International Tax News

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Start

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Welcome

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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 Update: Traps for the unwary

Doug McHoneyis joined by returning guest Steve Kohart, an International Tax Partner in PwC's New York City office and former advisor to the Center for Tax Policy Administration for the OECD. They dive into Pillar Two with a refresher of the Qualified Domestic Minimum Top-up Tax (QDMTT), the Income Inclusion Rule (IIR), the Under Tax Profit Rule (UTPR), as well as the status of Pillar Two enaction across the globe, including in Puerto Rico. They also talk through how companies are approaching year-end, data readiness and tax compliance; Belgium's registration process; and several traps for the unwary, including the post-finalization of consolidated financial statements, purchase price accounting, hybrid arbitrage, and country-by-country safe harbor requirements. Finally, they discuss what makes a 'good' credit for Pillar Two, the US R&D credit, the reverse consensus process for qualifying a QDMTT, permanent safe harbors, and what guidance to expect next.

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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

In this issue

Legislation

Brazil

Partial adoption of Pillar Two rules (QDMTT)

Provisional Measure (MP) No. 1,262/2024, which seeks to introduce a Qualified Domestic Minimum Top-Up Tax (QDMTT) in Brazil through the 'Additional Social Contribution on Net Profits' (CSLL), along with Normative Instruction (IN) RFB No. 2,228/2024, which regulates the MP, have been published by the Federal Government. This represents Brazil's partial and selective adoption of the Pillar Two rules effective 1 January 2025. Provisional Measures have the immediate force of federal laws but need to be ratified (or modified or rejected) and 'converted' into ordinary federal law by Congress within 120 days.

The government introduced the MP and the Additional CSLL as a protective measure designed to safeguard national revenue in response to the expected increase in tax burdens for large multinational groups abroad. According to the explanatory memorandum, if Brazil does not implement a local mechanism to collect this supplementary tax by 1 January 2025, other jurisdictions where investors or other Constituent Entities of the multinational group are based will collect the supplementary tax on profits generated in Brazil via IIR or UTPR. The Brazilian Federal Revenue Service (RFB) has also opened a public consultation on the text of IN No. 2,228/2024, inviting taxpayers and other stakeholders to submit comments and suggestions for improvement by 10 November 2024.

Although the combined nominal rate of Brazil's corporate income taxes IRPJ and CSLL is 34% (higher for entities in the financial services sector), depending on the combination of tax attributes, tax incentives, and special regimes specific to Brazilian legislation, many Brazilian companies have effective rates below 15%, either through the specific GloBE calculation or through a simplified calculation.

Brazilian multinationals would not be subject to foreign UTPR in 2025 in respect of their Brazilian-source income, which under the new MP will be subject to Brazil's newly implemented QDMTT.

Note that Brazilian UPEs are already subject to a higher burden than the IIR under Brazil's full-inclusion rule, 'TBU', and the only potential top-up tax they would be exposed to abroad on Brazilian-source profits would arise in 2026 through the still-uncertain and controversial UTPR rule (considering the transitional UTPR safe harbor). Therefore, Brazil's QDMTT, as an Additional CSLL in Brazil, may not primarily be a defensive measure for Brazilian multinationals, whose domestic profits seem unlikely to be taxed abroad under the Pillar Two system, but a unilateral tax increase. Brazil's QDMTT might serve as a defensive measure for subsidiaries of foreign multinationals from countries that have already implemented the IIR.

For US and Chinese multinational groups, the newly introduced Brazilian QDMTT likely represents a unilateral tax hike on Brazilian profits, starting in 2025, either due to the absence of IIR rules in their home countries or the broader challenges surrounding UTPR implementation (which faces legal questions in relation to DTAs and national tax systems).

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Legislation

Chile

Chilean Congress approves new tax reform

Chile's Congress approved the bill submitted by the Chilean Executive Branch (the 'Tax Reform' or 'Bill') on 25 September 2024. The Tax Reform is now under Constitutional review by the Chilean Constitutional Court. Once this process is finalized, the Tax Reform will be ready for the President's signature and publication in the Chilean Official Gazette and enacted as law.

General anti-avoidance rule (GAAR)

The Tax Reform modifies the definition of 'abuse' and 'simulation' currently included in Chilean GAAR, emphasizing that the key feature of an 'abuse' is obtaining tax benefits in an 'improper' way, i.e., when a transaction's legal form does not align with the economic effect sought by the taxpayer when entering into the transaction. The Tax Reform's initial proposal of replacing the current judicial procedure with a purely administrative procedure was not approved by the Chilean Congress. Accordingly, the current procedure rules still apply. This means that the Chilean tax authority will still need to initiate a judicial procedure before the Chilean tax courts in order to pursue a GAAR case.

Chilean tax authority assessment power

As a general principle, the Chilean Tax Code allows the Chilean tax authority to challenge transactions executed at a value that significantly differs from 'normal market value.' The Tax Reform defines 'normal market value' as the value that third parties would have agreed in comparable transactions and circumstances, considering the relevant characteristics of the industry, sectors, functions, assets and risks, etc. Under the original wording of the Tax Reform, taxpayers would have been required to follow specific valuation methods to support that a relevant transaction had 'normal market value.

'However, this valuation methodology requirement was not approved by the Chilean Congress, and under the approved wording taxpayers may submit, upon request of the Chilean tax authorities, a valuation report that supports the 'normal market value,' without any obligation of applying a specific valuation method.

Business reorganizations

Under the Tax Reform, mergers and de-mergers, whether domestic or international, will be tax neutral provided that (1) the tax basis in the transferred assets carries forward to the receiving entity, and (2) there is no cash consideration. Note that the initial wording of the Tax Reform suggested that mergers and de-mergers would need to have a legitimate business reason to qualify as tax neutral. However, such a requirement was not included in the approved Tax Reform. Finally, the Tax Reform rules that an international reorganization (different from a merger and de-merger) that produces effects in goods, shares, or rights located in Chile will be tax neutral provided that the following requirements are met:

- It has a legitimate business reason;
- The transaction does not entail a cash consideration for the transferor entity;
- The tax basis in the transferred, assigned, or contributed assets is carried over to the acquiring entity;
- Legal requirements of other jurisdictions involved in the transaction have been met; and
- Chile's taxing rights are kept or not impacted (i.e., Chile is still able to impose taxes in a subsequent transfer of the reorganized assets).

For more information see our PwC Insight.

The Tax Reform adopts measures aimed at addressing tax evasion and avoidance and modernizing the Chilean tax administration. The Bill proposes changes to the Chilean Income Tax Law, Value Added Tax Law, and Tax Code, among others. Multinational companies with operations or presence in Chile should assess whether the approved changes in the current tax system could impact their current or future structures and transactions.

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Legislation

Colombia

Colombian executive branch presents a new tax reform bill before congress

In September 2024, the Colombian Government presented Tax Reform Bill - Draft Law 300. The Bill introduces several changes to the income tax and value added tax (VAT) rules, among others.

One of the most significant proposals includes a reduction of the general CIT rate of 35% to progressive rates ranging from 27% to 33%, based on the taxpayer's net taxable income. The Bill preserves the 35% CIT headline rate for oil exploration and production companies and the coal industry. It also preserves the CIT surcharge (up to 15%) introduced in 2023 for oil exploration and production companies, and increases the surcharge for the coal industry to up to 15% (from 10%). CIT surcharges for financial and hydropower industries and financial institutions remain unchanged.

- The 20% CIT rate for free trade zone users remains unchanged.
- The Bill increases the 15% Minimum Effective Tax Rate (METR) introduced in 2023 to 20%.
- Deductibility of costs and expenses is allowed to the extent the applicable withholding tax is timely remitted. Currently, such condition only applies to payroll and cross-border expenses.
- The Bill increases the capital gains tax rate applicable to the transfer of fixed assets held in Colombia (including shares) that are held for two years or more to 20% (up from the current 15% rate) for resident and nonresident taxpayers. The transfer of fixed assets held for less than two years continues to be subject to the general CIT rate (i.e., new progressive rates introduced by the Bill).
- The Bill repeals the short-term statute of limitations of six or 12 months currently available under certain circumstances.

For more information see our PwC Insight.

If Congress passes the Bill, most changes are expected to become effective 1 January 2025. Multinational enterprises with presence in Colombia should evaluate the proposed changes and assess potential impact on their local operations.

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Legislation

France

Exceptional contribution on the profits of large companies

French Finance Bill 2025 introduces an exceptional contribution on the profits of large companies. This exceptional contribution would target taxpayers with turnover of more than €1 Bn (turnover generated by the taxpayer in France during the financial year or aggregate turnover of the tax consolidation). It would be due in respect of the first two consecutive FYs ending on or after 31 December 2024.

The tax basis would be:

- For non-tax consolidated companies: CIT calculated on all taxable profits at the rates set out in Art. 219 of the French tax code.
- For tax consolidated companies: CIT on the tax consolidated income and net tax consolidated gain.

CIT is before deducting tax reductions, tax credits and tax receivables of all kinds, in particular carry back.

For taxpayers with turnover greater than or equal to €1 Bn and less than €3 Bn, the rate of the exceptional contribution would be 20.6% for the first FY ending on or after 31 December 2024 and 10.3% for the second FY ending on or after the same date. For taxpayers with turnover greater than €3 Bn, the rates would be 41.2% for the first FY ending on or after 31 December 2024 and 20.6% for the second FY ending on or after the same date. Where turnover exceeds the thresholds by less than €100m, a specific rule would apply.

The Finance Bill will be discussed in Parliament before its adoption in late December.
The contribution will not be deductible from taxable income, and the payment will be due when CIT balance is paid (no advance payment mechanism).

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Legislation

Ireland

Irish Finance Bill 2024 Released

The Irish Minister for Finance has published Finance Bill 2024, following approval by the Irish Government.

Finance Bill 2024, which runs to 118 sections and over 200 pages, implements the taxation changes announced on Budget Day as well as introducing some necessary administrative and technical changes to the tax code.

The key highlights from a business tax perspective are:

1. Participation Exemption for Foreign Dividends

A new Participation Exemption for Foreign Dividends is being introduced to simplify existing double taxation relief provisions. It provides an alternative method of double tax relief for dividends received from subsidiaries in the EU/EEA and tax treaty partner jurisdictions, subject to various shareholding / ownership requirements and anti-abuse conditions. It brings Ireland's tax treatment of foreign dividends in line with that of most other EU Member States and OECD countries.

Under the new rules a company will have the option to claim the Participation Exemption or to continue to use existing tax-and-credit relief, by way of an election in the company's annual corporation tax return. Where a company elects to claim the Participation Exemption for a financial period, it must do so for all dividends potentially in scope of the exemption in that period.

The Participation Exemption will be available for relevant distributions received on or after 1 January 2025.

2. Pillar Two – Technical Updates to Existing Legislation

The updates to the Pillar Two rules enacted last year mainly relate to legislating for elements of Pillar Two GloBE Administrative Guidance, the first of which was released 18 December 2023 and the second of which was released on 17 June 2024, along with clarifying the operation of certain aspects of the Domestic Top-up Tax calculation.

3. Research & Development (R&D) Tax Credit

The R&D Tax Credit provides a 30% tax credit for all qualifying R&D expenditure. The Bill provides for an increase to the first-year payment threshold from €50,000 to €75,000. This threshold is the amount up to which a claim can be paid in full in the first year, rather than paid in installments over three years as is usually the case.

4. Stamp Duty on Residential Property

The Bill provides for the higher Stamp Duty rate of 10% on bulk acquisitions to be increased to 15%. This measure applies where ten or more residential properties (excluding apartments) are acquired in any 12-month period.

5. Green Technologies and Capital Allowances

The Bill introduces a number of measures that promote green technologies, reduce carbon emissions, and enhance climate resilience. These include amendments to emission thresholds, extension of accelerated capital allowances for certain vehicles, carbon tax increases, and reduced VAT on the supply and installation of low emissions heat pump heating systems.

6. Technical Amendments to the Outbound Payment Rules

The Bill also provides for some technical amendments to the outbound payment rules introduced in Finance Act (No.2) 2023. These relate to payments of dividends, interest and royalties to certain non-cooperative and 'zero tax jurisdictions'.

These amendments shall apply to relevant payments or relevant distributions made on or after 1 January 2025.

7. Relief for Listing Expenses

The Bill also provides for a new measure giving relief for expenses incurred on an initial stock market listing. The deduction will be for expenses incurred wholly and exclusively on a first listing (IPO) on a recognised stock exchange in Ireland or the EU/EEA area, subject to an overall cap of €1 million of expenses per listing.

Finance Bill 2024 establishes the legal framework to implement many of the proposals announced by the Minister for Finance on Budget Day, while also providing clarity on specific measures. Taxpayers should consider the potential impact on their Irish operations or structure.

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Legislation

Netherlands

Tax plan 2025 measures: Key CIT changes and considerations

The Dutch Government has presented its annual package of tax measures – the Dutch Tax Plan 2025 - on 17 September 2024. The package proposes the following corporate income tax measures:

EBITDA rule: adjustment to earnings-stripping rule percentage: the percentage for applying the earnings stripping (EBITDA) rule would be increased from 20% to 25% of the adjusted taxable profit (taxable EBITDA). At the same time, the EUR 1 million threshold for the application of the rule would be removed for companies whose assets mainly consist of real estate rented out to third parties.

ATAD 2: object exemption and disregarded permanent establishment: to prevent double taxation, the Tax Plan proposes that the Netherlands apply the object exemption to foreign disregarded permanent establishments, provided the profits of such a permanent establishment are subject to tax on profits in the foreign country.

Debt cancellation profit exemption: a new debt cancellation profit exemption would be introduced for taxpayers with losses exceeding EUR 1 million. Under this scheme, debt cancellation profit would be fully exempt to the extent that it exceeds the losses from the previous year.

Adjustment of liquidation loss regime: amendments are proposed to prevent the conversion of non-deductible losses into deductible liquidation losses for an intermediate holding company

Deduction limitation for granting own shares: the deduction limitation for the granting and issuance of shares and stock options within a group would be adjusted. This clarification establishes that the deduction limitation applies to all taxpayers, not just to companies with share capital.

Codification of ATAD GAAR in corporate income tax: the ‘general anti-abuse rule’ (GAAR) from ATAD 1 would be incorporated into Dutch corporate law.

Pillar Two: overlap of corporate income tax subjectivity tests and Pillar Two: For the participation exemption, the object exemption and anti-profit-shifting measure in corporate income tax, it is now laid down in law, that a so-called “qualifying Pillar Two top-up tax” is considered a tax levied on profits. This is not the case for transfer pricing mismatches and hybrid mismatches.

Source Tax: replacement of ‘collaborating group’ with ‘qualifying entity’: in the Source Tax Act 2021, the term 'collaborating group' will be replaced by 'qualifying entity'.

Source Tax: retention of buyback facility in dividend tax: It is proposed that the abolition of the buyback facility will not proceed.

The Dutch Tax Plan 2025 introduces several measures that could significantly and mainly positively impact MNEs operating in or through the Netherlands. One of the key measures is the increase in the EBITDA rule percentage from 20% to 25%, which will provide more flexibility and room for interest deduction. Furthermore, the retention of the buyback facility in dividend tax aims to enhance the competitive position of Dutch businesses and allows listed companies to continue share buybacks free from Dutch dividend withholding tax under certain conditions. MNEs should ensure that share buybacks comply with the specified conditions to benefit from the tax exemption.

Additionally, the proposed changes to Pillar Two rules would mean that the participation exemption may become applicable to one of the shareholdings or the object exemption would become applicable to profits from a permanent establishment where this was not previously the case, or that measures such as the interest deduction restriction or anti-mismatch measures would no longer apply. Finally, the incorporation of the GAAR into Dutch corporate law does not aim to introduce any material changes.

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Legislation

Poland

2025 as the first year for settlement of Polish minimum income tax

The regulations on the Polish minimum income tax effectively came into force 1 January 2024. The tax will apply to entities that have incurred a loss from income sources other than capital gains or have achieved a profitability threshold not exceeding 2%, calculated as the ratio of income from sources other than capital gains to income other than capital gains.

The minimum tax rate is 10% and is applied to a specifically determined tax base (1.5% of revenues and the value of certain costs incurred for the benefit of related entities). There is also an alternative simplified calculation method - 3% of revenues without considering incurred costs. The first settlement of the minimum tax will take place in 2025 (at the end of March for entities whose tax year equals their calendar year), at the time of submitting the annual CIT return for 2024. Exemptions for the Polish minimum income tax are foreseen in the CIT law.

The Polish minimum income tax applies to domestic taxpayers, tax capital groups, and foreign taxpayers conducting business through a foreign branch located in the territory of the Republic of Poland. Due to specific rules on calculating the tax base, the entities operating in Poland should analyze their tax position to check whether they are exposed to the new tax as well as whether exemptions can apply.

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Legislation

Poland

Poland Pillar Two law submitted to Parliament

The government's bill on the global minimum tax (Pillar Two) was submitted to the Parliament and was sent to the first reading on 25 September 2024. The law is generally intended to come into effect from 1 January 2025 with the optional possibility of retroactive application of the provisions of the law from 1 January 2024.

During work on the bill, an open catalog of covered taxes was added, which refers to the taxes indicated in the Polish CIT Act, including withholding tax, diverted profits tax, income tax on controlled foreign corporations, etc. Simultaneously, the justification for the draft law points out the taxes in force in Poland that are not considered covered taxes. In this regard, it is particularly worth noting: retail sales tax, tax on certain financial institutions, and the tax on the extraction of certain minerals.

For more information, please see our article on the Polish Pillar Two bill changes.

In addition, the Polish Ministry of Economic Development and Technology announced changes in the operation of the Polish Investment Zone (Polska Strefa Inwestycji, PSI), which are intended to limit the negative impact of Pillar Two on PSI investors. In particular, the Ministry announced the replacement of the CIT exemption with aid in the form of a cash grant, which will be correlated with the profitability of the investment-related activity. For more information, please see our article on the planned PSI regulation changes.

Taxpayers operating in certain sectors (e.g., retail or financial) may thus be required to pay both the sectoral tax and the top-up tax resulting from Pillar Two.

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Legislation

Portugal

Proposed State Budget Law for 2025: Key tax changes and implications

The proposed State Budget Law for 2025 was presented to Parliament on October 10. Parties with Parliamentary seats now will present proposals to amend it. After the general and specialized discussion, the final approved measures generally should become effective 1 January 2025.

The main tax proposals for corporate taxation are as follows:

Corporate income tax (IRC):

- The standard IRC rate would be reduced from 21% to 20%.
- SMEs and small mid-caps would be subject to an IRC rate of 16% (currently 17%) on the first €50,000 of taxable income.

Tax benefits:

IRC – Fiscal incentive for salary enhancement:

- The fiscal incentive for salary enhancement would apply when there is an average annual base salary increase per worker of at least 4.7% (currently 5%).
- The regime no longer would depend on the non-increase of the salary range.
- It would be necessary to have an average increase of at least 4.7% in the annual base salary of workers earning an amount equal to, or less than, the company's average annual base salary.
- Salary increase costs would increase by 200% (currently 150%), up to a largest annual amount per worker of five times the guaranteed minimum monthly wage (currently four times). Thus, the maximum deduction from taxable profit per worker would be set at €4,350 (currently €1,640).

IRC – Fiscal incentive regime for business capitalization (ICE):

- ICE would be calculated by applying the average 12-month Euribor rate plus a spread of 2 percentage points (currently 1.5 percentage points), regardless of the company's size.
- For the 2025 tax period, the incentive rate is expected to be increased by 50%, instead of the previously planned 30%.

Personal income tax (IRS) – Incentive for business recapitalization:

- The budget proposes a reinforcement of the incentive for individual investment in business capitalization, allowing a deduction of 20% of capital contributions in cash from the gross amount of profits distributed by the company or, in the case of the sale of this participation, from the balance between capital gains and losses.
- This deduction no longer would be conditioned by specific requirements related to the company's economic situation, thus applying to most companies.
- However, it would not apply to contributions to entities supervised by the Bank of Portugal or the Insurance and Pension Funds Supervisory Authority, branches in Portugal of credit institutions, other financial institutions, or insurance companies.

Contributions:

The following contributions still would be in force:

- Extraordinary contribution to the energy sector (CESE)
- Contribution to the banking sector • Additional solidarity contribution to the banking sector • Contribution to the pharmaceutical industry

For more information see our PwC Insight

These changes could significantly affect corporate tax liabilities and financial planning for businesses operating in Portugal. Companies should evaluate the proposals and their impact. Specifically, they should:

- Review and adjust financial strategies to align with the new tax rates and incentives.
- Consider the implications of the new fiscal benefits on salary increases and capital investments.

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Administrative

Germany

Pillar Two notification requirement in Germany – Head of the minimum tax group

The German Federal Ministry of Finance published a Pillar Two notification form on 17 October 2024. The head of any ‘German minimum tax group’ must file this notification form with the German Federal Central Tax Office no later than two months after the end of its tax period for Pillar Two purposes.

German constituent entities of an MNE group as well as German joint ventures including their subsidiaries located in Germany form the German minimum tax group. If an MNE group has only one constituent entity in Germany, draft legislation states that this constituent entity also forms a German minimum tax group. The German minimum tax group is mandatory and automatically established by law. Under German law the head of the German minimum tax group is required to:

- file the German minimum tax return, and
- pay the top-up tax (IIR, UTPR, QDMTT)

for the German minimum tax group. However, the members of the minimum tax group whose top-up tax is paid by the head of the group are jointly and severally liable for the minimum tax owed by the latter. In return for the minimum tax payments, the head of the minimum tax group holds a compensation claim against those members of the minimum tax group. On the other hand, it has the obligation to forward to the minimum tax group members any refunds of top-up taxes it receives on their behalf.

The head of the German minimum tax group is:

the ultimate parent entity, if located in Germany; or

1. if the ultimate parent entity is not located in Germany but all German constituent entities of an MNE group are directly or indirectly owned by one German parent entity, then this one German parent entity is the head of the minimum tax group; or
2. if 1. and 2. do not apply for an MNE group, the ultimate parent entity can choose and determine one German constituent entity as the head of the minimum tax group.
3. if, however, the MNE Group is not able to determine the head of the minimum tax group in time, the most economically significant constituent entity located in Germany is, by default, the head of the minimum tax group.

The notification of the head of the minimum tax group must be filed with the German Federal Central Tax Office no later than two months after the end of the tax period. In the case of a financial year beginning on 1 January 2024, the notification has to be made by 28 February 2025. The German Federal Ministry of Finance published the form for the notification on 17 October 2024. The form for the notification needs to be filed electronically and the filing is expected to be possible starting on 2 January 2025. A later change in the head of the German minimum tax group also must be electronically reported by both the former and the new head of the minimum tax group. In addition, the latter must inform all other German minimum tax group members of its function as the head of the minimum tax group.

For more information see our PwC Insight.

Taxpayers should determine which entity is the head of the German tax minimum group. For financial years beginning on 1 January 2024, the notification must be made no later than 28 February 2025.

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Corporate interest restriction: new guidance on return compliance process

HMRC recently published new guidance regarding the Corporate Interest Restriction (CIR) return compliance process. This indicates that it will apply a much stricter policy than previously on filing CIR returns, and HMRC is already applying this policy to current and historic periods. UK groups therefore need to review their records to establish whether they might be impacted by this change.

A CIR return is filed by one company (known as a reporting company) on behalf of a UK group. The reporting company must be nominated by the group, which is done by filing a nomination approved by each of the UK group companies concerned. That nomination must be made in writing within twelve months of the end of the accounting period to which it is to first apply, and must meet various different criteria regarding its format and content. Once the nomination is made it continues in effect until withdrawn.

HMRC's new guidance clarifies that it will be taking a strict line with groups where it considers that there are CIR returns without valid nominations, or where the nomination is not technically correct and complete. It has also stated that the fact that CIR returns have not been challenged to date is not evidence that they are valid. We are aware that HMRC is challenging historic periods on this point despite previously not raising any enquiries. HMRC has the power to appoint a reporting company for a group, but it has clarified that going forward it is only prepared to exercise that power in exceptional circumstances.

If a group fails to validly appoint a reporting company, it is not possible to file a CIR return for the period, and the group's CIR position is determined by the default rules (allocating disallowances pro rata between companies and allowing no carried forward attributes). It is also not possible in these circumstances to make elections (including a group ratio election) or to claim reactivations of previously disallowed amounts.

UK groups should check their records to ensure that they have a valid nomination in place for current and historic periods. If there is any question as to the nomination's validity, the UK group should consider submitting a new nomination before filing the next CIR return. However, any decision on this needs to be considered in the light of both the current compliance cycle and historic periods, and specific advice should be taken.

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Judicial

India

US LLC eligible for India-US tax treaty benefits

The Delhi bench of the Income-tax Appellate Tribunal (Tribunal), in a recent ruling, concluded that US limited liability companies (LLCs), opting to be disregarded entities in the United States, should be considered as 'residents of the United States' under Article 4 of the India-US tax treaty by virtue of such LLCs being (i) a 'person', and (ii) 'liable to tax' in the United States, i.e. the United States has a right to tax the LLC but the LLC has the option to elect to be a fiscally transparent entity wherein the income is taxed in the hands of the owners. Accordingly, US LLCs should be entitled to claim the benefits of the India-US tax treaty.

For more information see our Tax Insights.

The Tribunal's ruling has laid down the principles of the 'liable to tax' concept in the context of tax transparent entities. While judicial precedents exist on the eligibility of tax transparent partnerships being eligible to avail a tax treaty, this guidance on the applicability of a similar principle to an LLC is the first of its kind. While this ruling sets a precedent on this issue, as this is a Tribunal ruling, the Revenue authorities have the option to challenge it before the High Court.

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Glossary

Acronym	Definition
ATAD	anti-tax avoidance directive
ATO	Australian Tax Office
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
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

Contact us

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