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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

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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

Belgium

Belgium aligns its 'EBITDA interest limitation rule' with ATAD I Directive

Belgium's new legislation addresses the European Commission's criticism of Belgium's implementation of its 'EBITDA interest limitation rule'.

The European Commission, on July 2, 2020, sent a formal notice of default to the Belgian government regarding the implementation of the July 12, 2016 Council Directive (EU) 2016/1164, which prescribed rules against tax avoidance practices that directly affect the internal market's functioning (ATAD I). The European Commission concluded that the Belgian definitions of 'financial undertakings' and 'public private cooperation' – that are exempted from the rule – are not compatible with the ATAD I Directive. In response, Belgium published new legislation on December 20, 2020 that introduces three changes:

- revises excluded 'financial undertakings'
- replaces 'public-private partnerships' (PPS) with the term 'long-term public infrastructure projects'
- makes technical corrections to better align article 198/1 ITC92 with ATAD I objectives

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

PwC observation:

Multinational groups should consider how this legislation could impact their Belgian entities, specifically entities involved in actively financing real estate or performing factoring activities. The same applies for Belgian entities with income and costs economically equivalent to interest arising from financial instruments (other than loans) from contracts concluded before June 17, 2016.

Alternatively, broadening the definition of PPS projects to long-term public infrastructure projects could create opportunities for reducing excess borrowing costs. The changes to the 30% EBITDA rule entered into force on December 31, 2020 and apply to the taxable periods ending thereafter.

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China

China simplifies negative list for market access; expands the encouraged industry catalogue

China, on December 10, 2020, issued the nationwide negative list for market access which further simplified the list by removing 8 provisions and grouping the remaining provisions into two categories, i.e. 'prohibited access' (5 provisions) and 'allowed access upon pre-approval' (118 provisions).

On December 27,2020, China issued the encouraged industry catalogue for foreign investment. This catalogue includes two sub-catalogues: a revised catalogue of encouraged industries for foreign investment nationwide, and a revised catalogue of preferential industries for foreign investment in the central and western regions. Compared to the 2019 catalogue, 88 items were revised and 127 items were newly added. The 2020 catalogue focuses on the manufacturing and productive service industry, to further leverage the positive role of foreign investment in supply chains and develop new types of infrastructure. The catalogue became effective on January 27,2021.

PwC observation:

The Chinese government wishes to broaden foreign investment sectors by further 'shortening' the negative list, removing the restrictions on foreign investment in certain sectors, and 'lengthening' the 2020 catalogue.

Implementing the 'equal treatment in market access unless prohibited' principle in China, sectors that are not on the negative list are administered following the principle of 'non-discriminatory equal treatment' for domestic and foreign investors. This will encourage a more open, convenient, and fair business environment by protecting foreign investors' legitimate rights and interests, and should enhance foreign investor confidence to invest in China.

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France

2021 French Finance Act aims to improve competition

The 2021 French Finance Act (the Finance Act) was enacted on December 29, 2020 and published in the French legal gazette on December 30. The Finance Act includes corporate tax measures designed to improve the French business environment and local companies' competitiveness. Other provisions affect individual taxation, VAT, customs, and small companies.

Most of the measures apply as of January 1, 2021 and affect multinational enterprises (MNEs) that have French operations or subsidiaries. Such MNEs should consider the favourable impact of applicable tax rate reductions with respect to their French operations, as well as potential investment opportunities provided by the Finance Act.

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

PwC observation:

MNEs should consider how the enacted measures will impact their French operations. Favourable measures in the Act also could lead to financing and investment opportunities.

Note: Some of these measures are temporary.

MNEs also should consider how the reduced business tax rates could impact their IFRS positions, and for US MNEs, their US GAAP consolidated statements and deferred taxes.

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Germany

Germany adopts draft bill on modernization of withholding tax relief procedure

On January 20, the German government adopted the draft bill on modernizing withholding tax relief and certifying paid withholding taxes. The draft bill includes changes to the withholding tax and relief procedure, as well as the German anti-treaty-shopping rules. The German government's approval of the bill is the first step in the legislative process, so companies should monitor possible further changes.

As reported in a previous **PwC newsflash**, initial versions of the draft bill also included a proposal from the German Ministry of Finance which would repeal, on a retroactive basis, the application of German withholding tax on royalties attributable to IP registered in Germany when paid on an extraterritorial basis. However, that proposal was dropped from the draft bill. As such, the circular published by the German Ministry of Finance, discussed in our **previous PwC Insight**, applying German withholding tax to such royalties when paid on an extra-territorial basis (i.e., non-German payor and payee) remains the controlling guidance.

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

PwC observation:

The envisaged amendments to the German anti-treaty-shopping rules may impact the current withholding tax position of foreign beneficiaries. MNEs should review and evaluate relevant transactions and group structures based on these new requirements.

As the draft bill does not include the envisaged abolishment of the German extraterritorial IP taxation for German registered rights, the German tax authorities are expected to focus again on enforcement of those rules. MNEs should continue to evaluate their IP structures and transactions in order to identify potential German-registered IP and evaluate respective German compliance requirements.

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Hong Kong

New tax incentives for ship leasing businesses in Hong Kong

To enhance the competitiveness of Hong Kong ship leasing businesses, the government introduced concessionary tax regimes for qualifying ship lessors (at a 0% Hong Kong profits tax rate) and qualifying ship leasing managers (at a 0% Hong Kong profits tax rate for activities carried out for an associated corporation, and at an 8.25% Hong Kong profits tax rate for other cases). The tax concessions are retroactive and became effective on April 1, 2020.

The tax legislation includes anti-abuse measures and sets out the substantial activity requirement test, which requires entities to satisfy two conditions in Hong Kong: (a) an adequate number of full-time qualified employees, and (b) an adequate amount of operating expenditure. In addition, the Hong Kong Inland Revenue Department (HKIRD) issued the Departmental Interpretation and Practice Notes No. 62 on December 7, 2020 to provide more guidance on the interpretation and application of the concessionary tax regimes.

PwC observation:

As the new ship leasing tax regime involves complicated qualifying conditions and anti-abuse rules, companies should examine the rules carefully and consider applying for an advance ruling from the HKIRD. Shipping groups should also ensure that an effective transfer pricing policy is in place, with respect to intercompany cost recharge and service fees (if any).

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Ireland

Irish tax residency grandfathering provisions ended December 31, 2020

Irish tax residency rules previously were amended to allow an Irish-incorporated company to be deemed a tax resident in Ireland if it was incorporated in Ireland on or after January 1, 2015, unless another country that had a tax treaty with Ireland already treated the company as a tax resident. A company is regarded as Irish tax resident if it is managed and controlled in Ireland, regardless of its place of incorporation.

However, for companies incorporated before January 1, 2015, there was a transition period (known as the grandfathering period) until December 31, 2020, where the 'old rules' were used to determine a company's tax residence. Beginning January 1, 2021, all Irish-incorporated companies follow the same rules in determining tax residence. Therefore, certain Irish-registered non-resident (IRNR) companies that are not tax residents in a jurisdiction with an Irish tax treaty should have reverted to being Irish tax resident as of January 1, 2021.

Any company whose residence reverted to Ireland may be required to register for Irish tax as of the date it became Irish tax resident. Also, a company that begins conducting a trade, profession or business in Ireland must notify the Irish tax authorities within 30 days of starting to carry on such trade, profession or business in Ireland (Forms 11FCRO).

PwC observation:

All groups with IRNR companies should assess their tax residency position and ensure that they meet all Irish registration and notification requirements by the deadlines.

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Italy

Italy 2021 budget extends step-up regime for intangibles and provides for retroactive application of APAs

The Italian Parliament approved and published the 2021 budget law ('the Law') in the Official Gazette on December 30. The Law contains several corporate tax provisions, including (i) an extension of the tax step-up regime for goodwill and other intangible assets, (ii) retroactive application of advance pricing agreements, (iii) dividend and capital gains tax exemptions for European Union (EU) and European Economic Area (EEA) investment funds, and (iv) revamping and introducing new tax credits and incentives to address the economic impact of the pandemic.

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

PwC observation:

Multinationals should consider the potential impact of the 2021 budget law, analyse their position for Italian tax purposes, and consider the relevant tax regimes that have been introduced or revamped (e.g., the step-up regime or the tax credits) for short-term support. At the same time, certain new opportunities and challenges can impact multinationals significantly with respect to their long-term Italian tax position (e.g., the tax exemption for dividends and capital gains realized by EU/EEA regulated investment funds and the new APA rules).

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Korea

Korea extends excess corporate earnings tax, increases carryforward opportunities

In December 2020, the Korean National Assembly approved changes to Korean tax laws. The changes are mainly consistent with the government's proposals announced in August 2020. The main tax law changes of interest to Korean inbound investors include:

- An extension of Korea's tax on excess corporate earnings: Companies whose net assets exceed KRW 50bn are subject to an additional retained earnings tax of 22% if they fail to spend a certain amount of their net income on qualifying expenditure items (such as investment in facilities and employee salary increases). This temporary tax measure was scheduled to expire at the end of 2020, but has been extended for two years until the end of 2022.
- An increase in the carryforward period of unused tax losses: The carryforward period for corporate tax losses has been extended from 10 to 15 years. For most companies, there is no change to the limitation that carryforward losses can offset only 60% of current year profits. The new 15-year carryforward period will be effective for tax losses reported in tax returns submitted on or after January 1, 2021.
- An extension of the carryforward rules for unused tax credits: The carryforward period for unused tax credits (e.g. R&D tax credits) has been extended from 5 to 10 years. The change applies to unused tax credits whose carryforward period has not expired by the time the corporate tax return is filed on or after January 1, 2021.
- The introduction of an integrated investment tax incentive system: The government has integrated a number of tax credit regimes into a single and easier-to-understand incentive scheme. Under this new scheme, large companies will be eligible for a basic credit rate of 1% on expenditure for all types of business assets subject to certain exclusions (higher rates available for SMEs and medium-scale companies). Additional credits at 3% of the qualified investment amount will also be available if the expenditure exceeds the average investment made over the past three years, subject to a cap of 200% of the amount of the basic tax credit claimed. Investments to commercialize certain new technology, such as automated driving and artificial intelligence, will be eligible for higher credit rates.

PwC observation:

With these tax law changes, the Korean government hopes to encourage corporate investment and help the economy recover from the pandemic's impact.

The changes may present opportunities for companies to realize benefits for unused tax losses and credits that would otherwise expire. With the introduction of the new investment tax incentive scheme, companies apply either the previous or the new tax credit system for 2020 and 2021. Companies should therefore assess which system is more beneficial.

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Peru

Peru's new limitation on interest expense deductibility

Pursuant to a Peruvian income tax law modification approved in 2018, the EBITDA rule has replaced the thin capitalization rule for purposes of determining the amount of interest expense that taxpayers may deduct from taxable income. This change was effective on January 1, 2021.

Under the EBITDA rule, the interest expense amount arising from related and unrelated party loans that taxpayers may deduct from taxable income is limited to 30% of its EBITDA from the previous fiscal year. For these purposes, EBITDA is defined as taxable earnings before interest income and expense, depreciation and amortization. Interest expense that exceeds the threshold could be carried forward and deducted in the next four fiscal years. Taxpayers that incorporate or start their operations during the year will consider the EBITDA from their year of incorporation or starting of activities.

The EBITDA rule applies regardless of whether the interest expense arises from obligations that were issued before January 1, 2021.

Finally, the EBITDA rule does not apply to taxpayers whose net profits do not exceed 2500 Peruvian Tax Units (currently approx. USD 3 million), or to taxpayers that develop public infrastructure projects or public services under Legislative Decree No 1224 (which regulates the private investment promotion framework through public private partnerships), among other exceptions.

PwC observation:

Peruvian corporations should assess how the limitations will impact taxable income, and should consider available options for how they might utilize carryforwards over the subsequent four-year period.

United Kingdom

Beyond Brexit

The United Kingdom left the European Union but reached a deal regarding their future trading relationship. The Trade & Cooperation Agreement (TCA) came into provisional effect at 11pm GMT on December 31, 2020, and established the commercial and regulatory arrangements between the European Union and the United Kingdom. The agreement is provisional upon European Parliament ratification, which is expected by the end of February or early March.

The TCA sets out preferential arrangements in a number of areas that are relevant for tax purposes, including trade in goods and services, the digital economy, intellectual property, and social security. It also contains arrangements to ensure a level playing field and to maintain minimum standards in key areas of tax policy, as set forth by the OECD as of December 31, 2020.

There also is a requirement to bring in a system of subsidy control to avoid distortion in the market – such as measures like EU State Aid rules.

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

PwC observation:

The agreement between the UK and the EU should provide greater clarity; however leaving the single market and customs union will impose significant extra costs on UK businesses. Still, avoiding the economic shock of a 'no deal Brexit,' and the UK stabilizing its relationship with its closest trading partners is good news, and which could, over time, lead to further development.

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Uruguay

Uruguayan National Budget

The National Budget Law for the 2020-2024 period (see **September 2020 edition** of International Tax News) was approved in December 2020.

The Law introduces CIT modifications, including the repeal of the limitation deduction for prior year tax losses. Previously, companies could deduct up to five previous years of tax losses at 50% of the net taxable income. The modified rules allow taxpayers with accumulated losses to deduct the losses without any cap, beginning with tax years ending on December 31, 2020.

PwC observation:

This tax measure is relevant for companies, no only to the extent that it affects current tax, but also because it may impact financial projections and deferred tax.

The changes introduced by the National Budget Law are effective from January 2021, unless otherwise provided.

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Administrative

Chile

Chile issues regulations on tax residency certificates and foreign flow-through entities

The Chilean Tax Authority issued Resolution N°151/2020 on December 9, 2020 (the 'Resolution'), which addresses formal requirements applicable to tax residency certificates required to claim: (i) a full 'first category tax credit' against withholding taxes imposed on dividend distributions to foreign shareholders resident in a treaty jurisdiction, or (ii) a reduced rate or exemption for other types of income under the relevant treaty. In the Resolution, the Chilean Tax Authority also went beyond formal requirements and analysed the specific situation of dividends paid to foreign shareholders deemed to be flow-through under foreign law.

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

PwC observation:

Taxpayers should consider the new tax residency certificate regulations prior to making any payment abroad, especially for dividends that would claim a full first category tax credit.

In addition, foreign entities and individuals holding Chilean investments via flow-through entities should evaluate whether the treatment applied to dividends paid in the past or to be paid in the future to such flow-through entities are consistent with the Resolution.

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France

French tax authorities publish their guidelines on the BEPS multilateral Instrument

On December 16, 2020, French tax authorities published guidelines on the BEPS multilateral Instrument (MLI), which came into force for France on January 1, 2019.

As described in the guidelines, the MLI's purpose is to amend all tax treaties to include a series of provisions designed to prevent aggressive tax planning strategies that result in the artificial transfer of profits to states or territories where they are not subject to taxation or where they are subject to limited taxation. The MLI also aims to ensure that tax treaties avoid the possibility of double non-taxation.

The guidelines clarify the effects of the different options France has taken with respect to the MLI. They also include examples of their application for options that France or the other Party to a given tax treaty have notified.

PwC observation:

The consolidated versions of the tax treaties, as amended by the MLI, will be available on the website of the French tax authorities. They are published for information purposes only and are not binding on the French tax authorities.

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Judicial

Nigeria

Landmark decision – 'sales in the ordinary course of business not subject to WHT'

The Tax Appeal Tribunal, on November 30, 2020, ruled that sales in the ordinary course of business are not subject to withholding taxes. This decision comes after the Federal Inland Revenue Services pressured taxpayers to collect withholding tax on such sales.

In reaching its decision, the Tax Appeal Tribunal held that although the withholding tax regime is a collection device, its primary objective is to prevent tax evasion, and there was no occasion for such evasion in this case.

The tribunal also held that it is a question of fact as to whether sales are in the ordinary course of business, and a tax authority has the responsibility of determining this, noting the following guidance:

- whether the activity was contained in the memorandum and articles of association
- the type of industry the taxpayer operates in
- the history and antecedents of the taxpayer, and
- the frequency of carrying out the activity.

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

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PwC observation:

The Tribunal confirmed that sales in the ordinary course of business are not subject to withholding tax, but the analysis is fact specific and considers whether any degree of tax evasion is present.

EU/OECD

Cyprus

Cyprus NID assessed as 'not harmful' and its exchange of information rated 'largely compliant'

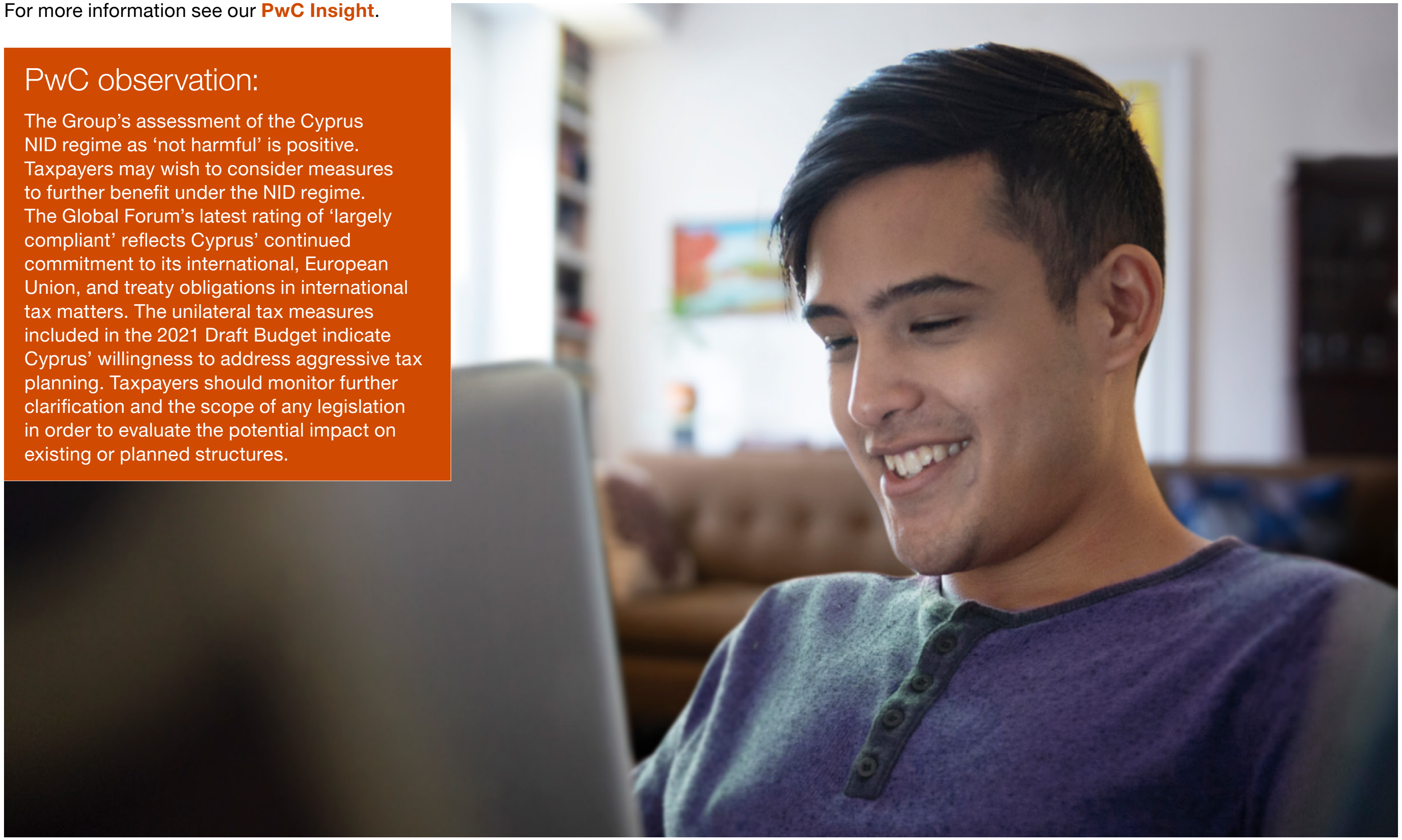
The EU Code of Conduct Group (Business Taxation) (the Group) on November 20, 2020 issued a report in which the Cyprus notional interest deduction (NID) regime was assessed as 'not harmful' as of its January 1, 2015 introduction. The EU Economic and Financial Affairs Council (ECOFIN) approved the report on November 27, 2020. Furthermore, as indicated in its official December 11, 2020 report, the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) found that Cyprus' overall rating remains 'largely compliant.'

In the meantime, the Cyprus Council of Ministers recently approved the Cyprus draft budgetary plan for 2021 (2021 Draft Budget). The 2021 Draft Budget reiterates Cyprus' commitment and willingness to cooperate in all appropriate forums for taxation, with respect to the respective competencies under treaties and in light of relevant voting procedures that apply to such matters. Furthermore, Cyprus announced new unilateral measures to address 'aggressive tax planning.'

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

PwC observation:

The Group's assessment of the Cyprus NID regime as 'not harmful' is positive. Taxpayers may wish to consider measures to further benefit under the NID regime. The Global Forum's latest rating of 'largely compliant' reflects Cyprus' continued commitment to its international, European Union, and treaty obligations in international tax matters. The unilateral tax measures included in the 2021 Draft Budget indicate Cyprus' willingness to address aggressive tax planning. Taxpayers should monitor further clarification and the scope of any legislation in order to evaluate the potential impact on existing or planned structures.



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OECD

Public comments on OECD Blueprints for Pillar One and Pillar Two

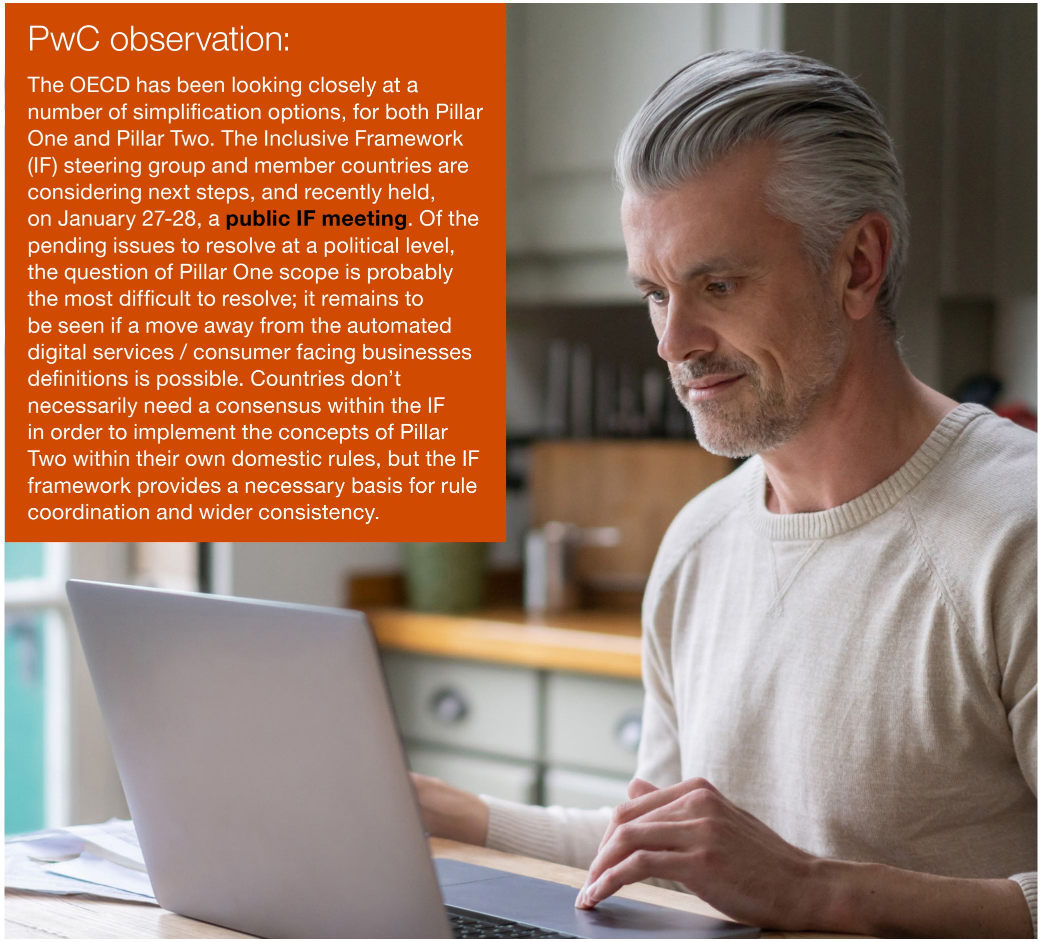
Businesses, advisers, trade organisations, academics, and NGOs were eager to 'have their say' in relation to the Blueprint Reports for Pillar One and Pillar Two frameworks that seek adjustments to the international tax system in order to meet the challenges of digitalization and globalization. The OECD received more than 200 response letters with 3,500 pages of comments (marginally more on Pillar Two than on Pillar One), and the virtual public meetings featured over 3,000 viewers.

- PwC's written comments pointed to matters of principle to follow, as well as suggestions for simplification, such as including viability testing and a netting process between countries to facilitate the required re-allocation of tax revenues. PwC also addressed a number of technical issues, including certainty and interaction with transfer pricing rules, plus matters of administrative implementation.
- Other commentators focused on a wide range of subjects covering, for example, alternatives to the Amount A formulation, scoping depth for Amount B, and the political issue of the level of the Pillar Two minimum tax. The OECD Secretariat said the main thrust was the need for reducing both the inherent complexity of what is being sought and the practical complexity of making changes work.
- The virtual meeting's Chairs noted that simplification has already played a big role in discussions and will remain important. Fundamental policy issues remain open, such as scope of Amount A and rates, benchmarks and thresholds. However, forward movement on these issues will require involvement of the new US administration, which may result in a brief delay. Nevertheless, in the Chairs' view, there is a solid foundation for future consensus.

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

PwC observation:

The OECD has been looking closely at a number of simplification options, for both Pillar One and Pillar Two. The Inclusive Framework (IF) steering group and member countries are considering next steps, and recently held, on January 27-28, a **public IF meeting**. Of the pending issues to resolve at a political level, the question of Pillar One scope is probably the most difficult to resolve; it remains to be seen if a move away from the automated digital services / consumer facing businesses definitions is possible. Countries don't necessarily need a consensus within the IF in order to implement the concepts of Pillar Two within their own domestic rules, but the IF framework provides a necessary basis for rule coordination and wider consistency.



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OECD

OECD updates COVID-19 guidance on displaced persons and tax treaties

The OECD published Updated guidance on tax treaties and the impact of the COVID-19 pandemic, which deals with:

- creation and continuation of a permanent establishment (PE), including home office, agency, and construction-site PEs
- change of residence, including by entities and individuals, plus the application of tie-breaker rules to dual residents, and
- income from employment, i.e. payments under stimulus packages, stranded workers, cross-border (frontier) workers, and teleworking from abroad.

The paper is a Secretariat view on the interpretation of various treaty provisions – i.e. jurisdictions may adopt a different view or outcomes could be affected by different tax regimes (such as state/provincial taxes). It applies in circumstances where public health measures are in effect and extends previous guidance, given the longevity of the crisis. Examples of guidance issued by individual tax authorities are set forth (such as from Australia, Austria, Canada, Germany, Greece, Ireland, the United Kingdom, and the United States), and tax authorities are encouraged to issue additional consistent guidance.

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

PwC observation:

The OECD has sought to provide a degree of certainty for taxpayers in relation to interpreting treaty provisions affected by the displacement of people as a result of public health measures that address the COVID-19 pandemic. The OECD guidance is with respect to the OECD Model's Article 5 and therefore does not cover the UN Model's 'service PE', but the reasoning in such cases could be the same as for a construction PE. However, much relies on the decision-making of the two jurisdictions when dealing with a bilateral treaty, although it is stated that the guidance was discussed in Working Party 1 in its Inclusive Framework configuration, which supports its publication.

In some respects, working arrangements post-COVID-19 may never be the same as they were before the pandemic. New ways of working virtually, different value chain arrangements, and the need for different locational presences may also change, leading to adjustments in revenue streams affected by nexus and income allocation rules. The current uncertainties likely are indicative of the many challenges that may lie ahead.

Employers will need to review carefully any employee displacements and work through any compliance obligations, particularly in light of different local tax authority positions. In particular, they will need to consider how COVID-19 driven displacements and changes may in fact now be the 'new normal.'

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Treaties

Ecuador

Ecuador approves resolution providing temporary tax treaty application relief

The Ecuadorian Tax Authorities issued a Resolution during November 2020 providing temporary relief with respect to certain tax treaty requirements established in a previous resolution from 2018. Due to the pandemic's impact, the Ecuadorian Tax Authorities published a new Resolution in November 2020, which modifies the earlier resolution, aimed at easing requirements for the automatic application of treaty benefits. When considering a situation listed in the second requirement above, the new Resolution allows the automatic application of treaty benefits, even if the Ecuadorian withholding agent was not provided with a tax residence certificate at the moment the withholding obligation accrued. However, the withholding agent should obtain a certificate complying with all requirements no later than March 11, 2022. The Resolution would apply only to withholding tax obligations accrued between March 11, 2020 and September 11, 2021.

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

PwC observation:

The temporary relief of the obligation to provide an advance tax residence certificate to Ecuadorian withholding agents should ease access to treaty benefits in Ecuador for foreign investors that are experiencing delays or difficulties in obtaining a tax residence certificate under the current circumstances.

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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

Acronym	Definition
ECOFIN	EU Economic and Financial Affairs Council
GAAP	generally accepted accounting principles
IF	inclusive framework
MNC	Multinational corporation
NID	notional interest deduction
NRC	non-resident companies
PE	permanent establishment
OECD	Organisation for Economic Co-operation and Development
R&D	Research & Development
VAT	value added tax
WHT	withholding tax

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