasury to identify significant tax regulations that 'impose an undue financial burden on United States taxpayers, add undue complexity to the federal tax laws, or exceed the statutory authority of the Internal Revenue Service' issued on or after January 1, 2016. Anti-corporate inversion regulations will be examined as part of this executive order including final and temporary regulations issued under sections 385 and proposed and temporary regulations under section 7874. Section 385 regulations address whether certain instruments between related parties are treated as debt or equity and regulations under Section 7874 would reduce certain tax benefits associated with inversion transactions.

The executive order directs Treasury to complete an interim report within 60 days and submit a report with recommendations to the President within 150 days. It also directs Treasury Secretary Steve Mnuchin to 'take appropriate steps to cause the effective date of such regulations to be delayed or suspended, to the extent permitted by law, and to modify or rescind such regulations as appropriate and consistent with law, including, if necessary, through notice and comment rulemaking'.

PwC observation:
For companies that chose to elect the proposed regulations early for section 385 and those affected by changes in section 7874, companies should consider the impact the executive order may have on their tax position and underlying financial statements.

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