International Tax News

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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:

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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:

Pillar Two Admin Guidance: Glimpses of clarity

Doug McHoney (PwC's International Tax Services Global Leader) is joined by Phil Ramstetter, International Tax Partner and former Tax Policy Consultant at Business at OECD (BIAC). Doug and Phil discuss the OECD's Administrative Guidance released in June 2024, including the deferred tax liability (DTL) recapture rule or five-year rule, the allocation of cross-border taxes, deferred tax accounting, transactions within the GloBE rules, entity classification and treatment, and the expectation of more OECD administrative guidance in the second half of 2024.

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

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Legislation

Hong Kong

Patent box tax incentive becomes law

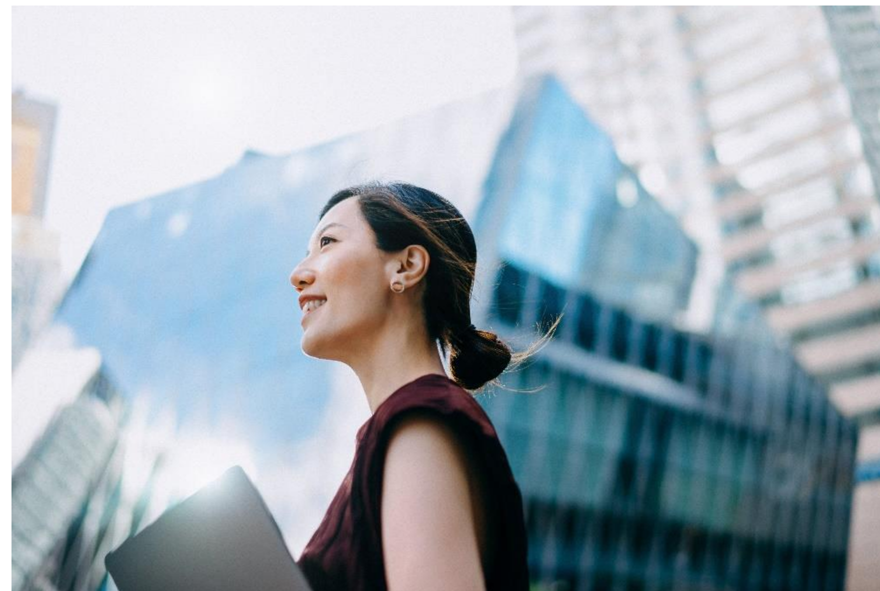
Hong Kong enacted a patent box regime on 5 July 2024 , aligning with international trends to incentivize research and development activities and intellectual property development. The Bill was gazetted as an amendment ordinance on 5 July 2024 which will take retrospective effective from the year of assessment 2023/2024.

The committee stage amendment (CSA) is technical in nature and seeks to clarify that the three-year transitional period, during which an eligible person with insufficient records is allowed to compute the R&D fraction using a three-year rolling average, commences from the first day of the eligible person's basis period for the year of assessment 2023/24, as opposed to the previously stated date of 1 April 2023.

See our PwC news flash that explains the CSA and discusses the key clarifications and responses to written submissions regarding the Bill as provided by the Hong Kong SAR Government during the legislative process.

The government provides welcome clarifications to the regime's application. Considering Hong Kong's other favourable attributes, such as its robust IP protection regime and strong government support for R&D activities, the introduction of the patent box regime is posed to further position Hong Kong as a jurisdiction for developing, protecting, and exploiting IP assets within the Asia-Pacific region.

Businesses should begin assessing the potential benefits of the patent box regime for their operations. While gathering the necessary underlying data may not be straightforward, this challenge can be overcome with early preparation.



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Legislation

Kazakhstan

Draft resolution on the Multilateral Convention to Facilitate the Implementation of the Pillar Two STTR presented for public discussion

The OECD announced that the Inclusive Framework on BEPS concluded negotiations on 3 October 2024, resulting in the development of the Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (the 'Convention').

The Convention's purpose is to facilitate coordinated and consistent implementation of the subject to tax rule (STTR) in certain existing tax conventions.

STTR, which is an integral part of the Pillar Two initiative, will allow source countries to tax certain intra-group income of a non-resident recipient when it is subject to corporate income tax below 9% in the recipient's country.

On 4 July 2024, Kazakhstan presented, for public discussion, a draft resolution for signing the Convention. The period for the discussion ended 19 July 2024.

After the Convention comes into effect with respect to Kazakhstan's tax conventions, multinational entities will need to consider the STTR when making certain intra-group payments to non-residents. Taxpayers should continue to monitor for changes related to the implementation of Pillar Two in Kazakhstan.

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Legislation

Luxembourg

Luxembourg releases draft law to amend the Pillar Two law

The Luxembourg Government, on 12 June 2024, submitted a draft law (n° 8396) to amend the law of 22 December 2023 that introduced the Pillar Two minimum taxation rules. The OECD's administrative guidance, issued 17 June 2024, specifically relevant to the exclusion of securitization vehicles from Qualified Domestic Minimum Top-up Tax (QDMTT), has not been included in the draft law.

With respect to the Luxembourg QDMTT, the bill of law includes provisions that detail which currency to use for QDMTT purposes. In case Luxembourg entities follow the local accounting standard for QDMTT and all entities file statutory accounts based on EUR, then EUR should be used for QDMTT purposes. If one of the Luxembourg entities does not file statutory accounts based on EUR, a five-year election could be made (which would be automatically renewed in absence of revocation) for the Luxembourg entities to choose either EUR or the currency used for group accounting purposes.

The bill currently does not provide the option to choose a different currency, e.g., for Luxembourg entities that do not follow EUR or the group accounting currency. If Luxembourg entities follow for QDMTT purposes the same accounting standard as the one used for the Income Inclusion Rule, then the currency to be used for QDMTT purposes should align with the currency used for group consolidation purposes. Any Top-up Tax due in Luxembourg is still expected to be paid in EUR.

With respect to the transitional rules, an important clarification is included in the commentary with respect to carried forward tax losses (and related deferred tax assets) that have been generated in relation to non-portfolio shareholdings during the transition period. The transition period started on 1 December 2021 and ends when a jurisdiction falls within the full Pillar Two rules (the transitional year). If a jurisdiction applies one of the transitional country-by-country safe harbours, the transition period would be extended. Deferred tax assets due to losses on shareholdings (impairments or capital losses) that originated during the transition period would be grandfathered, subject to the condition that Luxembourg entities apply for the jurisdictional Equity Investment Inclusion Election in the transitional year. Hence, groups with Luxembourg entities that generated such tax losses during the transition period would need to make the election to prevent the future utilization of those tax losses from having a dilutive effect on the jurisdictional effective tax rate.

With respect to the transitional country-by-country safe harbours, the OECD administrative guidance until the end of 2023 was included in the draft law. Specifically relevant is the inclusion of the Hybrid Arbitrage Arrangement Rule, where Luxembourg chose to implement the rule with retroactive effect for arrangements implemented or amended after 18 December 2023. Under such a rule, certain expenses, income taxes, or losses could be disregarded when testing the transitional country-by-country safe harbours. The Luxembourg Government included several arguments to defend the rule's retroactivity in the commentary to the draft law. It remains to be seen whether the retroactive date would be upheld in the final law.

For further details on the Luxembourg bill of law, see our PwC Insight.

The amendments proposed by the draft law clarify several points for Luxembourg businesses, such as the grandfathering of certain tax losses on shareholdings; the consolidation rules; and the treatment of deferred tax liabilities of Luxembourg reinsurance entities.

The draft law is still subject to review by the Luxembourg Council of State. It remains to be seen whether the final law will consider the June 2024 OECD guidance to exclude securitization vehicles from the scope of the Luxembourg QDMTT, as well as the safe harbour for non-material constituent entities issued by the OECD in December 2023.

We expect Luxembourg will initiate the process to ensure that the Luxembourg QDMTT rules qualify for the QDMTT Safe Harbour. This would lead to switching off the Income Inclusion Rule and Undertaxed Profits Rule in other jurisdictions. The OECD has recently clarified that jurisdictions would, in a first phase, prepare a self-certification report, which would be subject to a limited review by the OECD Inclusive Framework members.

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Legislation

Netherlands

Dutch Secretary of Finance clarifies anti-abuse rule on interest deduction with potential overreach

The Dutch State Secretary of Finance published a new Decree regarding the anti-abuse rule with respect to interest deductions (Art. 10a Corporate Income Tax Act – CITA) on 14 June 2024. The new Decree updates the Decree of 25 March 2013, which was last amended by the Decree of 10 February 2022. Compared to the previous decrees, the new Decree contains the following new elements:

I. Abuse of law (fraus legis)

Recently there have been a number of cases where the tax authorities argued abuse of law (fraus legis), in addition to the application of the targeted anti-abuse rule included in Article 10a of the Dutch Corporate Income Tax Act. The new Decree clarifies that an interest deduction cannot be denied based on fraus legis if the taxpayer plausibly establishes that the debt and the related transaction are justified by business reasons. However, in some cases, interest may still not be deductible under fraus legis when there is a breach of the CITA as a whole (and thus not only with respect to Article 10a CITA).

II. Adaptation to the 'financial hub function'

According to the Dutch Supreme Court judgment of 3 March (BNB 2023/61), Art. 10a CITA should not apply if the funds are obtained from a related entity that performs a 'financial hub function' within the group in carrying out financing activities. The tax authorities interpret the financial hub function in a very strict manner.

III. Approving policy in case of partially effectively taxed interest income

According to Art. 10a CITA, the interest deduction limitation does not apply if there is sufficient taxation levied on the interest received, according to Dutch standards. However, according to the literal text of Art. 10a CITA, there is no sufficient taxation if the interest income is only partially effectively (directly or indirectly) subject to tax at the level of the recipient. The new Decree clarifies that the interest deduction limitation does not apply, provided that:

- the taxpayer annually proves that the specific part is actually taxed; and
- neither treaties nor other instruments for the avoidance of double taxation further limit the actual taxation on that income.

IV. Coordinated group

Per 1 January 2017 a 'coordinated group' is considered affiliated for article 10a CITA, even though the members of the coordinated group individually may not exceed the threshold for affiliation (broadly 1/3 interest). The decree describes what may be considered a coordinated group, and it is indicated that a coordinated group in any case includes the situation where the material decision-making power with regard to the - design of the - investment and the joint interest in an acquired target rests with one or a seems to not make sense without adding 'neither' coordinated whole of (legal) person(s). In such a case the ultimate investors have - as it were - transferred the decision-making power (to a large extent) to that person/those persons.

V. Uncommercial rerouting

The Decree includes a number of additional examples of uncommercial rerouting transactions.

Article 10a CITA is a very important anti-abuse rule for international businesses operating in the Netherlands. The new Decree incorporates previously decided case law. Most notably, although it seems an incorporation of case law, we read a quite restrictive interpretation by the tax authorities, which does not necessarily follow the case law itself. This is, for instance, the case in defining whether a company performs a financial hub function.

If a taxpayer takes a position that conflicts with the positions taken in the Decree, it may require going to court. Article 10a CITA is under review before the European Court of Justice.

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Legislation

Netherlands

Dutch Court of First Instance rules again that Brazilian 'Interest on Net Equity' is considered a dividend

The Hague Court of First Instance issued, on 14 May 2024, two court rulings regarding the application of the tax sparing credit for the Brazilian 'Interest on Net Equity' (IoNE). The question at hand was whether this IoNE qualifies as dividend or interest purposes of the Netherlands-Brazil tax treaty. The significance of this distinction concerns the right to offset a tax sparing credit (TSC): in the case of dividend, the TSC is 25%, while in the case of interest, the TSC is 20%.

In both rulings (ECLI:NL:RBDHA:2024:6858 and ECLI:NL:RBDHA:2024:6857), the court concluded that the ambiguity of the treaty text should be borne by the Contracting States, and if there is reasonable doubt, it should not be interpreted to the detriment of the taxpayer.

Therefore, the court designates IoNE as a dividend for treaty purposes, and not as interest. As a result, the TSC is 25% instead of 20%.

The court rulings are in line with the similar ruling of 1 May 2023 of the Zeeland-West-Brabant Court of First Instance. The rulings support taxpayers' argument to utilize the 25% tax sparing credit instead of the 20%. A Supreme Court decision will likely have the final saying on this matter.

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Legislation

Vietnam

Vietnam adopts Pillar Two

The National Assembly approved the long-awaited Pillar Two Resolution on 29 November 2023. It is effective as of 1 January 2024. The Resolution provides that Vietnam will adopt (i) the Qualified Domestic Minimum Top-Up Tax (QDMTT) rule and (ii) the Income Inclusion Rule (IIR). The QDMTT rule and IIR in Vietnam generally follows the OECD's Model rules.

Tax filing obligations

In-scope taxpayers must submit GloBE information returns, supplementary corporate income tax returns, and explanations of differences arising from the adoptation of different accounting standards. The submission deadlines are as follows:

- For QDMTT: 12 months after the fiscal year end.
- For IIR: 18 months after the fiscal year end for the first fiscal year in scope and 15 months for subsequent fiscal years in scope.
- The tax payment deadline is the same as the filing deadline.

Safe harbor and penalty relief

The Resolution introduces a transitional country-by-country report (CbCR) safe harbor rule that is the same as that in the OECD's GloBE rules. Accordingly, during the transition period, top-up taxes under QDMTT rule and/or IIR in a jurisdiction are nil if one of the following conditions is met:

- The multinational group reports total revenue of less than EUR 10 million and profit before tax of less than EUR 1 million, or loss making in such jurisdiction on its qualified CbCR for the fiscal year.
- The MNE group has a simplified effective tax rate that is equal to or greater than the transition rate for the fiscal year. The transition rate is 15% for fiscal years beginning in 2023 and 2024; 16% for fiscal years beginning in 2025; and 17% for fiscal years beginning in 2026.
- The MNE group's profit before tax in such jurisdiction is equal to or less than the substance-based income exclusion amount, for constituent entities resident in that jurisdiction under the CbCR, as calculated under the GloBE rules.

Transitional penalty relief:

- Administrative penalties relating to tax filings will not be applied during the transition period. However, the Resolution is silent on whether late payment interest will be applied.

Vietnamese accounting standards may qualify as an authorized financial accounting standard under the GloBE rules. It is not entirely clear at this stage whether the calculation of QDMTT and/or IIR will be based on an acceptable financial accounting standard or an authorized financial accounting standard.

The Resolution sets out key principles for the QDMTT and IIR to be applied while further detailed guidance is to be issued in a subsequent decree. Particular uncertainties relating to GloBE information returns (e.g. what information needs to be included, technical guidance on how to complete the return), calculation of amounts payable under QDMTT/IIR, and tax filing and payments may be addressed in such decree. The tentative timeline of the decree was recently announced:

- July 2024: Release the draft decree for public comments.
- August 2024: Submit the draft decree to the Ministry of Justice after collecting public comments
- September 2024: Address MOJ's questions and comments; and revise the draft decree (if needed) to submit to the government
- October 2024: Issue official decree

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Legislation

Canada

Canada's Digital Services Tax Act enters into force

Canada's legislation (included in Bill C-50) implementing the Digital Services Tax Act (DSTA), received royal assent on 20 June 2024. Later, on 3 July 2024, an order of the Governor in Council was made available on the Orders in Council website. The order fixes 28 June 2024 as the date that the DSTA comes into force. Accordingly, the Digital Services Tax (DST) will be effective for the 2024 calendar year and will apply retroactively to in-scope revenues earned since 1 January 2022.

The DST is a 3% tax on Canadian-source digital services revenue earned by large domestic and foreign taxpayers. It applies on a calendar-year basis (i.e., it is not based on the taxpayer's fiscal year). The first payment of the DST liability will include the DST on in-scope revenues earned since 1 January 2022, and the earliest that it will be due is 30 June 2025.

For more information see our PwC Insight.

Taxpayers who potentially will be affected by the DST should start taking the following steps to ensure they are ready to comply with the new rules:

- Consider whether revenues earned in 2022 and 2023 fall into any of the four categories of in-scope DST revenues.
- Calculate global consolidated revenues for 2021 and 2022 to determine whether they meet the DST total revenue threshold for 2022 and 2023, respectively.
- Determine the consolidated revenues derived from any of the four in-scope revenue activities associated with users in Canada for 2022, 2023, and 2024.
- For budgeting purposes, calculate the estimated DST that may become payable in 2025 for 2022, 2023, and 2024.
- Determine if or when to recognize an obligation for accounting purposes.

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Legislation

Turkey

Türkiye publishes draft legislation implementing Pillar Two rules effective in 2024

- The Turkish government submitted draft legislation on 16 July 2024 that amends the tax laws which will, among other things, introduce into Turkish legislation Pillar Two rules that align with the EU Minimum Tax Directive and the Pillar Two Model Rules as approved by OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). Some key features of the Turkish Pillar Two rules, as proposed under the current draft, are as follows:

Operating mechanics: How do the rules operate?

The amount of top-up tax payable is determined through a system, consisting of two interlocked rules - the income inclusion rule (IIR) and the undertaxed profits rule (UTPR). The draft Turkish legislation also makes use of the option to introduce a qualified domestic minimum top-up tax (QDMTT), allowing Türkiye to collect top-up tax on the profits of a low-taxed Turkish entity that is part of an in-scope group.

- The IIR is the primary rule that is applied by a parent entity within the in-scope MNE group. Turkish parent companies of an MNE group must pay an IIR top-up tax calculated according to their allocable share in every entity of the group that is resident in a low-tax jurisdiction. If the entity has been subject to a qualifying QDMTT in its country of location, the amount of QDMTT paid will reduce the amount of IIR top-up tax at the level of the Turkish parent company.
- The UTPR acts a backstop to the IIR. If the ultimate parent of an in-scope group is in a low-taxed third-country jurisdiction or in a third-country jurisdiction that does not apply a qualified IIR, the legislation foresees that a Turkish-based constituent entity belonging to the same group will be subject to an additional tax equal to UTPR top-up tax amount allocated to Türkiye for the fiscal year.
- A Turkish entity of an in-scope group that has an effective tax rate (ETR) of less than 15% in a given year will be subject to QDMTT, meaning that it will have to pay top-up tax in Turkey to achieve the required minimum 15% ETR, rather than the additional tax being collected through IIR at the parent entity level or through the UTPR at the level of other group entities.

In line with the EU Minimum Tax Directive, the draft legislation foresees a substance-based income exclusion amount, calculated as 5% on tangible assets and payroll costs. (For 2024, these rates will apply as 9.8% and 7.8% respectively). Under the proposal's current draft, the IIR and the QDMTT will apply for fiscal years starting from 1 January 2024, while the UTPR will apply for fiscal years starting from 1 January 2025.

Safe Harbors

The draft legislation also contains safe harbors aiming to reduce the compliance burden on in-scope taxpayers during the initial years of the rules' application by avoiding detailed calculations for countries with low risks of significant top-up-tax.

A jurisdiction must meet one of the three tests in order to qualify for the transitional safe harbor:

1. revenue and income must be below the de minimis thresholds (revenue: € 10 million, income: €1 million)
2. the ETR must equal or exceed an agreed rate or
3. no excess profits may remain after excluding the routine profits.

The draft legislation also introduces a permanent safe harbor rule that can reduce to zero the top-up tax for a specific jurisdiction. The Turkish President is authorized to determine the safe harbor jurisdictions and to determine the requirements for such designation; the Ministry of Treasury and Finance is authorized to determine the procedures and principles for implementation. In addition, the draft legislation provides an exclusion for up to five years, if (i) the MNE group has constituent entities in no more than six jurisdictions, and if (ii) the net book value does not exceed the Turkish Lira equivalent of Euro 50 million for the tangible assets of all of the MNE group's constituent entities located in all jurisdictions, other than the reference jurisdiction.

For more information see our PwC Alert.

The draft legislation is subject to the legislative approval procedure before the Turkish Parliament. While the Turkish Pillar Two draft legislation runs through the legislative process, taxpayers should evaluate the potential impact of these new rules on their business structures and internal processes. In this regard, MNE groups should address both the technical impact of the rules as well as the organization's data and systems readiness to comply with and report on the rules.

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Administrative

Denmark

Danish Government announced taxation changes to boost R&D investments

In June, the Danish Government unveiled a series of significant amendments to the existing tax system. Below are the key modifications.

- **Increased deduction for R&D costs:** The deduction for R&D expenses gradually will be raised from 108% to 120%. This change is designed to strengthen the incentive for businesses to invest in innovative projects.
- **Removal of immediate write-offs:** Previously, businesses could immediately write off expenses related to computer software, patents, and know-how. However, these exceptions will now be removed.
- **Tax reductions for succession of family business:** When a business is handed over to the next generation, several tax reductions will apply. Notably, the tax rate will be lowered from 15% to 10%, and a schematic model will be used to calculate the tax liability.

While the changes have not yet been finalized, they likely will be enacted in 2024 and gradually implemented starting in 2025.

Notably, changing governments have changed the inheritance tax on succession of family business several times. For the first time the tax reduction is expected to include property companies.

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Administrative

Belgium

Belgium extends Pillar Two registration for certain large-scale domestic groups; validity of UTPR is challenged

The Belgian Tax Authorities published on 2 July 2024, an 'administrative tolerance,' extending the deadline for certain taxpayers within the scope of the requirement to register under Belgium's Pillar Two legislation. The extended deadline will apply to multinational and large-scale domestic groups that do not (intend to) make advance payments in 2024 for the Belgian domestic top-up tax or the Income Inclusion Rule (IIR). These groups are permitted to submit their notification for registration to the Crossroads Bank for Enterprises on or before 16 September 2024.

This administrative tolerance does not apply to MNE groups and large-scale domestic groups who (wish to) make advance payments in 2024. For those groups, the deadline to submit the form remains as 30 days after the first day of the first fiscal year for which the group is in scope of Pillar Two (for groups with a fiscal year starting on or before 14 June 2024, this deadline remains 15 July 2024).

Additionally, Belgium's Federal public service of Justice announced on 18 July 2024 that a petition was filed on 1 July in Belgium's Constitutional Court (Grondwettelijk Hof) challenging the validity of Belgium's Pillar Two legislation (passed on 19 December 2023). The petition was filed by the American Free Enterprise Chamber of Commerce (a non-profit organization) and it seeks annulment of the provisions establishing a UTPR (Articles 35 and 36).

For more information see our PwC Insight.

If the UTPR as implemented in Belgium is found to violate EU law, this could impact the UTPR of all EU member states. Moreover, taxpayers should remain aware of the varying Pillar Two registration deadlines as jurisdictions continue to announce (and change) them. This extension of the Belgium registration deadline should provide much needed relief to many taxpayers who were facing a tight deadline for compliance.

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Administrative

France

French tax authorities update their guidelines on the OECD MLI

The OECD Multilateral Convention (MLI) amends tax treaties to include a series of stipulations designed to prevent aggressive tax planning strategies and ensure that these treaties cannot be used to obtain double non-taxation. It implements the prescriptions of the BEPS project into tax treaties without having to renegotiate each reaty. To modify a specific tax treaty, both parties must have ratified the MLI and designated this tax treaty as a 'covered tax treaty.'

The MLI contains certain measures that are binding upon all signatories. These minimum standards aim to amend the preamble to the tax treaty, inserting a general anti-abuse clause and modernising the dispute settlement procedure. The MLI's other provisions apply when none of the parties to a specific tax treaty has issued reservations.

France has ratified the MLI, which entered into force on 1 January 2019 for France. French tax authorities have just updated and reorganised their guidelines on the MLI. They detail the options and reservations notified by France to the OECD and provide practical examples of application to specific tax treaties.

As new countries may ratify the MLI and designate new 'covered tax treaties,' the impact of the MLI on tax treaties signed by France must be closely followed.

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Administrative

United States

Final regulations address triangular reorganizations and inbound nonrecognition transactions

US Treasury and the IRS on 17 July released final regulations under Section 367(b) providing guidance on the taxation of cross-border triangular reorganizations and related transactions. The regulations finalize, without substantive change, proposed regulations published on 6 October 2023. The final regulations are effective 17 July 2024.

The regulations modify regulations previously announced in Notice 2014-32 and Notice 2016-73. Notice 2014-32 addressed transactions that Treasury viewed as exploiting certain aspects of final regulations published on 19 May 2011 under Section 367(b) (the 2011 Final Regulations). Notice 2016-73 modified the treatment of property used to acquire parent stock and the consequences to persons receiving such parent stock, but most importantly, Notice 2016-73 announced rules to modify the amount of income recognized in an inbound nonrecognition transaction, regardless of whether the taxpayer had engaged in a triangular reorganization.

For more information see our PwC Insight.

Treasury and the IRS issued various guidance (regulations and notices) to address certain concerns it had with the use of triangular ‘B’ reorganizations in the cross-border context. The proposed regulations were based on prior notices with modifications. The final regulations, which finalize without substantive change the proposed regulations, therefore may have minimal impact on future transactions.

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Executive

Mexico

Presidential decree grants tax incentives

In accordance with a Presidential Decree published 28 June 2024, tax incentives are granted to individuals and entities, as well as foreign residents with a permanent establishment in Mexico that obtain income from productive economic activities occurring within the industrial centers located in the state of Yucatan known as the Development Poles for Well-being. This initiative, which is part of the broader plan for the Interoceanic Corridor of the Isthmus of Tehuantepec, intends to stimulate investment and industrial growth in the Southeast region of Mexico.

The importance of these new hubs lies in their ability to attract investments in eleven key industrial sectors, including the electrical and electronics industry, semiconductors, automotive (with an emphasis on electromobility and auto parts), medical devices, pharmaceuticals, agribusiness, clean energy, machinery and equipment, information and communication technologies, metals and petrochemicals.

To encourage the participation of the private sector, the federal government announced a series of tax incentives for companies that establish within these poles. The tax incentive consists of an income tax credit that offsets the amount of income tax incurred, determined in the fiscal year in question. Such tax credit will equal 100% of the income tax incurred during three fiscal years counted as of the fiscal year in which taxpayers obtain a certificate proving that they are eligible to use the tax benefits, and will be equivalent to 50% of the income tax in the three subsequent FYs, or up to the equivalent of 90% in the event that the minimum employment levels are exceeded.

Those interested in the tax benefits must comply with requirements such as being up to date with their tax obligations, having a document that grants the use, exploitation, or total possession of a part of the surface of the poles, presenting the investment project and having their tax domicile in the pole. The Mexican tax authorities will issue a certificate if the taxpayer complies with the requirements.

Taxpayers may immediately deduct 100% of the original investment in certain new fixed assets (i.e., used for the first time in Mexico) used in the poles to carry out their productive economic activities during six fiscal years, counted from the year in which they obtain the aforementioned certificate. Moreover, taxpayers mentioned above who sell goods, provide independent services or grant the temporary use or enjoyment of goods to persons who carry out productive economic activities within the poles will be granted a tax incentive consisting of a tax credit equaling 100% of the VAT payable on the sale of goods, the rendering of independent services or the granting of the temporary use or enjoyment of goods, and will be creditable against the tax payable on the aforementioned activities. This tax incentive will be granted for four years from the effective date of the Decree.

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Judicial

South Africa

Coronation controlled foreign company case

On 21 June 2024, the Constitutional Court of South Africa (ConCourt) upheld Coronation's appeal against a judgment by the Supreme Court of Appeal (SCA). The previous SCA judgment held that Coronation's business model—separating fund management from investment management (outsourcing the latter)—was disqualified from a critical exemption.

The ConCourt held that the Dublin-based business operation of Coronation Global Fund Managers (Ireland) Ltd (CGFM) did indeed qualify as a 'foreign business establishment' (FBE), for the purposes of South Africa's (SA's) controlled foreign company (CFC) rules, overturning an earlier SCA decision. The SCA had held that CGFM's core business operations included actual investment management and that the company's decision to outsource investment management disqualified it from the substance requirements in the FBE definition. The ConCourt, however, held that CGFM's stated business of fund management was not only to be distinguished from investment management but also was, in fact, the company's core business. The SCA had thus erred in denying the exemption.

For more information see our PwC Tax Alert.

In determining whether a CFC has an FBE, the ConCourt has essentially placed the focus on the manner in which the CFC chooses to operate its business. That is, regard must be had for the CFC's chosen business model rather than what might theoretically, or notionally, be within the CFC's ambit of activities. We caution that National Treasury, in 2023 and in response to Coronation's initial win in the Tax Court, proposed amendments to the FBE definition to effectively disqualify the outsourcing of any functions that might be perceived to be "important" for the business of the CFC for which it is compensated. This controversial proposal was withdrawn pending the outcome of the ConCourt judgment in this matter, and it is therefore possible that it could be resurrected in light of the judgment. We therefore recommend that stakeholders monitor developments in this area.

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Judicial

Germany

Constitutionality of the loss set-off restriction for forward transactions

In the summary review required during suspension proceedings under Section 69 (3) of the German Tax Court Code, the loss set-off restriction for forward transactions/futures under Section 20 (6) Sentence 5 of the German Income Tax Act (ITA) in the version of the Finance Act 2020 of 21 December 2020 (Federal Law Gazette I 2020, 3096) is incompatible with Article 3 (1) of the German Constitution. This was decided by the Supreme Tax Court in a ruling published on 27 June 2024.

Background

The applicants, who were subject to unlimited tax liability and were jointly assessed on income tax in the year 2021 (year in dispute), have challenged the restriction on loss set-off for forward transactions/futures under Section 20 (6) Sentence 5 ITA) in the version of the Finance Act 2020. They consider the provision to be unconstitutional. The Rhineland-Palatinate Tax Court granted the application for a stay of execution due to significant constitutional concerns regarding the compatibility of the restriction on loss set-off under Section 20 (6) sentence 5 ITA (Finance Act 2020 version) with Article 3 (1) of the German Constitution. The legality of the contested income tax assessment for the year in dispute was seriously in doubt.

Decision of the Supreme Tax Court

The Supreme Tax Court agreed with the decision of the lower court and dismissed the appeal as unfounded. The tax court rightly suspended the execution of the contested income tax assessment for the year in dispute. In its summary review, the Supreme Tax Court considered the restriction on loss set-off for forward transactions/futures under Section 20 (6) Sentence 5 ITA (Finance Act 2020 version) to be incompatible with Article 3 (1) of the Constitution. Section 20 (6) sentence 5 ITA gives rise to a two-fold unequal treatment of taxpayers who realise losses from forward transactions.

The separate set-off group for losses from forward transactions/futures leads to unequal treatment between taxpayers who have realised losses from forward transactions and those who have realised losses from other investments. Further within this separate loss set-off group, there is also an unequal treatment of gains and losses from forward transactions realised by the taxpayer.

The Supreme Tax Court stated that - within the introduction of the additional loss set-off group in Section 20 (6) Sentence 5 ITA – it was not able to recognise a system change by the legislator away from the basic principle – already regulated in Section 20 (6) Sentence 2 ITA - of equal treatment of positive and negative investment income taxed at a separate special rate. The Court's summary examination gave rise to the conclusion that there were no sufficient reasons to objectively justify this double unequal treatment.

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Judicial

United States

Potential tax implications of the US Supreme Court overruling the Chevron doctrine

The United States Supreme Court on 28 June released its opinion in Loper Bright Enterprises v. Raimondo, and Relentless, Inc. v. Department of Commerce, overturning the Chevron doctrine that generally required federal courts to defer to a federal agency's reasonable interpretation of an ambiguous statute.

The Chevron doctrine played a critical role in allocating interpretive authority between administrative agencies and the courts and has provided a background principle against which Congress has legislated for 40 years. Federal agencies that engage in rulemaking will be impacted by the Supreme Court's decision to overturn the Chevron doctrine, which could lead to a significant shift in how statutes are interpreted and enforced through regulations. Specifically, courts must now decide what is the best reading of an ambiguous statute, rather than being required to defer to an agency's 'permissible' interpretation. Federal agencies' interpretations of ambiguous statutory text will not receive the same level of judicial deference (if any) with the potential for more frequent challenges to agency regulations that interpret statutory text.

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The Loper Bright decision is likely to lead to a greater divergence of opinions among courts when they are confronted with challenges to regulatory validity. This development may pose compliance challenges or opportunities for taxpayers. At the same time, by constraining an agency's ability to interpret an ambiguous statute, the decision will likely promote regulatory stability across presidential administrations. In other words, an executive agency must adopt the 'best' interpretation of a statute, rather than choose from a range of reasonable readings, which may limit the ability of a new administration to undo the regulatory actions of its predecessors.

The Loper Bright decision is focused on agency action interpreting silence or ambiguity in a statute. It also acknowledges, however, that Congress may delegate rulemaking authority to executive agencies within certain bounds. These types of delegations are common throughout the Code. For example, Section 954(b)(5) directs the Secretary of the Treasury to issue regulations on which deductions are 'properly allocable' to certain categories of income. It remains to be seen what type of deference courts will provide in that context. Furthermore, questions remain as to the scope of the delegation under Section 7805(a), which asks the Secretary to "prescribe all needful rules and regulations for the enforcement of this title."

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EU/OECD

European Union

Priorities of Hungarian Council Presidency and Update on five EU Tax Directives

Keeping track of EU direct tax legislative developments is crucial, but it can be challenging for your organization. The direction of pending EU Directives is not always clear, potentially impacting your organization's tax position across different EU Member States. Additionally, not all information regarding the progress of negotiations on pending EU Directives is easily accessible, further complicating the task of staying informed.

The presidency of the Council of the European Union is held by an EU Member State. The Council is made up of ministers from each EU country. The presidency of the Council rotates among the EU Member States every six months. During this six-month period, Hungary takes over the presidency, which chairs meetings at every level in the Council, helping to ensure the continuity of the EU's work in the Council.

Priorities of the Hungarian Presidency of the Council of the EU

In June 2024, the Hungarian presidency published its **programme** outlining the priorities and directions for its term. In terms of taxation, the presidency aims to advance discussions on taxation files and international issues, focusing on new business models, international cooperation, and fiscal revenues. Key priorities include fighting tax evasion, ensuring legal certainty for taxpayers, and supporting the EU's international engagement.

Additionally, the presidency sees digitalization, efficient use of information, and simplification as opportunities to enhance the competitiveness of European businesses.

The programme does not specify which direct tax directives will be prioritized for discussion, as this will be determined later.

For more information see our PwC Alert.

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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	notionial 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

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