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Contents

Introduction to Tax Link

Welcome to another edition of Tax Link. This time we have a real mix of articles for you.

We have countries trying to attract new investment: Greece, Hong Kong, Russia. Countries trying to curb avoidance: UK (both companies and individuals), Spain (rental properties). Changes to the reporting requirements for Transfer Pricing or country-by-country reporting: China, Singapore and Korea (as well as introducing an exit tax). We have countries going for greater transparency in its economy: Argentina introducing an amnesty to encourage further disclosure, Switzerland introducing automatic exchange of information and greater transparency and India attempting to curb the cash economy. Finally, we have Australia revising some of its cross-border GST provisions.

As this will be the last edition of Tax Link that I shall be editing, I should like to take this opportunity to thank all members of the tax group within Nexia for contributing tax articles both to Tax Link and to the shorter Global Insight over the years. I know that it has been much appreciated by all within Nexia.

Warm regards

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Argentina

The new Asset Disclosure Amnesty Law

The Asset Disclosure Amnesty Law, known as Ley de Sinceramiento Fiscal, implements a legal scheme whereby both individuals and legal entities, whether registered with the AFIP (Argentine Revenue Administration) or not, may voluntarily declare their holdings in Argentine pesos or foreign currency, and other assets held both in the country and abroad. Assets disclosed may include property held under the name of a spouse, direct relatives or third parties, provided they are later registered under the name of the person who has disclosed them as part of the amnesty scheme.

Assets that can be disclosed include national or foreign currency holdings and real property held in the country or abroad, shares, equity interests in companies, beneficial ownership in trusts, shares or participations in mutual funds, ADRs of Argentine companies listed in foreign stock markets, corporate notes and other financial instruments. Also included are personal property, inventories, receivables and capital contributions, art objects, etc.

Any currency holding and/or securities deposited in High Risk Non-Cooperating countries, as identified by the Grupo de Acción Financiera Internacional ("GAFI"), or Financial Action Task Force (on Money Laundering) ("FATF") to use its English name, cannot be included in the asset disclosure amnesty scheme. In this respect, it should be noted that High Risk Non-Cooperating countries **are not** low or zero tax jurisdictions.

Individuals are not required to repatriate the assets they hold abroad. They may disclose them and can leave them there. If the money disclosed is in the country, the deadline for disclosure was October 31, 2016, which was extended to November 21. In that case, the money should be deposited in a bank and remain deposited until March 31, 2017 unless it is used to a) acquire real property, b) other registrable personal property or c) pay this "new optional" tax.

As regards the cost of this disclosure, taxpayers will have to pay 5% on the value of the disclosed real property located either in the country or abroad. Where assets (including real property) do not exceed AR$ 305,000, the disclosure will have no cost at all. Where valuation ranges between AR$ 305,000 and AR$ 800,000, the cost will be 5%. Where the aggregate value exceeds AR$ 800,000, other than real property, the cost will be 10% provided they were disclosed up to December 31, 2016. If disclosed between January 1 and the final deadline of March 31, 2017, the cost steps up to 15%. In this latter case, if the taxpayer pays with Bonar or Global 2017 (Argentine government bonds), the rate is reduced to 10%.

If the taxpayer has no penalty under Act 11683 and the Criminal Tax Law, certain national taxes that would have otherwise been levied on the assets being disclosed will be exempted. The benefit also includes exempting them from the Personal Asset Tax for the period 2016 through 2018. This benefit also applies to surrogate taxpayers who are required to pay this tax on behalf of persons resident abroad who hold assets in the country and includes the tax on equity interests in companies. As indicated above, the final deadline for the scheme is March 31, 2017.

It should be noted that, under this scheme, asset disclosure can in no way be partial. The person opting to adhere to this scheme is expected to disclose ALL of its assets. Otherwise, should the Revenue Administration detect undisclosed assets, the benefits granted by this scheme will be lost and the taxpayer will be liable to pay all the fines computed as from the inception of all the assets.

As regards regularization of tax debts, taxpayers may include tax, customs and social security debts and fines due until May 31, 2016. They may also include social security contributions by the self-employed without interest at current values. In addition, withholding and collection-at-source agents may include amounts withheld and/or collected-at-source which were not paid off to the Revenue, and any debt under forfeited installment payment schemes.

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Australia

Goods and Services Tax (GST) Changes in Australia

Cross Border Business to Business (B2B) Changes

Measures have been enacted in Australia which are designed to relieve the imposition of GST on non-residents on a range of cross border transactions. These measures commenced on the 1st October, 2016.

The measures are designed to remove a range of cross border B2B transactions from Australia's GST net. The measures apply mainly to supplies of things other than goods or real property and broadly encompass supplies of services and intangibles. This should lead to non-residents that do not have a permanent establishment in Australia being more easily able to stay outside the GST net.

The effect of these changes will be to remove the administrative difficulties encountered by overseas businesses that have been drawn into Australia's GST net.

The changes should enable compliance costs to be reduced by:

- amending the test for "carrying on an enterprise in Australia"
- limiting the cases where a non-resident entity must pay GST on supplies of things done in Australia
- ensuring there is no GST liability for certain supplies made between non-residents
- extending the GST free (zero rate) rules for certain supplies made to non-residents shifting the liability in some circumstances from overseas businesses to the Australian based business recipients that are already registered for GST.

The test for carrying on an enterprise in Australia

Although supplies made by non-residents through a PE in Australia will continue to be caught in the GST net, the new provisions include a revised definition of a PE which brings the GST rules more into line with the income tax definition of a PE.

Generally, under the new provisions, a non-resident's enterprise will need to be based in a fixed place in Australia for more than 183 days in a 12 month period and have a GST turnover of A$75,000 or more, before they would be required to register.

Accordingly, non-resident entities will need to address whether they operate via a fixed place or what their length of stay in Australia will be, in order to ascertain whether they have GST obligations.

Supplies not connected with Australia

The following transactions will be no longer connected to Australia for non-resident suppliers:

- supplies of intangibles (such as services and digital products) which are done in Australia if the recipient is an Australian based business recipient or a non-resident acquiring the intangibles for their overseas based enterprise
- a transfer of ownership of leased goods which are located in Australia where the transfer takes place between non-residents that do not have an enterprise in Australia
- a supply of goods where the supplier installs or assembles the goods in Australia, but does not import the goods into Australia.

Examples of supplies that may now be GST free include:

- when an Australian business makes a supply of training services to an overseas company, but provides those services to one of the company's employees in Australia
- when an Australian business supplies repair services to an overseas company, but the supply is provided to an entity in Australia in order to fulfil the overseas company's obligations under a warranty.

Non-resident business turnover for GST

GST-free supplies made by a non-resident business are not counted as part of their turnover for GST when the supply is not made through an enterprise they carry on in Australia. Accordingly, GST-free supplies are only included in a non-resident's GST turnover if the supply is made through an enterprise they carry on in Australia.

Goods are subject to GST at the point of importation and is payable on the sum of the customs value and any applicable customs duty and international freight and insurance charges.

A simplification measure has been introduced to enable an importer to simply apply a 10% mark-up of the customs value, thereby eliminating the need to determine the freight and insurance charges applying to the particular shipment.

Non-residents businesses with an Australian resident agent

Non-residents and their resident agents can agree the resident agent is liable for GST in relation to supplies made through the agent. Both the non-resident supplier and the agent must specifically agree to this in writing.

Where there is no agreement in writing between the non-resident supplier and the resident agent, in certain circumstances, the recipient of the supply would be required to reverse charge the supply and account for any GST.

Reverse charge for supplies

Generally, for business to business transactions performed

in Australia by non-residents, the recipient of the supply will be liable to pay the GST if the recipient is an Australian based, GST registered business.

The new provisions will mean a greater range of supplies made by non-resident entities will be removed from the GST net, but a broader range of Australian recipients may be faced with a compulsory reverse charge GST liability in respect of acquisitions that are not made for a fully creditable purpose.

Review transactions

Having regard to the start date, businesses with cross-border transactions should review and make an assessment of how the changes may impact their existing GST position.

Other changes

From 1 July 2017, it is proposed to require overseas vendors, electronic distribution platforms and goods forwarders to account for GST on sales of low value goods to consumers in Australia if they have a GST turnover of $75,000 or more.

The Government's intention with the change is to ensure that low value goods imported by consumers will face equivalent GST treatment to goods that are bought locally.

Currently, there is a GST threshold exemption of $1,000 that applies to purchases of imported goods by consumers, which has led to a large increase in on-line purchases from off-shore based suppliers to the detriment of locally based retailers.

Rather than lower the threshold the Government has simply decided to remove it all together, meaning all goods supplied by off-shore vendors to non-registered consumers will be subject to GST.

These amendments will mean those non-resident suppliers that become connected with Australia will be required to register and account for the GST collected.

The Government has said it believes Australia will be the first country to apply GST to the importation of low value goods using a supplier based collection method. It remains to be seen how the Government will enforce the new Law to ensure compliance by non-resident suppliers.

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China

China's Updated Transfer Pricing Documentation Requirements

In June 2016, China's State Administration of Taxation (SAT) responded to the OECD BEPS Action 13 report recommendations through the release of GuoShuiFa [2016] #42, Announcement on Improved Administration of Related Party Declarations and Contemporaneous Documentation (Announcement 42). Retroactive to January 1, 2016, the provisions of the announcement replace the previous transfer pricing documentation regulations that have been in effect since the 2008 Enterprise Income Tax (EIT) law. While in some cases these latest regulations increase the complexity of reporting on related party transactions by multinational companies in China, many of the provisions clarify points that were previously quite vague. Moreover, China's SAT has mostly brought the country's transfer pricing documentation requirements into line with the BEPS recommendations.

Related Party Transactions Clarified

As with past rules, Announcement 42 provisions mandate that all resident and non-resident companies subject to China EIT annually file an updated version of a Report of Yearly Related Party Business Transactions. However, under Announcement 42, the definitions of related party relationships have been clarified and broadened. For example, the formulas for determining whether or not two parties are related by virtue of borrowed funds are considerably more exact, thereby making it simpler to determine whether or not a related party relationship exists. Relationships resulting from family ties have also been clarified. Where the previous regulations merely mentioned familial relationships in passing, Announcement 42 adds a dedicated family relationship category that refers back to all other categories of related party relationships that are defined in the announcement.

The definitions of what constitutes related party transactions have also been updated. A new category covering the transfer of financial assets between related parties is now present and includes accounts receivable, bills receivable, equity investments, debt investments, derivative financial instrument investment, and others. The financial intermediation category has expanded to include funds from various long-term and short-term borrowing (including enterprise group capital pools), surety bonds, accrued interest advances, deferred payables and receivables, and others. The related party service transaction category has also been expanded to include market survey, marketing planning, agency, design, consultancy, administration, technical services, contract R&D, repair and maintenance, legal services, financial management, audit, recruitment, training, centralized procurement and so on.

Country-by-Country Reporting

As per the BEPS Action 13, country-by-country (CBC) reporting is incorporated into the Announcement 42 provisions. There are two main cases in which CBC reporting is required. In the first case, a resident company that is the ultimate holding company of a multinational group which has consolidated financial statements exceeding RMB 5.5 billion for the previous year must file the CBC report. Here the ultimate holding company is defined as a company that can consolidate the financial statements of other group members and cannot have its own financial statement consolidated by another member. The second case in which CBC reporting is required is where the China resident company would merely be designated by the multinational group as being in charge of the CBC reporting. It should be noted that where any taxpaying entity in China is under special tax investigation, CBC reporting is generally required even if the entity does not fall into either of the two cases listed above, especially where a CBC report has been submitted by a group member in a tax jurisdiction that does not have an effective information exchange mechanism in place with China.

Contemporaneous Documentation

Announcement 42 also details changes with respect to contemporaneous documentation requirements, to include how the documentation is structured, the contents of the documentation, the thresholds at which documentation is required, and the deadlines for document preparation. As per the BEPS Action 13 report, contemporaneous documentation shall now include a Master File and a Local File, as well as "special documentation" that may be required with respect to Cost Sharing Arrangements, or where thin capitalization thresholds are exceeded.

In line with the BEPS Master File content recommendations for multinational companies, the Announcement 42 requirement includes organization charts, business descriptions, financial and tax situations, intercompany financial transactions and so on. Beyond the BEPS recommendations, the Master File should also contain details regarding the primary R&D facilities of the multinational group, details of any bilateral Advanced Pricing Agreements, and details of the legal entity that files the CBC reporting, if any. Details of group restructuring activities must also be included where applicable. Master Files are required of any company with related party transactions totaling RMB 1 billion or more, or where the ultimate holding company of the multinational company group prepares a Master File. Master Files must be prepared within 12 months of the ultimate parent company's end of the fiscal year.

The Local File is comprehensive, much like the documentation required under previous regulations, and primarily includes details about the China entity's related party transactions,

a detailed company profile, a description of all related party relationships, details of comparability analyses, and an explanation of pricing methods. New to the Local File, and a significant deviation from BEPS recommendations, is a Value Chain Analysis connected to the related party transaction descriptions. This analysis includes all aspects of the business, logistics and funds flow within the multinational company group, as well as financial statements of participants in the flow, measurement of the value contributed to the group as a function of geographical factors, and how profits are distributed within the global value chain. Again, if Cost Sharing Arrangements are present in the group, details for those agreements must also be provided.

Whereas the previous deadline for preparation of the Local File (and special documentation, if any) was May 31 following each tax year, the date has now been shifted to June 30. A Local File is required for any company with tangible assets transfers in excess of RMB 200 million, financial assets or intangible assets transfers in excess of RMB 100 million, or other transactions, such as for services or loan interest, in excess of RMB 40 million per year. Note that any transactions covered by an Advanced Pricing Agreement, or companies that do not have related party transactions with overseas entities, are exempted from the Local File requirement.

Conclusion

It is noteworthy that Announcement 42 is the first SAT circular that has been issued in direct response to the BEPS action reports. And while the provisions of this announcement do align well with the BEPS recommendations, additional requirements also exist, some of which will no doubt increase the documentation burden over what foreign-held entities in China have faced in the past. Especially for smaller foreign-held companies, it is a positive that the higher related party transaction thresholds for contemporaneous documentation generally target larger multination company groups. It is also welcome news that the deadlines for documentation preparation have been extended. The BEPS initiative reports have addressed a number of tax-related issues to which countries are responding. Now that China has overhauled and consolidated its transfer pricing documentation regulations, it is expected that further alignment with BEPS recommendations will be forthcoming.

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Greece

New Development Law for Investment Incentives (4399/2016)

After a long maturing time, with the Law 4399/2016 (Government Gazette 117A'/ 22.06.2016) the new institutional framework has been defined for the regulation of private participation in the country's regional and economic development and for the appointment of the Development Council.

The new law is not contrary to the European Community guidelines for state aid and the General Exemption Regulations (Regulation rules 651/2014 EU).

The law consists of 87 articles. Articles 1 to 69 concern the new development framework for private investment, Articles 70 to 75 concern the formation of the Development Council for the planning and the implementation of the wider development plan for the country, and Articles 76 to 87 contain transitional provisions from the previous investment laws and other provisions.

Of the 69 articles, which concern the new development framework, Articles 1 to 31 constitute the general part of the development law. The Articles 32 to 69 describe the eight special aid schemes, which will be further specified in the relevant decisions of the regulations to be announced at a later stage.

The new development law is aimed at the restarting of investment in Greece.

It is aimed at increasing investment efforts with the final goal of reindustrialization, the development of less developed areas of the country, support for new established and / or existing partnerships / entities, which will employ or have already employed qualified scientific personnel and to stop the outflow from our country, of highly trained and specialized scientific staff, which have been leaving the country over the last nine years because of the current economic crisis for a better future in the developed economies of Europe and North America.

Eligible sectors for aid are the processing industries and branches providing internationally marketable services and products.

It is possible to include all legal forms of business, existing businesses and ones under formation.

Within the aid framework of the new development law, investment in the primary sector is included as well as the tourism industry, among them the medical tourism companies, health tourism, logistics companies, IT companies and communications companies, the marinas, the water airports and the businesses of renewable and alternative energy sources.

The investment projects themselves may relate to the creation of a new unit, the extension of an older one and conditional production diversification, the change in the overall production process and the acquisition of all assets belonging to establishments already shut down.

More specifically:
The purpose of the new development law is to

- promote balanced development with respect to environmental resources
- support the less favored areas of the country as well as employment growth
- improve cooperation between and increasing the average size of enterprises
- upgrading technology
- develop a new national identity (branding)
- improve competitiveness in areas of high added – value and knowledge-intensive sectors
- move the value production chain towards the production of more complex products
- save natural resources in the context of a circular economy,
- generally offer better services
- attract foreign direct investment, and finally
- to ensure a better positioning of the country in the international division of labor.

Beneficiaries of aid schemes under this law are the companies which are either established or have a branch in the Greek territory at the time of the beginning of the activities of the investment plan and have one of the following legal forms:

a. Sole partnership
b. Trading company
c. Partnership
d. Social cooperative enterprise, agricultural cooperative, producers group, rural corporate partnership
e. Companies in their establishment- or merging- phase, with the obligation to have completed the publication procedures before starting activities under the investment plan
f. Companies operating as a joint venture provided they are registered in the companies register
g. public and municipal companies as long as they provide the conditions foreseen by law.

Not considered as beneficiaries and excluded from the aid schemes are the following:

a. Enterprises declared to be in critical difficulty
b. Enterprises, which have terminated their own or a similar

activity within the European Economic Area during the two years prior to the submission of the request for regional investment aid or that, at the time of submission of the request for aid, planned to terminate their activities within a period of a maximum of two years after the completion of the investment plan

c. Businesses that implement investment projects which are carried out on the initiative and on behalf of the State, based on a relevant project contract, contract for the services concession or provision.

Regarding investment plans which are falling under this aid scheme, the following types of aid are provided:

- tax exemption
- subsidy
- subsidy of leasing
- subsidizing the costs of the created employment
- stabilizing the income tax rate (tax system)
- financing of the business risk through participation funds.

The specific aid schemes under the development law are summarized as follows:

- **Aid for machinery and mechanical equipment.** The goal is for the fast inclusion of firms of all kinds under the provisions of the law and the payment of aid for the machinery after a brief audit process
- **General Entrepreneurship.** The aim of the scheme is to strengthen businesses of all types, for all categories of eligible expenditure
- **New established independent small and medium enterprises.** The scheme is targeted to support new established independent small and medium enterprises, through increased benefits
- **Aid for Innovative Character of small and medium companies.** Under this scheme the target has been set of establishing and strengthening innovative products or processes, with a corresponding commitment by the assisted enterprise towards innovation
- **Synergies and networking (business clusters).** This scheme is targeted at enhancing the competitiveness of enterprises which participate in collaborative schemes through defined tasks related to the production and promotion of products
- **Financial Intermediaries – participation funds.** The goal of this scheme is to create a participation Fund, in which the state invests funds by selecting, with specific criteria, the fund manager, who then will seek the greatest possible leverage of public resources with private sector resources
- **Integrated Territorial and Sector Plans.** The aim of the scheme is to increase and to protect the existing employment and regional convergence
- **Large Investment projects.** This scheme aims to create an appropriate investment environment to attract very large investment projects.

Entry to the provisions of this regime is possible under two cumulative conditions:

a. total eligible investment costs have to exceed twenty million euros

b. the investment project has to create at least two employment positions per one million euros of eligible investment costs

c. The law requires a minimum of 25% contribution towards the total cost of the investment plan. The remaining percentage can be covered by bank funding body or a third party, or depending on the region of the country, from state aid, to be received by the investor after approval.

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Hong Kong

The growing popularity of Hong Kong as a location for Corporate Treasury Centres ("CTCs")

The size and scale of western MNCs in China is increasing and the economic power is generally considered to be shifting to Asia. In addition Asian companies, particularly Chinese State-owned Enterprises and Privately-owned Enterprises are expanding their business overseas due to the internationalisation of the RMB and Chinese Central government's policies.

Locating CTCs of multinational corporations in locations with attractive tax regimes, such as Hong Kong, has therefore become an effective way of supporting such expansions.

Tax impact of the new Corporate Treasury Centre Policy

In order to increase the competiveness of Hong Kong to be the preferred location of setting up CTCs in Asia, the Financial Secretary announced in the 2015-16 Budget that the Hong Kong Government was to amend the Inland Revenue Ordinance, with three key tax impacts in relation to CTCs. With effects starting from 1 April 2016, the following have been in place:

1. A concessionary tax rate of 50 percent reduction on existing rates (i.e. a reduction to 8.25%) for specified treasury activities of qualifying CTCs (effective from 1 April 2016)
2. Interest deductions for intra-group lending (effective from 1 April, 2016)
3. Deemed interest income and other gains on certain intra-group lending are regarded as taxable regardless of the place where the relevant contracts are effected and where the loan fund is provided (in place from 3 June, 2016).

The first amendment is first and foremost to incentivise corporations to set up their treasury centres in Hong Kong.

The second amendment aims to correct the unintended tax consequences of previous asymmetrical taxation on inter-company interest. Under the new policy, interest expenses related to inter-company borrowings will become deductible if the interest income received by the corresponding company is subject to tax of a similar nature outside Hong Kong at a rate that is not lower than Hong Kong's profits tax rate of 16.5%.

The third amendment follows this and makes it clear that interest income from inter-company lending will be deemed trading receipts chargeable to profit tax, which may impact corporations that have been applying the "provision of credit" test in the past.

How to be qualified as a CTC?

In order to be a qualified CTC, the corporation should have carried out during the year of assessment, in Hong Kong, only Corporate Treasury Activities; satisfied the specified safe harbour rules; or has obtained the Commissioner of Inland Revenue's ("CIR") determination that it is a Qualifying CTC. In addition, the corporation must, in the relevant year of assessment, be centrally managed and controlled in Hong Kong and the activities generating the profits must be carried out or arranged by the corporation in Hong Kong. The new Qualifying CTC rules do not apply to financial institutions.

There are three types of corporate treasury activities:-

1. Carrying on an intra-group financing business, i.e. borrowing money from and lending money to its associated corporations
2. Providing a Corporate Treasury Service
3. Entering into a Corporate Treasury Transaction.

Even if a corporation cannot satisfy the requirements of "carrying out only Corporate Treasury Activities", it will still be considered as a Qualifying CTC if it satisfies the profits test and the assets test for either one year ("One-year Safe Harbour Rule") or for multiple years ("Multiple-year Safe Harbour Rule"):

	One-year Safe Harbour Rule	Multiple-year Safe Harbour Rule
Profits test	Corporate Treasury Profits ("CTP") percentage is not lower than 75 percent for a one-year period. CTP percentage is calculated as below: The total CTP of the CTC for the year of assessment concerned divided by: The total profits accruing to the CTC for the year of assessment concerned.	Average CTP percentage is not lower than 75 percent over a two-year period or three-year period. Average CTA percentage is calculated as below: Average CTA percentage for two years or three years divided by: Two or three years (depending on the duration of which the corporation has carried on a trade or business in Hong Kong).
Assets test	Corporate Treasury Assets ("CTA") percentage is not lower than 75 percent for a one-year period. CTA percentage is calculated as below: The total CTA of the CTC for the year of assessment concerned divided by: The total assets of the CTC for the year of assessment concerned.	Average CTA percentage is not lower than 75 percent over a two-year period or three-year period. Average CTA percentage is calculated as below: Average CTA percentage for two years or three years divided by Two or three years (depending on the duration of which the corporation has carried on a trade or business in Hong Kong).

If a corporation cannot satisfy the requirement of "carrying out only Corporate Treasury Activities" or the abovementioned safe harbour rules, it can apply to the CIR for his discretion to deem the corporation to be a Qualifying CTC if he is satisfied that the corporation would have been qualified as a CTC in the ordinary course of its business, but for some extreme or unforeseen circumstances it cannot be qualified in the meantime.

Benefits of setting up CTCs

Other than tax benefits, there are several areas that CTCs can also bring value to the corporations. Firstly, CTC facilitates cross-border cash pooling in different currencies. This can be done on a cash basis and on a notional basis and, with more flexibility offered by the Chinese regulators, it is possible to transfer cash balances among China, Hong Kong and other countries now. Secondly, CTC helps to centralise financial resources to achieve cost savings on funding and increase investment returns on excess cash. Thirdly, it can reduce potential hedging costs by supporting the netting of foreign currency exposures across currencies within operating entities and have better visibility to the corporate's net exposure. Finally, one of CTCs' functions is to standardise and centralise the key treasury functions to a single location, thereby enhancing the efficiency and effectiveness of treasury functions.

With the introduction of this new CTC regime, alongside the low personal tax rates and the absence of tax on dividends, estates, capital gains and no VAT and sales tax, Hong Kong holds a competitive position within the APAC region as an attractive location for multinational corporations to site their Corporate Treasury functions.

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India

Demonetization in India: A Snapshot

On 8th November 2016, in one bold move, the Prime Minister of India Mr. Narendra Modi may have possibly altered the entire economic landscape of the country. In the terms of Gazette Notification No 2652 issued by the Government of India, bank notes of denomination Rs.500 and Rs.1000 of the existing series issued by the Reserve Bank of India ceased to be legal tender with effect from the very next day i.e. November 09, 2016.

The Prime Minister in his address to the nation thundered, "The 500 and 1,000 rupee notes hoarded by anti-national and anti-social elements will become just worthless pieces of paper. However, he reassured honest people of the Country, "The rights and interest of honest hard-working people will be fully protected."

The enormity of the decision can be gauged from the fact that India is primarily a cash based economy in which 98% of the transactions by volume and 65% by value are made using cash and the above denomination notes made up almost 85% of the money in circulation. Overnight the country went into a severe cash crunch and the impact on the economy is still being felt today and the jury on the pros and cons of the move is still out.

The government's stated goals by undertaking this demonetization were:

- Eradicate the menace of counterfeit currency
- Fight tax evasion by forcing holders of unaccounted money to deposit the cash into banks
- To curb terror financing activities
- Promote a cashless economy.

Despite some temporary hiccups and downside, the move is generally seen as providing a big boost to the national interest by discouraging a parallel economy on one hand and giving a much needed push to the cashless economy on the other. If a significant amount of black money held as cash comes into banking system, the government will be able to utilize the resultant funds to boost tax collections in the longer run. As per various reliable estimates, demonetization could lead to the disclosure of 1-2% of GDP.

But some economists point to some short-term risks, particularly including a dip in the December quarter GDP growth and corporate performance. In the first policy review post demonization, the Central Bank of India has already lowered the GDP growth forecast to 7.1% from 7.6%. Largely, the economists believe that the Demonetisation is likely to have several spin-offs for Asia's third largest economy in terms of lower interest rates, lower inflation, improved tax to GDP ratio, rising public investment and healthy public finances.

Government and its various agencies are sparing no efforts to block all escape routes for tax evaders. Large scale seizures of unaccounted money, necessary amendments to the Income Tax Act, 1961 through the Taxation Laws (Second amendment) Bill 2016 and the alternative scheme to disclose black money namely Pradhan Mantri Garib Kalyan Yojna 2016 are all oriented to that cause.

So to conclude – the above demonetization exercise undertaken by the Indian government is a complex and untested experiment in various domains – political, social as well as economic. Only time will tell the real result of the exercise in all these spheres.

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Korea

Recent tax amendments affecting those investing in South Korea

Background

On July 28, 2016, the Korean Ministry of Finance announced its 2017 tax law revision bills. The following is a selection of proposed bills relevant to those investing in South Korea or thinking of doing so. The proposed "Exit Tax" would be of interest to those in Korea who are considering expatriating from Korea. As a tip for foreign investors, the newly ratified Korea-Hong Kong double tax treaty is introduced briefly at end.

Flat Rate 20.9% Tax for foreign workers

Under the Tax Incentives Limitation Law revision proposal, three major changes regarding the preferential treatment of foreign workers in Korea are as follows:

1. The existing five year time limit for application of the flat tax rate which is scheduled to sunset is proposed to be extended to December 31, 2019. Therefore, those who start to work in Korea no later than the deadline can elect to apply the flat rate
2. Currently there is no time limit for applying the flat rate for those foreigners who started to work in Korea before January 1, 2014. However, the proposed change states that there is no exception to this five year time limit. As such, those foreign workers who started to work in Korea before January 1, 2014, the flat rate is granted only up to December 31, 2018
3. The flat rate will be adjusted to 20.9% (19% flat income tax plus 1.9% local income tax surcharge) from the current 18.7% (17% flat income tax plus 1.7% local income tax surcharge).

Changes to NOL carryforwards Applicable to Foreign Companies

A new limit on utilization of net operating losses (NOL) carryforwards for foreign companies was proposed.

a. Until the tax year ended on or before December 31, 2015, NOL of domestic companies were allowed to be carried forward for 10 years. And the NOL was 100% deductible against taxable income in subsequent years
b. However, as a result of the 2015 tax law amendment, the amount of NOL carryforward that can be deducted in any given year is limited only to 80% of taxable income for the year, from the tax year commencing on or after January 1, 2016
c. Currently, this 80% deduction limit is applied only to domestic companies, not to foreign companies with a permanent establishment in Korea (a "Korean branch"). To remove the discrepancy in the utilization of NOL, a new tax amendment bill is proposed to impose the same limitation on the utilization of NOL carryforwards by foreign companies with a Korean branch.

The Exit Tax

The proposed exit tax will be applied to Korean residents who expatriate from Korea on or after January 1, 2018. The details of the exit tax are as follows:

1. The new rule is applied to Korean residents who break the tax residency through permanent departure from Korea, by reason of immigration to a foreign country, etc. The exit tax is imposed on those who satisfy all the following conditions:
   a. Having an address or domicile in Korea for at least five years during the 10-year period before the expatriation date
   b. Constituting a large shareholder of a domestic listed company owning more than 1% of all shares or owning shares valued at least KRW 2.5 billion at preceding tax year end.
2. The taxpayer is deemed to have disposed of relevant domestic shares on the final day of residence and the deemed gain is subject to a capital gains tax rate of 22% (including local income tax)
3. The exit tax return filing, together with the tax payment will need to be made within three months from the end of the month when expatriation occurs. A 20% non-reporting penalty may be assessed, if not compliant
4. If the taxpayer returns to Korea within 5 years from the expatriation date to declare a tax residency, the exit tax paid will be refunded.

The Introduction of Country-by-Country Reporting

In addition to the local file and master file documentation requirements imposed on multinationals in Korea effective from the tax year commencing on January 1, 2016, new Country-by-Country Reporting (CbCR) is proposed in line with the OECD/G20's efforts to prevent Base Erosion and Profit Shifting (BEPS). The details of the proposed amendments are as follows:

1. CbCR is reported by the ultimate Korean parent company of a multinational consolidated group, if the consolidated group's revenue for the preceding year exceeds KRW 1 trillion (approximately USD 900 million)
2. The Korean subsidiary of a foreign-based multinational consolidated group would be required to submit the CbC report to the Korean tax authority, if the country of residence of the ultimate parent does not have the CbCR filing requirements, or the country of the residence of the ultimate parent has not entered into the multilateral agreement on the exchange of CbC reports
3. The proposed CbCR will need to include information on

country specific income and taxes, a list of companies by respective jurisdiction, main business activities, the number of employees, etc

4. The CbC reports should be filed by 12 months after the relevant tax year-end
5. The revised rule will be effective for the CbC reports filed on or after January 1, 2017.

Korea-Hong Kong Double Tax Treaty

The Korea and Hong Kong double tax treaty which was officially signed in July 2014 was ratified by the National Assembly in Korea on September 7, 2016.

The treaty will be effective for Korean tax for tax years commencing on or after January 1, 2017 (for Korean withholding tax, the treaty will be effective for any amounts payable on or after April 1, 2017). For Hong Kong tax, the treaty will be effective for any year of assessment commencing on or after April 1, 2017. Reduced rates of the treaty are as follows:

Income types	Reduced Tax Rates
Interest	10%
Royalties	10%
Dividends	10% (shareholding of 25% or more), 15%

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Russia

Extension of Profit Tax Relief in regional Investment projects

In recent years, the Russian Government has refocused its economic policy towards the achievement and maintenance of a highly competitive national economy, and import substitution of manufactured goods in most industries.

The current objectives of Russia's industrial policy are:
- to promote the establishment or development of the industrial infrastructure as well as the infrastructure supporting the industrial operations
- to create conditions for industrial operations in the Russian Federation, which are competitive with the environment existing in foreign countries (North America, Europe, South Eastern Asia, Japan, Brazil, India, China).

Based on this background, Federal Law No. 144-FZ dated May 23, 2016, amended a number of articles of the Tax Code of the Russian Federation, which govern the tax status of participants in regional investment projects as well as the procedure for administration and application of tax exemptions for such taxpayers.

The federal law extends the composition of participants in regional investment projects. The right to apply for the profit tax relief can be exercised, in particular, by participants in special investment contracts concluded according to Federal Law dated December 31, 2014, No. 488-FZ, Industrial Policy in the Russian Federation, provided that this investment project is included in a special list, the procedure for drafting and keeping of which should be approved by the Russian Government.

Definition and substantial conditions of a special investment contract

According to the definition of an investment contract, it is concluded between the Russian Federation represented by its competent authority and the investor(s) undertaking to initiate or develop manufacturing of industrial products in the Russian Federation and other socio-economic obligations, in particular, to:
- initiate or develop the manufacturing of industrial products, for which no similar products are manufactured in the Russian Federation
- initiate or develop the manufacturing of products of the top-priority branches of industry for the socio-economic development of the Russian Federation
- initiate or develop the manufacturing of industrial products, by introducing the intellectual deliverables belonging to top-priority branches of science, engineering, technology or critical technologies
- introduce the principles of the application of the best available technologies into the manufacturing of industrial products
- create high-performance work places
- create industrial and social infrastructure facilities.

An investment contract largely differs from a public and private partnership agreement and concession agreement in that the State is not an investor under the investment contract, i.e. it does not invest budget money or state-owned assets into the facility invested in.

The goal of an investment contract is quite different – to create the most favorable conditions to an investor for implementation of the investment project, rather than to establish State ownership of the created facility. So the State does not invest money or property into an investment project under an investment contract, but, instead, provides incentive exemptions to the investor. The economic effect for the State from participation in an investment contract does not consist in obtaining property in ownership, but in creating a marginal product, new work places, in tax receipts from the new business.

Investment contracts can be concluded by the Russian Federation constitutive entities and municipal entities in order to provide the investor(s) with incentivizing preferences envisaged in the regulations and laws of the Russian Federation constituent entity or the municipal regulations and laws, respectively.

An investment contract is concluded for a term equal to the period required for an investment project to start generating an operating profit, according to the business plan of the investment project, increased by 5 years, but not more than 10 years.

To conclude a special investment contract, the investor is obliged to confirm investments of not less than RUB 750 million into the investment project and also to submit a business plan showing information on the investment project, in particular:
- parameters of the industrial products, for which the manufacturing facilities are created or upgraded and/or developed in the course of the contract fulfillment
- list of the project efforts and the scope of investments into the project
- deliverables (parameters) to be achieved in the course of the project implementation.

It is noteworthy that Russian law does not impose any limitations on the investor: both an individual and a legal entity as well as foreign business entities can act as an investor. Capital investments are funded by the investors from their own funds and/or from borrowed funds.

As concerns the economic areas in which an investment contract can be concluded, they include such lines of business as mining and processing industries, electricity, gas and eater generation and distribution, except for the manufacturing of alcoholic beverages and tobacco products.

Profit tax exemptions

The Federal Law establishes additional corporate profit tax relief for investing taxpayers under an investment contract. To make it clear, the law establishes provisions whereby tax rates, exemptions, the procedure for and timing of the payment of taxes, which deteriorate the investors' situation, for participants in special investment contracts should not change till the expiry date of the investment contract or the expiry date of the tax rates, tax exemptions, tax assessment procedure, procedure for and timing of tax payments, as applicable at the investment contract date.

The Russian Federation entitles taxpayers as investment contract participants to reduce the rate of the corporate profit tax to be credited to the federal and regional budgets of Russian Federation:

- provided that the federation constituent entity adopted a law that reduces the rate of the profit tax payable to the budget of the federation constituent entity
- provided that the proceeds from sale of goods manufactured as a result of implementation of a regional investment project amount to not less than 90% of total income taken into account when the taxable base is assessed
- starting from the tax period, in which the first profit from the sale of goods was generated and to the investment contract expiry date, which should be not later than 2025.

Special profit tax rates

0% rate is established for the tax to be credited to the Russian Federation budget.

It is envisaged that the federation constituent entity can reduce the rate of tax to be credited to the Russian Federation constituent budget to 0%.

The law also envisages that an investor can apply a mark-up depreciation factor not exceeding 2with respect to the fixed assets from the first till seventh depreciation groups under the tax legislation and manufactured according to the investment contract conditions. The Russian Government determines the procedure for classifying depreciable fixed assets as the assets manufactured according to the investment contract conditions.

However, some limitations still exist:

- dependence of the investor's application of a reduced rate for the profit tax on adoption of a special law by the federation constituent entity
- there is no procedure approved by the Russian Government for classifying the depreciable fixed assets as the assets manufactured according to the investment contract conditions.

It is noteworthy that this law concerns profit tax exemptions for investors under investment contracts only and does not envisage any VAT and corporate property tax exemptions.

Liability

If a special investment contract is terminated in connection with the investor's failure to perform or to duly perform its obligations, it should be noted that the investor must indemnify against damage and the amounts of taxes and charges not paid as a result of application of tax exemptions established for an investor as for a participant in a special investment contract in the law on taxes and charges, with payment of a forfeit.

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Singapore

New Transfer Pricing Reporting Requirements in Singapore

A Fine Balance

Singapore recently announced new reporting measures commencing during the 2018 tax year which require taxpayers to report certain details of related party transactions ("RPT") where the value of RPT in the audited accounts for the financial year exceeds S$15,000,000 (approximately US$10,500,000). The so-called "Form for Reporting Related Party Transactions" will need to be submitted together with the submission of the corporate income tax return otherwise known as the Form C. The value of RPT is the sum of all RPT items in the Income Statement and the year-end balances of loans and non-trade amounts.

This marks a subtle shift from the Inland Revenue Authority of Singapore's ("IRAS") current stance of maintaining a relatively light touch approach towards transfer pricing reporting in the interest of enforcing the arms' length principles without placing a disproportionate burden on taxpayers at large. Indeed, it signifies that the IRAS is aligning itself with the growing trend of greater scrutiny and heightened reporting requirements among an increasing number of countries on the transfer pricing front. In countries like Malaysia and India, transfer pricing reporting for related party transactions is an integral part of the overall corporate tax filing regime in those locations.

This latest move by the Singapore tax authorities is by no means isolated. Earlier this year, Singapore had already joined the inclusive framework for implementing measures against Base Erosion and Profit Shifting ("BEPS"). The inclusive framework is an OECD-backed effort and was endorsed by G20 members in February 2016.

By joining the inclusive framework, Singapore had already effectively committed to implementing four minimum standards of the 15-point action plan under the BEPS project:

Countering harmful tax practices
Under this action point which focuses on concerns around preferential regimes, Singapore is committed to using its tax incentive framework in a judicious manner in line with rewarding economically substantive activities without risking its use as a means to facilitate artificial profit shifting. This is in line with one of the key premises of BEPS where the incidence of taxation of profits is aligned with the place where the real economic activity generating them occurs.

Preventing treaty abuse
Singapore is firmly against all forms of treaty shopping and in a joint effort towards combating such activities, is actively working in conjunction with other countries to develop a multilateral instrument which will incorporate anti-abuse measures such as "Limitation of Benefits" clauses for inclusion in its tax treaties.

Transfer pricing documentation - Country-by-Country Reporting
Singapore has recently supplemented its two-tiered Master-File approach to transfer pricing documentation with a three-tiered approach by implementing Country by Country ("CbC") reporting. CbC reporting is being implemented for multinational enterprises ("MNEs") whose ultimate parent entities are in Singapore and whose group turnover exceeds S$1.125 billion. It is set to come into effect for financial years beginning on or after 1 January 2017 with the entities being required to file CbC reports within 12 months from the last day of their financial year. The CbC reports will be automatically exchanged with tax authorities of other jurisdictions that have entered into bilateral agreements with Singapore.

Enhancing dispute resolution
Singapore is committed to working closely with other countries on the establishment of robust dispute resolution mechanisms in line with the BEPS project to ensure taxpayers have access to such mechanisms under the bilateral treaty framework.

In conclusion, Singapore has tried to maintain a fine line between enforcing global transfer pricing rules while keeping its tax administration relatively simple without unduly burdening the average taxpayer. This balance is no doubt becoming harder to attain given the global scrutiny on transfer pricing and the increased reporting requirements being implemented by countries around the world. Singapore has had to in some ways jump on the bandwagon as evidenced by the latest reporting measures it is implementing. Having said that, it is the hope of many a taxpayer here that the pragmatism shown thus far by the IRAS will yet remain a cornerstone that continues to guide its approach towards achieving that fine balance.

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Spain

The Spanish Tax Agency investigates non-resident entities dedicated to property rental

The Spanish Tax Authority has started investigating Spanish entities belonging to non-resident individuals, whose only asset are their shareholder's vacation properties.

The existence of the economic substance of the entities renting properties is a controversial matter and source of numerous conflicts between the taxpayers and the Tax Authorities. Determining if there is real economic activity behind the companies, and ensuring compliance with the rules, are fundamental elements in order to avoid unpleasant surprises with the Spanish Tax Authority.

And the thing is that, the Spanish Tax Authority, aiming to comply with the Annual Plan for Tax and Customs Control, has initiated actions destined to control entities whose object is related to property rental in Spain.

The Tax Authority is paying special attention to entities owned by non-resident individuals whose properties are enjoyed by their shareholders, who do not pay any rental at all (or where the rent is lower than the market price).

The inspections carried out perform regularizations of the Company Income Tax (CIT) liability, drawing up an estimate of the revenue that the entity would have received for the rentals not paid by their shareholders. Entities and shareholders are related parties, so the use of any of the company's assets by a shareholder implies a related-party transaction, and it should be valued at the market price. Furthermore, controlling the dates on which the property has been at the shareholder's disposal or rented out to third parties, as well as the means employed for renting out the property, is essential.

Additionally, the Spanish Tax Agency will proceed to analyse the detail of the expenses deducted in the tax return. In that sense, it is relevant to mention that the expenses considered as deductible are those generated for the development of the activity and whose use is necessary to the income generation.

The penalties expected for this kind of tax infraction may range from 15% to 150% of the difference between the taxable base declared and the one resulting from the inspection. Alternatively, they may range from 50% to 150% of the difference of the VAT declared and the VAT resulting from the inspection; and, for the latter, it will be added the late payment surcharge. One or another penalty, as well as its percentage, will depend on how the tax penalty is classified by the inspection.

The expenses deemed to be personal expenses of the shareholders not only will not be deductible, but may be considered as revenue for the shareholders as if they were dividends; therefore, this will lead to the regularisation of the Personal Income Tax (PIT) liability and the corresponding penalty in that regard, if applicable.

Reviewing the situation of these entities in order to adapt the tax liabilities to the current and real operative is recommended, specifically if there is activity between associated parties (rentals for non-resident shareholders in Spain). Analysing the deductibility of the expenses (only when economic activity exists and relates to revenues) and studying the activity carried out would be advisable too.

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Switzerland

Automatic exchange of information (AEI)

On 1st January 2017 the agreements for the automatic exchange of information, which Switzerland entered with the EU and its 28 member states as well as 9 additional states (status as of 1st September 2016), come into force. But what is this automatic exchange of information and which consequences arise for you?

Hereinafter we are happy to provide you a summary of the most important facts:

What is the automatic exchange of information?

The AEI defines, how tax authorities of the individual participating countries can exchange data about bank and safekeeping accounts of taxpayers amongst each other. The aim is to make tax evasion more difficult and to make it impossible for foreign taxpayers to "hide" their assets, thereby making also the misuse of Swiss banking secrecy impossible.

Why the automatic exchange of information?

The Swiss banking location is of globally significant importance. About a quarter of the global transnationally invested assets is managed in Switzerland. In the last few years Switzerland has been globally criticised because banking secrecy favoured international tax evasion.

How is the automatic exchange of information working?

As of 1st January 2017 banks are obliged to collect data about foreign taxpayers. This affects the countries which entered an agreement for AEI with Switzerland.

They transmit the following data to the Federal Tax Administration (FTA):

- Name
- Address
- Place of birth
- Birth date
- Name and identification number of the bank
- Account / deposit number
- Account balance at the end of the year
- Capital income of the year

The FTA then forwards the data to the tax authorities of the respective countries. Additional data such as e.g. account movements are not forwarded. The bank is obliged to collect the data as of 1st January 2017 and in 2018 they have to be transmitted for the first time to the FTA.

What are the consequences of the automatic exchange of information for the banking secrecy?

In the negotiations of the individual agreements it was important for Switzerland to maintain banking secrecy. This means for Swiss banks that, for the time being, and also after the introduction of the AEI, some secrecy regarding customers and their accounts will exist. On the basis of the current legal provisions, no information regarding customers with a domicile in Switzerland will be forwarded to the FTA. Therefore, for persons with a tax residence in Switzerland currently nothing changes.

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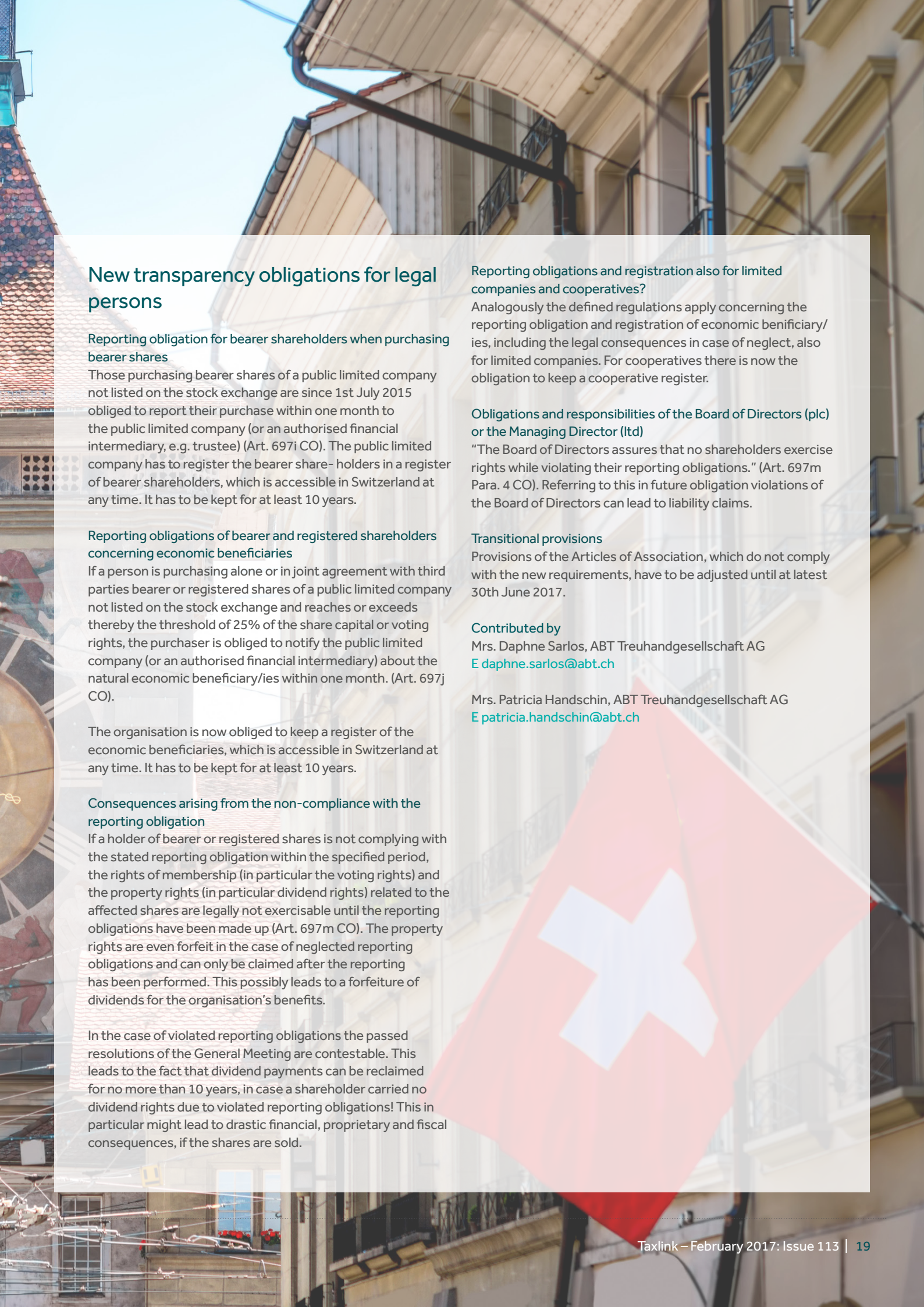

New transparency obligations for legal persons

Reporting obligation for bearer shareholders when purchasing bearer shares

Those purchasing bearer shares of a public limited company not listed on the stock exchange are since 1st July 2015 obliged to report their purchase within one month to the public limited company (or an authorised financial intermediary, e.g. trustee) (Art. 697i CO). The public limited company has to register the bearer share- holders in a register of bearer shareholders, which is accessible in Switzerland at any time. It has to be kept for at least 10 years.

Reporting obligations of bearer and registered shareholders concerning economic beneficiaries

If a person is purchasing alone or in joint agreement with third parties bearer or registered shares of a public limited company not listed on the stock exchange and reaches or exceeds thereby the threshold of 25% of the share capital or voting rights, the purchaser is obliged to notify the public limited company (or an authorised financial intermediary) about the natural economic beneficiary/ies within one month. (Art. 697j CO).

The organisation is now obliged to keep a register of the economic beneficiaries, which is accessible in Switzerland at any time. It has to be kept for at least 10 years.

Consequences arising from the non-compliance with the reporting obligation

If a holder of bearer or registered shares is not complying with the stated reporting obligation within the specified period, the rights of membership (in particular the voting rights) and the property rights (in particular dividend rights) related to the affected shares are legally not exercisable until the reporting obligations have been made up (Art. 697m CO). The property rights are even forfeit in the case of neglected reporting obligations and can only be claimed after the reporting has been performed. This possibly leads to a forfeiture of dividends for the organisation's benefits.

In the case of violated reporting obligations the passed resolutions of the General Meeting are contestable. This leads to the fact that dividend payments can be reclaimed for no more than 10 years, in case a shareholder carried no dividend rights due to violated reporting obligations! This in particular might lead to drastic financial, proprietary and fiscal consequences, if the shares are sold.

Reporting obligations and registration also for limited companies and cooperatives?

Analogously the defined regulations apply concerning the reporting obligation and registration of economic benificiary/ies, including the legal consequences in case of neglect, also for limited companies. For cooperatives there is now the obligation to keep a cooperative register.

Obligations and responsibilities of the Board of Directors (plc) or the Managing Director (ltd)

"The Board of Directors assures that no shareholders exercise rights while violating their reporting obligations." (Art. 697m Para. 4 CO). Referring to this in future obligation violations of the Board of Directors can lead to liability claims.

Transitional provisions

Provisions of the Articles of Association, which do not comply with the new requirements, have to be adjusted until at latest 30th June 2017.

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United Kingdom

UK Autumn Statement: further changes for non-UK companies investing into UK real estate

There have been numerous changes to the tax rules relating to UK real estate in recent years. It would appear that real estate has become the "go-to" source of tax revenues for the UK Government. Given the volume of tax changes in this area in recent years, it would, perhaps, have been reasonable for foreign investors to expect real estate to have been given a pass in the Chancellor's Autumn Statement which took place on 23 November. However, this was not the case as the UK Chancellor announced in the Autumn Statement a proposal to bring non-UK resident companies in receipt of UK source rental income within scope of UK corporation tax.

What is the current position?

At present, non-UK companies pay basic rate income tax on their annual net rental profits (the rate of tax payable is 20%). In calculating the net rental profits, a tax deduction is generally allowed for interest paid by the company on loans relating to the rental business, assuming the interest is representative of arm's length terms. Also, brought forward tax losses of the UK rental business can be offset against current year rental profits without restriction.

What are the proposed changes?

The Government will consult in 2017 on how to bring non-UK resident companies within scope of UK corporation tax. Consequently, there is uncertainty over what exactly the new regime will look like. On the face of it, bringing non-resident companies within scope of UK corporation tax is a positive proposal from the perspective of the foreign investor as the rate of corporation tax will be 19% from April 2017 (and will reduce to 17% by April 2020). Currently, non-resident companies pay 20% income tax on their rental profits.

However, the Government have stated that they "want to deliver equal tax treatment to ensure that all companies are subject to the rules which apply generally for the purposes of corporation tax, including the limitation of corporate interest expense deductibility and loss relief rules".

Introducing restrictions on deductibility of interest and the offset of brought forward tax losses could have a significant impact, depending on a company's particular circumstances. The corporation tax rules which restrict the offset of tax losses and deductibility of interest both contain de-minimus limits such that the new rules should only apply to "large" companies or groups. The tax loss restrictions, for example, are subject to a £5 million allowance per group. Many non-UK companies holding UK real estate are stand-alone entities and are not part of a group. As such, for many non-UK companies, the proposed restrictions may simply not apply. We will have to wait and see if the Government will attempt to amend how these rules will apply to for non-UK resident companies.

One potential issue which has not been mentioned by the Government to date is how, if at all, the profit on disposal of a UK property will be impacted by these changes. Currently, non-UK companies investing in UK real estate are taxable on gains arising on the sale of UK residential properties; however, disposals of UK commercial properties are not taxable. It is possible the Government could, as part of this regime change, bring all disposals of UK properties within scope of UK tax (regardless of whether the property is used for residential or commercial purposes).

Impact on corporate investors into UK real estate

Bringing non-UK companies within scope of UK corporation tax could, depending on how the rules are drafted, have a considerable impact on the return of an investor into UK real estate. In particular, the proposed restriction on interest relief, depending on how a company is funded, could have a significant impact. Often non-UK companies finance the purchase of UK rental properties by a combination of third party and connected party (ie shareholder) debt, potentially resulting in a high loan-to-value ratio. If all of the debt is interest bearing and the interest treated as tax deductible, the new proposals, if they are eventually enacted, could have a big impact on such companies as they may be facing an unexpected tax cost in the near future. Furthermore, if all profits on disposal of UK real estate were brought within scope of UK tax (removing the capital gains tax exemption for investing in commercial property) it could mark the end of there being any fiscal incentive to invest in UK real estate.

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Changes to the UK taxation of non-doms: draft Finance Bill 2017

On 5 December 2016, the government published its Finance Bill 2017, incorporating planned changes to the taxation of non-UK domiciled individuals (non-doms) from 6 April 2017.

There is now more clarity about how the new rules will operate and we consider them below in greater detail:

1. Interests in UK residential property owned directly or indirectly will be within the charge to inheritance tax (IHT)
2. Non-doms who have been resident in the UK for at least 15 out of the preceding 20 tax years will be deemed to be UK domiciled (deemed-domiciled) for income tax, capital gains tax (CGT) and IHT purposes
3. Individuals born in the UK with a UK domicile of origin, who have left the UK and acquired a non-UK domicile of choice, will always be treated as UK domiciled if they return to the UK (returning non-doms).

Inheritance tax on UK residential property

Non-UK entities which will be within the scope of the rules

An interest in a non-UK entity will only be within the scope of the new rules where it is an interest in a closely held company or partnership (or equivalent entity) which holds UK residential property either directly or indirectly. In addition, an interest will be disregarded if the interest is less than 1% of the total interests in the close company or partnership.

Debts of close companies

The liabilities of close companies will be attributed to all of the company's property 'rateably'. Debts will not be deductible based on what they were used for, but purely based on the balance sheet of the company at the relevant date.

Loans used to acquire UK residential property

The government has abandoned its plan to disregard loans from connected parties in calculating the value of relevant property for IHT purposes.

Instead, the rights of a creditor in respect of a loan used to purchase UK residential property will be relevant property and therefore within scope of IHT. These rules will also apply to assets used as collateral for such a loan, or an interest in a close company or partnership which is a creditor or guarantor. This will mean that although the debtor may receive a deduction for IHT purposes, the creditor may be within the scope of IHT instead. In addition, as a tax charge may arise for the owner, the creditor and the guarantor, there may be double tax charges.

This new rule is far reaching and will have implications for arrangements which might not have otherwise been caught.

Two-year rule

It will only be necessary to consider whether a residential property meets the definition of a dwelling on the date of the chargeable event in order to determine whether it is within the scope of IHT. However, where a UK residential property owned by an individual through an overseas vehicle has been sold (or a loan repaid), the proceeds of sale (or loan repayment) will remain within the scope of IHT for a period of two years following the disposal/repayment.

There is no two-year rule where a trust is the ultimate owner of an overseas vehicle, rather there will be an exit charge post-5 April 2017 when the disposal proceeds are removed from the UK or invested in a non-UK asset. This means that de-enveloping of property structures should be considered as a matter of urgency.

The IHT 10-year charges and exit charges will be proportionately reduced where assets become subject to the new rules from 6 April 2017.

The government is considering how it will ensure compliance with the new rules.

Double taxation relief

The interaction of these new rules with existing estate tax treaties has been clarified. As the asset subject to estate taxes may be shares in a non-UK company or a loan, the terms of some double tax treaties may exempt it from a charge to UK IHT. However, no such exemption will be available if no inheritance or estate tax is charged under the law of the other jurisdiction, or the effective rate of tax charged is zero.

What to do now

- All individuals, trusts, companies and partnerships holding UK residential property should consider whether they, their ultimate beneficial owners and/or their creditors will be affected by these changes
- Where UK residential properties are held within company and/or trust structures, a decision should be made regarding whether to 'de-envelope' before 6 April 2017 and the tax implications of doing so
- Settlors who have retained an interest in trusts set up by them, and individuals who have given away interests in UK residential property which they still occupy, should consider the impact of the 'gifts with reservation' rules, which could treat UK residential property as remaining within their estates for IHT purposes from 6 April 2017.

Long-term resident non-doms

Alongside the introduction of the new '15 out 20 year' deemed-domiciled rule, certain measures are being introduced to mitigate the adverse impact on long-term resident non-doms.

Capital gains tax rebasing

CGT rebasing will only be available to individuals who become deemed-domiciled on 6 April 2017 (rather than later) and who have paid the remittance basis charge at least once. Rebasing for tax purposes will only apply to 'qualifying assets' – broadly foreign assets acquired before 5 April 2017, which are still owned on that date, and which have not been situated in UK at any time between 16 March 2016 and 5 April 2017.

There appears to be no requirement that the individual owned the asset throughout this period.

The rebasing will apply automatically to qualifying assets sold on or after 6 April 2017, although an election may be made to dis-apply rebasing where this is advantageous to the taxpayer.

Segregating mixed funds

Non-doms will be able to segregate their 'mixed funds' (accounts containing a mixture of income, clean capital and realised capital gains) and this opportunity, referred to as 'cleansing', will last for two years from 6 April 2017. Only funds held in bank accounts by individuals will be eligible for segregation. Other assets will need to be converted into cash before segregation takes place. The opportunity will be available to all non-doms who have used the remittance basis of taxation before 5 April 2017 (other than returning non-doms).

Protections for foreign settlor-interested trusts

There will be new income tax and CGT protections for foreign trusts which are settlor-interested and which were established before the settlor became deemed-domiciled. Without these new protections, deemed-domiciled settlors would be subject, on an arising basis, to CGT on trust capital gains and income tax on income arising to trusts and their underlying companies.

The government seems content for both income and gains to roll up within protected trusts and for tax charges only to arise when benefits are taken from such structures. This will make non-resident trusts very attractive for all non-doms, including those who have been in the UK for only a few years, since it be possible for income and gains to accumulate in such trusts without any need to claim the remittance basis and pay the associated remittance basis charge of £30,000 or £60,000.

The trust income and CGT protections will not be lost if the settlor or a close family member receives a benefit from the trust.

Where property is added (directly or indirectly) to a trust by a settlor after becoming deemed-domiciled, the protections will no longer be available and the trust will be 'tainted'. Protection will also be lost if property is added to a trust by the trustees of a second trust and the settlor of the first trust is the settlor or a beneficiary of the second trust.

New anti-avoidance rules for trust distributions

UK-resident settlors will be taxed on capital benefits received by their close family members, to the extent that the family member is not subject to tax.

From 6 April 2007 it will no longer be possible to 'wash out' trust capital gains by making capital payments to non-resident beneficiaries. Capital payments made to a UK resident beneficiary who becomes non-UK resident before the payment is matched to a capital gain will also be disregarded. This will mean that capital gains remain available to match with capital benefits received by UK-resident beneficiaries.

There will also be provisions to prevent distributions being made to individuals not subject to UK tax which are gifted to a UK resident individual within three years.

The government is proposing to introduce a fixed valuation method for calculating the taxable value of capital benefits received from trusts.

What to do now

1. All UK resident non-doms should consider whether a foreign trust may be an efficient means of holding investments such that income and capital gains may roll up on a tax-free or tax-deferred basis. However, the new rules are extremely complex and professional advice will be needed in all such cases
2. Non-doms who will become deemed-domiciled in the

future may wish to receive trust distributions whilst they are still able to take advantage of the remittance basis of taxation

3. Non-doms becoming deemed-domiciled on 6 April 2017 should consider whether they can take advantage of the automatic rebasing of non-UK assets for CGT purposes. In particular, individuals who have not previously paid the remittance basis charge may wish to consider if it is worth doing so for 2015-16 or 2016-17
4. Non-doms who are not eligible for automatic CGT rebasing should consider whether they may rebase non-UK assets by selling and reacquiring them whilst still eligible for the remittance basis of taxation. Such 'bed and breakfast' type transactions normally require a minimum period of 30 days between the sale and corresponding re-acquisition, unless the later acquisition is by a spouse rather than individual themselves
5. Individuals may wish to consider ceasing to be UK resident. In order to reset the '15 out of 20 year' clock, it will be necessary to be non-resident for at least six full tax years
6. All non-doms should consider whether they have mixed funds which can be 'cleansed' within the two-year window from 6 April 2017
7. 'Returning non-doms' who may be affected by the new rules should take immediate advice, as their tax position is likely to change significantly and they will not benefit from the reliefs available to other non-doms who become deemed-domiciled under the 15 out of 20 year rule.

Summary

Although some points of detail have still to be clarified, notably in relation to the income of protected trusts, the impact of most of the new provisions is now reasonably clear. With little time remaining until the new regime comes into force on 6 April 2017, now is the time for those potentially affected to take action. Your usual Saffery Champness contact will be pleased to assist.

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