Briefing

International briefing

Speed read

There is now substantially more detail on the proposals for US tax reform, following publication of the US House Tax Cuts and Jobs Act and the release of the Senate's version of the tax reform conceptual document. Both the French and Dutch governments have proposed changes to protect their tax base in response to separate developments in case law. New tax proposals have been announced in Hong Kong which seek to maintain the territory's position as a leading international business centre in Asia. Meanwhile, the UAE Federal Tax Authority has provided clarity on the deadlines for VAT registration in the UAE.

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As we did last month, we will lead with US tax reform, which remains high up the international tax agenda. The fast moving nature of the political process in Washington means things may well have changed by the time this update goes to press. For this reason we have included some guidance on the process itself below, so you can follow the twists and turns on Capitol Hill over the next few weeks.

US: tax reform bill published

On 2 November 2017, the US House unveiled the legislative text of the Tax Cuts and Jobs Act, which was followed a week later by the release of the Senate's version of the US tax reform conceptual document. The US tax reform legislative text provides an important first look at the details of many proposals that have been discussed at a high level for several months, including what revenue raisers are proposed to pay for some of the policy modifications. While the House and Senate versions share many similarities, there are significant differences between the two proposals.

If enacted, many measures of the proposed House and Senate versions of US tax reform would take effect from 1 January 2018, and the proposals signal the most substantial and wide ranging reform of the US tax code since 1986. While both versions result in an overall estimated tax cut of $1.5 trillion over the initial ten years, the proposals also include measures to broaden the tax base, particularly for multinational groups, and have generated a lot of interest on both sides of the Atlantic.

Keep in mind, however, that the developments are just the first step on the long road to potential tax reform – albeit on an accelerated timeline. There are numerous steps that need to occur for tax reform to become law, and we are seeing debate and updates on a near daily basis.

Certain key measures found in both the House and Senate versions include:

- The reduction in the headline rate of corporation tax from 35% to 20% (1 January 2018 proposed effective date in the House version, but deferred to 2019 in the Senate version).
- Foreign source dividends received exemption for future profits and transitional mandatory repatriation tax on deferred overseas earnings: US shareholders that own more than 10% of a foreign corporation would receive a 100% exemption on foreign sourced dividends, subject to certain holding conditions. There is however a transitional tax which would deem a repatriation of previously deferred overseas earnings (higher applicable tax rates under the House version).
- Two new limitations on the deductibility of US interest expense: (1) the limitation on net US business interest expense to 30% of (US) adjusted taxable income (EBITDA in House version; EBIT in Senate); and (2) an additional limitation on US interest expense targeting disproportionate US indebtedness relative to US company's multinational group. This additional restriction (broadly) limits US deductions based on 110% of US corporation's share of global group's EBITDA (House version) or debt/equity ratio (Senate version).
- For a period of five years starting in 2017, 100% expensing for investment in certain depreciable assets, subject to certain conditions, intended to kick-start capital investment.
- A new tax on certain deductible payments to non-US affiliates and new minimum current tax imposed on certain 'excess profits' amounts earned by foreign subsidiaries. This proposal has already attracted a lot of discussion. Depending on the outcome, this could have a significant impact on global supply chains for any multinationals with significant US activity.

Other notable measures include a proposed limit on the use of net operating losses, a repeal of certain tax credits and a preservation of the R&D tax credit.

As noted above, this is a rapidly changing area and I expect I will have further updates as discussion of the proposals continue.

France: 'exceptional surcharge' proposed

I mentioned in my previous article that the French Court issued its decision (2017-660) regarding the 3% surcharge imposed on dividends paid by French companies to foreign parent companies. It declared the tax to be unconstitutional which has the effect of completely repealing the tax. At that point there had been no announcement from the French government, but I predicted that it would likely quickly introduce a new tax or increase the rate of an existing tax to compensate for, at least in part, the lost revenue that is likely to flow from this decision (estimated to be around €10bn).

On 2 November, the French government did indeed announce a proposed 'exceptional surcharges' to corporate income tax, expected to raise approximately €5bn in revenue. These proposals are currently being discussed by the French Parliament and therefore may be subject to change before they are finalised.

The proposed surcharges would apply to French companies subject to corporate tax, and having gross revenue exceeding €1bn. The surcharge provisions could also apply to French branches of foreign companies if they meet the conditions in terms of revenues.

- The surcharges would be imposed on the amount of corporate income tax due on the results of financial years closed between 31 December 2017 and 30 December 2018.

- The 'exceptional contribution' amounts would equal 15% of the gross amount of corporate tax owed by the taxpayer, before being offset by any tax credit or tax reductions.
- Taxpayers with revenue (as defined above) exceeding €3bn would be subject to an 'additional contribution' equal to 15% of their corporate tax liability, again before taking into consideration any offsets of tax credits or tax reductions. In other words, these taxpayers would be subject to a total surcharge of 30% of their gross corporate tax liability.

With the surcharges, the overall maximum rate of corporate tax could be roughly (taking into account the 3.3% existing surcharge that would be expected to apply to most of these taxpayers) as follows:

- 39.43% for taxpayers only subject to the 'exceptional contribution'; and
- 44.43% for taxpayers subject to both the 'exceptional' and 'additional contributions'.

Whilst the exceptional surcharges proposal is a temporary measure which is clearly a direct response to the loss of revenues from the dividend surcharge, we note that it is in contrast to President Macron's overall aim to reduce France's corporate tax rate from its very high level to a more competitive rate of 28%.

Netherlands: announcement of emergency remedial measures

On 25 October, Advocate General (AG) Campos Sánchez-Bordona to the CJEU published his opinion in relation to two important corporate income tax cases (joined cases *X BV* (C-398/16) and *X NV* (C-399/16)). These considered whether taxpayers, despite being unable to enter into a fiscal unity with subsidiaries established elsewhere in the EU, are nevertheless eligible for benefits from certain separate elements of the fiscal unity regime as if there were the ability to enter into a fiscal unity with foreign subsidiaries (the 'per element' approach).

In *X BV*, the AG considered the interest deduction limitation in the Corporate Income Tax Act 1969 s 10a is contrary to the freedom of establishment since the interest would have been deductible in case of a domestic subsidiary included in a fiscal unity with the domestic parent company.

Should the CJEU and Supreme Court issue final judgments in line with AG's conclusion, this could mean a considerable loss of tax revenue for the Dutch government. As such, the Cabinet has announced emergency remedial measures which would have retroactive effect to 25 October 2017 and would require some Dutch corporate income tax and dividend withholding tax rules to apply in domestic relationships as if there is no fiscal unity. This means, for example, that interest and/or losses may now already no longer be deductible.

These measures could impact many existing fiscal unities. The rules mentioned in the Cabinet's response are the above-mentioned interest deduction limitation, aspects of the participation exemption, the deduction limitation for excessive participation interest, the loss set-off when there is a change of control and, with regard to dividend withholding tax rules, the remittance reduction for redistributions.

At present, there is still uncertainty about how the remedial measures will exactly be implemented and when. However, given the breadth of the proposals, we recommend all groups with Dutch fiscal unities for corporate income tax purposes carefully consider the impact on their group.

Belgium: corporate tax reform

The Belgian government has reached an agreement on legislation for implementing corporate tax reform, which will take place in two phases (2018 and 2020). Key measures of the reform include a reduction in the rate of corporate income tax for 'large companies' to 29% for the 2019 and 2020 assessment years and 25% thereafter, and a reduction in the crisis contribution to 2% for the 2019 and 2020 assessment years and 0% thereafter.

The reform will also introduce a minimum tax base for companies with a taxable profit that exceeds €1m by limiting certain deductions (grouped in a 'basket') to 70% of the taxable profit exceeding €1m. Among the deductions to be included in the 'basket' are: the notional interest deduction; the dividends received deduction carry forward; the innovation income deduction carry forward; and the deduction of losses carried forward and the (old) notional interest deduction carried forward.

Hong Kong: progressive profits tax proposed

On 12 October, the chief executive of Hong Kong, Carrie Lam, in her first policy address to the Legislative Council, set out a broad range of measures to enhance the economy and address various social issues, and proposed a number of tax-related measures.

A central point of the tax measures is a proposal to introduce a progressive profits tax rate for companies. Under the proposal, the first HK $2m of profits earned by a company would be taxed at one-half the current tax rate (i.e., to be taxed at a rate of 8.25%). The remaining profits would continue to be taxed at the existing 16.5% tax rate.

In addition, as part of a broader plan to increase the amount of research and development (R&D) investment made in Hong Kong, the government would introduce a tax incentive through enhanced deductions for qualifying expenditures.

The first HK $2m of expenditures would qualify for an enhanced 300% tax deduction with remaining expenditure enjoying a 200% deduction. These new rules could apply as early as the 2018/19 year of assessment.

UAE: VAT registration

Whilst not a direct tax, I thought it worth briefly mentioning the United Arab Emirates proposed VAT regime (with a standard rate of 5%), as this will affect many companies that have business in the UAE. The VAT regime has been on the cards for a while and, with a rapidly approaching expected implementation date of 1 January 2018, the lack of clarity on the registration for VAT was a concern.

The UAE Federal Tax Authority (FTA) has now announced the deadlines for VAT registration in the UAE:

- Businesses with a turnover exceeding AED 150m should have applied for registration before 31 October 2017.
- Businesses with a turnover exceeding AED 10m should apply for registration before 30 November 2017.
- All other business entities should submit their application before 4 December 2017, so as to minimise the risk of not being registered in time for when VAT goes live.

Registrations can be completed online on the FTA website. ■

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