# International Tax Insight

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## Editorial

Welcome to the latest edition of Baker Tilly International's premier tax publication. In an increasingly globalised world, the following content aims to cover key tax topics which should be of interest to businesses operating internationally.

This edition features recent international tax developments emanating from Australia, Brazil, the European Union, India, Ireland, Japan, New Zealand, the Organisation for Economic Co-operation and Development (OECD), Singapore, South Africa and the US.

Should you require further information regarding any international tax matters, please do not hesitate to contact a specialist from one of our member firms, which can be located within our Worldwide Directory at www.bakertillyinternational.com.

I hope you find this document informative.

**Chris Danes**

International Tax Director,
Baker Tilly International

## Australia

**Australian Budget 'Consistent' with BEPS Project**

The international tax measures announced in Australia's Budget 2015 do not 'run ahead' of international efforts to address base erosion and profit shifting (BEPS), the Government has said.

The Government said that the new transfer pricing documentation requirements proposed in the Budget are consistent with the OECD's BEPS recommendations, and the penalty changes are separate from any matter being discussed as part of the BEPS project.

Australia announced in Budget 2015 stricter transfer pricing penalties and documentation requirements, including the introduction of a country-by-country reporting obligation. The Budget includes proposals to double the maximum administrative penalties that can be applied by the Commissioner of Taxation under Division 284 of Schedule 1 to the Tax Administration Act 1953 to companies with global revenues of AUS$1bn (US$810m) or more that enter into tax avoidance and profit shifting schemes (including transfer pricing schemes).

The Government said that the Budget proposals simply strengthen existing general anti-avoidance provisions contained in the Income Tax Assessment Act 1936 and should not be seen as new measures. Moreover, it noted that the language used in the proposed changes is based on a 2014 OECD report entitled *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances*, which is part of the BEPS project.

The 2015 Budget includes plans for a multinational anti-avoidance law, which will enter into force on 1 January 2016. The Government is also seeking to develop a voluntary code of conduct that seeks the disclosure of additional tax information by large companies.

Referring to the UK's controversial Diverted Profits Tax, the Australian Government said that the country cannot also be said to be 'jumping the gun.' The "proposed measures do not lay Australia open to the same charge", the Government said.

## Brazil

**Brazilian Government Continues to Seek ICMS Harmonisation**

Brazilian states failed to agree upon reform of the nation's provincial VAT, ICMS, during recent meetings, despite a more concrete offer of compensation from the Brazilian central Government.

Proposals to harmonise ICMS rules, in particular to eliminate tax competition between states and enforce restrictions on the introduction of tax breaks, have been under discussion for almost two decades. In general, the discussions have focused on introducing a single rate of 4%, but concessions allowing for higher rates for certain states have been discussed.

ICMS is a tax on the interstate sale of goods and services, at rates ranging between 7% and 12%. The regime is critically flawed as states may compete to win investment by undercutting each other with targeted ICMS tax breaks. To have a tax break authorised, states must theoretically receive unanimous approval from the National Council of Fiscal Policy (CONFAZ), housing a representative from each province, or (as the case has usually been) sidestep the process and introduce the tax break anyway.

Less affluent provinces, which have doggedly refused a unified rate over the years, have experienced stronger rates of growth averaging 3%, while richer, resource-heavy provinces Rio de Janeiro, São Paulo and Minas Gerais have seen growth rates averaging 2.2%.

In a bid to achieve consensus, the Government has now put forward proposals to pay compensation to the states worth US$3bn in 2016. This figure would increase to up to US$13bn in eight years, when the reform would be completed. At the recent meeting, three states that had previously been opposed to the plans voted in favour of a unified rate. Four states continued to oppose the deal.

## European Union (EU)

### ECOFIN BEPS Meeting Held in Latvia

The European Union's Economic and Financial Affairs Council (ECOFIN) met on 25 April 2015, in Riga, Latvia, to informally discuss the EU's future course of action in view of the OECD's BEPS project.

European Commission Vice President Valdis Dombrovskis said: "If we want to tackle aggressive tax planning, if we want stable revenues in the long-term, and if we want a Single Market that works for all businesses, then we need to work together and Europe needs to lead the way in the fight against tax avoidance. It is the Commission's political priority in its work agenda this year. And we are delivering with remarkable speed".

"Our proposal for the automatic exchange of information on tax rulings, which was presented in March, is a crucial first step in creating greater transparency in corporate taxation. With the proposed new requirements, each member state will be better able to react if another's tax ruling is impacting its own base. The automatic exchange of information will remove the shadows that currently surround tax rulings. This new openness should encourage fairer competition in this area, and deter companies from using tax rulings as an instrument for tax abuse".

On 18 March 2015, the Commission presented a package of transparency measures aimed at tackling corporate tax avoidance and harmful tax competition within the EU. The package sets out a number of measures that the Commission intends to pursue in the short term, including establishing an increased link between taxation and economic substance, in line with ongoing talks being led by the OECD, and the automatic exchange of information on tax rulings in cases where a tax ruling may impact the tax base of another member state.

"We are now calling for a swift agreement on the file by co-legislators. Soon the Commission will come out with further proposals and initiatives in the context of the [G20] initiative on BEPS", Dombrovskis said.

## India

### India Adopts New Accounting Standards

India's Ministry of Finance has gazetted new business income computation and disclosure standards (ICDS), which took effect from 1 April to support a tax-neutral transition to adoption of International Financial Reporting Standards (IFRS).

The Department's notification of the new ICDS confirmed that the standards are to be adhered to by all taxpayers following "the mercantile system of accounting for the purposes of computation of income chargeable to income tax under the heading 'Profits and gains of business or profession' or 'Income from other sources,' and not for the purpose of maintenance of books of accounts".

The ten issued ICDS relate to accounting policies; the valuation of inventories;

construction contracts; revenue recognition; tangible fixed assets; changes in foreign exchange rates; government grants; securities; borrowing costs; and provisions, contingent liabilities and contingent assets.

As the notification came into force with effect from 1 April 2015, it will apply to the 2016-17 year of assessment (YA) and all subsequent years.

On the basis of a proposal in the 2014-15 Budget statement in July last year, large Indian companies are able to comply, on a voluntary basis, with the new corporate Indian Accounting Standards (Ind AS) in their financial statements for accounting periods beginning on or after 1 April 2015.

Ind AS is intended to be largely in line with International Financial Reporting Standards (IFRS), and will then be mandatory for accounting periods beginning on or after 1 April 2016, for companies with a net worth of INR5bn (US$80.4m) or more whose equity and/or debt securities are listed, or are in the process of being listed, on any stock exchange in or outside India.

In addition, its use will be mandatory from 1 April 2017, for listed companies having a net worth of less than INR5bn, as well as for unlisted companies having a net worth of at least INR2.5bn but less than INR5bn.

## Ireland

### CCAB-I Responds to OECD's Work on BEPS Monitoring

The Consultative Committee of Accountancy Bodies — Ireland (CCAB-I) has responded to the OECD's discussion draft on Action 11 of its BEPS project, on improving BEPS analysis.

Through BEPS Action 11, the OECD is seeking to develop new ways to measure the scale and economic impact of BEPS and monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis.

Firstly, the CCAB-I noted that the discussion draft does not mention safeguards to ensure taxpayer confidentiality. "Country-by-country reporting under BEPS Action 13 is expected to be confidential [but] this would be moot if individual taxpayer data from BEPS indicators under Action 11 was released into the public domain", it said.

The CCAB-I also stressed the importance of ensuring that no additional reporting obligations or information collection requirements are imposed on businesses or tax professionals as a result of work under Action 11.

The discussion draft proposes a 'dashboard' of seven indicators that may give broad insights into BEPS and especially changes in BEPS over time. The CCAB-I noted that "the difficulty with indicators is to filter out factors which alter the trends, but which are not related to BEPS project initiatives".

The CCAB-I said that such indicators should be interpreted in the context of FAQ 63, which the OECD published alongside the 2014 BEPS 'deliverables,' which stated that: "The BEPS project is not about increasing corporate taxes…non or low-taxation is not itself the concern, but it becomes so when it is achieved through practices that artificially separate taxable income from the activities that generate it".

"Whatever methodology [for measuring BEPS] is used, there has to be consistency by way of international agreement on the method. The final indicators arrived at should be fit for purpose but equally these should be user friendly and not open to misinterpretation", the CCAB-I said.

## Japan

### Japanese Firms Reply to OECD Draft on CCAs

Keidanren, the Japanese Business Federation, has submitted its comments on the OECD's discussion draft on BEPS Action 8, which proposes revisions to Chapter VIII of the OECD Transfer Pricing Guidelines to tackle BEPS-related to cost contribution arrangements (CCAs).

Action 8 aims to deal with cases where CCAs are used to effectively transfer intangibles from the country in which they are headquartered to a lower-tax jurisdiction and thereby reduce the total tax burden of the corporate group.

On proposals to measure contributions made by CCA participants at value rather than at cost, Keidanren questioned whether the proposals will work in practice.

Keidanren added that if, as proposed, contributions were to be measured not at cost but at value, with the exception of some low value-added services, "companies might accordingly suffer a heavier administrative burden and undergo more disputes with tax administrations over the validity of the value measured. Tax consequences would become particularly unpredictable in cases where the proportionate shares of the benefits produced by the intangibles resulting from a CCA turn out to be different from the initial expectations or where participants in a CCA spread over multiple (three or more) countries. These might make the already high hurdle of using CCAs even higher going forward".

Keidanren drew attention to paragraph six of the discussion draft, which identifies that an advantage of using CCAs lies in the simplification of multiple transactions for transfer pricing purposes, such as by offsetting payments against receipts and vice versa with regard to royalties associated with the cross-licensing of intangibles. It said: "Care needs to be taken to ensure that the revisions to Chapter VIII do not inadvertently deter companies from using CCAs and jointly engaging in open R&D activities on a global scale".

Keidanren also expressed concerns that "no progress has been seen on dispute resolution mechanisms, despite the fact that — without consensus amongst the member countries as to what constitutes value — discussions are moving forward on taxation methods, such as the introduction of non-recognition and special measures, and the expanded application of profit-split methods".

The Federation called on the OECD to cater BEPS responses depending on the perceived BEPS risks involved with different arrangements. It proposes safe harbour provisions, stating: "We consider it rational to limit the subjects of heavily detailed transfer pricing analysis, especially the measurement of contributions at value, to those CCAs that pose the high risk of BEPS... They may include CCAs with an entity domiciled in a lower-tax jurisdiction, and 'important' CCAs involving the intangibles required to be reported on in the master file. Requiring each and every CCA to be subjected to measurement at value is excessive".

Lastly, it called on the OECD to consider methods of measuring value, noting the absence of clear guidance in its Transfer Pricing Guidelines.

## New Zealand

### New Zealand Sets Transfer Pricing Focus Areas for 2015-16

New Zealand's Inland Revenue Department (IRD) has announced its priorities in the area of transfer pricing enforcement for 2015 and 2016.

The IRD said it will prioritise efforts focused on the Significant Enterprises Segment, which represents the highest risk. It said it will continue to refine its risk assessments of all significant enterprises, informed through analysis of annual basic compliance packages (financial statements, tax reconciliations, and corporate structures) and supplemented by transfer pricing questionnaires.

The Significant Enterprises Segment covers 560 taxpayer groups with turnover over NZ$80m (US$61m), 50% of which are foreign-owned, with a further 25% involved in international operations mainly through controlled foreign companies (CFCs). These taxpayer groups account for 10% of the nation's tax revenue.

The IRD said it will also maintain a special focus on:

- Unexplained tax losses returned by foreign-owned groups
- Loans in excess of NZ$10m principal and guarantee fees
- Payment of unsustainable levels of royalties and/or service charges
- Material associated-party transactions with no- or low-tax jurisdictions
- Supply chain restructures involving the shifting of any major functions, assets or risks away from the country
- Any unusual arrangements or outcomes that may be identified in CFC disclosures.

The IRD said it will continue to monitor the profitability of foreign-owned wholesale distributors (firms that purchase and on-sell goods, without significant transformation, to other firms). For small wholesale distributors (those under NZ$30m in annual turnover), the IRD will seek explanations for any performance resulting in a weighted average profit-before-tax ratio of less than 3%.

Lastly, the IRD reiterated that it is the responsibility of local management to ensure a company's transfer prices are in accordance with the arm's length standard and that they maintain adequate supporting documentation.

## OECD

### BEPS Project at a 'Decisive' Stage, Says Gurría

Addressing G20 leaders ahead of the conclusion of the OECD's BEPS project, the Organisation's Secretary General Angel Gurría said that the project is at a "decisive stage... after 18 months of hard work".

Gurría confirmed that recommendations from the whole 2015 BEPS package will be presented to the G20 Finance Ministers in October 2015, in Lima.

"All countries have also recently been invited to join the ad hoc group for the negotiation of the multilateral instrument, which will be finalised in 2016. This will be a powerful tool to support rapid and coherent implementation of the tax treaty-related BEPS measures across the existing network of over 3000 bilateral treaties, and I encourage all countries to be involved", Gurría said.

Gurría said that the OECD will also present a final report on tougher initiatives that would target those jurisdictions that are perceived to not be meeting their commitments on tax transparency and information exchange.

"Whether tackling tax evasion and avoidance or addressing other, emerging, challenges to the international tax system, with your commitment and support, the G20-OECD partnership on tax will continue to deliver tangible results that are having a real impact in our communities for a stronger, fairer and more inclusive growth", Gurría concluded.

### OECD Welcomes EU Commission's Corporate Tax Plan

The European Commission's proposal for the automatic exchange of tax rulings would be 'a revolutionary step' towards international tax transparency and the fight against BEPS, OECD Secretary-General José Angel Gurría has said.

His comments, during a discussion with members of the Committees for Tax Rulings and Economic and Monetary Affairs on 31 March 2015, came in response to the Commission's release of a package of transparency measures aimed at tackling corporate tax avoidance and harmful tax competition within the EU.

The tax transparency package, which was released on 18 March 2015, sets out a number of measures that can be taken in the short-term, including establishing an increased link between taxation and economic substance, in line with ongoing talks being led by the OECD. However, more immediately, the Commission is in particular seeking to establish strict transparency requirements for tax rulings issued to companies by member states.

Asked if the EU member states speak with one voice when discussing avenues to overcome shortcomings in tax legislation in the OECD, Gurría said: "Yes; because they all need the money". But he also warned against draw backs under pressure of aggressive lobbying. "Many people try to kill our initiatives. Let's move with one united front and beware of [those] who want to take the teeth out of the legislation", he said.

Discussing the OECD's efforts under Action 15 of its BEPS Action Plan, to agree a multilateral change to double tax agreements, Gurría noted the complexity of the issue due to the substantial increase in bilateral tax agreements over recent years: "In 2008 there were 14 bilateral tax agreements, now there are 3000. We aim at replacing all of these by one multilevel convention", he explained, adding: "We have to adopt the package as a whole".

Lastly, Gurría said that forcing multinational companies, as proposed by some Members of the European Parliament, to publicly report on their activities, profits, and taxes on a country-by-country basis is "a bridge too far at this stage" for the OECD: "I am afraid that this would not work. If we insist on total transparency, including naming and shaming, we might lose the battle. Moreover, we are also sensitive to the compliance costs".

### OECD Releases BEPS Discussion Draft on CFC Rules

On 3 April 2015, the OECD released a discussion draft on BEPS Action 3, which contains recommendations for the design of enhanced controlled foreign corporation regimes.

The discussion draft states: "Many countries already have CFC rules, but these rules do not always counter BEPS in a comprehensive manner. While CFC rules in principle lead to inclusions in the residence country of the ultimate parent, they also have positive spill over effects in source countries because taxpayers have no (or much less of an) incentive to shift profits into a third, low-tax jurisdiction".

The discussion draft considers all the constituent elements of CFC rules and breaks them down into the 'building blocks' that are necessary for effective CFC rules. The building blocks include:

- The definition of a CFC
- Threshold requirements
- The definition of control
- The definition of CFC income
- Rules for computing income
- Rules for attributing income
- Rules to prevent or eliminate double taxation.

Recommendations are provided in each of these areas, and in cases where definitive recommendations are made, the paper discusses possible options. The discussion draft also identifies specific questions where input is required in order to advance the work on CFC rules.

The discussion draft also addresses the policy considerations to be considered in the context of BEPS Action 3, including some fundamental policy considerations that need to be considered when designing CFC rules, such as how to strike a balance between the need to tax foreign income and the need to maintain competitiveness; how to limit administrative and compliance burdens while ensuring that CFC rules are effective; and how to avoid double taxation.

There are also three annexes to the document, with tables outlining how existing CFC rules currently address several of the issues addressed in the discussion draft, including how countries' de minimis and low-tax thresholds work, and how they define attributable income from insurance.

### OECD Invites Comments on New Draft on PE Avoidance

On 15 May 2015, the OECD invited public comments on a new discussion draft on BEPS Action 7, on preventing the artificial avoidance of permanent establishment (PE) status.

In the main, the draft seeks stakeholders' input on key issues including the artificial avoidance of PE status using commissionaire arrangements and specific activity exemptions; the splitting up of contracts; rules applicable to insurance companies; issues relating to the attribution of profits to PEs; and interaction of these recommendations with other Actions on transfer pricing.

In October 2014, the OECD released a first discussion draft on BEPS Action 7, which described a number of PE avoidance strategies and included a number of options on how to deal with these strategies.

Based on the comments that were received on that discussion draft and the interventions at a public consultation meeting held on 21 January 2015, the options included in the first discussion draft were reviewed in order to produce a specific preferred proposal with respect to each PE avoidance strategy previously identified. This new discussion draft reflects the proposals that resulted from that work.

The discussion draft and comments received thereon will be discussed at the Working Party 1 meeting, when the Working Party will be asked to finalise the changes to the OECD Model Tax Convention, which will be proposed as a result of the work on Action 7.

Brief comments on the new draft have been invited until 12 June 2015.

## Singapore

### Singapore Sounds Note of Caution on BEPS

Singapore's Senior Minister of State for Finance and Transport, Josephine Teo, has said that, while Singapore supports the present co-ordinated international efforts to "tackle harmful tax practices, we must take care to preserve useful and beneficial ones".

During her speech to the Tax Academy & IFA Singapore Asia Pacific Regional Tax Conference, she pointed out that Singapore has kept its tax rates competitive. "Even as we expect spending to increase, we will endeavour to keep the tax burden low", she stated, "and we do so for a very simple reason — we want to continue to encourage enterprise, savings, and investment, which in turn generate positive economic spinoffs".

She noted the changing international tax landscape, particularly the developments related to the OECD Action Plan to counter BEPS, and the 'increasingly more aggressive actions' being taken by some tax authorities when scrutinising cross-border transactions and in dealing with transfer pricing issues.

However, "while the desire for quick action is understandable", she warned, "we must acknowledge the risk of countries taking unilateral steps in an uncoordinated manner. Uncoordinated actions are very likely to create uncertainty and increase business risks. This could also discourage cross-border trade and investment which are vital to the economic success of many countries".

While Singapore "supports the co-ordinated efforts of the global community to update international tax rules so that a common set of rules is applied equally across jurisdictions", she stressed that "it is critical for the reforms to the global tax system to be carried out in a way that continues to accommodate legitimate business models, promotes global economic growth and trade, and not be used as a disguise for protectionism".

She also confirmed that Singapore is participating and contributing to the discussions on international tax policies, including BEPS, at the multilateral OECD and G20 meetings, and will continue to regularly review Singapore's tax policies to ensure that they remain 'aligned with international standards'.

This final comment probably alludes to the ongoing discussions taking place on the substantial related-party flows being seen from Australia to Singapore. Pascal Saint-Amans, Director of the OECD's Centre for Tax Policy and Administration, told a recent Australian Senate hearing on corporate tax avoidance and minimisation that those flows do not necessarily amount to the product of BEPS, identifying that there is real economic activity taking place.

"Singapore is not in the same situation as a number of other very small economies where you have only sham entities. In Singapore, my understanding is that there are some requirements for real activity", Saint-Amans said.

## South Africa

**US, South Africa FATCA Agreement 'On Track'**

The South African Revenue Service has said that implementation of a framework to simplify compliance with the US Foreign Account Tax Compliance Act (FATCA) remains on track.

FATCA, which was enacted by the US Congress in 2010 and which took effect on 1 July 2014, is intended to ensure that the US Internal Revenue Service obtains information on financial accounts held at foreign financial institutions (FFIs) by US persons. Failure by an FFI to disclose information on their US clients will result in a requirement to withhold 30% tax on payments of US-sourced income.

To address situations where foreign law would prevent an FFI from complying with the terms of an FFI agreement, the US Treasury has developed model IGAs. Under the terms of the Model 1 IGA between South Africa and the US, South African-based FFIs will report information on financial accounts held by US persons to the South African Revenue Service, which will then exchange the information with the IRS.

The IGA was signed on 9 June last year, and entered into force on 28 October. Under its terms, financial institutions are required to collect and submit a return to SARS by 30 June 2015, containing the information referred to in the IGA for the period from 1 July 2014, to 28 February 2015. In turn, SARS will exchange the information with the US Treasury by 30 September this year.

SARS has now said that it is confident that all parties will be ready to meet their deadlines, adding that implementation of the IGA is an important stepping stone for South Africa in preparation for the automatic exchange of tax information from 2017 within the terms of the OECD's Convention on Mutual Administrative Assistance in Tax Matters.

"SARS has been working closely with industry bodies to ensure that all South African financial institutions are fully prepared to comply with the reporting requirements under the IGA and that deadlines will be met", the agency confirmed. "In addition, SARS has also published a draft general guide on the implementation of the IGA to provide further assistance to financial institutions".

SARS will exchange information with the US Treasury through a process of automatic exchange of tax information under the existing double taxation agreement between the two countries. "The legal framework for the implementation of the IGA is therefore completed and firmly in place", it noted. On a reciprocal basis, the US Treasury will also provide information about South African account holders in the US to SARS.

## US

### US CRS Report Considers BEPS Impact

The Congressional Research Service, the public policy research arm of the US Congress, has published a report on the impact of BEPS on US tax revenues.

The report, *Corporate Tax Base Erosion and Profit Shifting: An Examination of the Data*, which was published on 30 April 2015, discusses policy options and considerations for reducing BEPS.

The report says that its analysis shows that the magnitude of profit shifting may be significant. For example, of the US$1.2tn in overseas profits American companies reported earning in 2012, US$600bn was attributed to the UK Overseas Territories and five other low-tax territories: Ireland, Luxembourg, the Netherlands, Singapore and Switzerland. The Netherlands was the most popular location to report profits, accounting for 14.1% of all overseas earnings of American companies. The report also reveals that the share of profits reported is significantly disproportional to the amount of hiring and investment made by American companies in these countries.

The report analyses data on the foreign direct investment (FDI) positions of American companies and says that these same territories account for nearly half (47%) of the worldwide FDI position of US firms. The data also show that an increasing share of FDI is being held through holding companies.

Finally, the report concludes with a discussion of the OECD's BEPS project recommendations, and says these may have implications for American corporations even if the US does not adopt the OECD's recommendations.

### US Model Tax Convention Changes to Tackle Inversions

On 20 May 2015, the US Department of the Treasury released for public comment draft updates to the US Model Income Tax Convention, including provisions to deny treaty benefits to companies that change their tax residence via inversion transactions.

The Treasury said other changes are intended to ensure that the US is able to maintain the balance of benefits negotiated under its treaty network as the tax laws of its treaty partners change over time.

Introducing the changes, Deputy Assistant Secretary for International Tax Affairs Robert B. Stack said: "The draft provisions we are releasing for comment today reflect the fact that the tax regimes of our treaty partners are more likely to change over time than they have in the past, and that they sometimes change in ways that encourage BEPS, by multinational firms. Treaties exist to eliminate double taxation, not to create opportunities for BEPS, and today's updates fully take account of the new international tax environment. The draft provisions also articulate steps that would help prevent our treaty network from encouraging inversion transactions".

One set of draft provisions addresses issues arising from 'special tax regimes', which provide very low rates of taxation in certain countries in particular to mobile income, such as royalties and interest. The Treasury identified that this income can easily be shifted around the globe through deductible payments that can erode the US tax base. The proposals are intended to avoid instances of 'stateless income' or double non-taxation, whereby a taxpayer uses provisions in a US tax treaty, combined with special tax regimes, to pay no or very low tax in the treaty partner countries.

The second set of draft provisions is aimed at reducing the tax benefits from a corporate inversion by imposing full withholding taxes on key payments such as dividends and base stripping payments, including interest and royalties, made by US companies that are 'expatriated entities' as defined under the Internal Revenue Code.

Lastly, revisions are proposed to prevent residents of third-countries from inappropriately obtaining the benefits of a bilateral tax treaty. These include more robust rules on the availability of treaty benefits for income that is not subject to tax by a treaty partner because it is attributable to a permanent establishment located outside the country, and the ability of a company to make 'excessive base eroding payments.'

Recognising that multinationals often have global operations dispersed through many subsidiaries around the globe, the Model Convention for the first time contains a so-called ‘derivative benefits’ rule. The rule is an additional method of qualifying for treaty benefits based on a broader concept of ownership that includes certain third-country ownership.

While not amongst the draft treaty provisions released, the next US Model will include a new Article to resolve disputes between tax authorities through mandatory binding arbitration.

The Model Convention is the baseline text used by the Treasury when negotiating tax treaties and was last updated in 2006.

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