Briefing

International briefing for January

Speed read

Comprehensive tax reform in Argentina reduces the headline rate of corporate tax from 35% to 25% by 2020. For foreign investors in resident companies in China, direct investment in 'encouraged projects' is incentivised by tax deferrals. In France, there will be progressive reduction of the corporate income tax rate to 25% from 2022/23; and a reduction of the withholding taxes and levies on dividends and capital gains earned by foreign companies. A new two-tiered profits tax rate regime has been introduced in Hong Kong; and Japan has announced significant amendments to its tax regime. Finally, the OECD has issued an update on the digital economy and double tax treaties.

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As I return to my monthly article following the Christmas break, there have been various updates in both the US, which has been dominating the international tax news, and elsewhere around the world.

The extent of corporate tax reform that we are now seeing across the globe does mean that there are a lot of changes for multinationals to keep on top of, but the overall effect should be seen as a positive in opening up the opportunities for businesses looking to invest, expand or restructure.

US tax reform

As has been the case for the last few months, US tax reform has been a rapidly moving beast and often it has been difficult to keep up with all of the developments.

On 22 December 2017, President Trump signed into law H.R. 1 (originally known as the 'Tax Cuts and Jobs Act'). The new law represents the culmination of a lengthy pursuit of business tax reform over the course of more than 20 years.

Overall, it provides a net tax reduction of approximately \$1.456trn over the ten-year 'budget window'. Most of the provisions of the new law, including the headline rate reductions, are generally effective from 1 January 2018, although several provisions are effective either on the date of enactment, or at a specified later date.

The legislation includes substantial changes to the taxation of individuals, corporate and unincorporated businesses in all industries (including multinational enterprises). The details of the tax reform programme have been covered extensively in other *Tax Journal* articles and the broader media (as well as a number of my previous articles) and therefore I don't propose to replicate the commentary here.

However, I end with the comment that for such a substantial revision of the US federal tax code, this legislation has moved very quickly through Congress, with little time for public analysis and comment. It is to be expected that the text will leave many important questions unanswered, to be addressed in future notices, regulations and potentially corrective legislation.

Tax reform elsewhere in the world

With US tax reform dominating discussions, it is easy to lose sight of other recent tax reform announcements.

Argentina

On 29 December 2017, legislation was enacted which implemented comprehensive tax reform to promote investment in and enhance the competitiveness of Argentina. The headline rate of corporate tax will reduce from the current rate of 35% to 25% by 2020. However, an additional withholding tax will be levied on distributed dividends, bringing the total tax rate back up to 35% (where it applies). Changes have also been introduced in relation to the taxation of financial investments, the indirect transfer of shares, thin capitalisation, permanent establishments, transfer pricing and transparency.

Belgium

As reported in our last update, Belgium has introduced corporate tax reform measures and these were enacted into law on 29 December 2017.

China

Profits derived by a foreign investor from resident companies in China will be entitled to a tax deferral incentive. Such profits temporarily will not trigger withholding tax provided that they are reinvested in 'encouraged projects' (subject to other conditions being met). For multinational companies intending to make further investment in China, the newly released policy is to be welcomed and provides more flexibility for multinationals to choose between direct investment in China and traditional investment holding vehicles in Hong Kong or Singapore.

France

Two finance laws with tax provisions have been enacted on the 29 and 31 December 2017. The key measures affecting company taxation are set out below.

Progressive reduction of corporate income tax rate to 25%: Prior tax reform measures in 2016 already provided for a progressive reduction of the standard or ordinary corporate tax rate from 33.33% to 28%.

The Finance Law for 2018 provides for a further progressive reduction of the corporate income tax rate to 25%, fully applicable for financial years from 2022/23. The schedule for phased-in application of the progressive reduction will be as follows:

- In 2018, the 28% rate of corporate income tax will apply for amounts of taxable profit up to €500,000 and a corporate income tax rate of 33.33% will apply for amounts of profit above €500,000.
- For financial years starting from 1 January 2019, the standard rate of corporate income tax will be reduced to 31%, with the first €500,000 of profit being still subject to the 28% rate.
- For financial years starting from 1 January 2020, the 28% rate of corporate income tax will become the new 'ordinary rate' (for all profits).

- For financial years starting from 1 January 2021, the ordinary rate of corporate income tax will be reduced to 26.5%.
- For financial years starting from 1 January 2022, the ordinary rate of corporate income tax will be reduced to 25%.

The 3.3% surtax on the standard corporate income tax remains unaffected.

Reduction of the withholding taxes and levies on dividends and capital gains earned by foreign companies: The Finance Law provides that the rate of withholding taxes (subject to the provisions of relevant tax treaties) assessed on dividends received by foreign corporations, and the rate of the levy assessed on capital gains related to the disposal of substantial shareholdings realised by foreign corporations (again, subject to relevant tax treaties), will now be equal to the new rates of corporate income tax.

The previous 75% rate will, however, remain applicable when the beneficiary of the dividends/gains is established in a 'non-cooperative' state or territory.

Repeal of the 3% tax on dividend distributions: The 3% tax is repealed for dividend distributions paid out as from 1 January 2018. As I have mentioned in a previous article, the repeal of the 3% tax on dividend distributions was required to conform French law to EU law.

Numerous cases litigating this tax are still pending, and in light of the decision of the Constitutional Court, taxpayers may be able to seek refunds of the tax paid in 2016 and 2017.

Hong Kong

A new two-tiered profits tax rate regime has been introduced with the intention of boosting the attractiveness of Hong Kong as a location for business, reducing the overall tax burden on business (especially for small and medium sized enterprises), and encouraging the reinvestment of profits in IT hardware and software and social initiatives. Under the new regime, corporates will be taxed at a rate of 8.25% on the first HK$2m, with remaining profits taxed at the existing rate of 16.5%.

Japan

On 14 December 2017, Japan announced significant amendments to its tax regime. Details of the tax reform provisions are expected to be subsequently unveiled in bills and succeeding tax law amendments, cabinet orders and ministerial ordinances, with the final version of tax reform depending on the outcome of discussions in the Diet.

The corporate tax measures include: tax credits to encourage investment in jobs; tax incentives for assets such as software used for data collaboration; restrictions to special tax measures for certain eligible companies which are not otherwise taking 'positive actions' to invest in jobs and capital; amendments in revenue recognition rules; deferral of recognition of capital gains on shares under specified business restructuring; and changes to the taxation of business reorganisations.

In the area of international taxation, there are provisions concerning permanent establishments (generally implementing recommendations of the BEPS project) and additional amendments to the anti-tax haven (CFC) regime.

OECD looks ahead for 2018

On 15 December last year, the OECD's tax update webcast gave their key areas of focus for 2018. Following a quick update on progress so far they focused on two areas: the digital economy and the challenges it creates; and double tax treaties.

The digital economy

The OECD is expecting to release its interim report on the digital economy in April this year. This will include:

- analysis of how digitalisation affects business models and in turn affects the international tax framework;
- analysis of the impact of the BEPS measures already implemented and how these interact with the digital economy;
- proposals to implement interim measures if analysis determines that is appropriate;
- how tax authorities and companies can take advantage of digitalisation to improve the tax compliance process; and
- next steps.

The responses from the consultation process made it clear that long term solutions and solutions that do not attempt to ringfence the digital economy are preferred. The OECD agrees that digitalisation affects so many areas of business it would be impossible to separate them.

Tax treaties

This is closely linked to the digitalisation of the economy, insofar as it questions whether tax treaties and the threshold for taxing company's activities have kept up with the changing business landscape.

The OECD released the latest edition of the OECD 'Model Tax Convention' on 18 December 2017. The 2017 update to the Model Tax Convention incorporates significant changes developed through the BEPS project.

The 2017 update mainly refl cts a consolidation of the treaty-related measures resulting from the work on:

- BEPS Action 2 (neutralising the effects of hybrid mismatch arrangements);
- BEPS Action 6 (preventing the granting of treaty benefits in inappropriate circumstances);
- BEPS Action 7 (preventing the artificial avoidance of permanent establishment status); and
- BEPS Action 14 (making dispute resolution more effective).

The multilateral instrument (MLI) is expected to come into force in early 2018. In order for this to happen, five signatories must ratify the MLI. At the time of writing, three have ratified with the OECD confident that more are expected to follow in the very near future. The MLI, when in force, will update over 1,100 double tax treaties. This is likely to make treaty analysis more complex for companies, as the changes the MLI makes to treaties is not the same across all treaties and must be carefully considered.

EU tax developments

We conclude with a final word on the EU, with activity in the tax sphere continuing. On 18 December 2017, the European Commission opened an in-depth analysis into two Dutch tax rulings to assess whether an 'unfair advantage' had been provided to Inter IKEA under EU state aid rules.

In parallel to the OECD activity, we have also seen a push on looking at the challenges of taxing the digital economy with a consultation closing on 3 January 2018. Expect to see announcements relating to this over the coming months. ■

For related reading visit www.taxjournal.com

- ▶ US tax reform: the Tax Cuts and Jobs Act (Donald L Korb & Andrew Solomon, 10.1.18)
- ▶ Interpreting double tax treaties in light of the BEPS multilateral instrument (Jeremy Webster & Jamie Robson, 31.8.17)