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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

Bernard Moens
Global Leader International Tax Services Network
T: +1 703 362 7644
E: 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

Cyprus

Cyprus tax authorities issue guidance on practical implementation of EU ATAD laws

The provisions of the EU Anti-Tax Avoidance Directive (EU ATAD) all have been transposed into the Cyprus national law. More specifically, the provisions relating to interest limitation, controlled foreign company (CFC) and general anti-avoidance are effective in Cyprus January 1, 2019. The provisions relating to exit taxation and hybrid mismatch rules are effective in Cyprus January 1, 2020, with the exception of certain reverse hybrid mismatch provisions that are effective January 1, 2022.

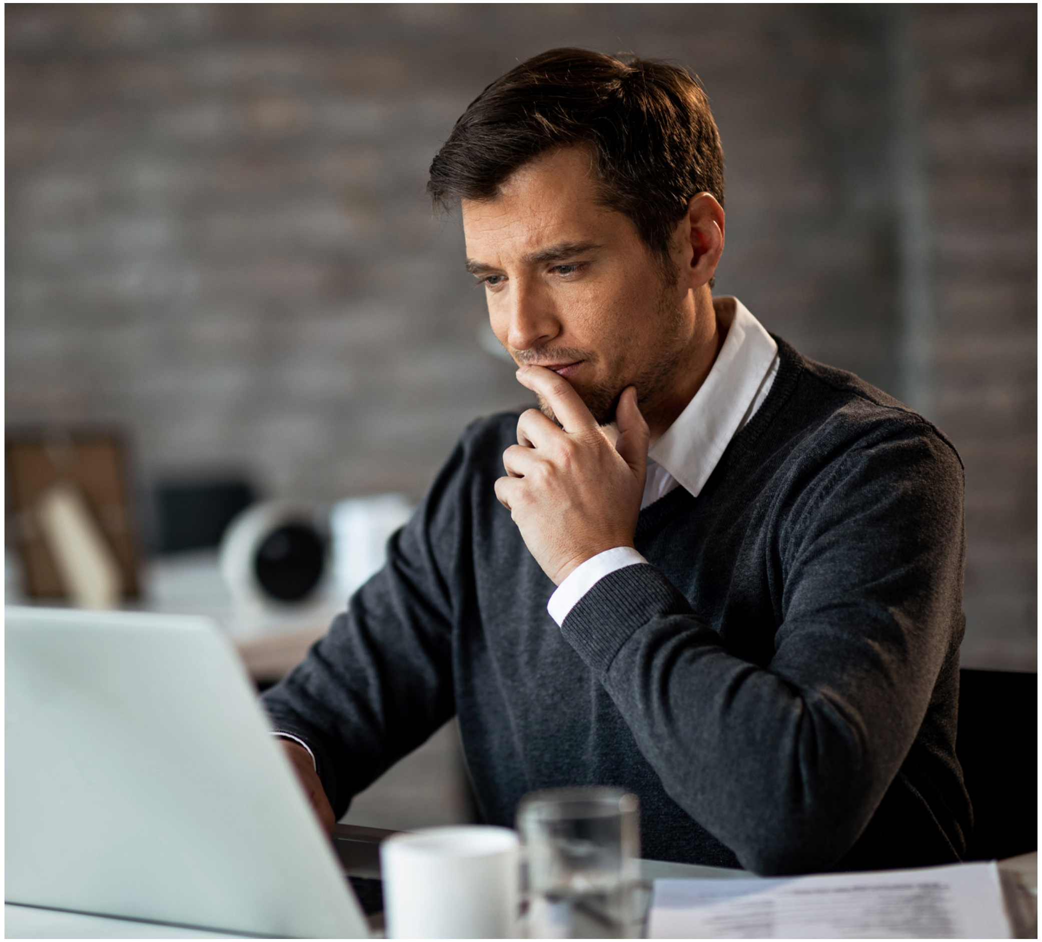
In February 2021, the Cyprus tax authorities issued an Implementing Directive which provides first, high-level guidance on the practical implementation of these EU ATAD law amendments such as:

- General anti-avoidance: In accordance with the Implementing Directive, the tax authorities have the burden of proof regarding the existence of non-genuine arrangements (i.e., arrangements that trigger the new general anti-avoidance rule).
- Exit taxation: applies at the headline corporate income tax rate that applies during the tax year in which the exit occurred (currently 12.5%).
- Interest limitation: In accordance with the rules, any exceeding borrowing costs should be restricted to 30% of EBITDA.

The Implementing Directive explicitly confirms that, for the purposes of the rules, EBITDA should not include any non-taxable earnings, i.e., the test will be done against the entity's taxable EBITDA. Moreover, as mentioned in the Implementing Directive, the Cyprus tax authority intends to issue separate, detailed directives for each EU ATAD law in the near future. These will provide additional guidance on practical implementation as well as examples.

PwC observation:

The issued Implementing Directive and expected future directives should resolve several matters that have been uncertain since the transposition of EU ATAD into Cyprus national law. Taxpayers should stay abreast of any developments and discuss any issues or opportunities that arise from the additional guidance with their advisors.



Marios Andreou/CY/TLS/PwC
Cyprus
T: +357 22 555 266
E: marios.andreou@pwc.com

Stelios Violaris/CY/TLS/PwC
Cyprus
T: +357 22 555 300
E: stelios.violaris@pwc.com

EU

DAC6 information exchange between EU Member States may begin April 30

Most of the EU Member States that deferred the DAC6 reporting deadlines due to the pandemic postponed them to February 28, 2021. Thus, the extended deadline has passed for reporting cross-border arrangements that satisfy at least one of the DAC6 hallmarks and whose first step was implemented on or after June 25, 2018.

However, EU Member States still are navigating the DAC6 landscape, with States frequently deviating in implementing and interpreting the rules. While some EU countries have published guidelines, the interpretation of key requirements for certain hallmarks and concepts remains unclear.

Despite the challenges, the European Union is committed to begin the exchange of information on reportable cross-border arrangements between European tax authorities on April 30, 2021.

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

PwC observation:

The first DAC6 information exchange between EU member states is expected to begin on April 30. MNEs with European interests should intend to comply with the DAC6 disclosure requirements on a timely basis. If they have not already done so, MNEs should develop internal control mechanisms to timely identify potential DAC6 exposures and coordinate filing of reportable arrangements within the 30-day window.

EU

European Union expands reporting obligations under DAC7 and DAC8 for the digital economy and crypto assets

While EU Member States, advisors, and taxpayers are still navigating the DAC6 landscape, the European Union is moving quickly to expand reporting obligations in the digital world. On March 10, the European Parliament (EP) adopted the DAC7 text featuring the new digital platform reporting rules proposed last year by the EU Commission. On March 22, the EU Council adopted the new rules, applicable January 1, 2023. Separately on March 10, the Commission launched a public consultation on DAC8, which would impose reporting obligations for e-money and crypto assets.

MNEs should consider establishing or extending internal control mechanisms to address the new reporting obligations. Failure to comply with these regulations could result in significant penalties.

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

PwC observation:

Based on previous DAC6 experience, local mismatches in the implementation and interpretation of the DAC7 Directive likely will occur within the EU community. This could result in additional complexity and increased compliance for MNEs.

Crypto operators, or similar parties, such as intermediaries in the crypto market, likely will become subject to similar obligations as the Reporting Platform Operators under DAC7.

Maarten Maaskant
US International Tax Desk
T: +1 (347) 449-4736
E: maarten.p.maaskant@pwc.com

Astrid Bauer
EMEA and Global Tax and Legal Regulatory Leader
T: +49 69 95851292
E: astrid.bauer@pwc.com

Will Morris
United States
T: +1 (202) 213 2372
E: william.h.morris@pwc.com

Jeremiah Coder
United States
T: +1 (202) 309 2853
E: jeremiah.coder@pwc.com

Germany

Germany passes draft ATAD bill

The German government on March 24 passed a draft bill aimed at implementing the Anti-Tax Avoidance Directive (ATAD). The draft bill is expected to become law before the September elections.

Taxpayers should particularly analyse the draft bill's hybrid rules impacting deductibility of expenses, since these would be implemented retroactively, and monitor the draft bill as it proceeds through the legislative process.

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

PwC observation:

In order to implement ATAD, the draft bill includes several changes to existing German tax law. Taxpayers should assess the rules' potential impact. They should especially focus on the hybrid rules, as these would be implemented with retroactive effect and may impact deductibility of expenses. The draft bill is expected to pass before the September elections, so taxpayers should monitor the legislative process.

Hong Kong

Tax measures proposed in the 2021-22 Hong Kong Budget

In the 2021-22 Hong Kong Budget delivered on February 24, the Financial Secretary proposed the following profits tax measures:

1. A one-off waiver of 100% of the profits tax for assessment year 2020/21, subject to a ceiling of HK$10,000. The Revenue (Tax Concessions) Bill 2021, which seeks to implement this measure, was gazetted on March 5, 2021. The Bill was introduced into the Legislative Council on March 17, 2021.
2. A review of the tax arrangements in order to enhance Hong Kong's attractiveness as a hub for home offices.
3. The Advisory Panel on BEPS 2.0 will recommend specific response measures in a report to the Financial Secretary once the OECD has finalized the proposals.

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

PwC observation:

This Hong Kong Budget covers a broad range of sectors, including financial services, tourism, innovation and technology, and the digital economy. The government's various initiatives appear to further develop Hong Kong's financial services industry, particularly in light of the BEPS 2.0 development (including the proposal of a global minimum effective tax), where tax incentives may not have been attractive. Perhaps the government will consider incentives for other sectors that are strategically significant for Hong Kong's economic development, such as regional headquarters and intellectual property hubs.

Arne Schnitger
Germany
T: +49 1511 213 8039
E: arne.schnitger@pwc.com

Volker Kabisch
Germany
T: +49 1511 274 5936
E: volker.kaebisch@pwc.com

Fergus WT Wong/HK/TLS/PwC
Hong Kong
T: +852 2289 5818
E: fergus.wt.wong@hk.pwc.com

Spain

Spain enacts ATAD 2 anti-hybrid rules

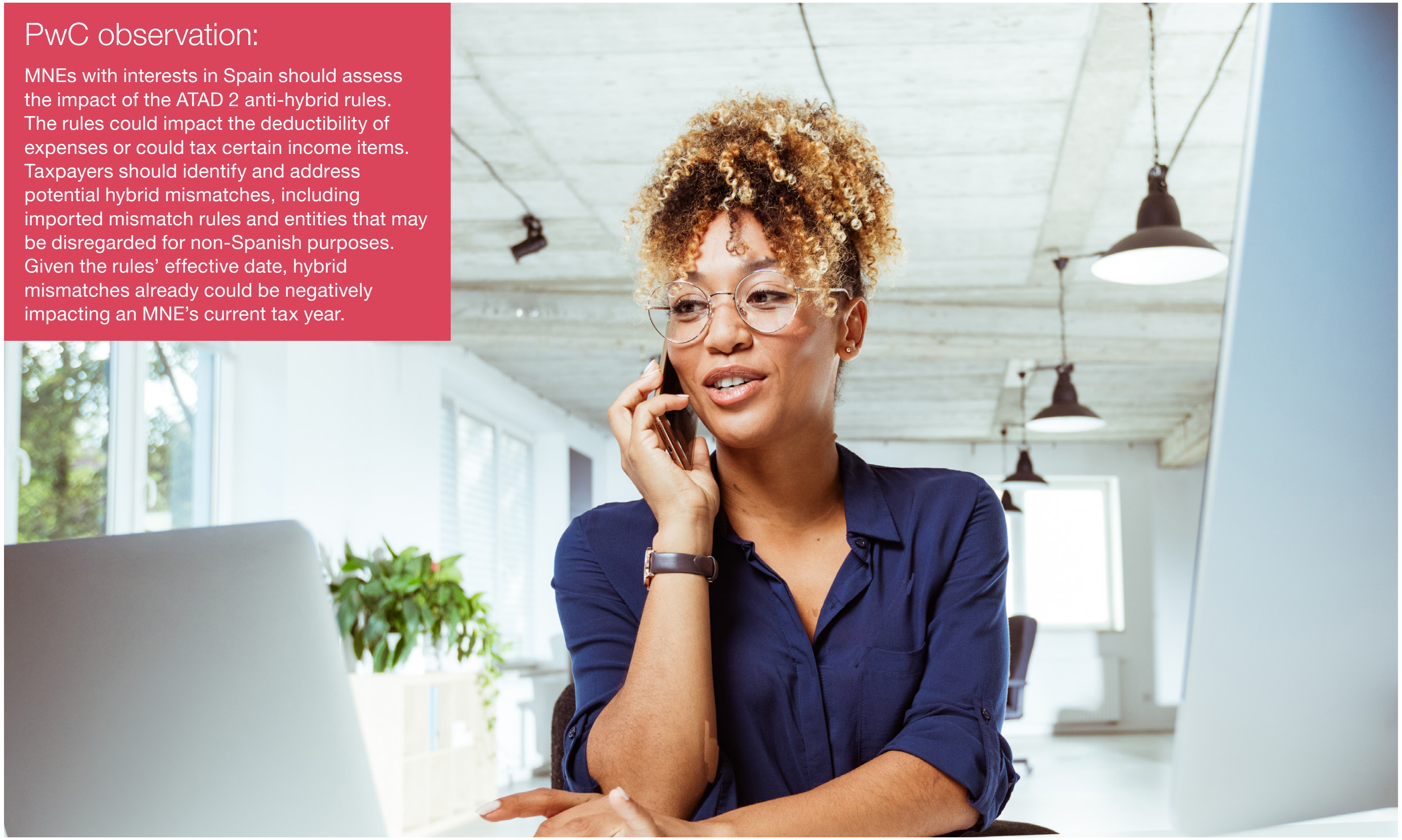
The Spanish Government, on March 9, amended the Corporate Income Tax (CIT) law and the Non-Resident Income Tax (NRIT) law to address hybrid mismatches. The stated purpose of these amendments is to enact into Spanish domestic law the anti-hybrid rules included in EU Directive 2016/1164, dated July 12, 2016 (ATAD 1), as amended by EU Directive 2017/952, dated May 29, 2017 (ATAD 2).

The Royal Decree law was published in the Spanish Official Gazette on March 10, 2021, and entered into force the following day. The new rules effectively apply to tax years not finalized when the new rules entered into force (March 11, 2021).

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

PwC observation:

MNEs with interests in Spain should assess the impact of the ATAD 2 anti-hybrid rules. The rules could impact the deductibility of expenses or could tax certain income items. Taxpayers should identify and address potential hybrid mismatches, including imported mismatch rules and entities that may be disregarded for non-Spanish purposes. Given the rules' effective date, hybrid mismatches already could be negatively impacting an MNE's current tax year.



Carlos Concha
Spain
T: +34 628 12 96 80
E: carlos.concha.carballido@pwc.com

Roberta poza Cid
Spain
T: +34 669 41 92 20
E: roberta.poza.cid@pwc.com

United Kingdom

Budget 2021

The UK's Chancellor of the Exchequer, Rishi Sunak, delivered his second Budget on March 3, 2021. This was followed by the publication of Finance Bill 2021 on March 11, 2021. The Chancellor focused on three key priorities: emergency measures for the pandemic, repairing public finances, and stimulating economic recovery.

The key announcements for multinational companies operating in the United Kingdom include::

Corporation tax & Diverted Profits Tax (DPT)

The corporation tax rate will increase to 25% on profits over £250,000 beginning in April 2023. The rate for small profits under £50,000 will remain at 19% and there will be taper relief for businesses with profits between £50,000 and £250,000, so that their average rate is less than the main rate. In line with the main rate increase, the DPT rate will rise to 31% beginning in April 2023.

Super-deduction for plant and machinery

From April 1, 2021 until March 31, 2023, companies investing in qualifying new plant and machinery assets will benefit from a 130% first-year capital allowance. Investing companies will also benefit from a 50% first-year allowance for qualifying special rate (including long life) assets.

Extended loss carry back for businesses

The trading loss carry-back rule will be temporarily extended from one year to three years. This will be available for both incorporated and unincorporated businesses.

- Unincorporated businesses and companies that are not members of a group will be able to obtain relief for up to £2 million of losses in each of 2020-21 and 2021-22.
- Companies that are members of a group will be able to obtain relief for up to £200,000 of losses in each of 2020-21 and 2021-22 without any group limitations.
- However, companies that are members of a group will be able to obtain relief for up to £2 million of losses in each of 2020-21 and 2021-22, but are subject to a £2 million cap across the group as a whole.

Payments of interest or royalties to connected companies in the European Union

Domestic legislation that gives effect to the EU Interest and Royalties Directive, providing an exemption from withholding tax for certain intra-group interest and royalty payments made by UK companies to EU companies, will be repealed. As a result, withholding taxes will apply to payments of annual interest and royalties made by UK companies, subject to the terms of the relevant double taxation agreement. This will mirror the position for payments of interest and royalties (as well as dividends) by EU companies to UK companies beginning January 1, 2021 as a result of the United Kingdom ceasing to be an EU member.

Hybrids

Finance Bill 2021 includes several amendments to the anti-hybrid rules following HMRCs recent consultation, including measures relating to:

- the definition of a hybrid entity
- dual-inclusion income definition and group relief
- acting together, and
- imported mismatches

A number of these changes are retroactive and apply effective January 1, 2017. There also are provisions that allow taxpayers to apply certain changes to the dual inclusion income rules effective January 1, 2017, despite accounting periods being closed.

PwC observation:

The decision to increase corporation tax to 25% in 2023 is surprising since a staggered approach was expected. A substantial portion of the increased tax amount is returned to business via the 130% 'super deduction' for investment, which is anticipated to stimulate £25B in UK business investment. The super deduction is expected to benefit capital-intensive businesses, such as manufacturers and utilities companies.

These measures may encourage an immediate acceleration of investment. However, additional consideration is needed for certain assets, such as vehicles and leased plant and machinery, which may be subject to restrictions.

Rachael Palmer
London
T: +44 7525 298719
E: rachael.palmer@pwc.com

Sara-Jane Tovey
London
T: +44 7590 354061
E: sara-jane.tovey@pwc.com

Uruguay

Corporate restructuring: Mergers and demergers – Decree No. 64/021

In line with our comments included in the February **2021 edition**, the Executive Power issued Decree 21/021 which adjusts some of the provisions included in Decree 76/020. The original regulations established that companies that resolve to merge or demerge – according to the provisions of the Commercial Companies Act – , may choose to do so without computing goodwill, provided they meet certain conditions. In this context, the Executive Power issued Decree 64/021, in February 2021, correcting an error made in Decree 21/021.

The adjustment introduced by Decree 64 establishes that the maintenance requirement for a period of not less than two years of the equity proportions of the beneficial owners participating in the mergers and splits, must be at least 95% instead of 5% as it had been established by error in Decree 21/021.

PwC observation:

The above-mentioned adjustments would allow the execution of corporate reorganizations with relevant tax and administrative savings in fewer cases than in the case of maintaining the requirements established in Decree 21/021.

Patricia Marques
Uruguay
T: +598 2916 0463
E: patricia.marques@pwc.com

Eliana Sartori
Uruguay
T: + 598 2916 0463
E: eliana.sartori@pwc.com

Administrative

Australia

COVID-19 – ATO compliance approach for permanent establishments of foreign companies extended

The Australian Tax Office (ATO) has advised that it will extend its 'safe harbor' compliance approach related to permanent establishments (PEs) created in Australia due to the effect of travel restrictions as a result of COVID-19 until June 20, 2021.

This compliance approach will apply if:

- the foreign company did not otherwise have a PE in Australia before the effects of COVID-19
- the temporary presence of employees in Australia continues to be solely as a result of COVID-19 related travel restrictions
- those employees temporarily in Australia will relocate overseas as soon as practicable following the relaxation of international travel restrictions, and
- the foreign company has not recognized those employees as creating a PE or generating Australian-source income in Australia for the purpose of another jurisdiction's tax laws.

PwC observation:

At this stage, it is unclear whether there will be any further extensions. Beginning July 1, 2021 the compliance approach will cease to apply and any affected company will be required to consider whether ongoing arrangements give rise to a PE in Australia.

Peter Collins
Australia
T: +61 (0) 438 624 700
E: peter.collins@pwc.com

David Earl
Australia
T: +61 (0) 403 416 958
E: david.earl@pwc.com

United States

USTR proposes potential tariffs pending six digital tax investigations; closes four others

The United States Trade Representative (USTR) on March 26 published updates to digital service tax (DST) investigations regarding Austria, India, Italy, Spain, Turkey, the United Kingdom, Brazil, the Czech Republic, the European Union, and Indonesia. The USTR has terminated its investigations regarding Brazil, the Czech Republic, the European Union, and Indonesia because those jurisdictions either have not adopted or not implemented a DST during the investigation period. For the other countries, the investigatory process is continuing, and the USTR has proposed a list of goods for potential tariffs.

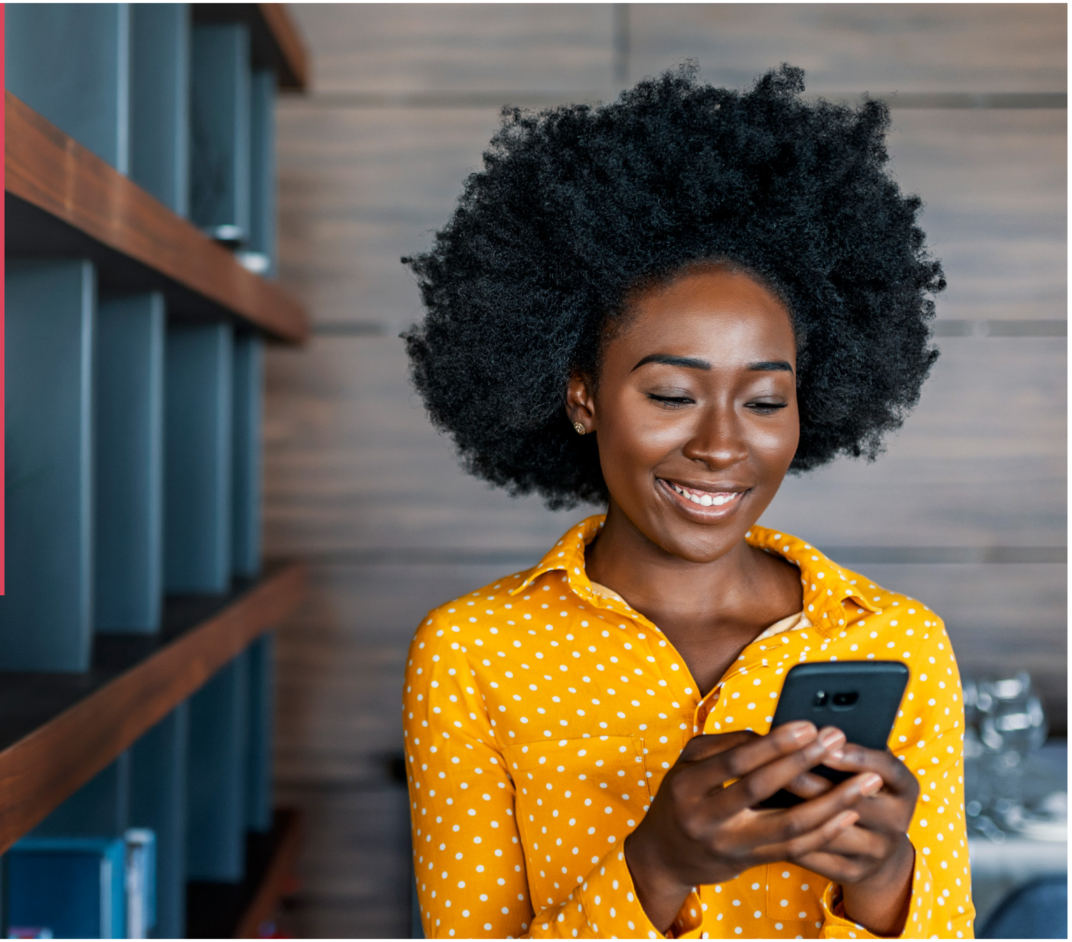
The USTR is soliciting comments from the public regarding the proposed tariffs and has scheduled both a multi-jurisdictional hearing as well as hearings regarding each country. The March 26 USTR updates may be found on the **USTR's website**.

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

PwC observation:

The March 26 notices indicate that the possibility of enforcement tariffs remains despite the change in administration. They further indicate how actions taken by the previous administration have paved the way for the current and future administrations to use these measures. Companies should remain aware that actions taken by other countries that affect companies doing business in the United States could lead to the imposition of US tariffs on goods from such other countries.

Companies importing from any of the six referenced countries should review the proposed product listings and, if potentially affected by any of the tariffs under consideration, should determine whether to submit written comments and requests to appear at the applicable hearings.



Anthony Tennariello
United States
T: +1 (917) 612-4556
E: anthony.tennariello@pwc.com

Maytee Pereira
United States
T: + 1 (917) 691-1284
E: maytee.pereira@pwc.com

Judicial

Brazil

Brazilian tribunal considers municipal service tax over complex contracts

Pursuant to the judgment in relation to Acão direta de inconstitucionalidade ADI 3142 dated November 11, 2020, the Supreme Federal Tribunal (STF) unanimously rejected the final appeal against the STF judgment dated August 5, 2020, effectively confirming the earlier judgment by the STF concluding, by the majority of votes, that ISS can apply over complex or mixed contracts. Following the decision, the dispute became final (transitou em julgado) on December 10, 2020.

Background

Brazil's Constitution provides municipalities with the power to institute certain taxes, including those related to services of whatever nature (not otherwise specified in Article 155 of the Constitution), defined in a Complementary Law—this tax is referred to as ISS (imposto sobre serviços). Subsequently, Complementary Law 116/2003 lists services subject to tax. Item 3.04 of this list provides lease, sublease, charter, right of passage or permission to use, shared or not, of railroad, highway, posts, cables, ducts and conduits of any nature.

Original STF Decision

The original STF decision dated August 5, 2020, considered the historical controversy in relation to transactions involving arrangements contemplated by Item 3.04, highlighting four key points:

- Where the arrangement reveals, in essence, a simple 'obligation to give' (e.g. mere lease of movable assets), ISS should not apply;
- Where the arrangement reveals an 'obligation to do', the levy of ISS is possible;
- In the case of a mixed or complex arrangement, where it is possible to clearly separate part of the arrangement that should not be subject to ISS (such as an obligation to give), either in relation to its object, or a specific value of financial consideration, this part of the arrangement should not be subject to ISS; and
- In the case of a mixed or complex arrangement, where such separation is not possible, and the operation falls within the scope defined in a complementary law as a service of any nature (within the terms of the Federal Constitution), the levy of ISS is possible.

The judgment contemplated that even where the lessor (or equivalent) has the obligation to keep things in good condition and to guarantee their good use, this does not transform these situations into a mixed or complex arrangement.

The original STF judgment also considered and dismissed the argument of unconstitutionality of Article 3(1) of the Complementary Law (regarding the municipality of the triggering event) which was based on the argument that in order to comply with the law it would be necessary to create an operational infrastructure in hundreds of municipalities, including opening branches, just to collect ISS in each municipality—violating the principles of proportionality or reasonability.

Appeal

On appeal (embargo de declaração), the STF decided that anomission, contradiction, obscurity or material error in judgment did not exist, nor an internal conflict with the paragraphs of the Complementary Law or violation of the principles of proportionality or reasonability. Finally, no alteration in the jurisprudence of the Tribunal was identified.

It considered that mixed or complex contracts are those contracts where obligations of a different nature have been combined within a single contract or transaction. In the case under discussion, this involved the provision of services along with the underlying leasing arrangement.

PwC observation:

The judgment of the appeal reiterated that ISS should not apply in relation to transactions contemplated by Item 3.04 where considered in isolation. However, in mixed or complex contracts where it is not possible to clearly segregate the obligations to give and to do—whether it be with the object or concerning the value of the financial consideration specified—the activity may be subject to ISS.

The decision stressed the importance that application of the tax should be considered in the light of each individual case, with regard to the facts and evidence.

While the judgment deals specifically with the application of ISS, the commentary and analysis regarding complex or mixed contracts involving services may have wider application to other taxes and contributions, and is especially relevant for sectors where complex or mixed contracts are becoming increasingly popular (e.g., technology).

Bruno Porto/BR/TLS/PwC
Sao Paulo
T: +55 11 97097-1862
E: bruno.porto@pwc.com

Mark Conomy/BR/TLS/PwC
Sao Paulo
T: +55 11 3674-2519
E: conomy.mark@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
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
ECOFIN	EU Economic and Financial Affairs Council

Acronym	Definition
GAAP	generally accepted accounting principles
IF	inclusive framework
IP	intangible property
M&A	mergers and acquisitions
MNC	multinational corporation
MNHC	multinational holding company
NRC	non-resident companies
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	research & development
STF	Supreme Federal Tribunal
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

Geoff Jacobi
International Tax Services

T: +1 202 262 7652
E: geoff.jacobi@pwc.com

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