ITS News

International Tax Services

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Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. As a result, PwC's International Tax Network is excited to bring you a new publication that will offer updates and analysis on international tax changes around the world.

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

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In this issue

Tax Legislation

Belgium

Draft legislation on excess notional interest deduction

Following the budgetary proposal of the Belgian government, the Chamber has approved new draft legislation limiting the carry forward of excess Notional Interest Deduction (NID).

These rules can substantially impact Belgian companies with current or carried forward excess NID and can potentially result in the inability to use existing carried forward NID. Under current rules, excess NID can be carried forward for seven years. Under the proposed legislation, new excess NID could no longer be carried forward. The stock of excess NID (stemming from previous years, i.e. tax years 2012 and before) could still be carried forward for seven years, though the excess NID that could be applied in a given year would be limited to 60% of the taxable profit. This 60% limit would only be applicable to the part of taxable profit exceeding 1 million EUR.

PwC observation:
This new draft legislation can substantially impact the tax position of Belgian companies as to their effective tax rate. Moreover, it could also significantly impact group's IFRS/USGAAP financial statements to the extent that previously DTA's have been set up which need reversal as a consequence of a non-(partial) use of carried forward NID. Therefore, carefully monitoring its impact and determining remedying actions will be a key.

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Belgium

Belgian withholding tax regime incompatible with European Law

Recent case law of the European Court of Justice (ECJ) states that the Belgian withholding tax regime is currently incompatible with EU law.

These recent decisions clearly show that the current Belgian withholding tax regime applicable to foreign investors is not in line with the free movement of capital. Therefore, clear arguments are now present to, for certain cases, file tax claims to recover the withholding tax unduly suffered in Belgium. Indeed, in Tate & Lyle(C-384/11), the ECJ condemned Belgian tax law as discriminatory against non-resident investors. Under Belgian tax law, Belgian parent companies holding a participation in a Belgian subsidiary of less than 10% but with an acquisition value of more than 2.5m EUR will de facto, on an overall basis, not be subject to withholding tax on the dividends received from such Belgian subsidiaries, while European parent companies with a Belgian subsidiary cannot claim the same benefits. In Commission v. Belgium (C-387/11), Belgium is condemned for its discriminatory taxation regime of non-resident investment companies without a permanent establishment in Belgium which were not permitted to recover the withholding tax paid on income from capital and movable property.

PwC observation:
Taxpayers should assess the opportunity to file tax claims in view of recovering unduly paid withholding tax in Belgium.

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Belgium

New guidelines from the Belgian Ruling Office for profit participating loan

The Belgian Ruling Office has recently updated and re-confirmed their position on Profit Participating Loans (PPL).

To recall, a PPL is a financing instrument which can be used by multinational corporations (MNCs) to fund a Belgian finance centre, resulting in a stable tax regime applicable on intra-group financing activities (irrespective of FX, fluctuations in the interest rates, etc.,). The refined guidelines of the Belgian Ruling Office include the abolishment of a formal minimum effective tax rate requirement provided that, amongst other things, the required substance is in place. The PPL, combined with some other features of the Belgian legal environment (such as the ability to opt for a very flexible legal form - reducing burdensome procedures - and the opportunity to keep accounts in a foreign currency), underpin the fact that Belgium still remains an attractive location for intra-group treasury and financing activities. PwC Belgium obtained several PPL rulings very recently.

PwC observation:
MNCs considering setting up new intra-group financing functions or re-thinking their intra-group financing activity should assess the feasibility of a Belgian PPL-funded financing entity as the latter might allow achieving a stable and low effective tax rate on future financing income.

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Canada

Comprehensive income tax package released

On October 24, 2012, Canada's Department of Finance released a Notice of Ways and Means Motion ("NWMM").

This comprehensive package of technical income tax legislation implements a variety of outstanding technical tax amendments, including legislative proposals relating to the taxation of Canadian multinational corporations with foreign affiliates ("FAs"). The NWMM is the culmination of legislative developments that started almost ten years ago. Given these proposals have been released as a NWMM, final FA legislation can be expected sometime in 2012 or early 2013, which would provide taxpayers and their advisers some stability in this area for the first time in a decade.

Upstream loan rules

On August 19, 2011, Canada's Department of Finance introduced new rules to cause certain loans from a FA of a corporation resident in Canada to a "specified debtor" to be included in the income of the Canadian taxpayer. Although the Canada Revenue Agency had expressly permitted loans from FAs to Canadian corporations in the past, the Department of Finance indicated that these new rules were necessary to support the integrity of Canada's taxable surplus and hybrid surplus regimes.

The restrictions imposed on the ability of a taxpayer to claim a deduction in respect of an amount included in income relating to an upstream loan, the lack of sufficient "grandfathering" provisions and several other items were the subject of many submissions received by the Department of Finance. The revised upstream loan proposals released as part of the October 24, 2012 NWMM are generally more robust and address several (but not all) of the concerns with the original draft.

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Foreign tax credit generator rules

The foreign tax credit generator ("FTCG") rules were introduced by the March 4, 2010 federal budget. These rules target hybrid investments in foreign entities that are used to artificially create credits and deductions for foreign taxes when the taxpayer doesn't bear the economic cost of the tax. When these rules apply, the foreign tax associated with the relevant investment is excluded in computing foreign tax credits and other available deductions. When the rules apply to a hybrid investment in a FA, the foreign tax of other FAs in the same ownership chain is also denied.

The FTCG rules were substantially revised by draft legislation released on August 27, 2010. The scope of these proposals was very broad. When a taxpayer had a hybrid instrument in a FA, the rules could apply to every member of the taxpayer's corporate group and could deny the foreign tax of all FAs in the group that were subject to tax under the relevant foreign law, even if these FAs had no connection to the hybrid instrument.

The October 24, 2012 NWMM restricts the scope of the FTCG rules by generally limiting the denial of foreign tax to FAs in the same ownership chain as the hybrid investment.

However, the NWMM also introduces two new proposals that can broaden the scope of the rules:

- An indirect funding rule, which can draw in other FA chains when entities in these chains receive funding from the chain that includes the hybrid investment; and
- A deemed ownership rule, which deems an investor to have a hybrid investment in a FA when dividends on the FA shares are treated as interest or other deductible payments under the relevant foreign tax law.

While the rules are now more focused, they can still apply to deny genuine foreign tax that has no connection to the hybrid nature of an investment.

PwC observation:

The relief provided in the NWMM relating to the ability to claim deductions in respect of amounts included in income under the upstream loan rules represents a welcome change for taxpayers. However, taxpayers that hope to take advantage of this deduction will need to maintain up-to-date information relating to the tax attributes of FAs. Notwithstanding the extension of the grandfathering period for debts outstanding on August 19, 2011, companies with pre-existing upstream loans may want to consider the impact of these loans on their financial statements before August 2016.

The FTCG rules should allow taxpayers to make hybrid investments without affecting the foreign tax of their existing FAs, provided these investments are structured carefully. Taxpayers should isolate hybrid investments in separate ownership chains, closely monitor any transfers of funds between chains and closely examine the foreign tax treatment of distributions on their investments.

Canada

Foreign affiliate dumping and shareholder loan rules

On October 15, 2012, Canada's Department of Finance released a Notice of Ways and Means Motion ("NWMM") to implement certain remaining March 29, 2012 federal budget proposals as well as certain other previously announced tax measures.

The NWMM contains revisions to the foreign affiliate ("FA") dumping rules and shareholder loan rules that were released as a consultation draft on August 14, 2012. The NWMM has been introduced into Parliament as a Bill and is progressing quickly through the Parliamentary process. The expectation is that these rules will be enacted into law prior to the end of 2012.

Overview

The March 29, 2012 federal budget introduced sweeping proposals to curtail transactions involving an investment in a FA by a corporation resident in Canada ("CRIC") that is controlled by a non-resident of Canada. These transactions have been referred to by the Department of Finance as "FA dumping" transactions. A dividend will be deemed paid by the CRIC to its foreign parent to the extent of any non-share consideration given by the CRIC for an investment in a FA. This deemed dividend will be subject to Canadian withholding tax (as reduced by the applicable treaty). No paid up capital ("PUC") additions will be allowed for any share consideration issued by the CRIC in exchange for an investment in a FA.

Under current shareholder loan rules, a loan by a Canadian corporation to a non-resident shareholder or a person "connected" with that shareholder (other than a FA of the Canadian corporation) is deemed to be a dividend paid to the non-resident shareholder if the loan is not repaid within one year after the end of the taxation year of the lender or creditor in which the loan arose. The deemed dividend is subject to Canadian withholding tax (as reduced by the applicable treaty).

Legislative proposals released by Canada's Department of Finance on August 14, 2012 included significant changes to the FA dumping rules and the shareholder loan rules, including:

- An expansion of the FA dumping rules to indirect acquisitions of FA shares;
- Relief from the FA dumping rules through PUC reduction and reinstatement rules as well as for investments arising in the context of certain corporate reorganisations; and
- The introduction of an exception from the shareholder loan rules, and the FA dumping rules, for debt that qualifies as a "pertinent loan or indebtedness" ("PLOI").

Changes to FA dumping rules

Key changes to the FA dumping rules under the October 15, 2012 NWMM include:

- The PLOI exception is now available when the maturity date of an existing debt obligation owing to the CRIC by a FA is extended as long as the debt obligation is a PLOI immediately after the time of the extension;
- The threshold for when an acquisition of shares of a Canadian corporation will be treated as an indirect acquisition of a FA has been increased from 50% to 75%;
- A narrow exception to the application of the FA dumping rules is provided for an investment that can be demonstrated to meet a "more closely connected" test;
- A number of relieving measures expand the circumstances in which the PUC reduction and reinstatement rules will apply;
- Exceptions are available for internal reorganisations that involve an indirect acquisition of FA shares by a CRIC resulting from a direct acquisition by the CRIC of shares of another corporation resident in Canada; and
- An indirect funding exception which essentially provides for a "look through rule" when financing "more closely connected" FA operations via indirect loans.

Changes to shareholder loan rules

Key changes to the shareholder loan rules under the October 15, 2012 NWMM include:

- The PLOI regime has been extended to cover loans made by or to certain partnerships;
- The PLOI regime applies on a loan-by-loan basis (instead of to all loans and indebtedness incurred by a particular borrower); and
- Inclusion of a new restriction on the availability of the PLOI regime where a CRIC or certain partnerships rely on Canada's treaty network to reduce the income inclusion relating to a PLOI.

PwC observation:
The NWMM responds to various submissions received by the Department of Finance, making important changes to the FA dumping proposals and shareholder loan rules, mostly of a relieving nature. The NWMM is complex and may have far reaching implications for existing Canadian subsidiaries of foreign multinationals and for transactions in which a foreign acquirer buys a Canadian target that holds FAs.

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Luxembourg

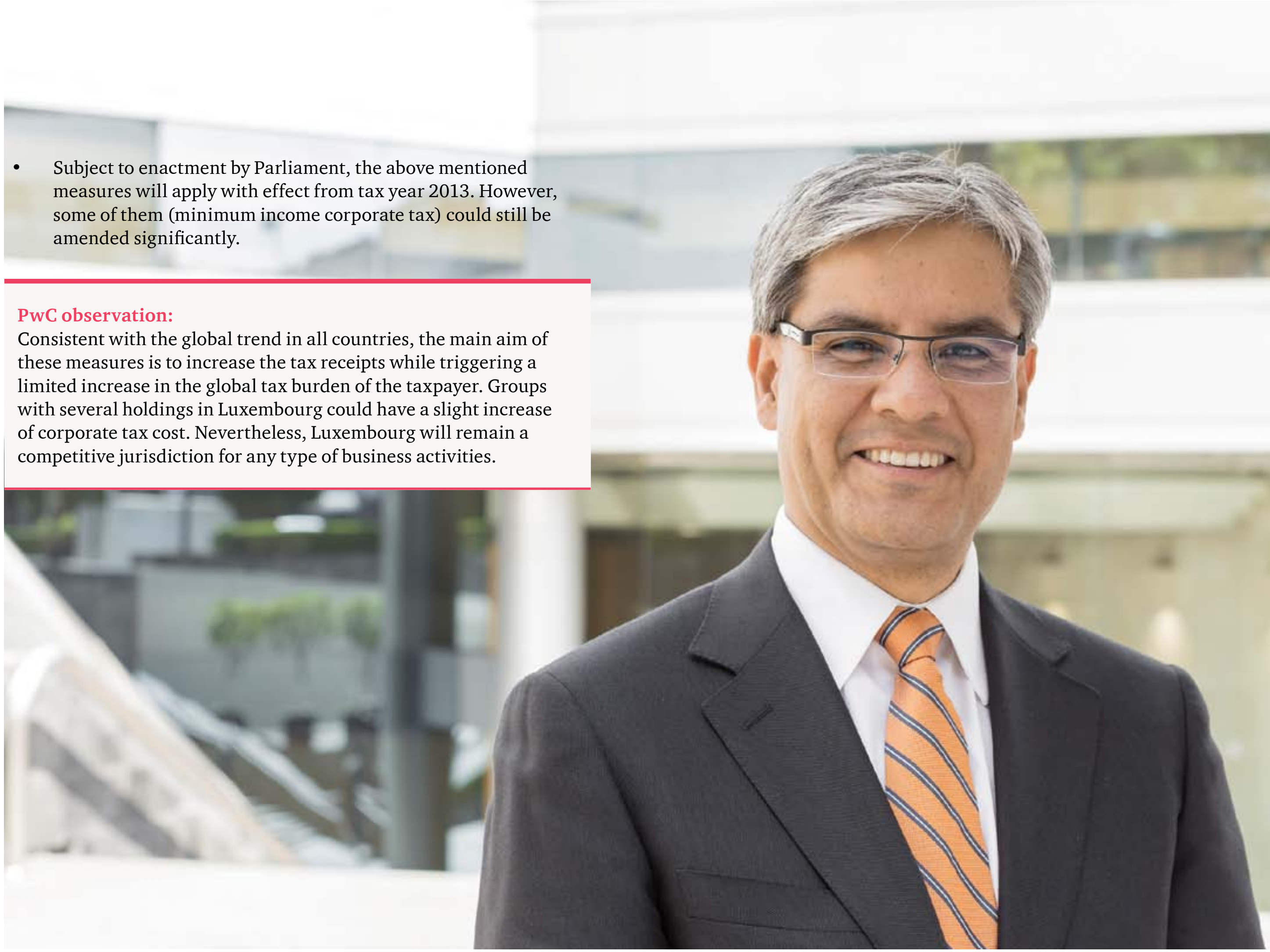
Bill in relation to new tax measures for individuals and corporations

On November 8, 2012, Bill No. 6497 (the "Tax Bill") including the proposed new tax measures for individuals and corporations was released.

The main new tax measures for corporations are the following:

- The aggregate corporate income tax rate will increase from 28.80% to 29.22% (for Luxembourg City) due to an increase of the solidarity tax from 5% to 7%;
- The minimum corporate income tax will increase from 1,500 EUR to 3,000 EUR (increased to 3,210 EUR by the solidarity surtax), applicable to all fully resident taxable corporate entities whose activity does not require a business license, and for which the sum of financial assets, transferable securities and cash at bank exceeds 90% of their total balance sheet (receivables due by affiliated companies are to be included in the list of assets to be considered when assessing the said 90% threshold);
- A minimum corporate income tax ranging from 500 EUR to 20,000 EUR (to be increased by the solidarity surtax), depending on the company's total balance sheet will be introduced for all other corporations (i.e., it will not apply to entities above falling within the scope of the 3,000 EUR minimum tax);
- The investment tax credit granted on additional investments will be decreased from 13% to 12%. The investment tax credit on global investments will be decreased from 3% to 2% for the portion of investment exceeding 150,000 EUR. The rate of 7% for the first portion of investment not exceeding 150,000 EUR will remain unchanged.
- Subject to enactment by Parliament, the above mentioned measures will apply with effect from tax year 2013. However, some of them (minimum income corporate tax) could still be amended significantly.

PwC observation:
Consistent with the global trend in all countries, the main aim of these measures is to increase the tax receipts while triggering a limited increase in the global tax burden of the taxpayer. Groups with several holdings in Luxembourg could have a slight increase of corporate tax cost. Nevertheless, Luxembourg will remain a competitive jurisdiction for any type of business activities.



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Proposed legislative changes

Denmark

New proposed bill aims to tighten the Danish tax legislation

On October 3, 2012, the Danish Ministry of Taxation presented a new Bill, which, based on the proposal, aims to target certain tax avoidance structures.

The proposed amendments tighten Danish tax legislation in three areas:

- withholding tax will be imposed on certain intra-group restructuring
- withholding tax exemption will not apply if Danish flow-through entities are used
- full tax liability will be incurred if business entities are either registered or have an effective seat of management in Denmark.

PwC observation:
The Bill has not yet been adopted, but we do not expect that major changes will be made to the proposal during the hearing process. The most significant proposed amendment can be said to be the imposition of withholding tax on certain intra group restructuring which is primarily aimed at private-equity owned structures.

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France

Draft finance bill for 2013

The Finance Bill for 2013 is under discussion before French Parliament. The key provision concerning corporations is the modification of tax deduction of interest charges. Some other provisions are also expected which are listed below.

New limitation to tax deduction of interest charges
For Financial Years (FY) 12 and 13, the tax deductibility of the net financial charges incurred by an enterprise/a French tax group would be limited to 85% (75% from FY14).

This new limitation would be applicable in addition to existing limitations such as the interest rate capping on related party debt, thin capitalisation rules and the so-called "Amendment Carrez" that prevents the deduction of interest charges related to the financing of the acquisition of shares when the purchaser does not actually make decisions relating to the shares and does not exercise control or influence over the target.

In a French tax group, the limitation would apply to net interest charges related to debts with entities which are not members of the French tax group. This is a permanent disallowance as there would be no carry-forward mechanism of the disallowed interest.

The new limitation would apply to both related and third party financing regardless of the purpose of the financing. A safe-harbour would be introduced to prevent the application of this limitation when the total amount of net financial expense of a company/a French tax group does not exceed 3m EUR.

Other main measures

- For FYs ending on or after December 31, 2012, the tax losses carried forward would only be available to offset 1m EUR plus 50% (instead of 60% currently) of the current taxable income exceeding that amount.
- For FYs ending on or after December 31, 2012, gains on investment shares owned for more than two years would be taxed up to 10% on the "gross amount" of the gains realised (instead, currently, of the gain, "net" of capital losses realised on investment shares realised during the same financial year).
- The exceptional 5% additional contribution to Corporate Income Tax (CIT) would be extended to FYs 13 and 14, so that the effective CIT rate would remain 36.1%.

PwC observation:
As the new limitation to tax deduction on interest charges would apply "retroactively" to FYs closed on or after December 31, 2012, it is highly recommended to start identifying the net financial charges that would fall within the scope of this new measure. Particular attention should notably be paid within French tax groups where the computation of the 15% capping already raises some practical questions

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Singapore

Public consultation on the extension of antimony laundering laws to tax crimes

The Monetary Authority of Singapore (MAS) is proposing to designate wilful or fraudulent tax evasion as serious offences under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act with effect from July 1, 2013.

The MAS is seeking public feedback on its consultation paper which sets out an implementation framework of essential measures that financial institutions will have to comply with in order to counter money laundering and the financing of terrorism.

Financial institutions will have to develop and implement policies, controls and procedures to effectively detect and deter the laundering of proceeds from wilful or fraudulent tax evasion through the financial system.

This designation will allow the powers presently used to investigate and prosecute money laundering offences to be similarly applied to the proceeds of the designated tax crimes. Foreign jurisdictions may also make requests for mutual legal assistance to pursue wilful or fraudulent tax evaders and their criminal proceeds.

PwC observation:
With the designation, financial institutions will have to apply the appropriate anti-money laundering and countering the financing of terrorism measures to prevent the laundering of proceeds from serious tax crimes.

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Administration & case law
United States

IRS extends FATCA effective dates and modifies key concepts

Internal Revenue Service (IRS) Announcement 2012-42, released October 24, addresses the implementation of various provisions under the Foreign Account Tax Compliance Act (FATCA). FATCA was enacted to prevent and detect offshore tax evasion by US taxpayers. The FATCA regime imposes substantial new due diligence requirements on foreign financial institutions (FFIs) related to holders of financial accounts, and requires reporting and withholding in certain circumstances.

The IRS and US Treasury released proposed regulations in February 2012 which adopt a phased approach to implementation of various provisions of FATCA with effective dates beginning January 1, 2013. In a number of jurisdictions, FATCA compliance is hampered by certain legal impediments such as data privacy, and the US Treasury, along with several jurisdictions, has developed two model intergovernmental agreements (IGAs), which address these legal issues and provide different implementation dates.

The IRS and Treasury received comments on the practical issues related to the phased implementation timeline in the proposed regulations and the timeline in the model IGA, In response, the Announcement adjusts some of the effective dates and clarifies certain key concepts.

The announcement:

- aligns effective dates described in the proposed regulations for client on-boarding and pre-existing accounts review to the Model IGA dates,
- delays the withholding on gross proceeds,
- pushes back the earliest effective date of FFI agreements,
- modifies certain concepts around grandfathered obligations.

PwC observation:
Companies and stakeholders should proactively analyse how these new effective dates and revised concepts may affect their preparation for FATCA compliance.

Some of the items to consider include:

- the convergence of multiple FATCA deadlines on January 1, 2014 creates a 'FATCA cliff' that requires a higher degree of integrated planning and resource loading for 2013 (FATCA due diligence, reporting and withholding are now 'live' within the same year),
- monitor and analyse IGA and local law restriction impacts with regard to withholding and reporting,
- initiate pre-existing analysis (e.g., locate, stratify, and profile) in preparation for release of FATCA final regulations,
- identify and resolve current information reporting issues (i.e., chapter 3/61) impacting FATCA compliance,
- revisit tactical/short-term approaches for operations and technology (including third party service providers) planned for the previous timeline,
- refocus approach for identifying grandfathered obligations and monitoring material modifications,
- continue analysing legal agreements to identify FATCA responsibility (i.e., contractual versus regulatory requirement).

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United States

Tax court's PepsiCo opinion upholds taxpayer's equity characterisation of hybrid instruments

The PepsiCo case involved a US multinational company that treated certain inter-company advances (advance agreements) from the US to a foreign affiliate as equity investments for US federal income tax purposes, thereby characterising the payments received by the advancing party as equity distributions. The Internal Revenue Service (IRS) challenged the treatment of the advance agreements.

The Tax Court, ruling in favour of the taxpayers, upheld the taxpayers' treatment of the advance agreements as equity and not as debt for US federal income tax purposes.

The court's analysis in *PepsiCo* provides several points to consider for multinational companies with inter-company financing arrangements.

These include:

- a taxpayer's decision as to how to capitalise its affiliates with debt or equity is best left with the taxpayer (so long as the capitalisation decision is consistent with the substance) and not the court,
- structuring a cross-border inter-company financing arrangement that results in different tax treatment for US and foreign tax purposes is not, by itself, determinative of how the instrument is properly characterised for US federal income tax purposes,
- the purpose of an arrangement for foreign tax purposes will not, itself alone, dictate the appropriate treatment for US tax purposes, although the facts that are essential for foreign tax treatment will likely be accepted as facts for US tax purposes, but not to the exclusion of other facts,
- the analysis of debt-equity factors in *PepsiCo* may not necessarily be adopted by a court in the context of a foreign multinational that desires to structure an inter-company arrangement with its US subsidiary as debt for US tax purposes.

PwC observation:
Although this decision is a memorandum opinion that does not serve as binding precedent, the decision provides important insight into the Tax Court's current approach to handling ongoing IRS challenges to cross-border inter-company financing arrangements.

Given the inherently factual nature of this inquiry, taxpayers with cross-border financing arrangements should consider preparing contemporaneous analysis and documentation to clearly establish the parties' intent and the substance with respect to the desired characterisation of the arrangement for US federal income tax purposes.

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Treaties
Canada

Canada-US information exchange agreement

Canada and the US have begun negotiating an agreement to improve cross-border tax compliance through enhanced information exchange under the Canada-US treaty, including information exchange in support of the provisions enacted by the US commonly known as the Foreign Account Tax Compliance Act (FATCA).

PwC observation:
FATCA was enacted by the US in 2010 and requires Canadian financial institutions to report directly to the IRS information about accounts held by US taxpayers and by entities in which US taxpayers hold a substantial ownership interest. In an effort to minimise conflicts with privacy and other laws, Canada and the US are currently negotiating to place greater reliance on government-to-government mechanisms for the exchange of information, similar to the procedures already in existence under the Canada-US tax treaty.

Canada

Canada – Hong Kong Tax treaty

The newly signed tax treaty between Canada and Hong Kong, which is based on the OECD Model Tax Convention, aims to remove tax barriers to encourage trade and investment between Canada and Hong Kong.

The new Canada-Hong Kong tax treaty will, in particular, reduce the rates of withholding tax applicable to certain cross-border payments and ensure that double taxation does not arise for individuals and companies doing business or earning income in the other jurisdiction.

PwC observation:
Canadian taxpayers have been waiting for some time for Canada to enter into a tax treaty or tax information exchange agreement with Hong Kong so that the active business earnings of Hong Kong resident foreign affiliates can qualify as exempt earnings and be repatriated back to Canada tax-free. For purposes of this exemption, once the new tax treaty enters into force, it will be deemed to have entered into force for the 2012 fiscal year (the year of signing).

Czech Republic

Czech – Gabon double tax treaty negotiations

Representatives from the Czech Republic and Gabon held a first round of negotiations for an income tax treaty in Prague on 12-14 November. Any resulting treaty would be the first agreement of its kind between the two countries.

PwC observation:
Tax residents of both countries concerned may benefit from the implications of the DTT once concluded.

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Czech Republic

Tax information exchange agreement between the Cayman Islands and the Czech Republic

Representatives from the Cayman Islands and the Czech Republic signed a tax information exchange agreement (TIEA) during a meeting in Cape Town on October 26-27, 2012. This is the first TIEA concluded between the countries. It will enter into force after being ratified by both sides.

PwC observation:
The respective tax authorities, thus, will be able to benefit from the features of TIEA.

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Ireland

Recent ratifications of tax treaties

The double tax treaty which was signed between Ireland and Saudi Arabia on October 19, 2011, was approved for ratification by the Saudi government in September 2012.

This treaty provides for a 0% withholding tax on dividends if the company receiving the dividend holds at least 25% (directly) of the capital of the company paying the dividends. A 5% rate will apply in other cases. The treaty provides for a 0% withholding tax on interest, and a 5% withholding tax on royalties related to industrial, commercial, or scientific equipment. In other cases, an 8% rate will apply.

On August 29, 2012, the Qatari government ratified Qatar's pending tax treaty with Ireland. The double tax treaty, which was signed on June 21, 2012 provides for a 0% withholding tax on dividends and interest, and a 5% withholding tax on royalties.

The Panamanian government also approved for ratification the double tax treaty signed with Ireland in November 2011. Under the treaty, dividends, royalties and interest will be taxable at a maximum rate of 5% with exemptions for certain interest payments.

PwC observation:
These recent ratifications signal Ireland's commitment to expanding and strengthening its double taxation treaty network. Ireland has signed comprehensive double taxation agreements with 68 countries, 61 of which are now in effect and negotiations are ongoing with other territories at this time. Double Taxation Agreements seek to eliminate and minimise double taxation that might arise for companies operating crossborder and are an essential tool for achieving international tax efficiencies.

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New Zealand

Tax treaty update

In recent months, New Zealand has been active in negotiating new double tax agreements and updating its existing double tax agreements. Key features of the new and updated double tax agreements are lower withholding tax rates and an increased focus on the exchange of tax information to combat tax evasion.

Recent developments include:

New double tax agreement with Papua New Guinea
New Zealand has signed a new double tax agreement with Papua New Guinea. The new treaty is intended to help reduce tax impediments for doing business between the two countries. The agreement will come into force once both countries give legal effect to it, which in New Zealand's case will occur through Order in Council.

Update to Malaysia double tax agreements
On November 6, 2012 the New Zealand Government signed a protocol to amend the existing double tax agreement with Malaysia, which was first entered into in 1976. The protocol relates to the exchange of information and is intended to better equip both nations to combat tax evasion. The Protocol will come into force once both countries have exchanged diplomatic notes.

New double tax agreements with Japan
In June, Officials in New Zealand and Japan reached an 'in principle' agreement to a new double tax agreement between New Zealand and Japan. Details of the new agreement will be released once both governments have approved the agreement.

New double tax agreements with Canada
A new DTA with Canada was signed in May, to replace the 1980 treaty. A key feature of the new agreement is lower withholding taxes on dividends and royalties between NZ and Canada. The withholding tax rate on dividends will reduce from 15% to a maximum of 5% for an investor who holds at least 10% of the shares in the company paying the dividend. The withholding tax rate on royalties will reduce from 15% to 10%, with a further reduced rate of 5% for royalties relating to copyright, computer software and others.

NZ signs multilateral tax convention
In October, the New Zealand Government announced that it had signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters. The convention will help with the detection and prevention of tax evasion by allowing Inland Revenue to request information from other tax authorities. It will also enable Inland Revenue to seek assistance in collecting outstanding tax debts from absconding taxpayers who move overseas. NZ Revenue Minister, Peter Dunne, stated that signing the Convention had significantly increased New Zealand's international tax treaty network "at a single stroke".

Government to pursue FATCA agreement with US
On October 25, the New Zealand Government announced that it would look to negotiate an intergovernmental agreement (IGA) with the United States in relation to the Foreign Account Tax Compliance Act (FATCA). If an IGA is agreed, New Zealand financial institutions will report on customers with US links to the Inland Revenue Department, which in turn will report to the US Government. In New Zealand, a joint working group comprising private sector representatives and officials is being formed to work through FATCA issues.

PwC observation:
The recent activity in treaty negotiations is indicative of the New Zealand Government's desire to increase trade between New Zealand and other countries. Announcements of further treaty negotiations are expected over the coming months.

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Singapore

Update on tax treaties

Singapore signed an enhanced treaty with Poland on November 4, 2012 which provides for lower withholding tax rates on interest, dividends, royalties, exemption for shipping and air transport income, as well as more liberal permanent establishment rules as compared to the existing treaty.

It also incorporates the internationally agreed Standard for Exchange of Information (EOI) for tax purposes. Singapore also signed a comprehensive treaty with Jersey on October 17, 2012, and an agreement for the exchange of information with Bermuda on October 29, 2012. These agreements have not been ratified and do not have the force of law.

A protocol to the treaty between Singapore and Italy was ratified and entered into force on October 19, 2012. The protocol incorporates the EOI into the existing treaty and provides for more liberal permanent establishment rules.

PwC observation:
The enhancements to the treaties with Poland and Italy, and the treaty with Jersey are comprehensive treaties that should facilitate economic exchange, trade and investment flows between Singapore and the respective treaty partners. All these treaties also incorporate the internationally agreed Standard for the Exchange of Information and are an indication of Singapore's commitment to tax transparency.

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Switzerland

Double taxation agreement between Switzerland and Hong Kong has entered into force

The double taxation agreement (DTA) between Switzerland and Hong Kong entered into force on October 15, 2012 and is applicable from January 1, 2013 with regard to Swiss taxes, and from April 1, 2013 concerning Hong Kong taxes. It contains an administrative assistance clause in accordance with the international standard.

Dividends
The new DTA allows for a full exemption from withholding tax on dividend payments between associated enterprises (stake of at least 10% of capital). Further, there will be no withholding tax on dividends paid to the national banks of the two jurisdictions or to pension funds or schemes. In all other cases, a maximum rate of 10% dividend withholding tax will apply.

Interest and royalties
According to the new double tax agreement, interest payments shall not be subject to withholding tax in the source country. Royalty payments are subject to a maximum rate of 3% withholding tax.

PwC observation:
Switzerland offers a very attractive double tax treaty network for investors. The new DTA between Switzerland and Hong Kong is the first such agreement between the two parties and will contribute to the further positive development of bilateral economic relations.

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United Kingdom

Protocol to UK/India double taxation convention signed

A protocol to the UK/India double taxation convention (DTC) was signed on October 30, 2012.

Summary of changes

Changes include:

- Replacement of Article 3(1)(f) (definition of “person”), deletion of Article 3(2) , and replacement of Article 4(1) (definition of “resident of a Contracting State”).
- Replacement Article 11 (Dividends) with a new article. The new article limits dividend withholding tax to 10% or 15%.
- Deletion of Article 25 (Partnerships).
- Replacement of Article 28 (Exchange Of Information) with a new article, including exchange of banking information.
- New article 28A (Tax Examinations Abroad). This allows tax authorities from one territory to enter the other territory to conduct interviews, examine records, and be present at tax examinations.
- New Article 28B (Assistance In Collection Of Taxes).
- New Article 28C (Limitation Of Benefits). This denies treaty benefits to a resident of a territory with respect to a transaction if a main purpose of the creation/ existence of the resident or of the transaction was to obtain treaty benefits.

Entry into force and effective dates

The Protocol will enter into force once all ratification procedures have been completed in both the UK and India and each has notified the other.

The new Exchange Of Information, Tax Examinations Abroad, and Assistance in Collection of Taxes articles have retrospective effect. The provisions “...shall apply in respect of any matter referred to in these Articles even if such matters pre-date the entry into force of this Protocol or the effective date of any of its provisions.”

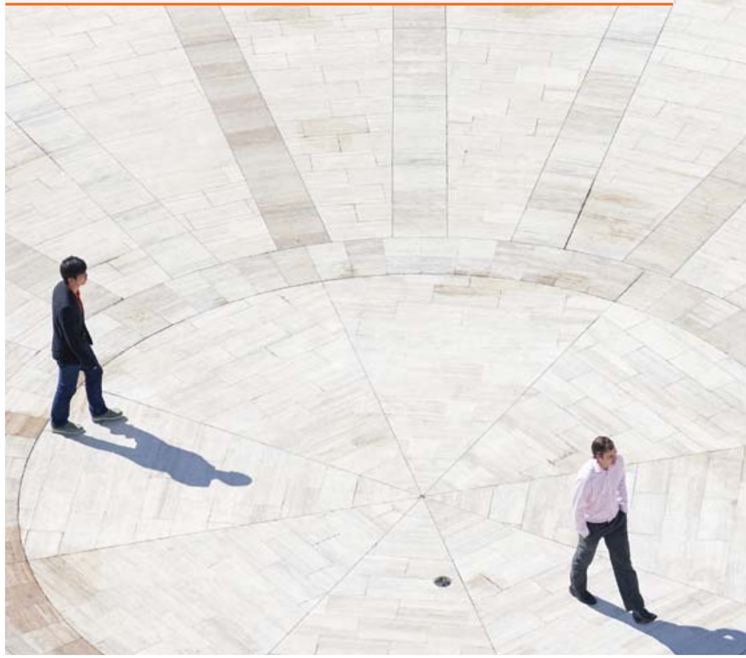
Otherwise, the protocol has effect:

- **For withholding taxes –**
  for amounts paid on or after the protocol enters into force.
- **In India –**
  in respect of taxes levied for fiscal years beginning on or after the date the protocol enters into force.
- **In the UK:**
  - for income tax and capital gains tax - for any year of assessment beginning on or after April 6 in the calendar year following that in which the protocol enters into force.
  - for corporation tax - for any financial year beginning on or after April 1 in the calendar year following that in which the protocol enters into force.
  - for petroleum revenue tax - for any chargeable period beginning on or after January 1 in the calendar year following that in which the protocol enters into force.

PwC observation:

It is intended that treaty benefits will be extended to partners in a partnership to the extent that the partners are subject to tax on the partnership income.

The new dividend article will have little impact in practice as the UK does not deduct withholding tax from dividends, and India has a dividend distribution tax which applies irrespective.



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