

[www.pwc.com/its](http://www.pwc.com/its)

# International Tax News

Edition 100  
July 2021



## Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. International Tax News is a monthly publication that offers updates and analysis on developments taking place around the world, authored by specialists in PwC's global international tax network.

We hope that you will find this publication helpful, and look forward to your comments.

---

### Featured articles

**Bernard Moens**

Global Leader International Tax Services Network

T: +1 703 362 7644

E: [bernard.moens@pwc.com](mailto:bernard.moens@pwc.com)

**Responding to the potential business impacts of COVID-19**

COVID-19 can cause potentially significant people, social and economic implications for organisations.

This link provides information on how you can prepare your organisation and respond.

## In this issue

Legislation

Judicial



# Legislation

## Hong Kong

### Revising the statutory framework to prepare for tax return e-filing

The Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 was gazetted on June 11, 2021. The Ordinance, among other things, enhances the statutory framework for furnishing tax returns to prepare for e-filing of profits tax returns.

The Inland Revenue Department (IRD) announced the following plan and timeline for the e-filing:

- The first phase is to enhance the existing e-tax portal by around 2023 to enable more businesses to voluntarily e-file profits tax returns together with financial statements and tax computations.
- The second phase is to develop a new business tax portal by 2025 for e-filing of profits tax returns.

E-filing of profits tax returns will first be rolled out on a voluntary basis, with the ultimate goal of implementing mandatory e-filing over time. For mandatory e-filing, the IRD's preliminary plan is to first require large businesses (e.g., with turnover above a certain threshold) or businesses in certain sectors (e.g., financial institutions) to file their tax returns electronically. They may gradually expand to other classes of businesses/entities. The IRD may consider exempting micro-enterprises (e.g., with turnover below a certain threshold) from the mandatory e-filing requirement.

### PwC observation:

The IRD's initiative for revamping its existing IT infrastructure should facilitate e-filings of profits tax returns and enhance efficiency in tax administration. However, the new portal must be flexible and user-friendly, with a simple and seamless process for e-filing in order to ensure success.



Fergus WT Wong

Hong Kong

T: +852 2289 5818

E: [fergus.wt.wong@hk.pwc.com](mailto:fergus.wt.wong@hk.pwc.com)

## Spain

### Spanish new anti-fraud legislation enters into force

On July 10, Law 11/2021 on measures to prevent and combat tax fraud (transposing Council Directive (EU) 2016/1164 of July 12, 2016), was published in the official state gazette. The Law sets forth rules against tax avoidance practices that directly affect the functioning of the internal market, amending various tax rules.

The main measures from an international tax perspective include:

- **Exit tax:** where the exit of an entity or asset is to a country within the European Economic Area (except for Liechtenstein, which does not have a bilateral exchange of information agreement with Spain), the current wording of the corporate income tax law envisages deferral of the exit tax payment until the assets and liabilities are transferred to third parties. Effective for fiscal years that start on or after January 1, 2021, the Law, in order to adapt the domestic legislation to the EU Anti Tax Avoidance Directive (ATAD), allows taxpayers to spread the exit tax payment over five years. Likewise, the Law addresses situations that cause the loss of a fractionation right (for example, transfer of elements to a

third State other than those that allow the fractionation).

- **International fiscal transparency (i.e., Spanish CFC rules):** effective for fiscal years that start on or after January 1, 2021, the Law adapts Spanish legislation to the ATAD. The main amendments related to international tax transparency include:
  1. Application of the CFC rules to passive income obtained by permanent establishments established abroad, which currently is not included.
  2. Abolishment of the exception to apply the CFC rules to foreign holding entities that meet certain requirements (concretely holding entities that own at least a 5% interest in subsidiaries for at least one year, with the purpose of managing and administering such participation having appropriate substance).
  3. Broadening the categories of passive income.
- **The current concept of 'tax haven' would be substituted with 'non-cooperative jurisdictions':** Currently Spain has a tax haven list that will be replaced by a list of non-cooperative jurisdictions, to be updated periodically based on, among other items, the EU and OECD lists. The list of non-cooperative jurisdictions would include those that attract tax bases without economic activity, that lack transparency, have no exchange of information on the beneficial owner, have nil or low taxation, or that facilitate tax fraud (by means of, for example, benefiting non-resident entities with respect to resident

entities). The new list may include jurisdictions with an in-force tax treaty with Spain.

- **Reduction of surcharges in case of voluntary regularization and payment of due taxes:** the applicable surcharges ranging from 5% to 15% (depending on the delay) in the case of voluntary regularization and payment of due taxes by a taxpayer (without a previous request from the Spanish tax authorities) will be replaced with a 1% surcharge applicable per month of delay, for up to 12 months. This change is effective July 1, 2021.

### PwC observation:

Spanish companies that have foreign subsidiaries through intermediate holding companies should review their structures, considering the proposed CFC rules and the amendment to the Spanish participation exemption. The amendment reduces the total exemption to a 95% exemption for fiscal years that begin on or after January 1, 2021.

Roberta Poza Cid

Madrid

T: +34 669 41 92 20

E: roberta.poza.cid@pwc.com

Isabel Asin Perez

Madrid

T: +34 660 41 28 13

E: isabel.asin.p.perez@pwc.com

## United Kingdom

### The end of patent box grandfathering

All companies will be required to make patent box claims under the new Nexus regime, including companies that were grandfathered under the old patent box regime beginning July 1, 2021. The Nexus regime introduces key changes that could significantly impact the patent box benefits, potentially preventing some companies from making claims.

For more information see our [PwC Insight](#).

### PwC observation:

If your company is moving from the old grandfathered regime to Nexus, you should assess the impact of these changes on your claim. In particular, you should consider:

- the need to track and trace data for the purposes of calculating a Nexus fraction
- the current and potential future impact of any connected party sub-contracted R&D acquisition costs on the Nexus fraction and the possibility of restructuring
- the impact of mandatory streaming, including what could be a 'just and reasonable' basis for allocating debits to relevant IP income streams and the impact that may have on relevant IP profits.

## Uruguay

### Tax measures in response to COVID-19

The Uruguayan Parliament introduced beneficial tax measures for certain companies due to the COVID-19 pandemic, including:

- Corporate income tax taxpayers whose main activity is included in the below list will be relieved from the obligation of making minimum CIT advanced payments from January to June 2021, thus obtaining a financial benefit.
- Net wealth tax taxpayers whose main activity is included in this list will also be relieved from the obligation of making tax advanced payments from January to June 2021. In addition, these taxpayers will get a tax credit for an amount equivalent to the payments that would have been made in absence of said exemption.

Companies that carry out the following activities qualify for these special tax measures:

- School transport
- School canteens and scratch catering services
- Organization and celebration of events and parties (in or out of venues)
- Organization and holding of national and international congresses or fairs
- Travel agencies
- Specific cases of land transport

- Radio operator desks
- Air and river passenger transport
- Movie theatres, film distribution and theatres
- Land border duty-free stores, and
- Sports and recreational education, management of other sports facilities, and sports club activities.

### PwC observation:

These measures aim to mitigate the economic impact of the pandemic caused by COVID-19. The Executive Power will establish the criteria to determine taxpayers' main activity, to access to the tax exemptions commented.

**Rachel Moore**

United Kingdom

T: +44 (0)7841 561 935

E: [rachel.moore@pwc.com](mailto:rachel.moore@pwc.com)

**Sara-Jane Tovey**

United Kingdom

T: +44 (0)7950 354061

E: [sara-jane.tovey@pwc.com](mailto:sara-jane.tovey@pwc.com)

**Patricia Marques**

Uruguay

T: +598 2916 0463

E: [patricia.marques@pwc.com](mailto:patricia.marques@pwc.com)

**Eliana Sartori**

Uruguay

T: +598 2916 0463

E: [eliana.sartori@pwc.com](mailto:eliana.sartori@pwc.com)

# Judicial

## Spain

### **Dividend WHT exemption under the EU Parent-Subsidiary Directive**

In a recent ruling dated May 21, 2021 the National High Court has limited the application of the beneficial ownership doctrine and the specific anti-abuse provision contained in article 14.1.h) of the non-resident income tax law (i.e., the article that transposes the withholding tax exemption of the Parent Subsidiary Directive).

In the case in question, the Spanish tax auditors denied the application of the dividend payments exemption in a case in which the dividends had been paid by a Spanish company to its Spanish parent company, which was wholly owned by a Luxembourg entity, and the ultimate owner was a Canadian management company of public pension funds.

The denial of the exemption was based on the grounds that (i) the Spanish parent company directly receiving the dividends did not carry out any economic activity, (ii) the Luxembourg parent company did not have the necessary resources to be considered as having a structure capable of carrying out a minimum economic activity, and (iii) the taxpayer did not demonstrate the existence of valid economic reasons for the incorporation of the interposed Luxembourg entity.

The Spanish National High Court cites and recalls the doctrine established by the CJEU in the cases of Equiom and Deister Holding. The Court concludes that, notwithstanding the provisions of article 14.1.h) of the non-resident income tax law, anti-abuse provisions that deny the application of the exemption to generic structures or transactions are not admissible, reversing the burden of proof of the existence of valid economic reasons placed on the taxpayer.

The Court reasoned that the Spanish tax auditors, and not the taxpayer, must justify the assumptions for applying the anti-abuse provision by using the various means of information provided for in the double taxation agreements or the directive on administrative cooperation (DAC).

According to this decision, against which an appeal may still be lodged, the Spanish National High Court aims to overcome the beneficial ownership doctrine previously established by both the National High Court itself and by the Supreme Court.

### **PwC observation:**

There is no doubt that this new position, should it be definitively confirmed, would limit the broad application of the limitation of the beneficial ownership doctrine, which has been applied by the Central Economic Administrative Court in several rulings, and influences the interpretation of the current wording of Article 14.1.h) of the non – resident income tax law.



**Roberta Poza Cid**

Madrid

T: +34 669 41 92 20

E: roberta.poza.cid@pwc.com

**Isabel Asin Perez**

Madrid

T: +34 660 41 28 13

E: isabel.asin.p.perez@pwc.com



## Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CGT	capital gains tax
CIT	corporate income tax
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DEBRA	Debt equity bias reduction allowance
DST	digital services tax
DTT	double tax treaty
EBITDA	earnings before interest, tax, depreciation and amortization
ECJ	European Court of Justice
ETR	effective tax rate
EU	European Union
FTT	First Tier Tax Tribunal

Acronym	Definition
GAAP	generally accepted accounting principles
IF	inclusive framework
IP	intangible property
M&A	mergers and acquisitions
MNC	multinational corporation
NCST	non-cooperative states and territories
NWT	Net Wealth Tax
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	research & development
STE	Small & Thin Profit Enterprises
VAT	value added tax
WHT	withholding tax



## Contact us

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

**Bernard Moens**  
**Global Leader International Tax Services Network**

**T: +1 703 362 7644**  
**E: [bernard.moens@pwc.com](mailto:bernard.moens@pwc.com)**

**Geoff Jacobi**  
**International Tax Services**

**T: +1 202 414 1390**  
**E: [geoff.jacobi@pwc.com](mailto:geoff.jacobi@pwc.com)**

[www.pwc.com/its](http://www.pwc.com/its)

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 155 countries with over 284,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](http://www.pwc.com).

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

© 2021 PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

Mitie Design RITM6003282 (08/21).