International Tax News

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Launch >

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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

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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

Colombia

Colombian tax reform includes tax rate increases, tax amnesty

Tax Reform Bill No. 2155, which incorporates various changes to Colombia's national tax system, was published on September 14.

The titled 'Social Investment Law' aims to increase the collection of revenues to fund social programs and public spending, which were affected by the pandemic. Most of the adopted changes apply as of fiscal year 2022 (FY22). Some of the key changes are highlighted below:

Corporate Income Tax (CIT)

- The CIT rate will increase from 30% to 35% starting in 2022 for domestic corporations, permanent establishments, and foreign corporations that file tax returns in Colombia.
- A new amnesty regime applies a 17% tax rate on the historic tax value of undisclosed assets or improperly claimed liabilities as of January 1, 2022. The taxable base of undisclosed foreign assets is reduced by 50% if repatriated by December 31, 2022 and invested in Colombia with 'permanence.'
- An additional 3% tax will be levied from FY22 to FY25 on financial institutions with taxable income equal to or greater than 120,000 tax units (Unidad de Valor Tributario – UVT), resulting in a new total tax rate of 38% from 2022 to 2025. The 3% additional tax should be paid through an advance payment based on the prior year's taxable income.

For more information see our **PwC Insight.**

PwC observation:

The Colombian Government is expected to issue regulations with respect to the tax changes covered in this Insight. Companies investing or carrying out business in Colombia should assess whether and how the increased rates could impact their operations and capital structures. Furthermore, companies should understand the potential opportunities that the tax amnesty might provide.

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Mexico

Important changes to the maquiladora regime

The Mexican Ministry of Finance on September 8, submitted to Congress the proposed budget for fiscal year 2022. Among the modifications, it proposes eliminating from Article 182 of the Mexican Income Tax Law (MITL) the option for companies operating under a maquiladora structure to request advance pricing agreements (APAs) in order to comply with their transfer pricing obligations and maintain the tax benefits granted by such regime.

According to Article 182, foreign tax residents would not have a permanent establishment (PE) in Mexico when maquiladora companies with which they have an economic relationship meet either of the two options that determine their taxable income: i) using a safe harbour methodology (i.e., the higher of 6.9% of the value of the assets used in the maquila operation or 6.5% of the total value of costs and expenses) or, ii) obtaining an APA from the Mexican tax authorities.

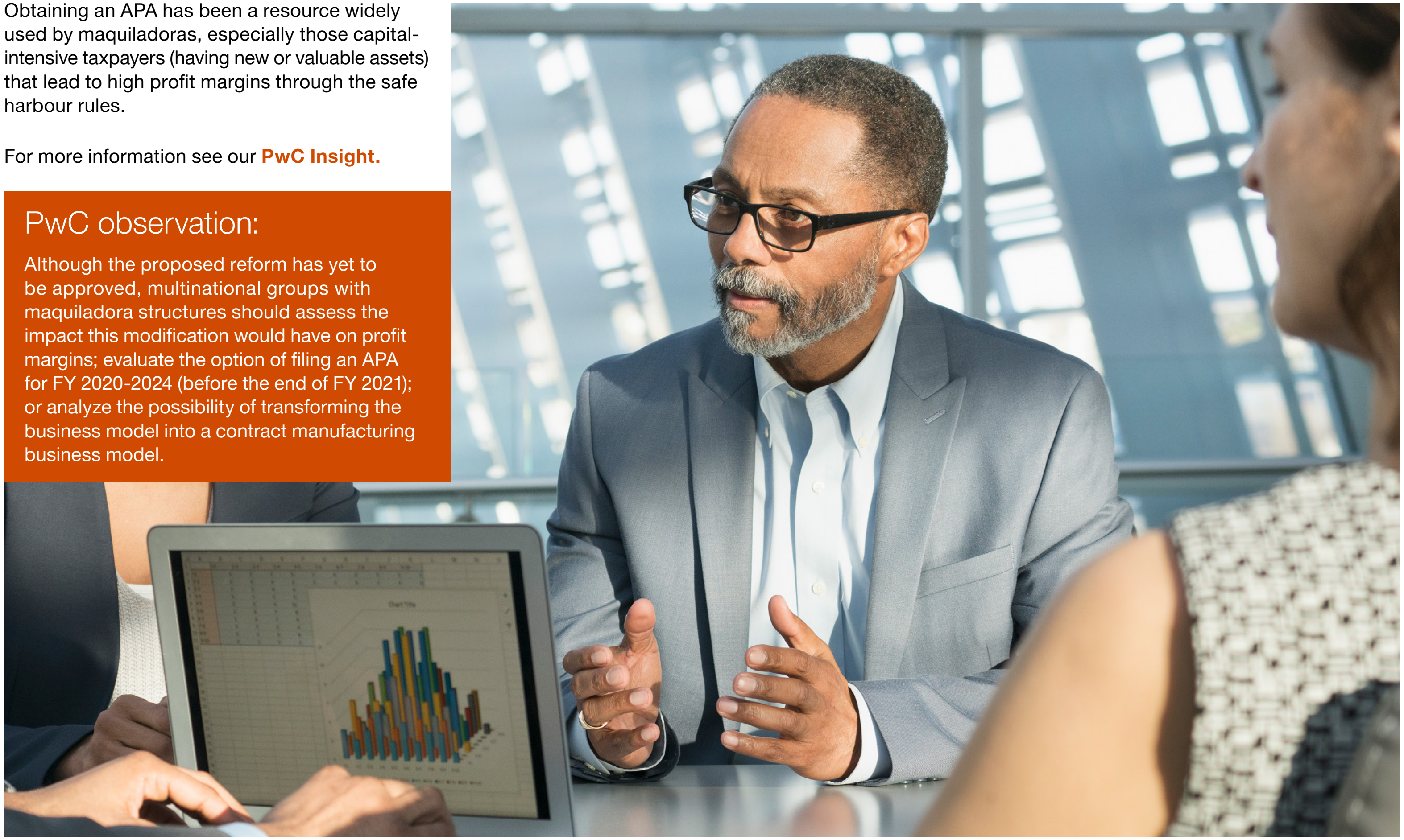
The 2022 budget proposes to eliminate the option for requesting an APA; thus, effective for FY 2022 maquiladoras would not be able to comply with transfer pricing obligations through an APA; the only applicable mechanism to determine the profit margin would be the safe harbour rules.

Obtaining an APA has been a resource widely used by maquiladoras, especially those capital-intensive taxpayers (having new or valuable assets) that lead to high profit margins through the safe harbour rules.

For more information see our **PwC Insight.**

PwC observation:

Although the proposed reform has yet to be approved, multinational groups with maquiladora structures should assess the impact this modification would have on profit margins; evaluate the option of filing an APA for FY 2020-2024 (before the end of FY 2021); or analyze the possibility of transforming the business model into a contract manufacturing business model.



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Canada

Canada signs the international tax framework and introduces a conditional DST

Following the OECD's October 8 announcement that 136 countries had committed to the fundamental changes to the international corporate tax system, Deputy Prime Minister and Minister of Finance, Chrystia Freeland, confirmed Canada's commitment to this international agreement. She also announced that Canada intends to move ahead with legislation finalizing a digital services tax (DST) by January 1, 2022 (as announced in the federal government's 2021 budget). However, the DST would only be imposed if the multilateral convention implementing Pillar One has not come into force by December 31, 2023. In that event, the DST would be payable as of 2024 with respect to revenues earned since January 1, 2022.

For more information see our **PwC Insight.**

PwC observation:

Taxpayers should keep abreast of ongoing developments in Canada (and globally) and understand how the implementation of Pillars One and Two could impact them. Given the challenges of developing the multilateral convention required to implement Pillar One, it is uncertain whether the proposed timelines will be met. If such timelines are not met by December 31, 2023, an MNE earning revenue from certain digital services in Canada could be subject to the Canadian DST on the MNE's revenues as of January 1, 2022, although it would not be payable until 2024.

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Ireland

New legislation introduced in relation to Interest Limitation Rules

Finance Act 2021 introduced legislation related to interest limitation rules (ILR), which aim to limit base erosion through the excessive use of interest deductions, as required under ATAD. This aligns Ireland with other jurisdictions that have similar interest-capping legislation. The new interest restriction provisions would operate alongside existing comprehensive rules that restrict the deductibility of interest expenses. As a result, taxpayers face an increasingly complex set of rules and a greater administrative burden.

The ILR will apply for accounting periods commencing on or after 1 January 2022. It is a fixed ratio rule that seeks to link a taxpayer's allowable net borrowing costs directly to its level of earnings, by limiting the maximum net deduction to 30% of tax-adjusted EBITDA. While the default rate of the fixed ratio is set at 30%, a taxpayer may in certain circumstances deduct an amount in excess of 30% of tax-adjusted EBITDA under the 'group ratio' rule. This rule allows a higher maximum deduction where the consolidated worldwide group's exceeding borrowing costs, calculated as a percentage of its EBITDA, is higher than 30%. In such circumstances, the taxpayer is permitted to use the higher figure when calculating any interest restriction amount.

In line with ATAD, Ireland provides for the application of ILR using a 'group approach,' i.e., calculating the interest restriction at the level of a local group of companies ('interest group'), all companies within the charge to corporation tax in Ireland, where membership within the group is elective.

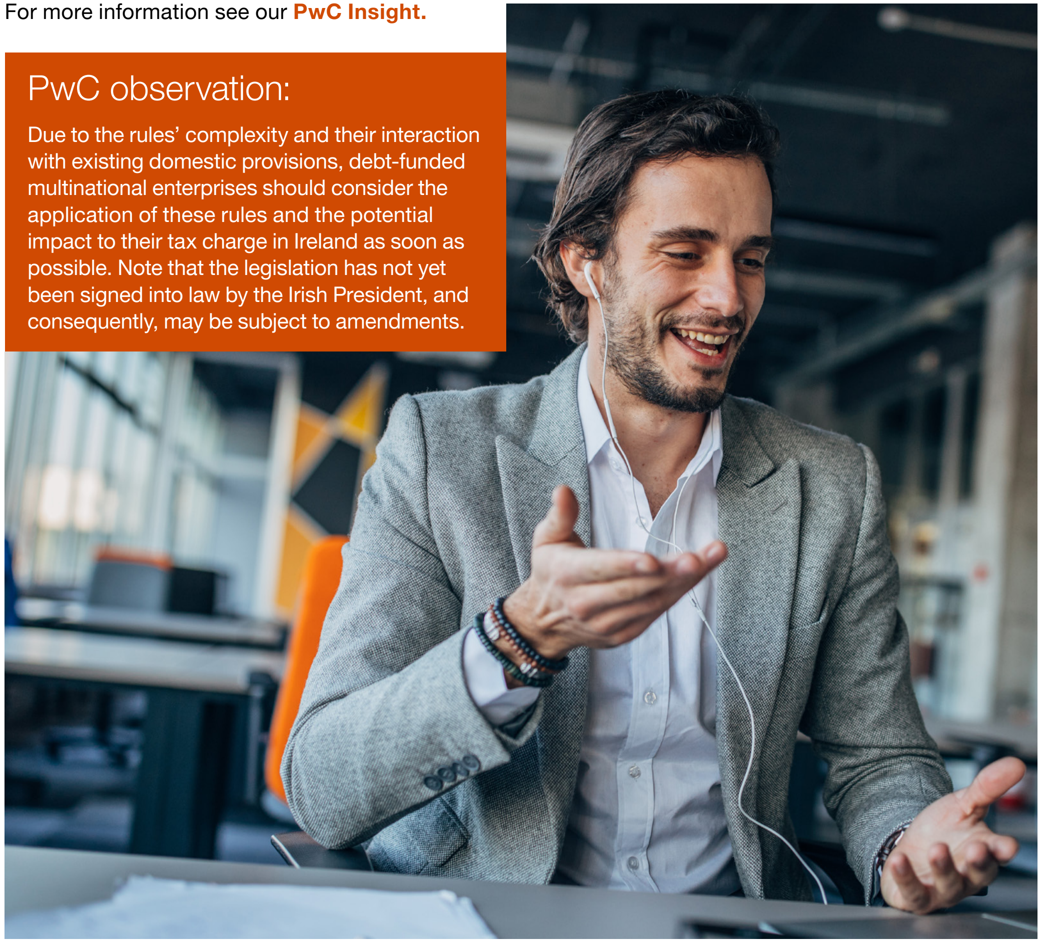
The draft legislation provides for exemptions and carve outs, one of which relates to situations where a taxpayer's net borrowing costs do not exceed €3 million. Ireland has introduced a carve out for the ILR rules in relation to loans in place and concluded before 17 June 2016. The provisions also provide for an equity-escape carve out from the interest limitation rules, which focuses on the ratio of equity to total assets. If the interest group's ratio of equity to total assets is no lower than two percentage points below the worldwide group's ratio of equity to total assets, then the equity ratio rule applies and no interest restriction arises.

If interest payments are restricted under the ILR in an accounting period, the excess can be carried forward to succeeding accounting periods. The legislation also provides relief where there is 'interest spare capacity,' which arises where taxable interest equivalent exceeds the deductible interest equivalent. In addition, 'limitation spare capacity' arises where exceeding borrowing costs is less than the allowable amount (i.e., 30% of tax-adjusted EBITDA or the group ratio percentage of tax-adjusted EBITDA). Both amounts form 'total spare capacity,' and must be used within 60 months from the end of the accounting period in which it arose.

For more information see our **PwC Insight.**

PwC observation:

Due to the rules' complexity and their interaction with existing domestic provisions, debt-funded multinational enterprises should consider the application of these rules and the potential impact to their tax charge in Ireland as soon as possible. Note that the legislation has not yet been signed into law by the Irish President, and consequently, may be subject to amendments.



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Ireland

Digital Gaming Tax Credit introduced as part of Finance Act 2021

As part of Finance Act 2021, Ireland has introduced a digital gaming tax credit. The credit would apply to eligible expenditure incurred by a company resident in Ireland, or an Irish branch of an European Economic Area (EEA)-resident company in the design, production, and testing stages of the development of qualifying digital games.

The credit would equal 32% of the lowest of (1) the qualifying expenditure that is incurred for developing the digital game in Ireland or the EEA; (2) 80% of total qualifying expenditure (i.e., broadly, expenditure incurred by the company on the design, production and testing of a digital game); or (3) €25 million. Accordingly, a credit of up to €8 million per project is potentially available.

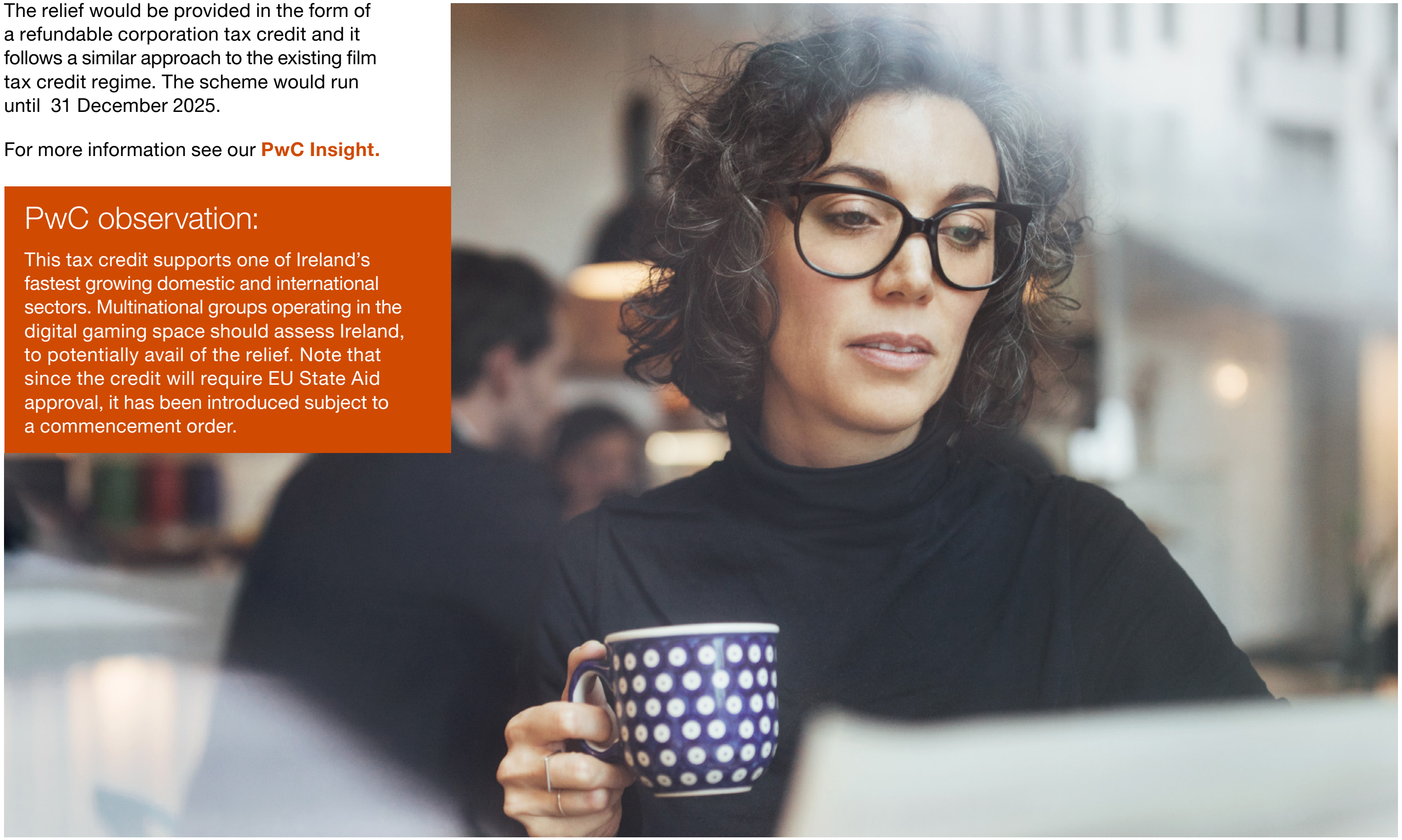
The digital gaming credit is subject to a minimum project spend of €100,000, and the digital gaming company will be required to go through a certification procedure with the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, as well as meeting various other conditions, including conditions related to record keeping and ensuring that funding comes from either EU or tax treaty partner sources.

The relief would be provided in the form of a refundable corporation tax credit and it follows a similar approach to the existing film tax credit regime. The scheme would run until 31 December 2025.

For more information see our **PwC Insight.**

PwC observation:

This tax credit supports one of Ireland's fastest growing domestic and international sectors. Multinational groups operating in the digital gaming space should assess Ireland, to potentially avail of the relief. Note that since the credit will require EU State Aid approval, it has been introduced subject to a commencement order.



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Australia

Proposed amendments to deal with cessation of LIBOR

Treasury released, for consultation, exposure draft law that proposes amendments to various laws to correct technical or drafting defects in order to remove anomalies and address unintended outcomes.

Amendments to the income tax law would replace the London inter-bank offer rate (LIBOR) with a qualified rate to act as a ceiling for certain intra-bank loans by a foreign bank to an Australian branch.

PwC observation:

Since the LIBOR will no longer be published after 31 December 2021, the Commissioner will be empowered to determine the qualified rate for a particular currency through legislative instrument.

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United Kingdom

Budget announcements with response to latest economic forecasts

On 27 October, the UK Chancellor presented his second Budget of the year along with a response to the latest economic forecasts and a comprehensive spending review.

This was followed by the publication of **Finance (No.2) Bill 2021-22** (FB22) on 4 November. This Bill will now progress through Parliament (subject to amendment) and is estimated to enter into law around mid-February. In the interim, there will be a 'Tax Day 2' on 30 November, on which HMRC will issue a number of new consultations and provide responses to earlier consultations.

The Budget included two key announcements for multinationals operating in the United Kingdom:

- **Notification of uncertain tax treatment (UTT) by large businesses** – FB22 introduces a requirement for large businesses to notify HMRC when they take a tax position that is uncertain in their returns for corporation tax, income tax (including PAYE) or VAT where the tax advantage is expected to be over £5m during a 12-month period. Uncertain amounts are defined by reference to two criteria: 1) that a provision has been made in the accounts for the uncertainty, or 2) that the position taken is contrary to HMRC's known interpretation (as stated in the public domain or in dealings with HMRC). A potential third trigger, which was included in previous rule drafts (where there is a substantial possibility that a tribunal or court would find the taxpayer's position to be incorrect) will not be included initially, but may be added later.
- **Corporate re-domiciliation** – The government intends to allow companies to re-domicile, making it easier to relocate their site of incorporation to the United Kingdom. It is therefore seeking views on how best to do this, together with views on whether to also permit re-domiciliations of UK companies to other territories.

For more information on these and other Budget announcements, see our **Budget web page.**

PwC observation:

The new notification requirement relating to UTTs is a significant change, including for those businesses with a 'low risk' rating. Companies need to ensure they (a) understand the impact of this new regime, (b) develop the right strategic response for their business, and (c) develop and implement new processes and controls.

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Administrative

United States

US compromises with the United Kingdom, France, Italy, Spain, and Austria on DSTs and trade

Austria, France, Italy, Spain, the United Kingdom, and the United States on 2 October issued a joint statement on a compromise reached regarding digital services taxes (DSTs) and related unilateral measures. It follows the OECD Inclusive Framework (IF) statement of 8 October which contained details on unwinding existing DSTs and an agreement not to introduce further unilateral measures in the lead-up to the implementation of Pillar One.

Under the joint statement, Austria, France, Italy, Spain, and the United Kingdom undertake to withdraw their DST rules for all companies once Pillar One takes effect. The same countries also agreed that DST liabilities accrued in their territories in the period beginning on 1 January 2022, and ending on the earlier of the date the multilateral convention (MLC) implementing Pillar One comes into force, or 31 December 2023 (the Interim Period) would be credited against the tax liability arising from the introduction of Amount A under Pillar One.

In return, the United States agrees to terminate proposed trade actions, including for periods before 8 October, and not to impose any new trade actions, until the end of the Interim Period with respect to the existing DSTs imposed by the countries participating in the joint statement.

For more information see our **PwC Insight.**

PwC observation:

Multinational entities should model the effect of DSTs and consider their impact when implementing business changes.

As provided in the IF Statement, once Pillar One is implemented, DSTs and similar measures will be repealed for all groups, including those not in scope of Pillar One and for all countries that joined the IF Statement, including India and Turkey. Kenya has not signed up to the 8 October IF agreement and hence, is bound to neither implement Pillar One nor repeal its DST.

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Italy

Italy launches public consultation on draft Circular Letter covering hybrid mismatch rules

The Italian Tax Authorities (ITA) launched, on 18 October, a public consultation on the draft interpretative Circular Letter, which covers the application of the hybrid mismatch arrangements rules as governed by the ATAD Decree that implements the ATAD Directives through domestic Italian legislation.

For more information see our **PwC Insight.**

PwC observation:

The public consultation was an opportunity to participate in the legislative process and share operational and technical views on this complex and innovative legislation. Interested parties were invited to provide comments by 19 November.

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Australia

Update on ATO's proposed ruling on software and royalty payments

In response to community feedback, the Australian Tax Office (ATO) has indicated that draft Ruling TR 2021/D4, which deals with the circumstances in which receipts from the licensing and distribution of software will be royalties as defined under Australian domestic tax law, will be updated.

Specifically, a revised draft ruling is expected to clarify the Commissioner of Taxation's view on the application of Australia's double tax agreements to relevant cases and the circumstances where the final Ruling will apply before its date of issue. The draft Ruling will also be updated to include amended and new examples, including an example where a receipt requires apportionment. A revised draft ruling is now scheduled for release in early 2022.

For more information see our **PwC Insight.**

PwC observation:

The revised draft ruling is expected to provide taxpayers with more clarity into the ATO's proposed approach for software distribution arrangements.

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Judical

France

Court details the tax treatment of software licensing and related services

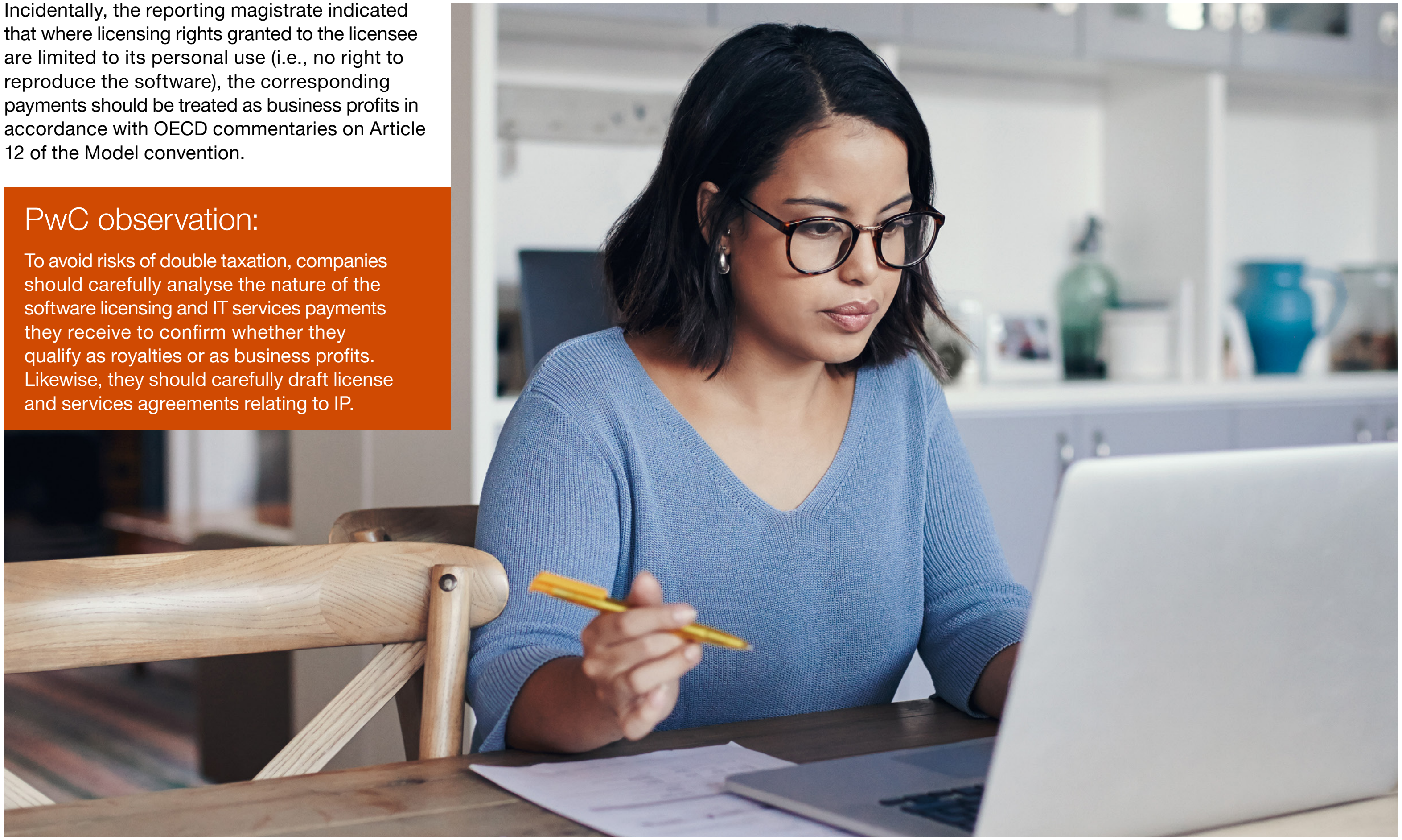
In an 18 June 2021 decision, the French administrative Supreme Court ruled that the treatment of royalties under applicable tax treaties does not extend to services (assistance, IT maintenance, etc.), even where they are closely linked to software licensing both economically and contractually. These payments qualify as business profits and should not be subject to withholding tax in the source country. Consequently, the Court confirmed the absence of tax credit in France for these payments.

A French company had received payments for software licensing and the provision of IT services to foreign entities. The whole payment was subject to a withholding tax in the country of source based on the provisions of the applicable tax treaties covering royalties. However, the French tax authorities challenged the application of these specific provisions to IT services. Consequently, the company was denied a tax credit in France.

Incidentally, the reporting magistrate indicated that where licensing rights granted to the licensee are limited to its personal use (i.e., no right to reproduce the software), the corresponding payments should be treated as business profits in accordance with OECD commentaries on Article 12 of the Model convention.

PwC observation:

To avoid risks of double taxation, companies should carefully analyse the nature of the software licensing and IT services payments they receive to confirm whether they qualify as royalties or as business profits. Likewise, they should carefully draft license and services agreements relating to IP.



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OECD/EU

OECD

136 countries reach political agreement on a new international corporate tax framework

On 8 October, 136 out of the 140 countries of the OECD Inclusive Framework (IF) politically committed to potentially fundamental changes to the international corporate tax system. The group of 136 includes some countries that had expressed reservations about the deal in July such as Ireland, Hungary, Estonia, Barbados and Peru, but have now committed to the agreement. Pakistan, which had signed up to the agreement in July, has now withdrawn its support for the agreement. The agreement allows for some optionality in terms of implementation of both constituent pillars.

Three other countries of the IF membership have not signed up to the agreement yet: Nigeria (the largest economy in Africa), Kenya (the fifth largest economy in Africa) and Sri Lanka. Mauritania subsequently joined the IF, and therefore committed to the two-pillar plan, thus bringing the total to 137 countries.

The IF Statement still maintains that both Pillar One and Two will come into effect in 2023, with the multilateral convention for the former developed and open for signature in 2022 and legislation for the latter brought in 2022 via national, domestic legislation. This remains an exceptionally ambitious timetable and appears to elevate political considerations over technical feasibility.

For more information see our **PwC Insight.**

PwC observation:

Pillar One and Two will introduce two very new, considerable sets of changes to the international corporate tax system. The application of Pillar One to the above-normal profit of less than 100 corporate groups means that many MNEs likely will not be in scope. Nonetheless, the focus of the Pillar on allocating more profit to markets and on using a formula has the potential to change the approach and expectations of tax authorities around the world for all taxpayers. This may be reflected more broadly on audit. Pillar Two has a much broader application and many MNEs will have to comply with it and line up the resources to calculate the ETR across many jurisdictions, using a mix of accounting and tax rules.

There remains, however, broader uncertainty around the effective implementation of the agreement. Although a lot of political and technical work is needed before year end, the Pillars now constitute a key tax input for any MNE's scenario planning.

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Treaties

Cyprus

Protocol amending the Cyprus-Switzerland tax treaty enters into force

A Protocol amending the Cyprus-Switzerland tax treaty, which was signed in 2020, has now entered into force effective 3 November 2021. The Protocol introduces, among others, minimum standards of the OECD's BEPS actions.

The main amendments that the Protocol introduces include:

1. the incorporation of specific wording in the treaty Preamble
2. the introduction of a principal purpose test through the 'Entitlement to Benefits' Article for the treaty
3. the introduction of specific wording in the 'Mutual Agreement Procedure' Article;
4. the introduction of a six-year limitation on adjustments made by the competent authorities of the two countries with respect to the attribution of profits to permanent establishments and profits from transactions between associated enterprises

The amendments mentioned in points (1) and (2) above shall be effective 1 January 2022, while the amendments mentioned in points (3) and (4) are effective 3 November 2021 (the date that the Protocol entered into force).

PwC observation:

Taxpayers will need to take into consideration the effects of the Protocol on their current and future investment plans, especially noting that two of the amendments are already in effect.

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Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
ATO	Australian Tax Office
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
DST	digital services tax
DTT	double tax treaty
EBITDA	earnings before interest, tax, depreciation and amortization
EC	European Commision
ECOFIN	EU Economic and Financial Affairs Council
EEA	European Economic Area
EU	European Union
GAAP	generally accepted accounting principles
IF	inclusive framework

Acronym	Definition
IP	intangible property
ILR	interest limited rules
LIBOR	London Inter-Bank Offered Rate
ITA	Italian Tax Authorities
M&A	mergers and acquisitions
MITL	Mexican Income Tax Law
MNE	Multinational enterprise
NCST	non-cooperative states and territories
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	research & development
STE	Small & Thin Profit Enterprises
UTT	uncertain tax treatment
UVT	Unidad de Valor Tributario
VAT	value added tax
WHT	withholding tax

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