Briefing

This month's international review

Speed read

In the midst of the ongoing pandemic, governments have been implementing further measures with extensions for tax filing and payment deadlines; in the Netherlands, corporate income taxpayers are to be allowed to create a tax reserve (corona reserve) when determining the tax profit; and the European Commission has proposed a three month filing extension of reportable arrangements under the new EU mandatory disclosure rules (DAC 6). There are withholding tax updates in Russia, Sweden and Egypt.

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After an extremely busy couple of months for international tax as governments rushed through policies in the face of broad based economic collapse, things have become a lot quieter. We are in the in-between times now: most Covid-19 related legislation is already in place; it is too early to unwind crisis policies; and there is little capacity or appetite right now to progress on the big, long term tax reforms that we all know are coming down the track via the OECD, EU and individual states.

Covid-19 developments to the tax landscape

Whilst the current crisis is far from over, world leaders are now faced with the difficult decision of when and how to ease lockdown restrictions in a bid to mitigate the effects of the growing economic recession. GDP growth rates reported for the year's first quarter, before the full impact of the virus had taken effect, indicate that the worst is yet to come for the majority of countries around the world, with the IMF forecasting world GDP to contract by 3% in 2020 and those forecasted to be most severely impacted are the advanced economies, contracting by 6.1%.

We are in uncharted waters and the emergency measures that governments have and are still announcing will undoubtedly create a lasting legacy that will reshape our future economy and have a significant bearing on future tax policy.

The most significant announcements occurred in March and April with some countries offering wide ranging and financially significant aid packages for their citizens; both individuals and businesses. To compliment this all countries, save a small minority, have implemented or proposed extensions for administrative and tax payment deadlines for businesses and individuals who have tax compliance duties over the coming months in response to the pandemic.

Delay to DAC 6 reporting deadlines

The most noteworthy of these for multinational corporations came on 8 May, with the European Commission proposing a three-month delay to the initial reporting deadlines under the EU mandatory disclosure rules (DAC 6), whilst affirming the initial date of application of the rules will remain 1 July 2020.

The proposed amendments are currently for:

- reportable arrangements where the first step was implemented between 25 June 2018 and 30 June 2020 to be reportable by 30 November 2020 (rather than 31 August 2020);
- arrangements where the reporting requirement is triggered between 1 July 2020 and 30 September 2020 to be reported by 31 October 2020; and
- the 30 day reporting requirement would start on 1 October 2020 (rather than 1 July 2020).

The proposal also includes a power for the European Commission to defer the deadline by an additional three months. However, this may only be exercised if during the existing deferral period 'the exceptional circumstances of severe risks for public health caused by the Covid-19 pandemic persist and Member States have to implement lockdown measures'.

This measure might be a welcomed, albeit short, breather to both businesses and intermediaries but the proposal will need approval from both the Economic and Financial Affairs Council (ECOFIN) and the European Parliament before it can take effect. However, in the UK, if approval is given, this will not automatically change the current UK implementation dates and will only change if the UK government positively chooses to implement the deferral.

Evidently, it may be unlikely the UK government would reject implementation of the proposed deferral, particularly in light of HMRC announcing it will accept delayed appeals against decisions and penalties arising from February onwards outside the normal 30-day deadline, whilst also confirming they will consider disruption caused by Covid-19 as a reasonable excuse for taxpayers not meeting their filing and payment obligations.

Changes to withholding taxes

Russia

In Russia, in response to the pandemic, the Ministry of Finance has reportedly sent official letters to Cyprus and Luxembourg requesting changes to the withholding tax provisions of the current income tax treaties between Russia and Cyprus and between Russia and Luxembourg.

The request for renegotiation is to amend Russia's current income tax treaties to a minimum withholding tax rate of 15% on dividends and interest paid from Russia.

The Federation are seeking an amendment to the tax treaty held with Luxembourg, by increasing the minimum withholding tax rate for dividends to 15% (up from 5%) and for interest to 15% (up from 0%), with the intention for it to be effective from 1 January 2021.

It is common knowledge that Russia has three jurisdictions on its 'blacklist'; namely, Cyprus, Malta, and Luxembourg, as these countries are often used when structuring investments into Russia. However, the full extent of Russia's list of jurisdictions for which they would like to amend the withholding tax rates contained in income tax treaties is at present unknown.

Given the UK's treaty agreement with Russia is generally akin to the income treaty currently held between Russia and Luxembourg, save the withholding tax on dividends currently being slightly higher at 10%, it does pose the question of whether Russia will seek to request amendments from the UK and other jurisdictions in the future.

Sweden

Not related to the Covid-19 outbreak, in Sweden, the Ministry of Finance in April announced a proposal to replace its withholding tax on dividends. The current withholding tax law would be completely replaced, and the new tax would be referred to as a withholding tax on dividends (not a coupon tax). The announcement was made with the view of it being effective for dividends paid after 30 June 2022.

If entitled to a dividend at the time of the dividend's payment, any non-Swedish tax resident, would be liable for the new withholding tax. A withholding tax liability would no longer be limited to investors qualifying as legal persons as under the previous law.

The withholding tax rate on dividends, as a starting point, would remain at 30% of the dividend payment, with the taxpayer still entitled to relief at source if applicable. There would be, however, a new requirement for information at the individual level to be provided in a tax return in order to directly benefit from such a reduced tax rate at the time of dividend's distribution.

In certain situations, the withholding tax would be imposed even when a person entitled to receive the dividend is not the same as the person actually receiving the dividend. In these instances, the person receiving the dividend would be considered to be the taxable person. This treatment would make it more difficult to circumvent the rules using certain securities, lending transactions or arrangements.

The proposals ultimately seek to widen the scope of those required to withhold tax on dividends, whilst simultaneously seeking to remain compliant with EU law by proposing certain exemptions to the rule including for example payments to foreign states and charities not liable to tax.

Linking with these proposals, Sweden previously proposed new legislation in 2019, which became effective on 1 January 2020, which permits the deferral of payment of withholding tax on dividends, when the recipient is a foreign legal person with tax losses. This will continue to apply to the new rules.

This was in response to the CJEU judgment in *Sofina SA and others* (Case C-575/17) which noted that the French legislation treats the dividends distributed to a non-resident, loss-making company less favorably compared to loss-making French companies, thus creating a cash flow disadvantage for non-resident, loss-making companies.

The Swedish had a very similar system for corporations and therefore sought to rectify this by permitting the postponement of payment up to four months after the end of the fiscal year that follows the fiscal year when a dividend was paid, for EU members, EEA members with a special agreement, or those with an appropriate tax treaty in place – which should somewhat level the playing field.

With this proposal for a new law on withholding tax on dividends, the Ministry of Finance hopes to achieve an efficient and modern regulatory framework. This should be welcomed as there have been reports of difficulties in the application of the current Withholding Tax Act. It is also positive that a number of exceptions from withholding tax, which already apply under EU law, are now set out in the wording of the law. I'll keep you updated on the progress of this proposal as it progresses through the consultation process.

Egypt

The Egyptian government have also implemented new withholding tax measures; clad as a response to the pandemic; the current rate of 10% withholding tax imposed on dividend distributions made by companies listed on the Egyptian stock exchange will be reduced to 5% when paid to both residents and non-residents. This is a Covid response that looks to encourage business, rather than raise tax revenues.

The have also announced a reduction in the rate of stamp tax imposed on the buying and selling of listed securities to 0.05%, from 0.15% for tax residents and to 0.125% from 0.15% for non-residents, which on a whole seems to signal that the Egyptians are still keen to encourage investment activities during the crisis.

Netherlands: Covid-19 response

The Covid-19 crisis means that many companies may incur a tax loss in 2020. Because this can only result in a (provisional) loss set-off after the tax return for 2020 has been filed, corporate income taxpayers are to be allowed to create a tax reserve (corona reserve) when determining the tax profit for the 2019 financial year. The corona reserve may be created for all or part of the 'corona-related loss' that is expected to be incurred for the 2020 financial year. The corona reserve means that the expected loss for 2020 may be used immediately (subject to certain conditions) to arrive at a lower (provisional) assessment for 2019, thus resulting in a liquidity benefit. It will be interesting to see if there is any movement in this direction in the UK as HMRC's approach to provisional trade loss carry back claims and consequential tax instalment repayments has been less flexible.

The Dutch response also includes taxpayers being permitted to still take a deduction for its mortgage interest payments where they have agreed a payment break of no longer than six months with their respective lender, so that the deduction is not lost due to the repayment requirement not being met when calculating taxable profits.

I suspect that these types of measures specific to real estate will become a growing theme across the global over the coming months, as a consequence of the temporary prohibition of evictions implemented in the US, UK, Germany, France and several other countries, with mortgage lenders simultaneously suspending mortgage payments, offering rent holidays and to give forbearance and not foreclose on late payments. All of which will probably begin to unravel come autumn, with landlords, investors and lenders alike demanding higher rates of return on capital to counteract a summer of being in the red, unless governments implement further measures throughout the remainder of the year at the very least.

However, we are starting to see evidence of this being addressed, with some Australian states providing a land tax concession of up to 25% of their 2020 land tax liability, provided the savings are passed on to tenants.

Overall, whilst we are entering a period of significant economic contraction and all the fallout that unfortunately entails, many people are still hopeful that sharp return to economic growth will occur next year, in line with the IMF's forecasted World GDP expansion of 5.8% for 2021. Whilst still in the middle of the crisis, however, it is difficult for anybody to predict exactly what will happen and the lasting effect on the economy. ■

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