ITS News

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Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. 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.

Tony Clemens
Global Leader International Tax Services Network
T: +61 2 8266 2953
E: tony.e.clemens@au.pwc.com

In this issue

Tax Legislation
Belgium

Legislative amendments impacting tax aspects of cross-border provision of services

As of January 1, 2013, two new provisions with respect to the taxation of services provided by non-residents to Belgian companies entered into force.

Firstly, pursuant to the introduction of a 'catch all' provision for the taxation of non-residents in article 228 Belgium Income Tax Code (BITC), payments for certain qualifying services made by foreign service providers to a Belgian taxpayer would be subject to a Belgian professional withholding tax (WHT) at an effective tax rate of 16.5%.

Services fall within the scope of this professional WHT if they are rendered by a non-resident located in a jurisdiction with whom Belgium has either not concluded a DTT or concluded a DTT which contains a specific provision for certain services such as technical assistance.

Secondly, pursuant to the introduction of a new paragraph in art. 229 BITC, a foreign enterprise would be deemed to have a Belgian establishment in case an individual of the foreign company is performing services in Belgium for more than 30 days within a time frame of 12 months in the context of one or more related projects.

PwC observation:
These new provisions may impact the tax position of foreign enterprises performing services to Belgian companies (e.g. in case service providers are established in India, Brazil, Argentina, Ghana, Rwanda, Morocco, Tunisia, or Romania.). It is highly recommendable to review existing service agreements in order to assess the impact of the new tax aspects of cross-border provision of services.

Pascal Janssens
Antwerp
T: +32 3 2593119
E: pascal.janssens@pwc.be

Axel Smits
Brussels
T: +32 3 2593120
E: axel.smits@pwc.be

Canada

Canadian shareholder loan rules

Under the shareholder loan rules, a loan made by a Canadian company to a non-resident shareholder or to a person connected with that non-resident shareholder (other than a foreign affiliate) is deemed to be a dividend paid by the Canadian company to the non-resident shareholder if the loan is not repaid within one year after the end of the taxation year of the lender in which the loan arose.

Any such deemed dividend is subject to Canadian WHT (as reduced by the applicable treaty). The WHT is recoverable when and if the loan is repaid (and the repayment is not part of a series of loans and repayments), provided that the non-resident applies for a refund of the WHT within a specified time.

On December 14, 2012, a new elective exception to the shareholder loan rules was enacted for loans or indebtedness that qualify as pertinent loans or indebtedness PLOI. A PLOI is defined as a loan received or an indebtedness incurred by a non-resident corporation to which the shareholder loan rules would apply if:

- the amount became owing after March 28, 2012;
- at the time the loan was made or the indebtedness arose, the Canadian company was controlled by the non-resident corporation or another non-resident corporation not at arm's length, and
- the Canadian company and the non-resident that controls the Canadian company jointly elect in writing for the exception to apply in respect of the amount owing.

The effect of this election is to withdraw the loan or indebtedness from the application of the shareholder loan rules and subject it instead to an interest imputation regime. Under the interest imputation rules, the Canadian company will be required to include in income interest computed using the higher of the actual interest rate on the loan or indebtedness or a prescribed rate, that is equal to the Government of Canada treasury bill rate (determined quarterly) plus 4% (presently just less than 5%). Any interest actually charged by the Canadian company on the loan or indebtedness will reduce the income inclusion.

PwC observation:
With the enactment of these rules, uncertainty arose regarding the application of the PLOI regime to loans or indebtedness owing on March 28, 2012. The question was whether a non-resident that had received a loan from a Canadian subsidiary before March 28, 2012 could elect into the PLOI regime by repaying the original loan and making a 'new' loan, and in so doing not be subjected to the shareholder loan rules. PwC recently learnt that the Department of Finance's view is that a PLOI election does not exempt a loan or indebtedness owing on March 28, 2012 from the shareholder loan rules (where the loan is repaid and re-loaned after March 28, 2012).

This interpretation would mean that the relieving PLOI regime applies on a prospective basis only (i.e. for loans made or indebtedness incurred after March 28, 2012). Taxpayers should review all shareholder loans in existence on March 28, 2012 to determine any necessary action. If the shareholder loan rules have already applied in respect of an amount owing, taxpayers will need to determine whether planning is available to obtain a refund of any WHT due on the resulting deemed dividend. PwC will be making further submissions to the Department of Finance regarding this matter.

Ken Buttenham
Toronto (Ontario)
T: +1 416 869 2600
E: ken.buttenham@ca.pwc.com

Maria Lopes
Toronto (Ontario)
T: +1 416 365 2793
E: maria.lopes@ca.pwc.com

Chile

Indirect Sales of Chilean assets

On September 27, 2012, a tax reform was enacted which included amendments to the Chilean indirect sales rules. The concept of Chilean source income has been extended to include capital gains derived from the alienation of foreign entities having an underlying asset in Chile.

This is taxed in Chile provided some specific requirements are met, regardless of the domicile or residence of the buyer.

PwC observation:
The new legislation applies a 35% tax rate provided all the requirements are met. Additionally, there are specials rules to determine the tax cost and the provisional WHT rate to be applied. The implications need to be analysed on a case by case basis to determine whether or not the new indirect sales rules apply to a given transaction.

Cyprus

Amendment to the period for which tax losses may be carried forward

In the case of persons (individuals and companies) which are required by the Assessment and Collections of Tax Law to keep proper books and records and to prepare audited financial statements, losses of any tax year will not be carried forward and will not be set off against income of any tax year after the lapse of five years from the end of the tax year in which the loss was incurred.

PwC observation:
Previously tax losses were available to be carried forward without time limitation. Effectively, the competitiveness of Cyprus as an international business centre is not compromised by this measure.

Germany

Germany expected to enact Company Taxation Bill shortly

The German Federal Council approved the Company Taxation Bill on February 1, following approval by the Federal Parliament on January 17.

We expect Germany to enact the bill in the upcoming weeks; it must be signed by the Federal President and published in the Federal Law Gazette.

The bill could particularly affect foreign multinationals with investments in German tax consolidated groups *Organschaft*. The bill substantially broadens the dual consolidated loss (DCL) rules applicable to *Organschaft* structures.

It also imposes an additional *Organschaft* requirement under which shares in a controlled entity must be allocated to a German permanent establishment (PE) of the controlling entity throughout the *Organschaft's* existence. Further amendments regard a potential 'fix' for improperly executed profit and loss transfer agreements (PLTA) and rules dealing with the required loss absorption wording in the PLTA.

PwC observation:
New DCL-rules may restrict tax deduction of expenses in Germany in *Organschaft* structures.

Sandra Benedetto
Santiago
T: +56 2 2940 0155
E: sandra.benedetto@cl.pwc.com

Stelios Violaris
Nicosia
T: +357 2255 5300
E: stelios.violaris@cy.pwc.com

Nicos Chimarides
Nicosia
T: +357 2255 5270
E: nicos.chimarides@cy.pwc.com

Stefan Brunsbach
Frankfurt
T: +49 69 9585 6319
E: stefan.brunsbach@de.pwc.com

Proposed legislative changes

New Zealand

Proposed changes to the thin capitalisation regime

An Officials' issues paper seeking feedback on suggested changes to the thin capitalisation regime was released on January 14, 2014. The paper explicitly states that it will not consider the levels of the existing 'safe harbour' debt to asset thresholds (60% for 'inbound' and 75% for 'outbound' investors).

It also does not consider rules which reclassify debt as equity but notes that this could be a focus for future work. The key proposals are as follows:

- The inbound thin capitalisation rules would be extended to apply to a resident entity that is controlled by a group of non-resident investors who are 'acting together' in relation to the New Zealand entity. This could include co-operating through a written or tacit shareholders agreement or being effectively coordinated by a person or group of people such as a private equity manager. The rules would also be extended to apply to resident trustees if more than 50% of settlements on the trust are made by non-residents.
- In calculating the world-wide debt percentage, for the purposes of determining whether an entity's New Zealand group debt percentage is less than 110% of the world-wide group debt percentage, debt that is linked to shareholders of group entities would be excluded.
- Where asset values have increased due to a sale of assets to an associated entity, the increase in value will be ignored for the purposes of calculating the group's debt to asset ratio (even if the value uplift has been recognised for accounting purposes), with the exception of internal sales that are part of the sale of an entire worldwide group.
- For the purposes of calculating the debt to asset ratio, capitalised interest will be excluded from the value of assets if a deduction for the interest expense has been taken for New Zealand income tax purposes.
- A New Zealand resident trustee will be subject to the thin capitalisation rules if more than 50% of settlements on the trust have been made by a non-resident, a group of non-residents acting together, or another entity that is subject to the thin capitalisation rules. Currently the rules only apply to resident trustees if more than 50% of settlements have been made by a single non-resident.

Submissions for the proposed changes was closed on February 15. Any changes are expected to be included in a Taxation Bill to be introduced to Parliament later this year.

PwC observation:
The proposals in the paper, if enacted, will widen the scope of New Zealand's thin capitalisation regime and potentially adversely impact businesses already subject to the regime. We will keep a close watch on any further developments in this area.

Sandy M Lau
Wellington
T: +64 946 275 23
E: sandy.m.lau@nz.pwc.com

Nicola J Jones
Auckland
T: +64 935 584 59
E: nicola.j.jones@nz.pwc.com

Michelle D Redington
Auckland
T: +64 935 580 14
E: michelle.d.redington@nz.pwc.com

Spain

Tax step-up of assets

One of the most significant changes in effect since January 2013 is the possibility for corporate taxpayers to step-up the tax basis in their assets.

It is applicable to both movable property and real estate, whether located in Spain and abroad. If the taxpayer opts for the step-up, all movable property needs to be revalued, but the taxpayer is entitled to choose whether to revalue real estate and, in that, case, which specific property.

The amount of the step-up must be calculated using a multiplier provided in the Law, which is dependent upon the year of acquisition of the asset and ranges from 2.2946 for acquisitions made in 1984 and before to 1 for acquistions made in 2012.

The amount of the step-up is subject to a single tax of 5%, which is payable when the taxpayer files the corporate income tax return of the year in which the step-up is made. However, the depreciation arising from the step-up is only deductible as of taxable years starting in 2015. Taxpayers paying the corporate income tax on a consolidated basis may carry out the step-up on an individual basis. The step-up should be reflected in the financial statements and, in that regard, a specific balance sheet needs to be prepared and approved by the Board of Directors.

PwC observation:
Taxpayers should analyse whether this option can lead to net tax savings by comparing the 5% adjustment cost and the net present value of future tax depreciation.

Ramon Mullerat
Madrid/Barcelona
T: +34 915 685 534
+34 932 532 748
E: ramon.mullerat@es.pwc.com

Anna Mallol Jover
Barcelona
T: +34 932 537 166
E: anna.mallol.jover@es.pwc.com

Administration & case law
Cyprus

Information Exchange and Tax Administration Update

Law on Administrative Cooperation in the Field of Taxation

Information exchange law is introduced (in compliance with the European Union (EU) Directive No. 2011/16/EU) between the Republic of Cyprus and the other member states of the EU covering all natural and legal persons of the EU. The law covers all taxes of any kind excluding value-added tax (VAT), customs and excise duties, consumption taxes, and social insurance contributions.

The exchange of information can be undertaken upon request, automatically or spontaneously.

Collection of information upon request is undertaken in line with applicable local procedures.

Following agreement, officials of the other member states can be present in the Republic of Cyprus during the conduct of the administrative investigations.

As per the EU Directive under conditions, the Republic of Cyprus may deny the provision of information for periods prior to 2011, as well as in cases where it would result in disclosure of a trading, industrial or professional secret or method which would be contrary to public order.

The automatic exchange of information applies to natural persons resident in another Member State earning the following revenues in the Republic of Cyprus:

- Income from employment.
- Director's remuneration.
- Life insurance.
- Pension.
- Ownership of immovable property and income therefrom.

The Republic of Cyprus may provide information spontaneously, for example in cases where it has reasons to assume that loss of taxes arises in another member state.

The exchange of information is also possible between member states and third countries, subject to conditions and following agreement between the counterparties.

This law is effective as of January 1, 2013. The provisions relating to the automatic exchange of information will be effective as of January 1, 2014 and the provisions relating to the possible presence of officials from another member state in the Republic of Cyprus will be effective as from January 1, 2015.

Exchange of Information extended to include countries with which there are agreements for the exchange of tax information

The Assessment and Collection of Tax Law has been amended in a way which allows the exchange of information not only with jurisdictions with which DTTs exist but also with jurisdictions with which there are agreements for the exchange of tax information.

In addition, the tax authorities may opt not to disclose the foreign tax authority which had requested information within the scope of exchange of information, if it is considered that such disclosure could compromise the examination.

Improved administrative measures

In an effort to reduce the administrative burden of companies, documentation supporting tax returns shall be kept for a period of six years from the end of the tax year to which it relates as opposed to seven years previously.

Additionally, the number of instalments for provisional tax is reduced from three to two. The first instalment is due on July 31 and the second on December 31 of the relevant tax year.

PwC observation:
The recent activity in tax and related law amendments by the Cyprus Government is an indication of a desire to increase further transparency and at the same time simplify existing administrative burdens of the taxpayer.

Stelios Violaris
Nicosia
T: +357 2255 5300
E: stelios.violaris@cy.pwc.com

Nicos Chimarides
Nicosia
T: +357 2255 5270
E: nicos.chimarides@cy.pwc.com

United States

Final FATCA regulations issued: Let the compliance begin

Stakeholders patiently waiting for guidance regarding the FATCA need not wait any longer as the final regulations were issued along with a press release on January 17, 2013.

FATCA was enacted as part of the Hiring Incentives to Restore Employment Act (HIRE Act) on March 18, 2010 to serve as an administrative tool to prevent and detect US tax evasion and improve taxpayer compliance. As a result, chapter 4 (Sections 1471 - 1474) was added to Subtitle A of the Internal Revenue Code.

Chapter 4 expands the US information reporting regime by imposing documentation, withholding, and reporting requirements on payments to Foreign Financial Institutions (FFIs) and Non-Financial Foreign Entities (NFFEs).

The length of these regulations (over 500 pages) is not surprising given that FATCA's statutory provisions were intentionally broad and gave considerable discretion to the US Treasury and the IRS to narrow its scope when promulgating regulations.

In addition, the issuance of the final regulations follows the conclusion of negotiations of several inter-governmental agreements (IGAs) between the US Treasury and various foreign governments addressing FATCA implementation.

PwC observation:
FATCA remains one of the most ambitious, comprehensive, and complex information reporting regimes in the world. The final regulations provide many of the needed details and clarifications regarding customer on-boarding, customer due diligence, account opening, documentation, registration, as well as tax reporting, and withholding.

The US Treasury and IRS have outlined and appear to have followed a policy approach using the guideposts of a risk-based approach, collaborations with non-US governments, and simplification. As a result, the regulations make favourable changes such as increasing the time available for reviewing existing accounts, expanding the ability to use existing documentation, and deferring the application of FATCA for certain existing obligations.

The story is still unfolding especially with the level of cooperation and implementation details from foreign governments that are expected to implement IGAs. Taxpayers should review and update any steps taken based on the proposed regulations. For example, plans to modify or replace operational processes and information technology systems should be updated.

As part of this effort, companies should also broadly quantify their compliance costs based on the simplifications in the final regulations. Do the simplifications substantially improve the bottom line compliance costs? How might the final regulations mitigate a previously expected drain on resources?

Stuart Finkel
New York, NY
T: +1 646 471 0616
E: stuart.finkel@us.pwc.com

Dominick Dell'Imperio
New York, NY
T: +1 646 471 2386
E: dominick.dellimperio@us.pwc.com

Steve Nauheim
New York, NY
T: +1 202 414 1524
E: stephen.a.nauheim@us.pwc.com

United States

New proposed GRA regulations: Failures to file and deficiencies in GRAs and other documents

US persons who either fail to timely file a GRA or related documents under the Section 367(a) regulations, or file such documents with material deficiencies, will face different rules for obtaining relief under proposed regulations released on January 30, 2013.

The proposed regulations also address failures to file (and deficient filings of) certain documents required in the Section 6038B regulations concerning outbound transfers, as well as Form 926, and the Section 367(e)(2) regulations for liquidations into foreign corporations.

Background

In general, certain non-recognition transfers of stock by US persons to foreign corporations are taxable, except to the extent the taxpayer files and maintains a GRA. GRAs are generally triggered (and thus US federal income tax must be paid on the gain realised but not recognised on the initial transfer) if certain events (such as a disposition the stock of the transferred corporation) occur prior to the close the fifth full taxable year following the year of the initial transfer. However, certain triggering events qualify for exceptions if the US transferor files a new GRA to account for the subsequent event (a 'Revised GRA').

The current GRA regulations require taxpayers seeking relief to meet a 'reasonable cause' standard. By contrast, the proposed regulations would only require the US person to demonstrate that the failure was not 'willful'.

On the other hand, the proposed regulations would continue to apply the current 'reasonable cause and not willful neglect' standard to US persons seeking relief from failure to report penalties under Section 6038B. Additional highlights include:

- The 2010 IRS directive (the 'GRA Directive'), which applies to timely filed but deficient GRAs and related documents, was not revoked (but likely will be revoked when the regulations are finalized, if not sooner.
- Whether the failure to file a GRA or to comply in all material respects with the GRA regulations was willful is to be determined based on all the relevant facts and circumstances.
- The proposed regulations would eliminate the requirement that the IRS respond to requests for relief for missed and deficient GRA filings within 120 days of receipt of the request.
- The proposed regulations would extend the requirement to file a Form 926 to outbound stock transfers where the US transferor files a GRA.
- The proposed regulations would provide relief rules similar to existing proposed GRA relief rules for failures to file statements.

PwC observation:
The proposed regulations appear taxpayer friendly in that they replace the existing 'reasonable cause' standard in the current GRA relief regulations with a less onerous 'willful failure' standard. Furthermore, the proposed regulations do not revoke and replace the temporary GRA Directive that applies to timely-filed but deficient GRAs and related documents.

In light of the temporary nature of the GRA Directive, US persons that have entered into GRAs should carefully review all GRAs and related statements, and perfect such filings as appropriate. In particular, taxpayers should determine if any of their GRAs used 'available upon request' or similar language for either the fair market value or basis of the transferred stock.

The proposed regulations make clear that the IRS considers such GRAs materially deficient and will only provide relief to correct them under the temporary GRA Directive.

Tim Anson
Washington, DC
T: +1 202 414 1664
E: tim.anson@us.pwc.com

Carl Dubert
Washington, DC
T: +1 202 414 1873
E: carl.dubert@us.pwc.com

Marty Collins
Washington, DC
T: +1 202 414 1571
E: marty.collins@us.pwc.com

Treaties
Canada

Canada's growing TIEA network

Canada signed a TIEA with Liechtenstein on January 31, 2013 and with Uruguay on February 5, 2013. These will enter into force at a later date.

PwC observation:
Once these TIEAs enter into force, Canada's exemption system can apply to the net earnings from an active business carried on in Liechtenstein or Uruguay by a Controlled foreign company (CFC) resident in either jurisdiction.

Ken Buttenham
Toronto (Ontario)
T: +1 416 869 2600
E: ken.buttenham@ca.pwc.com

Maria Lopes
Toronto (Ontario)
T: +1 416 365 2793
E: maria.lopes@ca.pwc.com

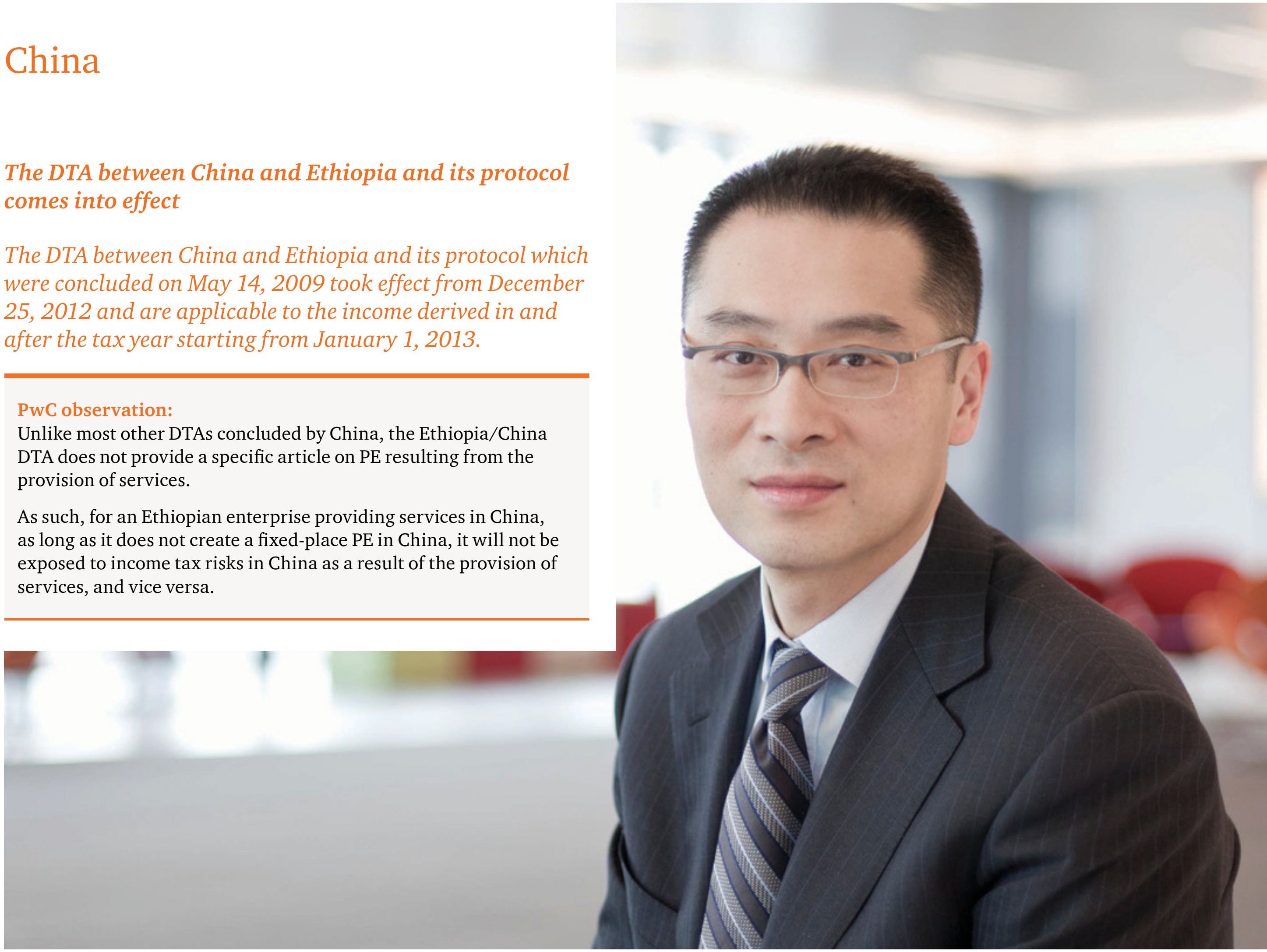
China

The DTA between China and Ethiopia and its protocol comes into effect

The DTA between China and Ethiopia and its protocol which were concluded on May 14, 2009 took effect from December 25, 2012 and are applicable to the income derived in and after the tax year starting from January 1, 2013.

PwC observation:
Unlike most other DTAs concluded by China, the Ethiopia/China DTA does not provide a specific article on PE resulting from the provision of services.

As such, for an Ethiopian enterprise providing services in China, as long as it does not create a fixed-place PE in China, it will not be exposed to income tax risks in China as a result of the provision of services, and vice versa.



Matthew Mui
PwC China
T: +86 10 6533 3028
E: matthew.mui@cn.pwc.com

China

China's interpretation on the capital gains article under the Singapore/China DTA

Departmental Interpretation Notes DIN on the DTA between China and Singapore ('China/Singapore DTA') were issued two and half years ago.

The interpretation in that DIN is applicable to other DTAs concluded by China if the provisions of the relevant articles in those DTAs are similar to those in the China/Singapore DTA.

The State Administration of Taxation has now issued a new circular Public Notice [2012] No.59 to clarify the following matters in relation to the capital gains article under the China/Singapore DTA and the relevant DIN:

- More clarification regarding the interpretation of Article 13.4 of the China/Singapore DTA (in respect of the disposal of shares of 'immovable property holding company'), including:
  - Definition of the term 'immovable property';
  - Clarification that the 'three-year look back period' referred to in the DIN for determining whether the value of immovable properties exceeds the 50% threshold shall refer to the 36 consecutive calendar months preceding the month in which the alienation of shares takes place.
  - Clarification on how to determine the value of assets and immovable property.
- Revised interpretation of the meaning of 'a participation, directly or indirectly' under Article 13.5 of the China/Singapore DTA for assessing the 25% shareholding threshold in a non-immovable property holding company.

Matthew Mui
PwC China
T: +86 10 6533 3028
E: matthew.mui@cn.pwc.com

PwC observation:
The clarification for Article 13.4 of the China/Singapore DTA helps both the tax authorities and treaty residents in applying the relevant capital gains article in the DTA.

The shift in the interpretation of the 'direct and indirect participation' concept may both give rise to opportunities and throw up challenges to treaty residents with regard to alienation of shares of non-immovable property holding companies if the relevant provision in the applicable treaty also contains the clause 'direct and indirect participation'.

It is important for treaty residents to take this development into consideration in future transactions and tax planning for group holding structures.

Cyprus

Tax treaty update

New DTT between Cyprus and Ukraine signed

A new DTT between Cyprus and Ukraine has been signed. The new treaty will become effective as from January 1 of the year following the year in which the new treaty will be ratified by the two countries. The old USSR treaty currently in operation between the two countries will be terminated on the date the new treaty will become effective.

Based on the provisions of the new treaty:

- WHT rates are as follows:
  - Dividends - 5% provided minimum participation of 20% or minimum investment of 100,000 EUR; 15% in all other cases.
  - Interest - 2%.
  - Royalties - 5%; 10% in case of royalties from films.
- Cyprus retains the exclusive taxing right on disposals of Ukrainian shares.

Protocol amending the DTT between Cyprus and Poland

The protocol amending the DTT between Cyprus and Poland dated July 4, 1992 entered into force on November 9, 2012. As a result it has effect in both Contracting States:

- in respect of taxes withheld at source - to amounts of income derived on or after January 1, 2013
- in respect of other taxes on income, to such taxes chargeable for taxable years beginning on or after January 1, 2013.

The major changes introduced by the Protocol are set out below.

Scope:
The provisions of the Protocol will no longer apply to the Polish agricultural tax.

Dividends:
The Protocol introduces a maximum 5% rate of WHT on dividends and exempts from WHT dividends paid to an immediate parent company which owns at least 10% of the capital of the company paying the dividend. The DTT previously provided for 10% WHT rate instead.

Interest:
The Protocol introduces a maximum 5% WHT on interest, while the DTT previously provided for 10% WHT rate.

Director's fees:
The protocol shifted a place where the director's fees are to be taxed to the country of which a director is a resident. Until now, based on the DTT, such income was subject to taxation also in the country of company's registered seat. Based on the favourable provisions of the DTT, such income was effectively exempted from taxation in the country of director's residence. The Protocol makes this optimisation no longer available.

Elimination of double taxation:
In accordance with the provisions of the Protocol, the amount of tax imposed on capital gains and business profits paid in the Cyprus, may be deducted from the tax paid in Poland (the so-called ordinary credit method). This is a disadvantage for Polish taxpayers, because on the basis of the DTT Polish taxpayers were able to apply a method of exemption with progression to such income. The Protocol eliminates 'tax sparing', with respect to tax due but effectively not paid under domestic legislation in another contracting state.

Exchange of information:
The Protocol changes rules and scope of the provisions governing information exchange.

PwC observation:
Combined with the beneficial provisions of the Cyprus tax legislation and practice, this new treaty and Protocol reinforce the position of Cyprus which firmly establishes itself as one of the favourite choices for Polish and Ukrainian inbound and outbound investments.

Panicos Kaouris
Nicosia
T: +357 2255 5290
E: panicos.kaouris@cy.pwc.com

Christos Charalambides
Nicosia
T: +357 2255 3617
E: christos.charalambides@cy.pwc.com

Hong Kong

Signing of the Hong Kong/Italy DTT

Hong Kong signed a DTT with Italy on January 14, 2013, bringing the number of treaties signed by Hong Kong to 27. The DTT has not yet entered into force pending completion of the ratification procedures by both sides.

PwC observation:
When the HK/Italy DTT is in place after ratification by both parties, it is expected that Hong Kong will be removed from the list of jurisdictions with low level of taxation or lack of adequate exchange of information maintained by the Italian Government. Hong Kong companies will also be benefitted from the preferential treaty rates on dividends, interest, and royalties when invest in Italy.

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

Ireland

Recent ratifications of tax treaties

The Ireland-Panama DTT, signed on November 28, 2011, entered into force on December 19, 2012.

Its provisions generally apply in Ireland from January 1, 2013. In Panama, provisions for withholding, income, and other taxes apply from January 1, 2013, and change of information provisions apply from January 1, 2009. The treaty provides a 5% WHT on dividends, interest, and royalties if the beneficial owner of the income from these sources is resident in the other state.

The DTT which was signed between Ireland and Saudi Arabia on October 19, 2011, came into effect on January 1,2013. This treaty provides for a 0% WHT on dividends if the company receiving the dividend directly holds at least 25% of the capital of the company paying the dividends. A 5% rate will apply in other cases. The treaty provides for a 0% WHT on interest, and a 5% WHT on royalties related to industrial, commercial, or scientific equipment. In other cases, an 8% rate will apply.

Taiwanese President Ma Ying-jeou met with John McGuinness, chair of the Ireland-Taiwan Parliamentary Friendship Society, in Taiwan on January 7 and expressed his desire to negotiate an income tax treaty with Ireland. Ma said he believes a treaty would be “an incentive to lure investment because it helps reduce costs.” A tax treaty would be the first agreement of its kind between the two countries.

PwC observation:
These recent ratifications signal Ireland’s commitment to expanding and strengthening its DTT network. Ireland has signed comprehensive double taxation agreements with 68 countries, 64 of which are now in effect and negotiations are ongoing with other territories at this time. DTTs seek to eliminate and minimise double taxation that might arise for companies operating cross-border and are an essential tool for achieving international tax efficiencies. The agreements cover income tax, corporation tax, capital gains tax.

Denis Harrington
Dublin
T: +353 1 792 8629
E: denis.harrington@ie.pwc.com

Poland

Protocol to the Poland-India Tax treaty signed

On January 29, 2013 Poland and India signed a protocol to the Poland-India DTT originally signed in 1989.

The protocol changes the maximum WHT of cross-border dividends and interest from 15% to 10% and the maximum WHT on royalties and fees for technical services from 22.5% to 15%.

The protocol also changes the method for relieving double taxation to the tax credit method for all types of cross-border payments. Previously, this method applied only to dividends, interest, royalties, while the exemption with progression method applied to all other income. In addition, the protocol introduces the concept of a service PE and expands the exchange of information clause.

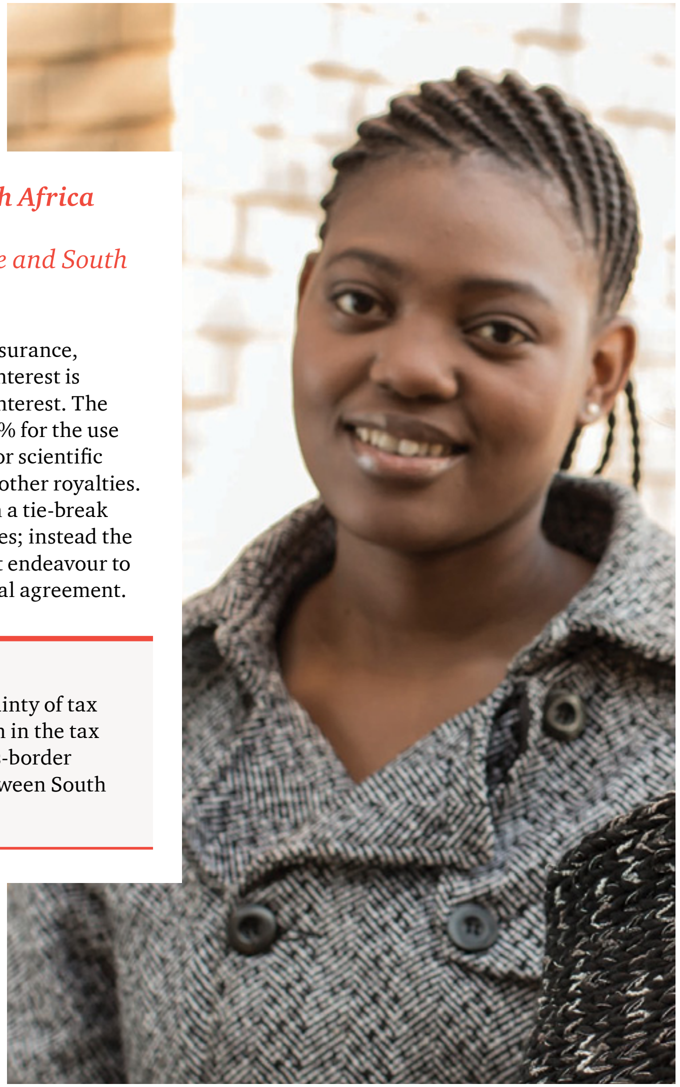
A new feature introduced by the protocol is the limitation of benefits clause. Under this clause, the benefits of the protocol will not be available to residents, transactions and other arrangements, whose main purpose of creation or existence was to obtain the benefits under the DTT.

PwC observation:
Tax residents of both countries concerned may benefit from changes introduced by the new protocol since the WHT rates for interest, dividends, royalties will be reduced. However, companies conducting cross-border transactions between Poland and India need to be aware of the less favourable changes including the elimination of exemption method, the new service permanent establishment rules as well as the limitation of benefits clause.

Agata Oktawiec
Warsaw
T: +48 22 523 4864
E: agata.oktawiec@pl.pwc.com

Michal Malkiewicz
Warsaw
T: +48 22 523 4605
E: michal.malkiewicz@pl.pwc.com

South Africa



Details of the first tax treaty concluded by Chile and South Africa

The text of the first tax treaty concluded in 2012 between Chile and South Africa has become available (the treaty is not in force yet).

The treaty will be Chile's first with an African country, and South Africa's second ever tax treaty with a South American country. The treaty is patterned on the Organisation for Economic Co-operation and Development (OECD) Model, but contains deviations.

These include an extension of the PE concept to services and insurance activities, 'long arm' taxation of gains on share transactions, source-based taxation of pensions and equal treatment for continued pension contributions of seconded employees.

It appears that pursuant to Chile's imputation system, source tax rates for dividends may not be reduced for South African investors, but as regards Chilean shareholders, the South African rate is reduced to 5% in respect of 25% shareholdings.

The treaty rate for bank, insurance, securities, and credit sale interest is 5%, and 15% for all other interest. The treaty rate for royalties is 5% for the use of industrial, commercial, or scientific equipment and 10% for all other royalties. The treaty does not contain a tie-break rule for dual resident entities; instead the competent authorities must endeavour to resolve the matter by mutual agreement.

PwC observation:
The treaty will offer certainty of tax treatment and a reduction in the tax cost associated with cross-border investment and trade between South Africa and Chile.

Spain

New Protocol to the US-Spain Tax Treaty

On January 14, the United States and Spain signed a new protocol which contains substantial amendments to the existing 1990 tax treaty.

Specifically, the new protocol provides for exclusive residence-state taxation of interest, royalties, certain capital gains and certain parent subsidiary dividends that fulfil a number of requirements.

If the exemption for dividends does not apply, a 5% WHT rate would apply if the shareholder holds at least 10% of voting stock; in other cases, the WHT rate is set at 15%.

The new protocol also contains an updated limitation of benefits clause which follows US tax treaty policy and which includes a specific clause for Spanish holding companies of foreign companies *(Entidades de Tenencia de Valores Extranjeros or ETVEs)*.

A new binding arbitration provision is also established for situations where, for a period of two years, disputes have not been resolved through the mutual agreement procedure.

PwC observation:
Once in force, this new protocol will allow Spanish subsidiaries directly held by US companies to be transferred to non-Spanish European platforms free from Spanish capital gains tax. It will allow multinational companies (MNCs) investing into the US to do so through an ETVE and, to the extent that the Limitation on Benefits (LOB) provision specific for ETVEs is satisfied, be entitled to a reduced WHT rate on dividends and participation exemption at the ETVE level on those dividends.

Charl Du Toit
Cape Town
T: +27 529 2367
E: charl.du.toit@za.pwc.com

Johann Hattingh
Cape Town
T: +27 529 2021
E: johann.hattingh@za.pwc.com

Roberto Carlos Rivas
Santiago
T: +56 2 940 0151
E: roberto.carlos.rivas@cl.pwc.com

Ramon Mullerat
Madrid
T: +34 915 685 534
E: ramon.mullerat@es.pwc.com

Anna Mallol
Barcelona
T: +34 932 537 166
E: anna.mallol.jover@es.pwc.com

United Kingdom

Protocol to UK/Belgium treaty enters into force

The protocol amending the 1987 double taxation convention (DTC) between UK and Belgium, which was signed on June 24, 2009, entered into force on 24 December 2012.

The protocol has effect:

- in respect of UK income tax and capital gains tax, for years of assessment beginning on or after April 6, 2013
- in respect of UK corporation tax, for financial years beginning on or after April 1, 2013
- in respect of UK petroleum revenue tax, for chargeable periods beginning on or after January 1, 2013
- in respect of Belgian taxes due at source, for income credited or payable on or after January 1, 2013, and
- in respect of other Belgian taxes; for chargeable periods ending on or after December 31, 2013.

PwC observation:
Changes introduced by the protocol include a new dividend article that grants zero WHT to direct investors and pension funds, and a new interest article that removes WHT on all interest paid between enterprises.

United Kingdom

New UK/Liechtenstein treaty enters into force

A new DTC between the UK and Liechtenstein, which was signed on June 11, 2012, entered into force on December 19, 2012.

The DTC has effect:

- in respect of taxes withheld at source, for amounts paid or credited on or after February 1, 2013
- in respect of UK income tax and capital gains tax, for years of assessment beginning on or after April 6, 2013
- in respect of UK corporation tax, for financial years beginning on or after April 1, 2013, and
- in respect of Liechtenstein income and capital taxes, for taxable years beginning on or after January 1, 2013.

PwC observation:
This is the first DTC between the UK and Liechtenstein.

United Kingdom

New UK/Liechtenstein treaty enters into force

A new DTA between the UK and Bahrain, which was signed on March 10, 2010, entered into force on December 19, 2012.

The DTA has effect:

- in respect of taxes withheld at source, for amounts paid or credited on or after January 1, 2013
- in respect of other taxes for taxable years (or, in the case of UK corporation tax, financial years) beginning on or after January 1, 2013.

PwC observation:
This is the first DTA between the UK and Bahrain.

David J Burn
Manchester
T: +44 161 247 4046
E: david.j.burn@uk.pwc.com

Chloe Paterson
London
T: +44 207 213 8359
E: chloe.paterson@uk.pwc.com

David J Burn
Manchester
T: +44 161 247 4046
E: david.j.burn@uk.pwc.com

Chloe Paterson
London
T: +44 207 213 8359
E: chloe.paterson@uk.pwc.com

David J Burn
Manchester
T: +44 161 247 4046
E: david.j.burn@uk.pwc.com

Chloe Paterson
London
T: +44 207 213 8359
E: chloe.paterson@uk.pwc.com

United Kingdom

New UK/Barbados treaty enters into force

A new DTC between the UK and Barbados, which was signed on April 26, 2012, entered into force on December 19, 2012.

The new DTC has effect:

- in Barbados, in respect of taxes withheld at source, to income derived on or after January 1, 2013
- in respect of other Barbados taxes, for taxable years beginning on or after January 1, 2013
- in respect of UK income tax and capital gains tax, for years of assessment beginning on or after April 6, 2013, and
- in respect of UK corporation tax, for financial years beginning on or after 1 April 2013.

PwC observation:
The new DTC replaces the 1970 DTA (as amended by protocol in 1973) between the UK and Barbados.

United States

US-Japan protocol exempts interest from source State taxation and reduces ownership for exemption from tax on certain dividends to 50%

On January 24, 2013, the United States and Japan signed a new protocol and exchange of notes amending the existing 2003 income tax treaty, protocol and exchange of notes.

The protocol is significant since it provides for exclusive residence State taxation of interest. In addition to other changes, the protocol expands the category of parent-subsidiary dividends exempt from source State taxation and allows the United States to fully apply the Foreign Investment in Real Property Tax Act rules with respect to capital gains.

The protocol also establishes a mandatory arbitration procedure for the resolution of competent authority cases. Unlike the recent protocol with Spain, the protocol with Japan does not revise the limitation on benefits (LOB) article of the treaty.

The protocol will enter into force on the date that the United States and Japan exchange the instruments of ratification. Certain provisions have varying effective dates. Presently, the protocol has not been sent to the US Senate Foreign Relations Committee to begin the ratification process.

PwC observation:
Certain provisions of the Japan protocol (such as exemptions from source State tax on interest and certain dividends) reflect a modernisation of the 2003 treaty consistent with US tax treaty policy. Unlike the recently signed United States-Spain protocol, the protocol does not reflect a fundamental shift in US tax treaty policy with regard to LOB provisions of the treaty.

David J Burn
Manchester
T: +44 161 247 4046
E: david.j.burn@uk.pwc.com

Chloe Paterson
London
T: +44 207 213 8359
E: chloe.paterson@uk.pwc.com

Bernard E. Moens
Washington, DC
T: +1 202 414 4302
E: bernard.moens@us.pwc.com

Ronald A. Bordeaux
Washington, DC
T: +1 202 414 1774
E: ronald.a.bordeaux@us.pwc.com

Oren Penn
Washington, DC
T: +1 202 414 4393
E: oren.penn@us.pwc.com

Contact us

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

Anja Ellmer
International tax services

T: +49 69 9585 5378
E: anja.ellmer@de.pwc.com

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