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International Tax News

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Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. International Tax News is a monthly publication that offers updates and analysis on developments taking place around the world, authored by specialists in PwC's global international tax network.

We hope that you will find this publication helpful, and look forward to your comments.

Featured articles

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Responding to the potential business impacts of COVID-19
COVID-19 can cause potentially significant people, social and economic implications for organisations. This link provides information on how you can prepare your organisation and respond.

In this issue

Legislation

China

China released the first negative list for cross-border services trade in Hainan free trade port

China's Ministry of Commerce (MOFCOM) released the negative list for cross-border services trade in the Hainan free trade port (the Hainan FTP). It is the first such list unveiled at the national level, which includes 70 regulatory measures targeted at overseas services providers in 11 categories, and took effect from August 26, 2021. For those industries not on the list, domestic and overseas service providers shall have a level playing field with equal market access in the Hainan FTP. This should ensure greater openness, transparency and predictability.

In addition to removing the restrictions on foreign individuals participating in the qualification examinations for engineers in many fields in the Hainan FTP, the negative list allows representative offices of overseas law firms in Hainan to engage in part of Hainan-related commercial non-litigation legal affairs.

PwC observation:

The negative list widens market access in trade in services and paves the way for higher-level opening-up in professional, transportation and financial services in the Hainan FTP. Through institutional opening-up, the negative list will further liberalize trade in services. The Chinese government may explore additional ways of expanding the administrative model of the negative list of cross-border services trade to other pilot free trade zones in China.

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Gibraltar

Gibraltar raises corporate rate to 12.5%

Gibraltar's 2021 budget was updated on July 26, 2021 with an amendment to the income tax act 2010 and rates of tax rules 1989.

The corporate tax rate increases from 10% to 12.5%, effective August 1, 2021. This causes a split in accounting periods with taxable profits prior to August 1 subject to tax at 10%, and profits on or after August 1 subject to tax at the higher 12.5% rate.

The Chief Minister also announced that the following allowances and deductions will be available for a limited period up to June 30, 2023:

- an allowance of 50% of the fixed salary cost of new employees employed after July 2, 2021
- an increase in the allowance for qualifying training costs from 50% to 60%, and
- an additional 50% deduction for business marketing and promotion costs.

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

PwC observation:

Taxpayers conducting business in Gibraltar should model how the amended corporate rate and other changes could impact current tax costs and operations and any planned transactions.

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India

India nullifies 'retrospective applicability' of tax on indirect share transfers

The Indian Government has ended the retrospective applicability of tax on indirect share transfers. The retrospective amendment introduced in 2012 had far-reaching consequences on indirect transfers undertaken prior to the 2012 introduction and led to litigation with significant amounts of tax contested. The 2021 amendment will nullify all tax-related demands pertaining to indirect transfers of transactions made before May 28, 2012. Further, it is expected to provide relief to prior investors subject to the tax because of the retrospective 2012 amendment.

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

PwC observation:

Multinational companies that were impacted by the retrospective tax amendment involving indirect transfer of Indian assets undertaken prior to May 28 2012, now may end their litigation cycle on this issue and apply for a refund of past taxes paid. The nullification of the retrospective applicability of the tax was influenced by the pandemic's impact on the economy and the need to boost investor confidence and promote foreign investment; these in turn could help fuel economic growth and generate employment.

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Mexico

Updates for complying with Mexico's outsourcing reform

Mexico's Congress on July 30 extended the entry into force of the tax implications for the recently approved outsourcing reform. The extension approval was published in the Official Gazette on July 31.

Generally, the outsourcing reform creates a prohibition on subcontracting employees and limits the use of subcontracting to specific cases (e.g., for specialized registered companies whose core business, according to its by-laws, differs from the core business of the company that is contracting it). In order to help companies transition to the new rules, Congress approved a different set of deadlines. Importantly, effective August 1, 2021, all payments from a Mexican company to an unregistered outsourcing company are nondeductible for income tax purposes. Furthermore, the corresponding VAT is nonrecoverable.

In this regard, Congress agreed to change the transitory articles that apply to various tax and labor provisions.

These changes include:

- Effective September 1, 2021, the above-mentioned tax aspects (i.e., nondeductible payments and nonrecoverable VAT) of the outsourcing reform entered into force. Likewise, the current 6% VAT withholding rate applicable to payments to outsourcing companies is eliminated.
- In order to qualify as a specialized registry company (known in Mexico as the REPSE registry), companies must have registered with the Ministry of Labor by September 1, 2021.

For additional information on the outsourcing reform, see our **PwC Insight**.

PwC observation:

In order to comply with the new obligations regarding new outsourcing limitations and rules, companies should have the necessary controls and tools in place.

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South Korea

Proposed tax law changes

The Ministry of Economy and Finance has announced the Korean Government's latest proposed tax law changes. Multinational groups investing into Korea should consider these key proposals:

- **New tax reporting requirements for liaison offices:** Under this proposal, liaison offices would need to comply with new tax reporting requirements each year, disclosing certain information regarding the activities of the group in Korea (e.g. list of customers, details of head-office, etc).
- **New VAT documentation requirements for foreign corporations providing electronic services:** Foreign companies that have made simplified VAT registrations to comply with Korean VAT obligations relating to electronic services provided to Korean consumers would be required to maintain details of transactions with Korean consumers for five years and must be ready to submit such information to the tax authority within 60 days, if requested.
- **New restrictions for utilising tax losses following a business transfer:** The proposals include new rules that would limit the use of existing tax losses carried forward by a company following the acquisition of a business from another party.
- **Increased R&D and investment tax credits for investments in certain strategic industrial technologies:** Under the proposals, expenditure on qualifying R&D and facilities would be able to obtain higher beneficial rates of tax credits if the investments are made in specified categories of technologies in three strategic industrial sectors of semiconductors, batteries, and vaccines.
- **Clarification of beneficial ownership requirements for overseas investment vehicles:** One proposal would clarify the requirements for treating an overseas investment vehicle as the beneficial owner of Korean-source income.

PwC observation:

The proposals aim to help grow the Korean economy following the COVID-19 pandemic, increase fiscal support to drive growth in designated strategic technologies, and reinforce anti-tax avoidance measures.

As a result of the new tax reporting obligations for Korean liaison offices, any groups with liaison offices in Korea should review activities performed in Korea to determine whether there is any risk of the office being regarded as a permanent establishment with resulting tax compliance obligations. Foreign companies providing electronic services in Korea should also review the new information retention requirements to establish how they would comply with the new rules.

The proposals may also offer opportunities for companies to claim additional tax credits if they conduct R&D activities or are planning to make investments in facilities and they operate in the specified strategic industrial sectors.

The proposals may be subject to some modifications before being finalized for submission to the National Assembly in September. If approved by the National Assembly, most of the proposed changes would become effective January 1, 2022.

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United Kingdom

Additional developments on UK uncertain tax treatment

As previously reported, large businesses (corporations and partnerships) will be required to send a specific notification to the UK tax authority (HMRC) if their tax returns contain an uncertain tax treatment (UTT) beginning in May 2022. On July 20, 2021, the government published draft legislation for inclusion in the next Finance Bill, subject to consultation, which includes several developments related to this new obligation.

For further details see our **PwC flyer**, which summarises the recent developments, in particular, the ‘triggers’ which create the obligation to disclose the treatment to HMRC, and the suggested approach for businesses to evaluate their position.

PwC observation:

This is a significant change, including for those businesses with a ‘low risk’ rating. These notifications effectively will provide HMRC with an early warning system. As a result, HMRC may undertake more targeted inquiries into tax returns.

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Administrative

Cyprus

ECOFIN approves the EC's positive assessment of Cyprus' recovery plan

The EU Economic and Financial Affairs Council (ECOFIN) approved the European Commission's (EC's) positive assessment of the Cyprus recovery and resilience plan (Cyprus RRP) on July 28.

The EC had assessed the Cyprus RRP on July 8.

In the international tax area, the Cyprus RRP Documents include four proposals for addressing tax evasion and aggressive tax planning (ATP) by Multinational Enterprises (MNEs). The four proposals are summarized below:

1. **EU 'blacklisted' jurisdictions**
   Introduction of Cyprus withholding taxes (WHTs) on outbound payments of dividends, interest and royalties to EU 'blacklisted' jurisdictions by December 31, 2022.

2. **Additional corporate tax residency test**
   Introduction of an additional corporate tax residency test based on incorporation in Cyprus by December 31, 2022.

3. **Low-tax jurisdictions**
   Introduction of Cyprus WHTs on outbound payments of dividends, interest, and royalties to low-tax jurisdictions by December 31, 2024. As it relates to interest and royalty payments, the Cypriot authorities may explore instead the approach of applying non-deductibility.

4. **Possible further measures on ATP**
   This would be a holistic review evaluating the effectiveness of the overall set of measures in Cyprus towards addressing ATP. Any required remedies would have to be introduced by June 30, 2026.

PwC observation:

These proposals indicate Cyprus' commitment and willingness to continue cooperation in all appropriate international fora for taxation, complying with the competencies under the EU treaties and relevant global / EU developments.

Taxpayers should monitor these proposals and evaluate how they may affect their existing and new operating structures.

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Treaties

United Kingdom

UK ratifies protocol to UK – Germany tax treaty

The UK ratified the protocol to its tax treaty with Germany on May 26, 2021, giving UK domestic effect to the protocol which was signed by the two countries on January12, 2021. Germany subsequently incorporated the protocol into its domestic legislation on July 23, 2021. The exchange of instruments of ratification is therefore expected shortly.

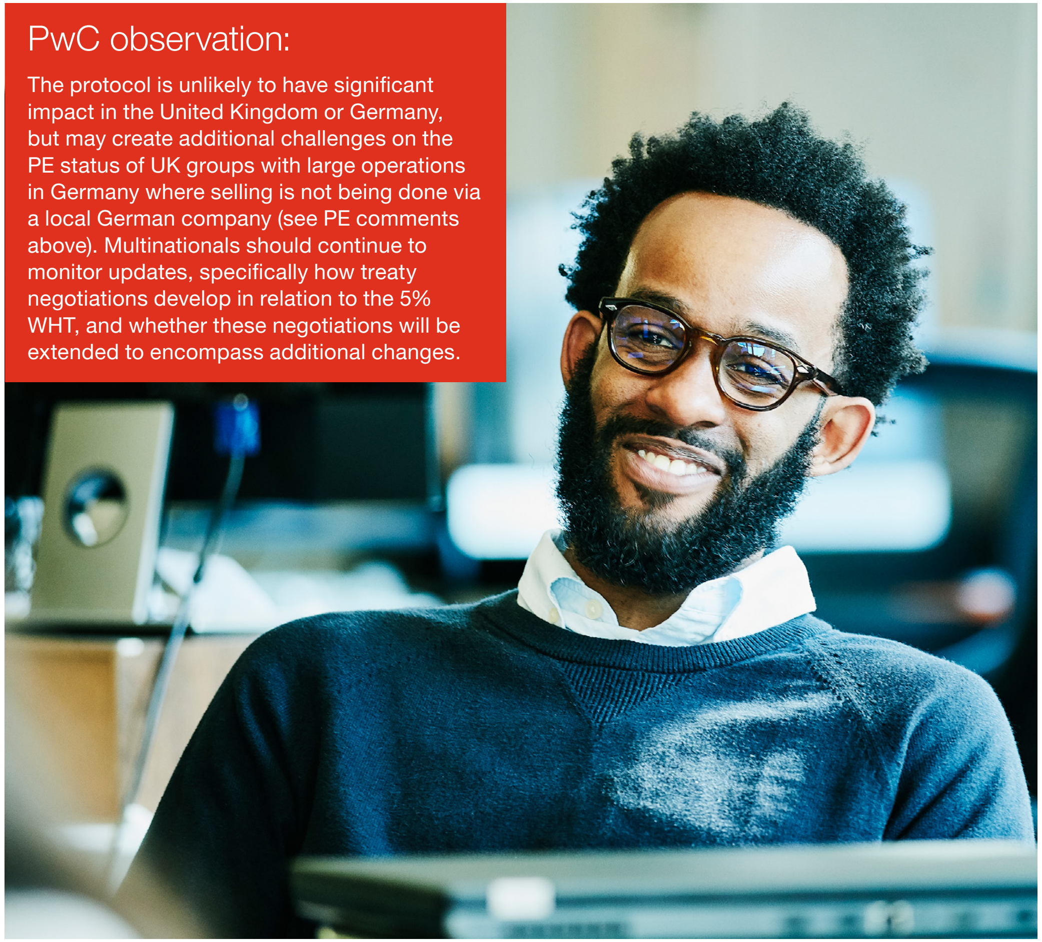
The key changes introduced by the protocol include:

- Tax evasion and avoidance – reflecting UK and German intent that the treaty not create opportunities for tax evasion and avoidance (e.g., anti-treaty shopping) by amending the title and preamble;
- Prevention of treaty abuse – incorporating the principal purpose test (PPT) in accordance with the OECD BEPS minimum standard. Existing specific anti-abuse rules for dividend, interest, and license payments, and income not covered by a specific treaty provision, will be removed. In contrast, the PPT will not deny treaty relief if the taxpayer can prove that granting the treaty benefit in such circumstances is in accordance with the treaty's objective and purpose.
- Permanent establishments – inserting an anti-fragmentation rule which is consistent with other UK treaties amended using the MLI. This prevents the avoidance of a PE by using the exceptions for preparatory and auxiliary activities. Activities carried out in one state by an entity of the other state (e.g., a UK company carrying out activities in Germany), and even by another entity which is closely related (broadly assumed in case of 50% of vote and value or beneficial equity ownership relationships), may be combined in assessing whether a PE arises.
- Mutual agreement procedure – amended so that there is no longer an exception that qualifies the obligations of the Competent Authorities to implement any agreement reached, irrespective of any domestic law time limits.
- Note that the protocol does not include any reduction of withholding tax (WHT) rates. Therefore, the 5% WHT payable on dividends remains for dividends paid by German companies to UK recipients since UK companies no longer

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

PwC observation:

The protocol is unlikely to have significant impact in the United Kingdom or Germany, but may create additional challenges on the PE status of UK groups with large operations in Germany where selling is not being done via a local German company (see PE comments above). Multinationals should continue to monitor updates, specifically how treaty negotiations develop in relation to the 5% WHT, and whether these negotiations will be extended to encompass additional changes.



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United States

US-UK competent authority agreement resolves Brexit issue for some UK companies

The IRS released two competent authority agreements on July 28 that the United States and the United Kingdom entered into (the 'US-UK competent authority agreements') to express their agreement on the application of certain aspects of the limitation on benefits (LOB) article of the US-UK income tax treaty (Article 23). The expressed agreement is in light of Brexit – the United Kingdom's departure from the European Union (EU) – and the United States-Mexico-Canada Agreement (USMCA), which replaced the North American Free Trade Agreement (NAFTA). Under the new agreements, the two countries have agreed that neither Brexit nor NAFTA's replacement by the USMCA should adversely impact the ability of US or UK tax residents to qualify as 'equivalent beneficiaries' under the US-UK income tax treaty.

The fact that the US-UK competent authority agreement on Brexit was issued as a clarification of, rather than a change in, the shared understanding of the United States and the United Kingdom that a 'resident of a Member State of the European Community' continues to include a UK resident for the purposes of the US-UK income tax treaty, means that taxpayers may wish to review their treatment of any affected payments since the effective date of Brexit (i.e., January 31, 2020).

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

PwC observation:

The US-UK competent authority agreements offer a limited scope of relief for certain companies that were affected by Brexit. In particular, groups headed by a UK publicly traded parent with indirectly held US or UK subsidiaries relying on treaty benefits to reduce or eliminate US tax on certain US-source payments may have the needed clarity to continue relying on the derivative benefits test (provided all other requirements are met). Similarly, certain closely held companies with seven or fewer UK individual owners who previously had relied upon the exemption from dividends provided by the treaty (provided all relevant requirements are met) also may have the needed clarity to continue applying the exemption. However, the Brexit clarification applies only for purposes of the US-UK income tax treaty. Brexit treaty relief is not provided for UK-parented groups with non-UK subsidiaries that receive US-source income; whether such additional relief may be forthcoming remains to be seen.

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Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CGT	capital gains tax
CIT	corporate income tax
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
EBITDA	earnings before interest, tax, depreciation and amortization
EC	European Commision
ECOFIN	EU Economic and Financial Affairs Council
EU	European Union
GAAP	generally accepted accounting principles

Acronym	Definition
HRMC	Her Majesty's Revenue and Customs
IF	inclusive framework
IP	intangible property
M&A	mergers and acquisitions
MNC	multinational corporation
NCST	non-cooperative states and territories
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	research & development
STE	Small & Thin Profit Enterprises
UTT	uncertain tax treatment
VAT	value added tax
WHT	withholding tax

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Worldwide Tax Summaries:
Corporate taxes

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