International Tax News

August 2024

Start

www.pwc.com/its

Welcome

Our monthly publication offers updates and analysis on international tax developments around the world, authored by specialists in PwC's global international tax network. We hope you find this publication helpful. For more international tax-related content, please visit:

https://www.pwc.com/us/en/services/tax/multinationals.html

Cross Border Tax Talks

Doug McHoney, PwC ITS Global Leader, hosts PwC specialists who share insights on issues and developments in the OECD, EU, US and other jurisdictions. Listen to the latest:

Taxing Cryptocurrency: US Digital Asset Regs

Doug McHoney (PwC's International Tax Services Global Leader) is joined by returning guest Rebecca Lee, a Principal in PwC's Washington National Tax Services Practice where she focuses on complex tax problems and financial transactions in the digital asset space. Doug and Rebecca discuss T.D. 10000, the recently published final regulations dealing with digital assets. They dive into the details of digital assets, including the definition of a digital assets, revisiting non-fungible tokens (NFTs) and blockchain, and the different types of digital transactions. They also cover the background of the final regulations, calculating gains and losses, determining basis, digital asset transaction costs, ordering rules, Form 1099-DA, Notices 2024-56 & 2024-57, and the applicability dates. They finish the podcast with an exploration of how other jurisdictions are approaching cryptocurrencies around the world, touching on FATCA, DAC8 and more.

Douglas McHoney
Global Leader - International Tax Services Network
+1 314-749-7824
douglas.mchoney@pwc.com

Doug McHoney, PwC's Global International Tax Services Leader shares some of the highlights from the latest edition of International Tax News

In this issue

Legislation

China

China offers more CIT incentives for green and digital development

Since 2008, China has provided an incentive credit against its Corporate Income Tax (CIT). An enterprise may offset 10% of its investment in specific equipment against its current year CIT, when it acquires and actually uses the equipment for the purposes of energy and water conservation, environmental protection, and safety production. Any excess amount may be carried forward and deducted in the subsequent five tax years.

To further increase tax support, in July 2024, China issued Ministry of Finance (MOF) and State Tax Administration (STA) Public Notice [2024] No. 9, providing a new preferential CIT incentive for companies investing in digital and intelligent transformation of certain types of equipment. To be eligible for the incentive, companies must invest in the digital and intelligent transformation of specific equipment for energy and water conservation, environmental protection, and safety production during the period 1 January 2024 to 31 December 2027. The amount not exceeding 50% of the original tax base at the time of purchase can be used to offset the current year tax income at a 10% ratio. Similarly, any portion of the credit that is not utilized can be carried forward for a maximum of five years.

The new tax incentive aligns with a State Council Action Plan Guo Fa [2024] No. 7 released in March 2024, which aims to boost the renewal of large-scale equipment, promoting high-quality and sustainable development for long-term benefits.

In response to the developments in science and technology, as an extension of the existing CIT policy since 2008, the Public Notice increased the scope from purchases and uses to digital and intelligent transformation, encouraging enterprises to further explore in high-end, green and intelligent industry and further expanding effective investment.

Long Ma
China
86 (10) 6533 3103
Long.ma@cn.pwc.com

Legislation

Argentina

Argentina's new promotional regime for large investments

The Argentine Congress passed comprehensive reform, effective 8 July 2024, that introduces, among several legislative amendments, a Promotional Regime for Large Investment (RIGI for its Spanish acronym). RIGI aims to provide certainty and legal stability to specific long-term investments in Argentina, by offering tax, customs, and currency exchange incentives.

On 25 August, Argentina issued regulations that provided additional details on the RIGI and designated the Ministry of Economy to administer the new regime.

Eligible participants

Benefits are only available for domestic Special Purpose Vehicles (VPUs for its Spanish acronym) incorporated by foreign and/or Argentine residents. The term VPU includes (1) corporations, including single-member corporations (i.e., Sociedad Anonima Unipersonal) and limited liability companies (i.e., Sociedad de Responsabilidad Limitada or SRL); (2) branches established by foreign-incorporated companies; (3) dedicated branches of domestic entities established according to the terms of the law; and (4) temporary joint ventures and other associative contracts.

VPUs must exclusively hold and engage in qualifying assets and activities. An existing entity may allocate part of its assets to create a VPU through a dedicated branch. In this case, the incentives under the RIGI will apply only to the dedicated branch and not its head office.

The 25 August regulations define the sectors that will be eligible for the RIGI, and provide details on various aspects for completing the application.

For more information see our PwC Insight.

The regime applies to several industries, including forestry, tourism, infrastructure, mining, technology, steel, energy, and oil and gas. The deadline to apply for the benefits of the regime is two years from the law's enactment, with an option for a one-year extension.

Investors should evaluate the possibility of benefiting from this new incentive regime. Argentine taxpayers should continue to monitor for further regulations on other topics such as foreign exchange, customs, and the application process.

Maximo Luis Vargas
United States
+1 347-325-4171
maximo.l.vargas@pwc.com

Maria Bel
United States
+1 646-637-2461
maria.j.bel@pwc.com

Legislation

Canada

Canada releases draft legislation to implement the Pillar Two UTPR

The Department of Finance released draft legislation to implement the Undertaxed Profits Rule (UTPR) into the Global minimum Tax Act (GMTA) on 12 August 2024. The UTPR is a backstop rule that applies to collect top-up tax that has not been collected under an Income Inclusion Rule (IIR) or Qualified Domestic Minimum Top-up Tax (QDMTT). The UTPR allocates any uncollected top-up tax to the respective Canadian entities in the group based on their share of the employees and tangible assets of the multinational group.

The UTPR applies to qualifying multinational groups for fiscal years that begin on or after 31 December 2024. The draft legislation includes a transitional UTPR safe harbour that applies to deem any top-up tax in respect of the jurisdiction of the Ultimate Parent Entity (UPE) to be nil in situations when (i) the filing constituent entity of the multinational group elects to apply the transitional UTPR safe harbour, (ii) the corporate tax rate applicable to the UPE jurisdiction is at least 20%, (iii) the fiscal year begins before 1 January 2026 and ends before 31 December 2026, and (iv) the fiscal year is not longer than 12 months.

Read PwC's Tax Insight.

The introduction of the UTPR may impact multinational groups with Canadian subsidiaries when the parent entity jurisdiction has not enacted Pillar Two rules. These in-scope groups should consider if any top-up tax will be subject to the UTPR and whether they qualify for the UTPR safe harbour. The introduction of the UTPR should not impact Canadian- headquartered multinational groups as those groups were already subject to the Pillar Two rules that were enacted in June 2024.

Kara Ann Selby
Canada
kara.ann.selby@pwc.com

Michael Black
Canada
Michael.c.black@pwc.com

Legislation

India

India Budget 2024: Impact on foreign investors and multinationals

The Indian Finance Minister presented the maiden Union Budget for 2024–25 (Budget 2024) on 23 July after the re-elected Modi Government came into power to serve its third term. With a growth forecast estimated at 6.5% to 7%, Budget 2024 seeks to present a detailed roadmap for India's pursuit to become a developed nation — Viksit Bharat by 2047. The budget proposals focus on infrastructure, skill development, manufacturing energy security, urban development, innovation and R&D, and next-generation reforms around labor, land, and foreign direct investments, among others. On the tax front, the theme of the announcements continues to be stability and certainty with no surprises.

For more information see our PwC Insight.

Budget 2024's tax proposals include measures intended to simplify and rationalize the existing law to enable the ease of doing business, reduce the compliance burden and tax disputes, and bring more certainty to the law. The proposals should be enacted in the next few weeks and be effective from the dates specified for the various proposals mentioned below. The Finance Minister also announced that a new tax code will be unveiled in six months. The government aims to make the new tax code concise, clear, and easy to read and understand.

Companies should evaluate the proposals and their impact. This analysis should be considered while planning and undertaking their business affairs in India.

Sriram (Sri) Ramaswamy
India
+1 646 901 1289
ramaswamy.sriram@pwc.com

Legislation

Israel

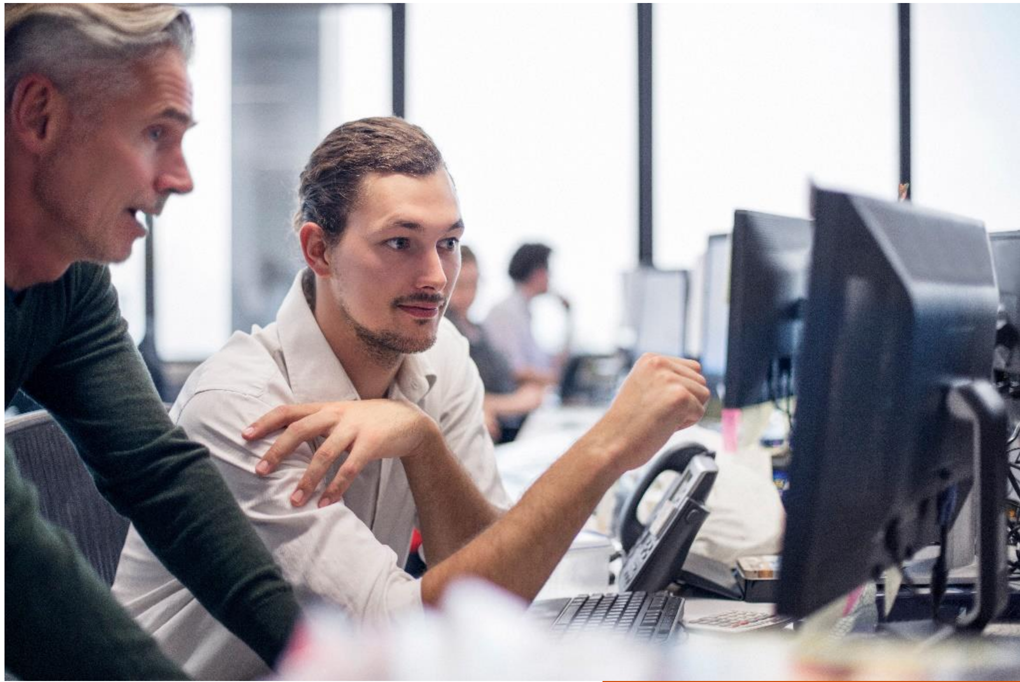
The Minister of Finance has announced his decision to adopt a QDMTT

The Minister of Finance announced his decision to adopt a QDMTT in Israel beginning in 2026. Israel also announced that it does not intend to adopt the Income Inclusion Rule (IIR) and UTPR mechanisms initially; the adoption of the IIR and UTPR will be re-examined following implementation of the QDMTT.

The official publication of the Ministry of Finance included the following statement:

"The decision was adopted, among other things, to prevent the payment of tax of Israeli resident companies in foreign countries for income generated in Israel. However, it was recommended that at this stage Israel should not adopt a mechanism for the collection of additional tax on the income of group companies that are not residents of Israel (IIR and UTPR). This issue will be re-examined after a period of implementing the QDMTT mechanism in Israel. The State of Israel is an attractive destination for many investments in the fields of innovation and high-tech. The Ministry of Finance will continue to work to maintain the attractiveness of the State of Israel for investments, in cooperation and dialogue with the industry, investors, various representative organizations, and other stakeholders."

We expect that the government may seek feedback in due course from key stakeholders through the release of public consultation and/or draft legislation. In the meantime, in-scope groups should assess the impact of the QDMTT applying beginning in 2026.



Vered Kirshner
Israel
+972 3 7954675
Vered.Kirshner@pwc.com

Alex Singer
Israel
+972 3 7954917
Alex.Singer@pwc.com

Yuval Vainer
Israel
+972 3 7955422
Yuval.Vainer@pwc.com

Legislation

Italy

Italy adopts a national minimum tax under Pillar Two

The decree of the Deputy Minister of Economy and Finance dated 1 July 2024 was published in the Official Gazette on 9 July 2024. This decree contains the implementing provisions regarding the so-called 'national minimum tax' (or Domestic Minimum Top-up Tax) provided for by Article 18 of legislative decree 209/2023, implementing the EU Pillar Two Directive. The Italian legislator exercised the option provided by the relevant international legislation to collect any Top-up Tax related to low-taxed entities located in the Italian territory with priority over the Top-up Tax due based on the application of the so-called income inclusion rule (IIR) and the undertaxed payment rule (UTPR). Regarding the Decree's specifics, the national minimum tax follows the framework of the relevant international legislation.

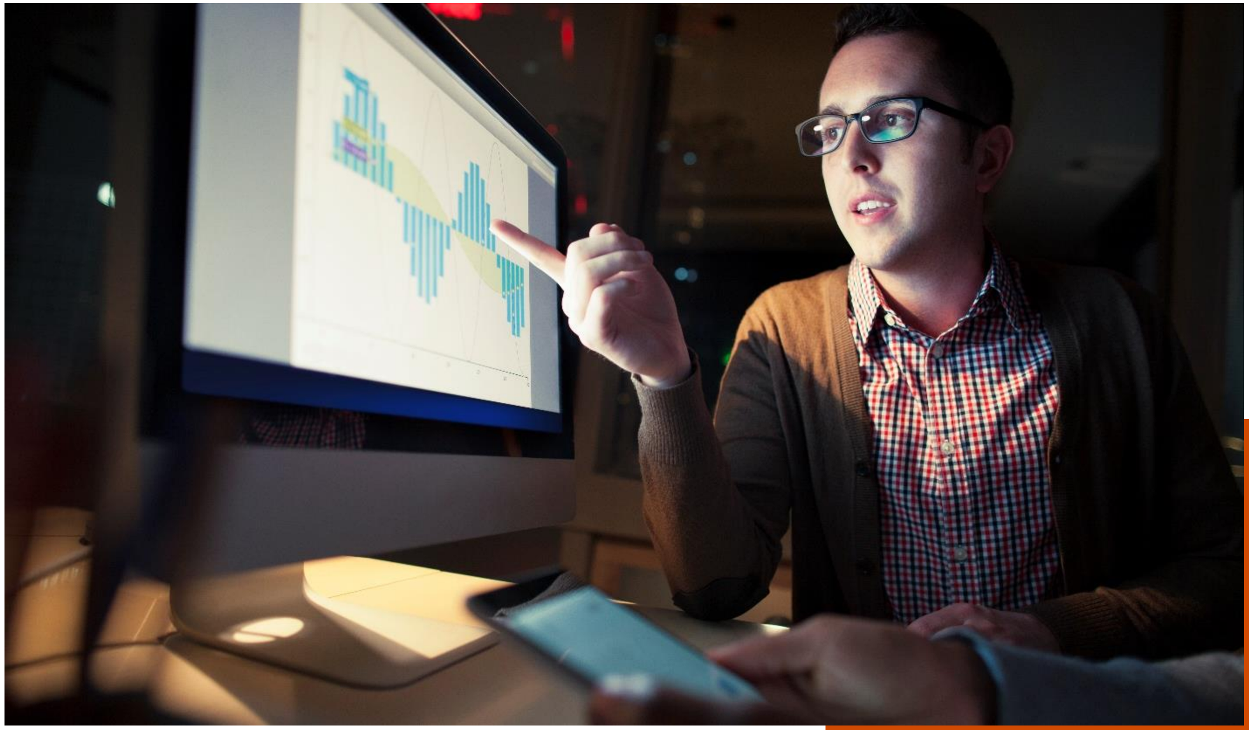
The national minimum tax is designed by the Italian legislator to be 'qualified.' This means it can be deducted from the overall additional tax due in Italy and serve as a 'Safe Harbor.' This allows groups that wish to use the OECD's simplification, to assume the amount paid as the national minimum tax equivalent to the overall additional tax due in Italy.

The Decree specifies that in-scope groups must identify, on a priority basis, a constituent entity located in Italy for the payment of national minimum tax if due in a fiscal year by the Italian entity of the group. Joint ventures, on the other hand, pay the national minimum tax due for each fiscal year autonomously. However, if the joint venture located in Italy belongs to a JV group, it is required to pay the national minimum tax due for a fiscal year for itself and its JV subsidiaries.

For more information see our PwC Alert

The Decree reiterates that the national minimum tax applies from fiscal years starting from 31 December 2023 (thus from 1 January 2024, for calendar-year taxpayers) for both multinational and domestic groups, without excluding the five fiscal years provided for in Article 56 of Legislative Decree 209/2023 for groups in the early stages of their international activity or in the initial phase of applying the OECD rules.

Following the issuance of the Decree, both Italian companies and permanent establishments of foreign entities located in Italy should evaluate the tax impacts arising from the national minimum tax and manage the related compliance obligations, for which the publication of a forthcoming decree is expected.



Claudio Valz
Italy
+39 347 062 2319
claudio.valz@pwc.com

Fabio Mastropasqua
Italy
+39 345 659 3910
fabio.mastropasqua@pwc.com

Legislation

Luxembourg

Luxembourg to reduce CIT rate by 1%

The Luxembourg Minister of Finance, on 17 July 2024, submitted a bill on various tax amendments to the Parliament, including a reduction of the corporate income tax (CIT') rate by 1%.

As a result of the rate reduction, effective 1 January 2025, the aggregate corporate tax rate (including the solidarity surcharge and the municipal business tax) for a company established in Luxembourg City is expected to decrease from 24.94% to 23.87%. In addition, the bill introduces a group ratio for the EBITDA rule, retroactive to 1 January 2024.

For more information see our PwC Alert.

Most of the tax measures were already part of the 2023-2028 coalition agreement and aim to provide relief for companies operating in Luxembourg. The new tax rate seems to be leaning towards the lowest in Europe; nonetheless, when for instance municipal taxes and solidarity surcharges are taken into account, the aggregate rate remains relatively high.

Michiel Roumieux
Luxembourg
+352 49 48 48 3055
michiel.roumieux@pwc.lu

Gerard Cops
Luxembourg
+352 49 48 48 2032
gerard.cops@pwc.lu

Legislation

Peru

Peru introduces new VAT rules on digital services rendered by non-residents, import of intangible goods

In early August, Legislative Decree 1623 (the Decree) was published introducing new VAT provisions on digital services rendered by foreign entities and the import of intangible goods within Peruvian territory. These provisions cover a wide range of intangible goods and digital services.

The Peruvian Executive Branch published the Decree, on 4 August 2024, introducing changes to the local VAT law. Regulations are expected to be published within the next few months.

Main changes introduced to the VAT law

Local end-user individuals who use digital services or end-user individuals who import intangible goods within the Peruvian territory are subject to VAT to the extent the end user resides in Peru. This is deemed to happen when (1) the device used for consuming digital services has a Peruvian IP or SIM card, (2) the payment for such services is made using a Peruvian debit or credit card (or any other product provided by the Peruvian financial sector), or (3) the end user adds a Peruvian address as billing address.

Digital services

Digital services generally are defined as services that are mainly automatic, would not be viable without the applicable technology, and that are provided to users through the internet, platforms or technology used by the internet.

The Decree provides the following examples of digital services:

- Access and/or transmission of images, series, movies, documentaries, videos, music, and any other digital content through streaming or other technology;
- Cloud storage services;
- Access to social networks and additional content or features;
- Online newspapers and magazines;
- Remote conferencing services; and
- Online marketplaces of goods or services.

Digital import of intangible goods

The Decree generally defines the digital import of intangibles goods as the acquisition of intangible goods that are downloaded in a definite way by the acquirer through the internet, platforms, or any other red through which intangible goods may be similarly downloaded.

For more information see our PwC Insight.

These provisions impose significant local compliance requirements on non-resident service providers, such as acting as VAT perception agents, registering before the Peruvian tax authority (SUNAT), and obtaining a local tax ID (RUC), as well as adhering to other local tax regulations. The change is intended to increase tax collection on the provision of digital services and import of intangible goods.

Foreign digital service providers should understand these new regulations in order to comply with the new requirements, if applicable.

Arturo Tuesta
Peru
+51 1 211 6500
arturo.tuesta@pwc.com

Daniela Comitre
Peru
+51 1 2116500
daniela.comitre@pwc.com

Administrative

Australia

ATO focus on cross-border dividend, interest and royalty payments

The Australian Tax Office (ATO) has set forth a focus on taxpayers who fall within the parameters of the ATO's medium public and multinational business engagement program and that make dividend, interest and royalty payments to non-residents. The ATO wants to ensure whether taxpayers are meeting their PAYG withholding and reporting obligations.

A range of issues beyond failing to withhold and pay withholding taxes will attract the ATO's attention. The ATO specifically mentioned focusing on entities that defer their interest to avoid or defer withholding tax, while continuing to claim income tax deductions on an accrual basis, and offshore related entities that are used to facilitate the avoidance of withholding tax in relation to interest expenses deducted against Australian-sourced income and paid to non-residents.

Impacted taxpayers should review the new requirements to ensure they are able to collate the required information in order to meet compliance deadlines.

Michael Bona
Australia
+61 (0) 405 136 010
michael.bona@pwc.com

Chris Stewart
Australia
+61 (0) 407 005 521
chris.d.stewart@pwc.com

Administrative

Australia

Final tax determination on concepts relevant to hybrid mismatch rules

Summary: The ATO has finalised Taxation Determination TD 2024/4, which sets out the Commissioner's final view ruling on the following two separate but related issues in relation to the hybrid mismatch rules:

- hypothetical income or profits within the tax base of a country can be used to identify a 'liable entity' or entities in the country for the purpose of section 832- 325 of the Income Tax Assessment Act 1997 (ITAA 1997), and
- a 'non-including country' for the purpose of subsection 832-320(3) of the ITAA 1997 of the 'hybrid payer' definition can be a jurisdiction other than the country where the payee of the relevant payment is located or resides.

Specifically, the Determination rules that the identification of a 'liable entity' for the purpose of section 832-325 can be based wholly on hypothetical income or profits within the tax base of the country (e.g. when an entity has not actually derived any income or profits in a particular period). Furthermore, section 832- 325 does not restrict when hypothetical income or profits within the tax base of a country can be used to identify a liable entity in the country. For example, there is no requirement that the entity being tested as a liable entity in the country must:

- be a tax resident of the country
- have previously carried on, currently carry on, or propose to carry on, activities that produce or may produce income or profits within the tax base of the country, or
- normally derive income or profits within the tax base of the country.

In relation to subsection 832-320(3), the Determination indicates that a non-including country can be a jurisdiction other than the country where the payee of the relevant payment is located or resides.

Accordingly, the laws of a jurisdiction other than the country where the payee is located or resides may fall for consideration in determining whether there is a hybrid payer within the meaning given by section 832-320.

A range of alternative views are set out in the Determination which the Commissioner does not accept.

The Determination, which finalises the draft Taxation Determination TD 2024/D1, applies both before and after its date of issue (3 July 2024).

Michael Bona
Australia
+61 (0) 405 136 010
michael.bona@pwc.com

Chris Stewart
Australia
+61 (0) 407 005 521
chris.d.stewart@pwc.com

Administrative

Bermuda

Bermuda proposes administrative provisions to facilitate compliance with its new corporate income tax

Bermuda's Ministry of Finance recently released a public consultation paper on the administrative provisions of the Corporate Income Tax (CIT). This follows the enactment of the Corporate Income Tax Act 2023 and the Corporate Income Tax Agency Act 2024, which establishes the Bermuda Corporate Income Tax Agency (the Agency) responsible for administering CIT laws. The consultation period is open from 8 August 2024, to 5 September 2024, with a subsequent consultation paper expected to contain the draft legislation, based on feedback.

The release of the public consultation paper on the administrative provisions of the CIT is designed to help affected Bermuda entities understand the registration requirements, the return filing process, the timing of payment obligations, and the applicability of the penalty and interest regimes.

For more information see our PwC Insight.

Bermuda entities that are subject to the CIT should review the consultation paper and assess the impact of the proposed administrative provisions on their operations, prepare to register with the Agency by the stipulated deadlines, ensure systems are in place for accurate and timely CIT return filing and payment, and provide feedback to the Ministry of Finance during the consultation period to address any concerns or clarifications needed.

Scott Slater
Bermuda
+1 441-537-7178
scott.slater@pwc.com

Administrative

Mexico

Renewal of qualified Maquiladora approach for FY 2020-2024

The Mexican Tax Administration Service (SAT), on 23 July 2024, announced that the US Internal Revenue Service (IRS) and Mexico agreed to renew for the second time in the 2018-2024 administration, the Qualified Approach for Maquiladoras (QMA), initially reached between the competent authorities of the United States and Mexico in 2016.

According to the SAT publication, the renewal agreement maintains the core elements of the QMA transfer pricing framework applicable to fiscal years 2019 and prior, as the competent authorities determined that it continues to produce results in accordance with the arm's length principle.

Based on the agreement reached between the US and Mexican competent authorities, maquiladoras will be allowed to obtain an Advance Pricing Arrangement (APA) applicable for fiscal years 2020-2024, only if they have requested, obtained and correctly implemented an APA ruling through FY 2019 in accordance with the QMA, or where applicable, having correctly applied the Safe Harbor rules included in the provisions of article 182 of the Mexican Income Tax Law (MITL).

Note that QMA estimates the income attributable to the maquiladora for services provided to a foreign related party. Further, the QMA incorporates the inflation update that is applied to balances due.

In the case of excess tax balances paid during the aforementioned period, the QMA does not include the inflation update. In this regard, since the renewal of the QMA covers the period from 2020 to 2024, its application may result in income tax (ISR) due or in favor depending on the tax results obtained during the period.

Finally, considering that currently, there is no extension granted by the SAT for the application of the APA in periods after 2024, taxpayers of the maquila tax regime must apply the pre-established procedure in the MITL or safe harbor starting in 2025, or evaluate whether it is appropriate to operate under a different tax regime.

In view of the renewal of the QMA for FY 2020 to 2024, taxpayers under the maquila regime must evaluate their compliance situation by applying the QMA to their tax results during the period covered by the APA, make the necessary modifications, and establish a strategy to obtain a definitive APA resolution from the SAT for 2020 to 2024.

Marta Milewska
Mexico
+52 55 3232 1137
marta.milewska@pwc.com

Luis Felipe Munoz
Mexico
+52 55 2272 5039
luis.felipe.munoz@pwc.com

Administrative

United States

Treasury releases proposed regulations on dual consolidated losses and certain disregarded payments

Companies should consider whether to submit comments on these new proposed regulations. Comments are due by October 7, 2024, 60 days after the proposed regulations were published in the Federal Register.

Treasury and the IRS on 6 August 2024 issued proposed regulations that address certain issues arising under the dual consolidated loss (DCL) rules, including the effect of intercompany transactions and items arising from stock ownership in calculating a DCL. The proposed regulations also address the application of the DCL rules to certain minimum taxes, such as those under Pillar Two. The proposed regulations also propose entirely new rules regarding certain disregarded payments that give rise to losses for foreign tax purposes.

Section 1503(d) and the regulations thereunder are intended to prevent ‘double dipping’ of the same economic loss that could be used to offset or reduce both income subject to US tax (but not a foreign jurisdiction's tax) and income subject to the foreign jurisdiction's tax (but not US tax).

The proposed regulations provide guidance on the DCL rules for the interaction with the intercompany transaction regulations, computing income or dual consolidated loss, provide a new anti-avoidance rule that generally is intended to address additional transactions, or interpretations, that may attempt to avoid the purposes of the DCL rules, and update the definitions of hybrid entities and separate units to include entities subject to a qualified domestic minimum top-up tax (QDMTT) or income inclusion rule (IIR).

The proposed regulations also propose new rules regarding disregarded payment losses, which generally require domestic corporations that own foreign disregarded entities (specified eligible entities) to include in income disregarded payment losses for which there is a triggering event, including foreign use. The proposed regulations also address the disregarded payment loss calculation, triggering events, the disregarded payment loss inclusion amount, the disregarded payment entity combination rule, the application to dual resident corporations, and the interaction with DCL rules.

For more information see our PwC Insight

Elizabeth Nelson
United States
(202) 460-8329
elizabeth.nelson@pwc.com

David Sotos
United States
(202) 701-3236
david.sotos@pwc.com

Micah Gibson
United States
(412) 559-2800
micah.j.gibson@pwc.com

Administrative

United States

Treasury releases guidance regarding elections relating to foreign currency gains and losses

Treasury and the IRS on 19 August 2024 issued proposed regulations regarding the time for making and revoking certain elections relating to foreign currency gain or loss. The proposed regulations change the ability to elect and revoke elections under Treas. Reg. 1.954-2(g)(3), Treas. Reg. 1.954-2(g)(4), and Prop. Reg. 1.988-7 that are (or previously had been) made or revoked with a timely filed tax return. The proposed regulations also partially withdrew certain proposed regulations issued in 2017 (2017 proposed regulations) regarding the same.
The proposed regulations generally apply to tax years ending on or after the date the final regulations are published in the Federal Register. The proposed regulations were published in the Federal Register on 20 August 2024.

The changes in these proposed regulations are proposed to be effective for taxpayer's relying on the 2017 proposed regulations as of 19 August 2024, the date the proposed regulations were filed in the Federal Register. Accordingly, taxpayers may not rely on Prop. Reg. 1.954-2(g)(3)(iii), Prop. Reg. 1.954-2(g)(4)(iii), and Prop. Reg. 1.988-7(c) and (d) included in the 2017 proposed regulations starting 19 August 2024.

The proposed regulations require taxpayers to make the Prop. Reg. 1.988-7 election to mark-to-market foreign currency transactions by the due date for the extension for the immediately preceding taxable year. In other words, taxpayers may no longer make such election on a retroactive basis after the applicability date of these proposed regulations. The proposed regulations also propose more restrictions with respect to revoking each of the elections (i.e., Treas. Reg. 1.954-2(g)(3), Treas. Reg. 1.954-2(g)(4), and Prop. Reg. 1.988-7).

For more information see our PwC Insight.

Companies should consider whether to submit comments on the proposed regulations. Comments are due 18 October 2024. Companies should also determine how the applicability dates of the proposed regulations may impact upcoming compliance.

Rebecca E Lee
United States
+1 202-280-5721
rebecca.e.lee@pwc.com

Laura Valestin
United States
+1 262-893-5146
laura.valestin@pwc.com

Judicial

India

General Anti-Avoidance Rules versus Specific Anti-Avoidance Rules

The Telangana High Court dismissed a writ petition filed by the taxpayer seeking a mandamus to declare the initiation of general anti-avoidance rule (GAAR) proceedings by the tax authorities as lacking jurisdiction. The court upheld Revenue's action in applying GAAR provisions on bonus-stripping transactions on shares before applying the specific amendment in specific anti-avoidance rules (SAAR) provisions for such transaction.

The court observed that the SAAR provisions for bonus stripping do not cover cases of bonus stripping on securities for the applicable period. Therefore, the taxpayer's argument that SAAR should override GAAR provisions is not applicable in the instant case.

Moreover, the court held that the GAAR provisions place responsibility on the taxpayer to disprove the presumption of a tax-avoidance scheme. According to the court there is clear and convincing evidence to suggest that the entire arrangement was designed with the sole intent of avoiding taxes.

For more information, please listen to our Podcast and read our Tax Insight.

This is the first decision of a High Court on GAAR provisions after its introduction in 2017. The decision lays down several findings and observations that may shape the litigation on this issue. While adjudicating on the settled argument that 'specific provisions override the general provisions', the High Court made an interesting observation: this principle is applicable only when the specific provisions are enacted after the general provisions, and not vice versa.

It is a settled principle of law that circulars issued by the Central Board of Direct Taxes (CBDT) do not bind the courts or taxpayers but only the Revenue authorities. Moreover, while it may serve as a contemporaneous exposition of a provision of law, the court in this rare situation~~,~~ heavily relied on a CBDT circular while deciding on the aspect of general versus special provisions. The court noted that the GAAR provision places responsibility on the taxpayer to disprove the presumption of a tax avoidance scheme. Note that this subsection only creates a statutory presumption related to obtaining a tax benefit. However, the existence of a tax benefit alone cannot sustain the invocation of GAAR provisions. However, the court did not specifically note how the other conditions are met in this case.

Sriram Ramaswamy
India
+1 646 901 1289
ramaswamy.sriram@pwc.com

Chengappa Ponnappa
India
+91 98451 88834
chengappa.ponnappa@pwc.com

Judicial

Netherlands

EC initiates infringement procedure against the Netherlands on taxation of foreign investment funds

This infringement procedure is crucial for foreign investment funds seeking refunds of Dutch dividend tax. The Netherlands has two months to respond to the European Commission's concerns. If unresolved, the European Commission may issue a reasoned opinion, a formal compliance request under EU law. Continued non-compliance could lead to escalation to the CJEU, though most cases are resolved before this.

Foreign funds should consider filing protective claims for withholding tax for 2021-2023, as the statute of limitations has not expired for these years.   Suggest Remove

The European Commission has initiated an infringement procedure against the Netherlands for failing to extend the Dutch dividend withholding tax reduction scheme to foreign investment funds which are comparable to Dutch investment funds. The European Commission considers that the relevant remittance reduction scheme (the so-called 'afdrachtsvermindering') restricts the free movement of capital as it discriminates against foreign funds compared to domestic ones.

Under Dutch law, qualifying investment funds can reduce their tax burden on dividends received from equity investments in the Netherlands and abroad. This reduction is implemented by offsetting the paid source taxes with the Dutch dividend tax due on redistribution of dividends to participants. However, this beneficial remittance reduction scheme is currently exclusively available to Dutch investment funds.

The Dutch Supreme Court ruled that the remittance reduction scheme is not the same as a refund, and therefore cannot lead to a refund. This applies if the foreign fund is comparable to a Dutch fund based on what the CJEU ruled in the Deka judgment (C-156/17) (a case relating to the old system of the refund of tax withheld on dividend).

Jeroen Peters
Netherlands
+31 6 20 03 57 34
jeroen.h.peters@pwc.com

Maurits Vedder
Netherlands
+31 6 12 43 49 34
maurits.v.vedder@pwc.com

Vassilis Dafnomilis
Netherlands
+31 6 13 99 87 29
vassilis.dafnomilis@pwc.com

EU/OECD

European Union

Tax implications of recent elections in Europe

Recent elections in Europe have concluded and the implications for tax policy are becoming more clear. The UK general election took place on 4 July 2024, with the Labour Party winning with a sizeable majority. The King's Speech on 17 July 2024 marked the formal start of the parliamentary year and outlined 39 bills for the coming parliamentary session, with an underlying theme of boosting economic stability and growth.

In France, elections were held on 30 June and 7 July 2024 to elect all 577 members of the 17th National Assembly (Assembly). Three large blocs now represent 85% of the Assembly, but no one has a majority. A coalition government would be an unprecedented situation for France. The left-wing bloc (Nouveau Front Populaire, NFP) with 182 of the 577 seats is the largest grouping in the Assembly.

Elections for the EU Parliament took place 6-9 June 2024. The EU Parliament has a very limited legislative role in taxation as most decisions are adopted by unanimous vote in the Council of Ministers. However, Members of the European Parliament (MEPs) have a role to play in shaping the public perception of tax policy and they also vote on the EU budget, which is crucial to the implementation of European policies. The European Parliament elected Roberta Metsola (European People's Party, EPP) as their president on 16 July 2024. On 18 July 2024, the European Parliament supported the nominations by the leaders of the EU Member States of Ursula von der Leyen (EPP) as president of the European Commission, Antonio Costa (Socialists and Democrats, S&D) as president of the European Council and Kaja Kallas (Renew) as High Representative for Foreign and Security Policy. Von der Leyen unfolded her plans for the coming five years in the Political Guidelines 2024-2029.

For more information see our PwC Tax Policy Alert.

In the United Kingdom, tax and employment policy changes over the coming months and years are expected to align with the Labour Party's manifesto. This includes a pledge not to increase the 'big 3' taxes: corporate tax, income tax, and VAT, and there has been no word yet on capital gains tax. However, the Labour Party will review the corporate tax rate if tax changes in other countries pose a risk to UK competitiveness. The Labour Party manifesto also looks to retain the current full expensing system for capital investment and the annual investment allowance for small business, together with relief for research and development expenditure.

The emergence of the left-wing bloc NFP as the largest grouping in the new French parliament is likely to change dynamics in France. However, as long as there is no Prime Minister appointed, there is no clarity on the tax policy plans of the French Government.

The priorities of the next EU Commission and Parliament will ultimately impact tax policy creation. Prosperity, competitiveness and sustainable growth are understood to be key priorities for the incoming Commission President and tax policies will likely be framed to deliver against these

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

Edwin Visser
Netherlands
+31 (0) 88 7923 611
edwin.visser@pwc.com

Glossary

Acronym	Definition
AFIP	Argentine Tax Authorities
ATAD	anti-tax avoidance directive
ATO	Australian Tax Office
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CTA	Cyprus Tax Authority
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
ETR	effective tax rate
EU	European Union
MNE	Multinational enterprise
NID	notional interest deduction
PE	permanent establishment
OECD	Organisation for Economic Co-operation and Development
R&D	Research & Development
SBT	same business test
SiBT	similar business test
VAT	value added tax
WHT	withholding tax

Contact us

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

Douglas McHoney
Global Leader - International Tax Services Network
+1 314-749-7824
douglas.mchoney@pwc.com

Geoff Jacobi
International Tax Services
+1 202 262 7652
geoff.jacobi@pwc.com